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Mr Timothy Waitling
Secretary
Senate Standing Committees on Legal and Constitutional Affairs
Department of the Senate

16 March 2018

Dear Mr Waitling,

RE: Invitation to respond to adverse comment during the inquiry into the Bankruptcy Amendment (Enterprise Incentives) Bill 2017 and the Bankruptcy Amendment (Debt Agreement Reform) Bill 2018

Thank you for the opportunity to respond to some of the statements made about Credit Corp during evidence. Our response is attached as an appendix to this letter.

We have been very disappointed with the standard of evidence provided by some of the witnesses and encourage the committee to take credibility into account when formulating its conclusions.

We have identified some erroneous observations and comments about Credit Corp's position and conduct made by Senator Pratt. We have also addressed these comments in the appendix to this letter.

We are an ASX 200 company committed to the highest standards of corporate conduct and we would be prejudicing the interests of our shareholders, clients and other stakeholders if we did not address the Senator's remarks. We suspect that Senator Pratt's comments arise from confusion created by the evidence provided by some of the witnesses.

Please do not hesitate to contact me should you require any further information or clarification.

Yours faithfully

Thomas Beregi
Chief Executive Officer

Appendix

Credit Corp response to adverse comment during the inquiry into the Bankruptcy Amendment (Enterprise Incentives) Bill 2017 and the Bankruptcy Amendment (Debt Agreement Reform) Bill 2018

Mr Clifford Mearns

Mr Mearns accuses Credit Corp of making submission which is not "particularly honest".

Credit Corp's submission is honest and accurate. We note that Mr Mearns has made no effort to particularise his accusation.

Credit Corp stands by its record as a credible and responsible financial services operator. We have an impeccable compliance record, never having been the subject of an adverse regulatory order or undertaking, despite being the largest and longest-established operator in our segment of the market. We have the lowest rate of complaints received by the external ombudsman service in our industry. We have never been the subject of a reportable systemic issue.

Mr Mearns says that it makes no sense for Credit Corp to have a relationship with financial counsellors, stating that it "makes no sense; none whatsoever".

This comment seems calculated to imply that there is something untoward about Credit Corp's interactions with financial counsellors. There is nothing irregular about Credit Corp's relationships with financial counsellors.

Financial counsellors represent consumers. We will interact with them to agree hardship arrangements and complete debt waivers where consumers are in unrecoverable situations.

Financial counsellors have a deep understanding of the personal circumstances affecting consumers. We regularly seek the input of financial counsellors on our practices and approaches to ensure that we are respectful in our communication and are equipped to recognise and appropriately respond to any particularly difficult personal circumstances affecting our customers.

Mr Mearns says that "For the last two years – maybe a bit longer – every debt agreement where Credit Corp is a creditor has been rejected by Credit Corp. 'No. No. No.' "

This is incorrect.

Over the past 3 years we have voted yes on more than 26% of all debt agreement proposals we have received.

Mr Mearns states that Credit Corp puts consumers into unconscionable arrangements lasting for periods of 17 years.

This is false.

The average duration of all payment arrangements agreed by Credit Corp over the past year is 40 months. This is much shorter than the average duration of a Part IX debt agreement of 60 months.

Mr Mearns states that Credit Corp wants 100 cents in the dollar.

Credit Corp does not expect to recoup 100 cents in the dollar on every debt it purchases, however, in our experience the majority of consumers who are the subject of debt agreement proposals have the capacity and willingness to meet their credit obligations in full without need for a debt agreement.

Credit Corp buys books of charged off debts comprising of at least several debts, and often many thousands of debts, for a single price representing an amount expressed as cents in the dollar. There will be a range of expected outcomes on these debts. On some of the debts Credit Corp will expect to collect nothing, while on others it will expect to collect part of the amount outstanding and on some debts it will expect to collect 100%. It is not possible to predict the outcome on any one debt at the time of purchase, however, on average we will expect each book of debts to collect around twice the amount outlaid to purchase the debts over time. Once costs and the time value of money are taken into account Credit Corp expects to make a reasonable, but not exceptional, return on its investment.

Our experience is that the majority of consumers who are the subject of debt agreement proposals are not insolvent and are not financially vulnerable. The advertising for debt agreements specifically targets such people, with messages promising “freedom from money worries”, rather than targeting people contemplating bankruptcy due to chronically unmanageable affairs. The business model of debt agreement administrators requires solvent and financially viable consumers because consumers who can pay 100% of their debts over time will provide the administrators with a sufficient fee while still delivering a high enough return to creditors to secure voting approval.

The business processes of debt administrators ensure that only those with the financial capacity and willingness to meet their credit obligations in full are provided with proposals. Upfront cash fee payments and agreement to ongoing repayments ensure both financial capacity and willingness. Advertising which encourages only those consumers intent on positively addressing their financial position filters out consumers who are unwilling or unable to do so.

This is borne out by the facts.

Credit Corp has received several thousand debt agreement proposals from various administrators over the past year. Our analysis of these proposals shows that consumers are required to make total payments equal to 108% of the amount owing to their genuine pre-existing creditors. Despite payments totalling more than is owed, creditors will only be repaid 64% of the amounts owing. The difference is taken up in fees.

Credit Corp is a specialist at dealing with hardship and managing repayment plans. We have invested heavily in our infrastructure and employ more than 1,000 Australians to manage these activities and interact with our customers. In light of this, in many instances we are unlikely to be satisfied with 64 cents in the dollar when the consumer is willing to and is capable of paying more than 100 cents in the dollar over 5 years. This partly explains why we have voted yes in only 26% of proposals over the past 3 years.

Mr Mearns says that Credit Corp has started a debt administration company because it is having trouble collecting debts.

This is incorrect.

We have started a debt administration to disrupt an industry which is making excessive returns at the expense of creditors and consumers. We have proven that we can provide a significantly cheaper debt agreement with an average saving in total fees paid to administrators and introducers of more than 35% with no upfront fees.

Mr Mearns says that Credit Corp’s entry into debt administration is a conflict of interest and is “bad business”.

There is no conflict of interest in a genuine pre-existing creditor also acting as an administrator. It enhances the alignment of creditor interests with the administrator and produces a better outcome for the consumer.

The conflict of interest in debt agreements today is the conflict between the interests of administrators and introducers on one hand and the interests of the consumer and the creditors on the other. The administrator/introducer has no interest in exploring hardship options with creditors because it can’t earn any fees if a hardship arrangement is agreed. The administrator/introducer is interested in maximising repayments in order to maximise its own fees and improve the likelihood of creditor acceptance. It is these conflicts which create poor outcomes for creditors and consumers.

A genuine pre-existing creditor also acting as an administrator will always exhaust hardship options because it won’t unnecessarily burden itself and other creditors with the costs and fees of a debt agreement, including the government’s AFSA fees.

Similarly, a genuine pre-existing creditor also acting as an administrator will have no interest in proposing unsustainably high repayments which only increase the chances that its debt will not be repaid.

Credit Corp’s entry into the debt agreement industry is only “bad business” for existing debt administrators charging excessive fees.

Mr Mearns says that Credit Corp's administration fee of 20% is the same as the average administrator, but notes that the average administrator also charges an up-front fee.

This is incorrect.

Credit Corp has received several thousand debt agreement proposals from various administrators over the past year and the average administration fee incorporated in these proposals is 24.1%. Adding the up-front fee to this amount brings total fees to 31.8% of total payments.

Credit Corp's fee structure delivers a saving to creditors of more than 35%.

Mr Benjamin Paris

Mr Paris says that Credit Corp's hardship arrangements include terms of up to 9 years and 4 months and that hardship arrangements are frequently far more onerous than debt agreements. Mr Paris says that "debt agreements repay on average, 90.2% of the original debt including all fees and charges".

This is incorrect.

Hardship arrangements are not more onerous than debt agreements. Hardship agreements do not start with an up-front fee to be paid in cash and they do not immediately increase the consumer's total indebtedness through a further deferred fee. They do not involve committing an act of bankruptcy and do not involve an adverse notation on the National Personal Insolvency Index. When a consumer enters a hardship arrangement they are taking a step to improve their credit record but when they enter a debt agreement they are immediately making their credit record worse.

The average duration of all payment arrangements agreed by Credit Corp over the past year is 40 months. This is much shorter than the average duration of a Part IX debt agreement of 60 months. Applying Mr Paris' approach to these statistical facts suggests that the average debt agreement is 50% more onerous for the consumer than the average hardship arrangement.

Mr Paris's statement that "debt agreements repay on average, 90.2% of the original debt including all fees and charges" is misleading. Creditors are not repaid 90.2% of the amount they are owed. AFSA's figures show that, on average, creditors are repaid only 60% of the debt owing at the commencement of the debt agreement. Credit Corp's experience with debt agreements is that consumers make payments in excess of their original indebtedness but that actual repayments to creditors are considerably lower.

Credit Corp has received several thousand debt agreement proposals from various administrators over the past year. Our analysis of these proposals shows that consumers are required to make total payments equal to 108% of the amount owing to their genuine pre-existing creditors. Despite payments totalling more than is owed, creditors will only be repaid 64% of the amounts owing. The difference is taken up in fees.

Mr Paris says that hardship arrangements are completely unregulated.

This is false.

Creditors regulated pursuant to the National Consumer Credit Protection Act (NCCP), such as Credit Corp, are required to hold an Australian Credit Licence (ACL) and much of their conduct is regulated by the National Credit Code (NCC). Section 72 of the NCC places a positive obligation on ACL holders to properly respond to requests for hardship consideration. ASIC is the relevant regulator and has provided substantial regulation and guidance in this area.

Unlike debt administrators, all ACL holders are required to be a member of an ombudsman scheme approved by ASIC. Consumers dissatisfied with hardship arrangements can lodge complaints with the relevant ombudsman scheme. If the ombudsman scheme finds that a response to hardship is inappropriate they can impose a different arrangement and order compensation. Any systemic failure to properly respond to hardship detected by an ombudsman scheme is reported to ASIC and regulatory sanctions, including licence termination, may be imposed.

It is curious that Mr Paris is critical of hardship arrangements and is only able to provide a handful of selective examples (he suggests these are from Credit Corp, but we have not been provided with any such material from either

Mr Paris or the committee secretariat). As part of proposing a debt agreement consumers are required to attest that they have explored hardship arrangements with their creditors but that nothing affordable could be agreed. If something affordable could be agreed then the debtor would not be insolvent and would not meet the threshold for a debt agreement. The debt administrator is required to ensure the accuracy of such attestations. Without verifying all hardship interactions and seeking confirmation that any inappropriate hardship arrangements had been escalated to the ombudsman it is difficult to understand how these attestations could be accurate.

Mr Paris says that under a Credit Corp hardship agreement a consumer will, "in general … stumble on in perpetual debt" and agrees with the proposition that such consumers will only ever be paying off interest and will never actually pay down their debts and would be better off going bankrupt.

This is entirely false. The facts are totally at odds with these wildly erroneous positions.

Hardship arrangements offered by Credit Corp are structured so that each payment reduces the principal outstanding. Even the selective and unverified examples provided by Mr Paris involve repayments of principal and do not involve perpetual indebtedness because in all instances the principal amount outstanding is reduced to zero. It is not mathematically possible for a debt to be repaid if all repayments are only paying off interest.

The fact is that over the last year 35,000 Australian consumers successfully completed a hardship repayment arrangement with Credit Corp and have cleared their debt to the company. This bears testament to Credit Corp's responsible conduct and the strength of Australia's hardship regime in delivering great outcomes where consumers obtain the satisfaction of having resolved their debts and are ready to re-enter the financial mainstream. The hardship regime prevents unnecessary fee leakages to debt administrators, lawyers, bankruptcy trustees and others which only serve to drive up the cost of credit for all Australians.

Furthermore, the average duration of all payment arrangements agreed by Credit Corp over the past year is 40 months. This is much shorter than the average duration of a Part IX debt agreement of 60 months. This means that on average a consumer on a Credit Corp hardship arrangement will clear their debts in two thirds of the time taken to clear debts under the average debt agreement.

Mr Paris says Credit Corp vote no to every debt agreement proposal.

This is incorrect.

Over the past 3 years we have voted yes on more than 26% of all debt agreement proposals we have received.

Mr Paris says Credit Corp is not willing to accept less than 100% on anything.

This is incorrect and has been addressed in our response to comments made by Mr Mearns.

As noted above we have voted yes on more than 26% of all debt agreement proposals we have received over the last 3 years. The average creditor return on these accepted proposals was 66%.

We also advise that our proactive and understanding approach to consumer hardship provides for a range of outcomes. In this regard we point out that over the last 3 years we have waived 1,461 consumer accounts with an outstanding balance of $13.6m as a response to severe financial hardship.

Mr Paris says that a large debt purchaser has hired 60 staff with plans to start a debt agreement business by seeking to purchase debts so that it is the majority creditor for a large number of consumers and will use its vote to establish debt agreements for all such consumers.

This is not Credit Corp and Credit Corp has no awareness of such an activity by any of its debt purchasing competitors. Furthermore, such an activity would be practically impossible and would be illegal for a debt purchaser to undertake.

Credit Corp's debt agreement business employs just 3 people.

No debt purchaser, and certainly not Credit Corp, would likely have any interest in unnecessarily placing consumers into debt agreements. There are significant costs involved in establishing debt agreements, including the 7% fee payable to AFSA. Credit Corp and other debt purchasers have already made the investment to collect debts directly and do not need to incur the additional costs associated with a debt agreement to obtain repayments.

The debt purchasing market does not allow any purchaser the ability to target the acquisition of the debts of a named consumer so as to become the majority creditor. Purchasers will lodge bids in a competitive process for a large numbers of debts where the identity of the individual debtors is either masked or otherwise unknown at the time of making such bids. Furthermore, it is very unlikely that all of a consumer's debts will reach the advanced state of arrears where they qualify for debt sale at the same time. In our experience the majority of debt agreements are proposed at a time when most of the consumers' debts are not in the advanced state of arrears required to qualify them for debt sale.

It would be a breach of the National Credit Code (NCC) for a debt purchaser to encourage a consumer to enter a debt agreement rather than agree a hardship arrangement. The NCC requires that debt purchasers offer affordable and appropriate hardship arrangements. It would be a breach of the NCC to simply refer a consumer to a debt administration business without first exhausting the prospect of a hardship arrangement. If a consumer is likely to qualify for a debt agreement because they are able and willing to make payments equal to all of their debts over a 3 or 5 year period a debt purchaser would be required to accept such a repayment schedule as part of a hardship plan. It would be a breach of section 72 of the NCC to refuse such an arrangement. If such an activity was systemic the debt purchaser would be exposed to severe sanctions, including cancellation of the purchaser's Australian Credit Licence (ACL) and the consequent cessation of business.

Credit Corp's objective in entering the debt agreement market is to introduce competition to the benefit of consumers and creditors. Consumers should not be increasing their indebtedness and paying up-front cash fees when they enter debt agreements. Creditors should not be getting an average of 60 cents in the dollar when consumers are making payments totalling more than 100 cents in the dollar. By introducing competition we aim to improve standards adopted by all debt administration participants and deliver better outcomes for consumers and creditors.

Credit Corp's debt agreement business only considers that a debt agreement is an appropriate solution in a limited proportion of cases. This is only where there are a number of significant creditors and where some of the creditors are not obliged to and are unwilling to agree an appropriate hardship arrangement. These are the only instances where Credit Corp can be satisfied that a consumer is insolvent and that a debt agreement is a lawful and appropriate solution.

Senator Pratt

Senator Pratt makes observations and comments about Credit Corp's position and conduct which are erroneous. We suspect that these remarks arise from confusion created by the evidence provided by some of the witnesses. Notwithstanding the reason for these errors, they do require correction.

Senator Pratt says that Credit Corp did not like the proposal to reduce the maximum term of a debt agreement to 3 years. Senator Pratt says that Credit Corp's evidence did not reject the proposal in explicit terms, but this was because Credit Corp was being careful.

Credit Corp has not said that it disagrees with the proposal to reduce the term of debt agreements to a maximum of 3 years. Our submission welcomes the reforms, particularly those which address our concerns with the sustainability and affordability of some debt agreement proposals. Our only objection to the Bill is with the formulation of the proposed voting exclusion and we have been explicit and precise in our submission and evidence on this point.

Credit Corp also rejects the implication that we have somehow attempted to carefully conceal underlying opposition to the proposal. Credit Corp is an organisation committed to the highest standards of integrity and transparency. If we have a view on a matter of interest to us we will be prepared to make our view known. We do not engage in any form of covert advocacy.

Senator Pratt says that when Credit Corp rejects a debt agreement proposal the consumer will be provided with a hardship arrangement where the consumer will "only ever be paying off the interest" on the debt and "they'll never actually pay it down and they'd be better off going bankrupt".

This is entirely false. The facts are totally at odds with these erroneous remarks.

Hardship arrangements offered by Credit Corp are structured so that each payment reduces the principal outstanding. Even the selective and unverified examples provided by Mr Paris involve repayments of principal and do not involve perpetual indebtedness because in all instances the principal amount outstanding is reduced to zero. It is not mathematically possible for a debt to be repaid if all repayments are only paying off interest.

The fact is that over the last year 35,000 Australian consumers successfully completed a hardship repayment arrangement with Credit Corp and have cleared their debt to the company. This bears testament to Credit Corp's responsible conduct and the strength of Australia's hardship regime in delivering great outcomes where consumers obtain the satisfaction of having resolved their debts and are ready to re-enter the financial mainstream. The hardship regime prevents unnecessary fee leakages to debt administrators, lawyers, bankruptcy trustees and others which only serve to drive up the cost of credit for all Australians. None of these consumers would have been better off declaring bankruptcy.

Furthermore, the average duration of all payment arrangements agreed by Credit Corp over the past year is 40 months. This is much shorter than the average duration of a Part IX debt agreement of 60 months. This means that on average a consumer on a Credit Corp hardship arrangement will clear their debts in two thirds of the time taken to clear debts under the average debt agreement.

It is likely that Senator Pratt's confusion arises from a misconception of the types of consumers who are the subject of the majority of debt agreement proposals and the real reasons why such consumers do not subsequently declare bankruptcy in circumstances where their proposal is rejected.

The first reason why such consumers do not declare bankruptcy is because they do not approach debt administrators looking for a bankruptcy solution. The advertising message they respond to is one of "freedom from money worries" and does not depict people contemplating bankruptcy. As AFSA's survey results show only 12% of consumers who entered debt agreements were actually seeking such a solution when they approached the debt agreement provider.

The second reason is that these consumers are not insolvent and do not legally qualify for bankruptcy. Any consumer capable of agreeing repayment arrangements with creditors which will see their debts cleared in 5 years is not insolvent. We again draw attention to the several thousand debt agreement proposals from various administrators that Credit Corp has received over the past year. Our analysis of these proposals shows that consumers are required to make total payments equal to 108% of the amount owing to their genuine pre-existing creditors.