15 September 2014

Ministry of Business, Innovation and Employment
PO Box 3705
Wellington
Attention: Janet Humphris

By email: consumer@mbie.govt.nz

SUBMISSION on
Disclosure and dispute resolution scheme requirements in relation to securitisation - potential exemptions

Introduction

Thank you for the opportunity to make a submission. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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Consumer NZ's position

There are many circumstances when a borrower may need to discuss the administration of an existing loan including, but not confined to, when they are struggling to meet repayments. It is in the borrower's and the loan administrator's interest to ensure the borrower knows who they should contact for these administrative services. However, quite apart from knowing who to ask for administrative assistance, borrowers need to know who can ultimately claim repayments from them.

Debtors should always be told who their creditors are *if* those creditors have the right to directly pursue payments from them. It doesn't matter what type of creditor it is, or where the creditor is located. Debtors are entitled to know who potentially has the right to pursue them for repayments.

Loan originators have an obligation to tell debtors what rights they retain (e.g., to administer the loan) and what rights transfer to the new creditor. They must explain this

clearly to avoid confusion. If they fail to do so, they will incur costs in resolving debtor issues and may suffer reputational damage in the market.

If the new creditor is truly "silent" (i.e., has no right to demand repayment and is not involved in the day-to-day management of the loan) then to the debtor they are, for all intents and purposes, of no significance and can be exempt from the disclosure requirement and the requirement to be a member of a disputes resolution scheme.

In our view, defining the exempt group on the basis of the investment product they used to become silent investors seems fraught. Investors with an interest in directly pursuing overdue payments could simply use a vehicle like this, and be exempt from the disclosure requirement but also, very importantly, membership in a dispute resolution scheme.

The key difference between silent creditors and others is that silent creditors do not directly collect from overdue debtors. They may not have the right to do so (this will be set out in the sales contract which led to the transfer of the loans) or they may choose not to exercise that right.

It therefore seems sensible to define the exemption as limited to creditors who, on the basis of the contracts that tie them to the debt, have no right to approach the debtor for repayment. Debt-collecting firms would clearly not sign a contract like this while silent investors could (their relationship is with the loan originator who sold them the investment and it is the loan originator they will pursue in the event of a claim).

In practice, the investment vehicles/trusts used by silent investors will hold the rights of the investors, and, in turn, the managers of those trusts may hold the rights to act on behalf of the trust. Thus the right to collect the debt may sit, in practice, with the investment managers. If that is the case, they should be registered and part of a disputes scheme if borrowers are to be protected.

If the loan originators are currently securitising loans but using contracts which give the new creditors (the vehicles and/or the managers) the right to recover the loan in the event of arrears, then the new creditors/vehicles/managers must be members of a New Zealand-based disputes scheme. The obligation must accompany the right. In our view, that is the only way debtors can be protected.

The loan originator may like it both ways – to offload the right to collect bad debts to the new creditor (vehicle/manager), making the product attractive to buyers but not wanting to burden the new buyer with rules that ensure they treat debtors well. We don't think that approach achieves the stated goals.

In the communication given to debtors by the loan originator when their loan is transferred, the rights of the new creditor could be spelt out, for example:

(a) "Your loan has been sold to a new owner. We remain responsible for the day-to-day management of your loan. The new owner of your loan has no right to demand repayment from you. That right remains with the institution that originally approved your loan and you must deal with them directly on any matter related to your loan. The institution that originally approved your loan is a member of an approved financial disputes scheme…."
OR
(b) "Your loan has been sold to a new owner. We remain responsible for the day-to-day management of your loan. However, the new owner of your loan has the right to demand repayment from you. This right is held by the Trust managers XXXX who are a member of an approved financial disputes scheme."

Thank you for the opportunity to make a submission. If you require any further information, please do not hesitate to contact me.

Yours sincerely

Sue Chetwin
Chief Executive