

**CREDIT OMBUDSMAN SERVICE
LIMITED**

ACN 104 961 882

**CREDIT OMBUDSMAN
SERVICE RULES**

Fifth Edition

In force on and from 20 August 2009

CREDIT OMBUDSMAN SERVICE LIMITED

RULES OF THE CREDIT OMBUDSMAN SERVICE

Fifth Edition

About the Credit Ombudsman Service

Introduction

1. The Credit Ombudsman Service is an independent External Dispute Resolution (EDR) scheme established by Credit Ombudsman Service Limited (COSL). COSL provides Consumers free of charge with an accessible alternative to legal proceedings for the resolution of their complaints against its members (Members).
2. The broad aim of COSL is to provide for the independent and prompt resolution of Consumers' complaints against Members, having regard to:
 - (a) relevant legal requirements and rights provided by law to consumers;
 - (b) applicable codes of practice*;
 - (c) good industry practice; and
 - (d) fairness in all the circumstances.

** - see Rule 142 for definition*
3. The Credit Ombudsman Service considers complaints from Consumers against Members in accordance with these Rules and looks to resolve Complaints by:
 - (a) agreement between the parties; or
 - (b) making recommendations to the parties; or

- (c) making a Determination; or
 - (d) making an Award; or
 - (e) some other appropriate means.
4. COSL does not provide general information about Members, Members' business operations or services, or the finance industry.
 5. Complainants who take their Complaint to the Credit Ombudsman Service are not bound by the Credit Ombudsman's Determination. Complainants who do not accept the Credit Ombudsman's Determination still retain any legal rights they have to refer their Complaint to a Court or a tribunal or other similar body.
 6. However, the Credit Ombudsman's Determination will be binding on a Member only if the Complainant accepts that Determination in full and final settlement of their Complaint against the Member. Complainants who accept the Credit Ombudsman's Determination will be required to sign a document called a Deed of Release in such form or to such effect as COSL specifies from time to time that has the effect of preventing them from later bringing legal or other proceedings against the Member in relation to the matters that were the subject of their Complaint.*

* *Rule 6 amended on 20 August 2009*

Independence

7. The Credit Ombudsman Service Limited ('COSL') is an incorporated company. The Members of COSL are individuals, firms and corporations that operate in the finance industry and who agree to be bound by the Credit Ombudsman Service Rules and applicable codes of practice.

The decision-making process and administration of COSL are independent of its Members and sectors of the industry which fall within its jurisdiction and which provide its funding.

The Credit Ombudsman and staff of COSL are:

- (a) entirely responsible for the handling and determination of complaints; and

- (b) accountable only to the COSL Board.

The COSL Board is responsible for overseeing the operations of the Credit Ombudsman Service, for ensuring independent decision making by the Credit Ombudsman and staff of COSL, and for preserving the independence of the scheme and of the COSL dispute resolution processes.

In order to ensure that COSL is clearly perceived to be independent, the COSL Board comprises:

- (a) an independent Chairman; and
- (b) an equal number of Consumer Representatives and Member Representatives. *

* *Rule 7 amended on 20 August 2009*

8. The main objectives of COSL are to:

- (a) act as a complaints resolution body for the finance industry; and
- (b) actively facilitate the resolution of Complaints about Financial Services. *

* *Rule 8(b) amended on 20 August 2009*

Credit Ombudsman Service

9. COSL has established and supervises the Credit Ombudsman Service. The Credit Ombudsman Service operates under a set of rules called the Credit Ombudsman Service Rules ("COSL Rules"). These Rules set out:

- (a) who can make a Complaint to the Credit Ombudsman Service;
- (b) what matters can be the subject of a Complaint;
- (c) what matters are not covered by the Credit Ombudsman Service; and
- (d) what procedures apply for making a Complaint to the Credit Ombudsman Service and having that Complaint resolved.

10. The Board may from time to time approve and have published on COSL's web site:
- (a) procedure manuals and handbooks;
 - (b) Guidelines to these Rules and procedures of the Credit Ombudsman Service;
 - (c) bulletins and policy guidelines; and
 - (d) other documents relating to the Credit Ombudsman Service process,
- but these always have to be read subject to the COSL Rules.*\

** Rule 10(b) amended on 20 August 2009*

11. The Credit Ombudsman Service:
- (a) receives and investigates Complaints; and
 - (b) carries out a conciliation role as between Complainants and Members,
- and if the parties are unable to resolve the Complaint themselves, the Credit Ombudsman can make a Determination.

This involves the consideration of each Complaint in distinct stages, as described in Rules 52 to 88. *

** Rule 11(b) amended on 20 August 2009*

12. The Credit Ombudsman Service is not bound by any legal rule of evidence and may inform itself about the Complaint and all matters relating to it in whatever manner and by whatever means in its discretion it thinks appropriate.

13. A Member who is the subject of a Complaint must:
- (a) provide COSL; or
 - (b) to the extent the Member is reasonably able to, cause another person (not the Complainant) to give COSL, any information or document COSL considers necessary to deal with the Complaint in accordance with the COSL Rules, failing which COSL may draw such inferences as it considers appropriate. *

** Rule 13 amended on 20 August 2009*

14. Subject to Rules 114 to 120 (these are rules about confidentiality), a Member must comply with COSL's requirement under Rule 13.

15. Subject to Rules 114 to 120, COSL may at its discretion give all relevant information and documents it receives to all other parties. However, COSL need not give other parties any information or document that COSL receives and relies upon provided it is identified in COSL's written reasons and is made available to the other parties when requested.
16. If COSL believes it is appropriate to do so, COSL may extend with or without conditions any time period under these Rules to enable a party to access and respond to any information or document COSL relies upon but has not provided to that party.
17. Where practicable, COSL will:
 - (a) by whatever means COSL regards as appropriate, keep all parties informed of the progress of a Complaint;
 - (b) subject to Board approval, publish the COSL Rules, procedures, guidelines, manuals, handbooks, policies, Practice Notes, By-laws, edited copies of Determinations and other documents relating to the process of the Credit Ombudsman Service on COSL's web site; and
 - (c) provide parties with copies of or extracts from COSL's policies that are relevant to a particular Complaint.
18. At any time and from time to time during the Credit Ombudsman Service process, if it thinks it appropriate to do so, COSL can suggest that the Complaint be withdrawn or settled, with or without conditions, with the agreement of both parties in full and final settlement of the Complaint. If this happens and one of the parties requests it, COSL will prepare a Settlement Agreement. If the parties do not agree to the withdrawal or settlement of the Complaint, COSL will continue the Credit Ombudsman Service process.
19. Where COSL reasonably considers that an offer made by a Member to a Complainant to resolve a Complaint is reasonable having regard to the information before COSL, COSL may recommend to the Complainant that they accept the Member's offer in full and final settlement of the Complaint. If the Complainant does not accept the offer, COSL may close the Complaint in the absence of further information from the Complainant that would justify the Complaint remaining open.

If COSL closes the Complaint, it will notify the Complainant and Member that it has done so.

Role of the Credit Ombudsman

20. The Board appoints the Credit Ombudsman. The Credit Ombudsman is the decision-maker of the Credit Ombudsman Service and the person who can make:
 - (a) any decision allowed for under the COSL Rules, including a decision about whether or not a Complaint is within the jurisdiction of the Credit Ombudsman Service;
 - (b) any order allowed for under the COSL Rules;
 - (c) a Determination; and
 - (d) a binding Award.
21. The Credit Ombudsman:
 - (a) has the powers, functions and duties conferred by COSL's Constitution and these Rules, and as conferred and delegated by the Board from time to time;
 - (b) has overall management responsibility for the Credit Ombudsman Service; and
 - (c) establishes systems and procedures to ensure COSL's efficient and effective operations in accordance with the COSL Rules.
22. The Credit Ombudsman may delegate all or any of his or her powers, functions and duties to employees of COSL and to other persons approved by the Board, except:
 - (a) the power to make a Determination or Award; and
 - (b) the Credit Ombudsman's power to delegate.

Complaints to which COSL Rules apply

23. Different versions of the COSL Rules operate in respect of a Complaint depending on the date of its receipt.
24. This Fifth Edition of the COSL Rules takes effect on 20 August 2009, and applies to every Complaint received on or after that date. This Fifth Edition also applies to all legal proceedings to set aside or otherwise challenge a decision

of the Credit Ombudsman or a Board Direction commenced after this Fifth Edition takes effect irrespective of whether:

- (a) the subject Complaint was received before or after this Fifth Edition took effect; and
- (b) the particular decision of the Credit Ombudsman was made or Board Direction was issued before or after this Fifth Edition took effect. *

* *Rule 24 amended on 20 August 2009*

When a Complaint can be made

25. A Complaint can be made to the Credit Ombudsman Service about a Member if:

- (a) the Complainant is a Consumer; and
- (b) the Complaint is about a Financial Service; and
- (c) the Complaint is otherwise one that COSL can deal with under these Rules.

The Credit Ombudsman may give a written Ruling as to whether the Complaint or any aspect of the Complaint can be dealt with under these Rules or about any matter that arises in the course of COSL dealing with the Complaint. The Ruling is final and binding on the Complainant and the Member. *

* *Rule 25 amended on 20 August 2009*

Individuals and companies who are not Consumers

26. Even if the Complainant is not a Consumer, if:

- (a) the Board gives its approval;
- (b) the Complainant complies with all conditions the Board imposes in respect of its approval;
- (c) the Complainant pays whatever fee the Board prescribes for the purpose; and
- (d) the Member gives its consent,

the Complainant can make a Complaint to the Credit Ombudsman Service about the Financial Service. *

* *Rule 26 amended on 20 August 2009*

27. If the Complainant is not a Consumer but they meet all the requirements in Rule 26, the COSL Rules apply to the handling of their Complaint as if they were a Consumer.

Types of complaints covered by COSL

28. COSL will deal with a Complaint if, in relation to Financial Services, the Member:
- (a) breached relevant laws (or duties imposed by law) or did not give effect to a right provided by law to the Complainant in relation to the subject matter of the Complaint;
 - (b) breached an applicable code of practice;
 - (c) not met standards of good practice in the finance industry; or
 - (d) acted unfairly towards the Complainant. *

** Rule 28 amended on 20 August 2009*

29. Once the Conciliation and Investigation Phase of the Credit Ombudsman Service process commences but before the start of the Determination Phase, the Complainant may only raise new grounds of complaint with COSL's approval. COSL will generally give its approval unless COSL considers that the Complainant has been tardy in raising the new grounds of complaint or it has by then become unreasonable for the Member to have to respond to the new grounds of complaint.
30. Once the Determination Phase of the Credit Ombudsman Service process commences, the Complainant may not raise any new ground of complaint unless:
- (a) COSL is satisfied that exceptional circumstances exist justifying allowing this to happen;
 - (b) the Member consents in writing; and
 - (c) COSL consents in writing on such terms and conditions as COSL regards as appropriate.

Compensation and orders available to a Complainant

31. (a) COSL can deal with a Complaint if the Complainant's loss resulting from the Member's conduct does not exceed or appear to COSL to exceed \$500,000. However, COSL can only award compensation up to its monetary compensation limit for loss suffered by the Complainant in respect of the Complaint. The Board may increase the amount of the monetary compensation limit from time to time. COSL will publish any increase in the compensation limit on COSL's web site.
- (b) If the Complainant accepts the compensation awarded by COSL, the Complainant must accept it in full and final settlement of their claim; that is, the Complainant will not be able to pursue any amount in excess of the award or the balance of the claim in another forum, such as a Court or tribunal.
- (c) COSL can also award interest or earnings in addition to any compensation awarded, even if the interest or earnings, when added to the compensation awarded, exceeds the monetary compensation limit. If interest or earnings is awarded, it will be calculated from the date of the cause of action or matter giving rise to the Complainant's claim. COSL will have regard to any factors it considers relevant, including, but not limited to, the extent to which the conduct of either party contributed to the delay.
- (d) COSL may, where appropriate, decide that the Member undertake a course of action to resolve the Complaint, including, but not limited to:
- (i) the payment of a sum of money;
 - (ii) the variation of a debt;
 - (iii) the release of security for debt;
 - (iv) the repayment, waiver or variation of a fee or other amount paid to or owing to the Member or its representative or agent, including the variation in the applicable interest rate on a loan;
 - (v) the discontinuation of enforcement action or legal proceedings against the Complainant;
 - (vi) the release of the Complainant from a contract;
- and

- (vii) the variation of the terms of a Credit Contract in cases of financial hardship. *

* *Rule 31 (a) – (d) amended on 20 August 2009*

- 32. The Complainant can claim compensation for loss that is:
 - (a) Direct Loss, or
 - (b) other indirect or non-financial loss or disadvantage as the Board specifies as recoverable from time to time and publishes on COSL's web site.

Punitive, exemplary or aggravated damages may not be awarded. *

* *Rule 32 amended on 20 August 2009*

- 33. Alternatively or in addition, the Credit Ombudsman can make an Order requiring the Member to do or to refrain from doing some act in relation to the subject matter of the Complaint.

Complaints not covered by Credit Ombudsman Service

- 34. COSL will not deal with a Complaint if, at the time of receiving the Complaint or at any time during the Credit Ombudsman Service process, COSL is satisfied that the Complaint falls into one or more of the following cases:
 - (a) the Complaint is about a Member's acts or omissions that do not comprise or are not otherwise directly related to the Financial Services; or
 - (b) the Complaint is about someone who is not a Member at the time the Complaint is made; or
 - (c) the Complainant is seeking compensation in an amount in excess of COSL's monetary compensation limit in respect of the Complaint; or
 - (d) to the extent that the Complaint relates to a fee, charge, commission or interest rate, unless:
 - (i) the Complaint concerns the non-disclosure, misrepresentation, miscalculation or incorrect application of the fee, charge, commission or interest rate; or
 - (ii) the charging of the fee, charge, commission or interest rate is in breach of the law or is unconscionable; or

- (e) to the extent that any aspect of the Complaint relates to something done or not done by, or the policies or commercial judgment of, someone other than the Member the Complainant is complaining about, examples of which are:
 - (i) a lender's assessment of lending risk, or of financial or commercial criteria, or of character;
 - (ii) a lender's decision to refuse the Complainant's loan application or the release of part of the security for the loan or to approve either of them subject to conditions;
 - (iii) the loan interest rates and fees charged by a lender; or
 - (iv) a lender's policy to require mortgage insurance; or
- (f) except where the Complainant is seeking to vary the loan agreement on grounds of financial hardship or is claiming an inability to repay the loan at the relevant time, the commercial judgment of a Member (who is a Credit Provider) about lending or the security for a loan, examples of which are:
 - (i) the Member's assessment of the credit risk or security; or
 - (ii) the Member's lending criteria or valuation of the security;
 - (iii) the Member's decision to refuse the Complainant's loan application or the release of part of the security for the loan or to approve either of them subject to conditions;
 - (iv) the Member's loan interest rates; or
 - (v) the Member's policy to require mortgage insurance or additional security; or
- (g) to the extent that the Complaint relates to any transaction entered into outside Australia; or
- (h) in the case of a secured loan, where the security is situated or legally registered outside Australia or is governed by laws other than the laws of Australia; or

- (i) to the extent that the Complainant is not seeking compensation or orders (see Rules 31 to 33) against a Member; or
- (j) to the extent that the Complainant is seeking redress other than compensation for loss (see Rules 31 to 33); or
- (k) the Complainant is not the person to whom the Financial Services directly relate; or
- (l) six years have elapsed since the time the Complainant appears to have first became aware, or should reasonably have become aware, of the loss they claim they suffered as a result of an act or omission of the Member, unless the Member nonetheless agrees to COSL dealing with the Complaint or COSL considers that there are exceptional circumstances that warrant its dealing with the Complaint; or
- (m) the Complainant has previously made a Complaint about the same Member in relation to the same subject matter which has been considered by the Credit Ombudsman Service, and there is insufficient relevant new evidence to warrant COSL's consideration of the new Complaint; or
- (n) the Member commenced legal proceedings before the Complaint was received by COSL, except where:
 - (i) the Complainant is reasonably seeking to vary a loan agreement on grounds of financial hardship; or
 - (ii) the legal proceedings have been discontinued; or
 - (iii) both the Complainant and the Member consent in writing to the Complaint being considered by COSL; or
- (o) the Complaint has been dealt with by a court, tribunal, arbitrator or another ASIC-approved EDR scheme, unless:
 - (i) a decision about the merits of the Complaint has not been made; or
 - (ii) both the Complainant and the Member consent in writing to the Complaint being considered by COSL; or

- (p) the subject matter of the Complaint becomes the subject of proceedings brought by the Member before a Court, but only if this occurred as a result of the Member having commenced legal proceedings in accordance with the Objection Notice procedure outlined in Rules 97 to 105; or
- (q) it is more appropriate that the Complaint is dealt with in another forum such as a Court, tribunal or another ASIC-approved EDR scheme; or
- (r) the Complaint involves an issue which may have important consequences for the business of the Member or the finance industry generally, or raises an important or novel point of law, and is dealt with under the special procedures set out in Rules 97 to 105; or
- (s) even if the matters set out in the Complaint were found to be true, these matters would not constitute:
 - (i) a breach of relevant laws (or duties imposed by law) by the Member, or a failure by the Member to give effect to a right provided by law to the Complainant in relation to the subject matter of the Complaint;
 - (ii) a breach of the applicable code of practice by the Member;
 - (ii) a failure by the Member to meet standards of good practice in the finance industry; or
 - (iii) the Member acting unfairly towards the Complainant; or
- (t) to the extent that the Complaint relates to the investment performance of an investment product, unless the Complaint concerns non-disclosure or misrepresentation or misleading conduct; or
- (u) the Complaint is lacking in substance or is being pursued by the Complainant for an improper purpose. *

* Rule 34 (a) – (f), (j) – (o), (q), (t) and (u) amended on 20 August 2009

35. If COSL thinks that it is appropriate to refer the Complaint and the information and documents provided by the Complainant to another ASIC-approved EDR scheme, it will obtain the Complainant's consent before doing so. *

* Rule 35 amended on 20 August 2009

36. If the Complaint or any aspect of the Complaint is not covered by the Credit Ombudsman Service, COSL will write to the Complainant advising them of this and setting out the reasons why the Complaint or relevant aspect of the Complaint is not covered by the Credit Ombudsman Service. *

* *Rule 36 amended on 20 August 2009*

Complaint at no cost to Complainant

37. The Complainant does not have to pay any fee if they are a Consumer.
38. Other Complainants who are not Consumers need Board approval to bring a Complaint to the Credit Ombudsman Service and must:
 - (a) comply with all conditions the Board imposes in granting approval; and
 - (b) pay whatever fees the Board prescribes from time to time.
39. Before it deals with a Complaint, COSL will let the Complainant know if they will be required to pay COSL a fee.
40. If a fee is payable to COSL or if the Complainant needs to satisfy conditions imposed by the Board, then COSL does not have to do anything about the Complaint until the fee is paid in full and all the conditions are satisfied.

Member to be given opportunity to resolve Complaint

41. Before taking a Complaint to COSL, the Complainant must first try to resolve their Complaint with the Member concerned using the Member's Internal Dispute Resolution (IDR) procedures. COSL will generally not consider the Complaint unless the Complainant has first attempted to resolve it with the Member.
42. Every Member must have IDR procedures in place which comply with standards and requirements made or approved by ASIC from time to time. *

* *Rule 42 amended on 20 August 2009*

43. A Member must provide a substantive response to a Complaint at IDR within 45 days of receiving the Complaint, or within a shorter time as may be prescribed by an applicable code of practice. *

* *Rule 43 amended on 20 August 2009*

44. If the Member cannot do this, the Member must:
- (a) give the Complainant reasons for the delay; and
 - (b) inform the Complainant of their right to take the Complaint to COSL. *

* *Rule 44 amended on 20 August 2009*

45. COSL regards the Member as having given the Complainant a substantive response if the Member:
- (a) accepts the Complaint and if appropriate offers the Complainant redress; or
 - (b) offers the Complainant redress without accepting the Complaint; or
 - (c) rejects the Complaint.

46. If:
- (a) the Member does not give the Complainant a substantive response to their Complaint within 45 days, or within a shorter time as may be prescribed by an applicable code of practice; or
 - (b) the Member gives a substantive response but the Complainant considers that the response does not satisfactorily resolve their Complaint,

the Complainant may make a Complaint to COSL. *

* *Rule 46 amended on 20 August 2009*

47. If COSL considers that the Complaint should be dealt with urgently or otherwise thinks it appropriate to do so, COSL may, at its discretion with or without conditions:
- (a) regard the Member's IDR procedures as having been completed even though a substantive response has not been provided; or

- (b) decide that the Complainant has met COSL's requirement that they first try to resolve their Complaint with the Member; or
- (c) waive the requirement for the Complainant to first try to resolve their Complaint with the Member using the Member's IDR procedures.

In any of these cases, COSL may accept the Complaint and commence the Credit Ombudsman Service process. *

* *Rule 47 amended on 20 August 2009*

Complaints against two or more Members

48. If the Complainant wants to make a Complaint about two or more Members in relation to the same subject matter, the Complainant can do so. But the Complainant must first of all try to resolve their Complaint with each of the Members concerned. These Rules apply with any necessary modifications in respect of a Complaint against two or more Members in relation to the same subject matter.

COSL's guiding principles

Principles COSL has regard to

49. In dealing with a Complaint at any stage of the Credit Ombudsman Service process, COSL has regard to:
- (a) relevant legal requirements or rights provided by law to the Complainant in relation to the subject matter of the Complaint;
 - (b) applicable codes of practice;
 - (c) good practice in the finance industry; and
 - (d) fairness in all the circumstances.
50. Dealing with a Complaint includes:
- (a) deciding if the Complaint is covered by the Credit Ombudsman Service;
 - (b) assessing the merits of the Complaint;
 - (c) making recommendations to the Complainant and the Member about resolving it;

- (d) making a Determination;
- (e) making an order; and
- (f) making an Award.

51. In considering what is good practice in the finance industry, COSL may:
- (a) consult within the finance industry;
 - (b) seek, but is not bound by, advice from such persons (including but not limited to those in the finance industry) as COSL regards as suitably qualified to give that advice; or
 - (c) have regard to a code of conduct or practice or industry guideline or protocol which has application in the industry in which the Member operates and which COSL reasonably considers reflects good industry practice, even if the Member has not subscribed to that code or industry guideline or protocol. *

* *Rule 51(c) amended on 20 August 2009*

Making a Complaint to COSL - the Initial Referral Phase

Making a Complaint

52. A Complainant may make a Complaint to the Credit Ombudsman Service:
- (a) by writing to COSL;
 - (b) by completing the complaint form located at COSL's website; or
 - (c) by phoning COSL and giving details of the Complaint to COSL.
53. If the Complainant phones COSL, a written complaint setting out the Complaint must be sent to COSL afterwards.
54. If the Complainant has any difficulty in presenting their Complaint, COSL will help them prepare it. In doing so, COSL will not be "taking sides" but will simply help the Complainant present their Complaint as clearly and concisely as possible. COSL will not do anything that could impair or could be seen to impair its impartiality.

55. When a Complainant makes a Complaint:
- (a) they do not need to use any formal, legal or technical language;
 - (b) they must tell COSL what compensation they want the Member to give them, or what corrective action the Complainant wants the Member to take to resolve the Complaint;
 - (c) the Complainant must give COSL a copy of every document relevant to their Complaint; and
 - (d) the Complainant must give written consent to COSL sending a copy of their Complaint, and copies of their documents to the Member they are complaining about.
56. When COSL receives a written Complaint, that Complaint is immediately recorded as received. Then, if it has not done so already, COSL assesses whether the Complaint is within the jurisdiction of the Credit Ombudsman Service. If it is not, COSL writes to the Complainant letting them know why their Complaint is not covered by the Credit Ombudsman Service. COSL's decision that the Complaint is not covered by the Credit Ombudsman Service is final and binding on the Complainant.
57. COSL will also:
- (a) check whether or not the Complainant has satisfied the requirement to try to resolve their Complaint with the Member as required by Rule 41; and
 - (b) consider whether or not Rule 47 applies in the Complainant's case.

Acceptance of Complaint

58. Provided that the Complainant has given all necessary consents, and COSL is satisfied that Rule 41 or Rule 47 has been complied with and that the Complaint is within the jurisdiction of the Credit Ombudsman Service, COSL:
- (a) records the Complaint as accepted;
 - (b) sends the Complaint and the information and documents the Complainant has provided COSL to the Member concerned; and

- (c) tells the Member it is required to provide COSL with a response within 21 days.
59. The Member's response must comply with the requirements COSL specifies.
 60. The Member must give its response to the Complaint to COSL within 21 days after COSL has sent the Member a copy of the Complaint.
 61. When COSL receives the Member's response, it will send the response to the Complainant for their consideration.
 62. If the Complainant is not satisfied with the Member's response and has provided COSL with reasons for this, the Complainant may, within 21 days of COSL sending the Complainant the Member's response, request COSL to deal with the Complaint. COSL will advise the Complainant of their right to do this.

Conciliation and Investigation Phase

Complainant dissatisfied with Member's response

63. Once the Complainant notifies COSL that it is not satisfied with the Member's response to their Complaint, COSL will begin the Conciliation and Investigation Phase of the Credit Ombudsman Service process.
64. In the Conciliation and Investigation Phase, COSL can, subject to any Board Direction, carry out whatever conciliation and investigation process it thinks appropriate to deal with the Complaint.
65. Without in any way limiting what COSL can do, COSL can do all or any of the following things:
 - (a) ask any party questions in relation to the Complaint;
 - (b) ask any party to give COSL information or documents;
 - (c) ask any party for their comments generally on the other party's responses to COSL;
 - (d) send to one party copies of:
 - (i) the other party's comments on the Complaint;
 - (ii) the other party's answers to questions asked; and

- (iii) information provided to COSL by the other party;
 - (e) prepare a Complaint Summary for the parties and tell them what COSL sees as:
 - (i) the key issues in the case;
 - (ii) the strengths and weaknesses in each party's case;
 - (f) conduct a Conciliation Conference to be attended by both parties and their permitted representatives, if any;
 - (g) conduct a Hearing to be attended by both parties and their permitted representatives, if any;
 - (h) continue to carry out the investigation process until COSL is reasonably satisfied that it is in possession of all relevant information;
 - (i) facilitate informal negotiations between the parties to resolve the matter;
 - (j) invite the parties to participate in any form of recognised alternative dispute resolution in relation to the Complaint;
 - (k) obtain whatever advice from whatever source COSL thinks will assist in dealing with the Complaint;
 - (l) having completed its investigation:
 - (i) give the Complainant and the Member COSL's assessment of the merits of the Complaint; and
 - (ii) make a recommendation to the Complainant and the Member about resolving the Complaint.
66. COSL may convene a Hearing or a Conciliation Conference if it is satisfied that doing so would lead to the more efficient and effective resolution of the Complaint.
67. However, COSL does not have power to subpoena witnesses or take evidence on oath or cross examine witnesses, so generally COSL would regard a Hearing as appropriate only where COSL believed that a question and answer investigation format would help clarify issues. *

* *Rule 67 amended on 20 August 2009*

Length of Conciliation and Investigation Phase

68. Normally COSL will try to complete the Conciliation and Investigation Phase within 90 days, and will keep the parties informed of the progress of the Complaint during this period. *

* *Rule 68 amended on 20 August 2009*

69. If at any time COSL in its discretion considers that:

- (a) it will be unable for whatever reason to further assist the parties to achieve resolution of the Complaint in the Conciliation and Investigation Phase; or
- (b) the subject matter of a Complaint against a Member is the same as or similar to that of other Complaints before COSL against the same Member,

COSL may declare the Conciliation and Investigation Phase completed and move on to the Determination Phase.

Member and Complainant reach agreement during Conciliation and Investigation phase

70. If the Complainant and the Member come to an agreement about resolving the Complaint during the Conciliation and Investigation Phase, and one of the parties asks for it, COSL will prepare a Settlement Agreement.

71. Both the Complainant and the Member must sign the Settlement Agreement for it to be binding on the Member.

72. If COSL is satisfied that:

- (a) the Settlement Agreement was validly signed by both the Complainant and the Member;
- (b) the Complaint was one which could be dealt with by the Credit Ombudsman Service; and
- (c) the Member has failed to comply with the Settlement Agreement,

the Credit Ombudsman can make an Award in terms of the Settlement Agreement to enforce it.

The Determination Phase

Where Conciliation and Investigation Phase doesn't work

73. If:

- (a) the Complaint is not resolved by the end of the Conciliation and Investigation Phase; or

- (b) the Member has not responded to COSL when required to do so under these Rules; or
 - (c) COSL has declared the Conciliation and Investigation Phase completed pursuant to Rule 69,
- the Credit Ombudsman can make a Determination about the Complaint.

How a Determination is made

74. The Credit Ombudsman will generally make its Determination based upon:
- (a) the Complaint;
 - (b) the Member's response;
 - (c) the Complainant's reply; and
 - (d) information and documents COSL has received during the Credit Ombudsman Service process, including any advice from suitably qualified people.
75. The Credit Ombudsman will only carry out further investigation of the Complaint if it thinks that it is absolutely necessary to do so to enable a Determination to be made.

Member and Complainant reach agreement during Determination phase

76. If the Complainant and the Member come to an agreement about resolving the Complaint during the Determination Phase, and one of the parties asks for it, COSL will prepare a Settlement Agreement.
77. Both the Complainant and the Member must sign the Settlement Agreement for it to be binding on the Member.
78. If the Credit Ombudsman is satisfied that:
- (a) the Settlement Agreement was validly signed by both the Complainant and the Member;
 - (b) the Complaint was one which could be dealt with by the Credit Ombudsman Service; and
 - (c) the Member has failed to comply with the Settlement Agreement;

the Credit Ombudsman can make an Award in terms of the Settlement Agreement to enforce it.

Types of Determinations the Credit Ombudsman can make

79. If the Credit Ombudsman is satisfied that having regard to the principles in Rule 49, it is fair to the Complainant and the Member and otherwise appropriate to do so, the Credit Ombudsman can make a Determination that:

- (a) the Member pay the Complainant compensation for any loss the Complainant has suffered up to the monetary compensation limit (plus interest, if applicable); and/or
- (b) the Member do some act or refrain from doing some act in relation to the subject matter of the Complaint; or
- (c) no compensation be paid and no orders made;

otherwise, if the Credit Ombudsman is not satisfied that the Complaint has been made out, the Credit Ombudsman will declare the Complaint closed. *

** Rule 79(a) amended on 20 August 2009*

80. The amount of compensation will be what the Credit Ombudsman believes is sufficient but not more than is required to compensate the Complainant for their loss as a result of the act or omission of the Member.

81. In determining whether to order the Member to do or refrain from doing some act, the Credit Ombudsman will have regard to what is fair and reasonable to put the Complainant and the Member in the position the Complainant and the Member would have been in were it not for the act or omission of the Member. In doing this, the Credit Ombudsman will consider what is fair and reasonable for all parties, including someone who is not a party to the Complaint but who might be affected by the Credit Ombudsman's Determination, eg. a lender.

After Determination is made

82. The Credit Ombudsman sends its Determination to the Complainant and the Member.

83. At the same time as sending the Complainant its Determination, the Credit Ombudsman sends the Complainant a Deed of Release. If the Complainant signs their acceptance of the Credit Ombudsman's Determination, the Complainant also needs to sign the Deed of Release. The Deed of Release will have the effect and only the effect of releasing the Member from any further legal liability to the Complainant and precluding commencement of legal proceedings by the Complainant against the Member in relation to the subject matter of the Complaint on condition that the Member has fully complied with the Determination.
84. If the Complainant signs both the acceptance of the Credit Ombudsman's Determination and the Deed of Release within 28 days of the documents being sent to them by the Credit Ombudsman, the Member will be advised by the Credit Ombudsman that:
- (a) the Complainant has signed the acceptance of the Credit Ombudsman's Determination and the Deed of Release; and
 - (b) the Member must also sign an acceptance of the Credit Ombudsman's Determination and send that signed acceptance to the Credit Ombudsman; and
 - (c) the Member may choose to also sign the Deed of Release the Complainant has signed and send a copy of that signed Deed of Release to the Credit Ombudsman.
85. If the Credit Ombudsman has not received from the Member its signed acceptance of the Credit Ombudsman's Determination as accepted by the Complainant within 28 days of sending it to the Member, the Credit Ombudsman can make a binding Award in terms of that Determination.
86. If the Credit Ombudsman does not receive the Complainant's signed acceptance of its Determination and the signed Deed of Release within 28 days after the Credit Ombudsman sends them to the Complainant, the Credit Ombudsman may declare the Complaint closed.
87. If the Complainant and the Member have both signed acceptances of the Credit Ombudsman's Determination but the Member does not fully comply with it, then the Complainant

can ask the Credit Ombudsman to make a binding Award in terms of that Determination.

88. Whenever the Credit Ombudsman makes an Award, the Member must comply with it fully and within the time period specified in the Award. If the Credit Ombudsman's Award does not specify a particular time period, then the Member must comply with the Award as soon as practicable.

Publication and publicity of Determinations

Determination will be published

89. The Credit Ombudsman's Determination of the Complaint will be in writing and include the Credit Ombudsman's reasons for making the Determination. Any Award the Credit Ombudsman makes will also be in writing. As an Award is based upon the Credit Ombudsman's Determination or upon a Member's failure to comply with a Settlement Agreement, the Award may but does not need to include the Credit Ombudsman's reasons for making the Determination.
90. A copy of the Determination and any Award may be given to:
- (a) the Complainant;
 - (b) the Member;
 - (c) the Board; and
 - (d) if the Member is a member of a Recognised Industry Body, (subject to removal from the document of any identification of the Complainant) to that body's Secretariat or public officer. *

* *Rule 90 amended on 20 August 2009*

Publicity

91. COSL may publish a non-identifying copy of the Credit Ombudsman's Determination of the Complaint on COSL's web site.

Cost of Hearing

Member may pay cost of Hearing

92. The Credit Ombudsman may award costs against a Member if a Hearing has been held in relation to the Complaint because that Member specifically asked for it. In that case, the Member will be required to meet the Complainant's reasonable costs of attending the Hearing including reasonable travel and accommodation costs.*

** - see also Rule 111 about legal and other representation.*

Giving effect to the resolution of a complaint

Other orders by Credit Ombudsman

93. The Credit Ombudsman can make any order the Credit Ombudsman thinks appropriate to give full effect to the resolution of a Complaint including but not limited to orders about giving effect the Credit Ombudsman's Determination or Award.

Non-compliance by party to Complaint

94. If a party does not comply with a COSL requirement within the period specified:
- (a) COSL may give the party whatever further period COSL thinks appropriate to comply; and
 - (b) if the Member still does not comply, the Credit Ombudsman may proceed to determine the Complaint on the basis of the information and documents then available; or
 - (c) if the Complainant still does not comply, COSL may declare the Complaint closed.
95. For the purposes of these Rules, the expression "COSL requirement" refers to any requirement imposed by COSL or these Rules on the Complainant or the Member, including the requirement to respond to COSL within a certain time or the requirement to provide COSL with such

information and documents that may be requested by COSL in relation to the Complaint.

Enforcing an Award

96. If a Member fails to comply with an Award after the Credit Ombudsman gives the Member 28 days' written notice to comply with it, then COSL can take whatever action it thinks is necessary to enforce the Award including but not limited to the following things:
- (a) take action to suspend or cancel the Member's membership of COSL;
 - (b) give written notice of the fact, if the Member is a member of the MFAA, to the MFAA National Secretariat, or if the Member is a member of a Recognised Industry Body, to that body's Secretariat or public officer;
 - (c) bring legal proceedings against the Member for recovery of the amount awarded or for the making of Court orders in terms of the Award;
 - (d) bring legal proceedings for specific performance of the Member's agreement to abide by COSL's Constitution and these Rules including but not limited to the Member's obligation to comply with the Award; or
 - (e) take such other action as COSL thinks appropriate to secure compliance with the Member's obligations under COSL's Constitution and these Rules. *

* *Rule 96(b) amended on 20 August 2009*

Important issues

Objection Notice from Member

97. COSL will suspend dealing with a Complaint if the Member gives an Objection Notice to COSL and is able to demonstrate to COSL's reasonable satisfaction:
- (a) that the Complaint involves or may involve an issue which could have important consequences for the Member's business or the finance industry generally; or
 - (b) that the Complaint raises an important or novel point of law.

- 98 A Member who gives an Objection Notice must:
- (a) identify and describe the issues which could have important consequences for the Member's business or the finance industry generally as the issues relate to the Complaint;
 - (b) identify and describe the important or novel point of law as it relates to the issues raised in the Complaint; and
 - (c) advise COSL of the grounds on which the Member seeks a declaration from the Court or Tribunal and how the declaration being sought relates to the issues raised in the Complaint.

99. COSL will refuse to accept an Objection Notice if:
- (a) the Member has not complied with Rules 97 and 98; or
 - (b) COSL reasonably considers that the Member has no or inadequate grounds for seeking a declaration from a Court or Tribunal; or
 - (c) having regard to all other relevant circumstances, COSL is reasonably satisfied that the Member has given COSL the Objection Notice for an improper purpose; or
 - (d) the Member previously gave COSL an Objection Notice in relation to the same Complaint.

COSL will give the Member written notice of the refusal and will continue to deal with the Complaint.

100. If COSL accepts the Objection Notice, the Member must, in order to have the issue determined:
- (a) commence proceedings in a Court or Tribunal in Australia within 14 days of giving the Objection Notice to COSL; and
 - (b) give an undertaking to COSL and the Complainant to:
 - (i) pay the Complainant's costs and disbursements (on a solicitor and client basis) of the proceedings and any subsequent appeal that may be commenced by the Member;
 - (ii) make interim payments of account of such costs if and to the extent that it appears reasonable to do so; and
 - (iii) seek to prosecute the Complaint expeditiously. *

* *Rule 100 amended on 20 August 2009*

101. If the Member does not commence these proceedings within 14 days of giving the Objection Notice to COSL, then COSL will deal with the Complaint as if the Objection Notice had not been given.
102. The Member is not required to pay the Complainant's costs if it is the Complainant that institutes a subsequent appeal.
103. Once COSL records a written Complaint from a Complainant as received under Rule 56 and for as long as COSL deals with the Complaint, a Member cannot commence legal proceedings against the Complainant or enforcement action relating to any aspect of the subject matter of the Complaint, unless:
 - (a) this is permitted under Rules 97 to 102; or
 - (b) the relevant limitation period for such proceedings or action is about to expire. *

* *Rule 103 amended on 20 August 2009*

104. However, subject to Rule 105 but otherwise despite any other provision of these Rules, the Board may in its absolute discretion direct that a Member may commence legal proceedings against the Complainant in relation to the subject matter of the Complaint on or after the date on which the written Complaint is received by COSL if the Board is satisfied that to not allow this would be unfair to the Member.
105. The direction of the Board under Rule 104 is final and binding on the Complainant and the Member.

Miscellaneous matters

Joining other parties

106. If COSL believes that:
 - (a) it would not unfairly prejudice the Complainant or the Member; and
 - (b) it would lead to a more efficient and effective resolution of the Complaint;

COSL may allow or require another Member (called the Third Party Member) to be joined as a party to the Complaint.

107. COSL may impose terms and conditions on joining a Third Party Member. For example, COSL may require the Member the Complainant has complained about to pay costs or to provide security for future costs.
108. Once a Third Party Member has been joined in the Complaint, COSL may give directions about how the Complaint will be dealt with.
109. A Third Party Member has all the rights and duties under these Rules as if that Third Party Member were the Member as referred to in the Rules.
110. Where a Third Party Member has been joined, these Rules are to be read to include that Third Party Member with appropriate changes being made.

Legal representation

111. Neither party has to have legal or other representation ("Representation") whilst COSL deals with the Complaint. Either party can choose to have representation at their own cost. However, if COSL convenes a Hearing or a Conciliation Conference the parties need to ask COSL to allow representation at the Hearing or Conciliation Conference. It will be up to COSL to decide at its discretion if representation can or should be allowed and on what basis. COSL will consider what is procedurally fair to both the Complainant and the Member. Any party who has representation will have to pay all their own costs of any representation COSL permits the party to have at a Hearing or Conciliation Conference.*

** - see also Rule 92 about costs.*

Statements and information made 'without prejudice'

112. All statements the Complainant or Member makes and information or documents they provide to COSL are on a "without prejudice" basis. This means that anything said or done or information as provided to COSL during the Credit Ombudsman Service process cannot be used in subsequent

legal proceedings unless required by an appropriate court process. *

* *Rule 112 amended on 20 August 2009*

113. Any information obtained by COSL during the Credit Ombudsman Service process must not be disclosed by:

- (a) the Complainant;
- (b) the Member;
- (c) the Board; or
- (d) COSL;

to anyone else unless disclosure is required by law or required or permitted by these Rules or COSL's Constitution.

Confidentiality

114. Any party to a Complaint who believes that disclosure of any information or document to COSL will place them in breach of a duty of confidentiality they owe to someone else may tell COSL this. The party claiming confidentiality must use their best endeavours to obtain the consent of the person to whom the duty is owed to disclosure of the information or document. If the consent is not given within a reasonable time, then the party claiming confidentiality will not be required to comply with any direction from COSL that the information or document be provided.

115. If COSL receives any information or document from any party to a Complaint with a request from that party that it be treated confidentially, COSL will not disclose that information or document to any other party or to any other person except:

- (a) with the consent of the person supplying the information or document, or
- (b) as required by law.

116. COSL will not use any confidential information or document to make a finding adverse to any party who has not had access to the confidential information or document unless COSL determines that special circumstances apply. *

* *Rule 116 amended on 20 August 2009*

117. COSL will return a party's confidential document or information as soon practicable after a Complaint is resolved or declared closed.
118. Before COSL sends any confidential information or document to another forum as contemplated in Rule 34(q), COSL will obtain the consent of the party claiming confidentiality.
119. Except where these Rules, COSL's Constitution or the law prohibits it, COSL may at its discretion disclose the Complaint, the Member's response, the Complainant's reply and any information or document obtained by COSL during the Credit Ombudsman Service process to any COSL employee, consultant, contractor or agent to the extent that is appropriate to do so to enable the person to fully and effectively carry out their powers, functions or duties. COSL will not be obliged to make available to the parties any memoranda, analysis, file notes or other documents generated by COSL's employees, consultants, contractors or agents. *

** Rule 119 amended on 20 August 2009*

120. Despite anything else in these Rules, any party to a Complaint who receives from COSL any document provided to COSL by another party:
- (a) must use that document only for the purpose of dispute resolution in accordance with and as contemplated by the COSL Rules; and
 - (b) must not disclose the document to any person who is not the party who provided the document to COSL without the prior written consent of COSL which consent may be subject to such conditions as COSL may in its absolute discretion consider appropriate;

and for the purposes of this Rule "disclose" includes communicating or divulging by any means whether written, electronic or oral or otherwise including copying by any means the whole or any part of the document.

Exemptions from these Rules

121. COSL may of its own volition or on the application of a party at any time and from time to time at its discretion and on whatever conditions it sees fit to impose, exempt a party from any one or more of these Rules. Before COSL grants any exemption, it must satisfy itself that doing so:

- (c) is necessary to ensure the efficient and effective resolution of the Complaint; and
- (d) would not be unfair to or impose an unreasonable burden or disadvantage on any party.

Extensions of time

122. COSL may of its own volition or on the application of a party at its discretion and on whatever conditions it sees fit to impose extend any time for compliance with any matter under these Rules. Before COSL grants any extension of time, it must satisfy itself that doing so would not be unfair to or impose an unreasonable burden or disadvantage on any party.

Declaring the complaint closed

123. COSL may at any time declare the Complaint closed in any of the following cases:

- (a) the Complaint is or becomes one not covered by COSL by reason of Rule 34; or
- (b) the Complaint is withdrawn; or
- (c) COSL deems the Complaint withdrawn by reason of the Complainant's failure to respond to COSL's communications within the timeframes COSL sets; or
- (d) COSL determines that the Complaint has not been made out; or
- (e) if COSL is unable to locate the Member despite its reasonable efforts to do so; or
- (f) the Member is at the time that COSL records a Complaint as received or becomes during the course of the Credit Ombudsman Service process an insolvent under administration or an externally-administered body corporate as those expressions are defined in the Corporations Act 2001.

Board directions

124. The Board may from time to time issue Board Directions:
- (a) dealing with administrative and procedural matters to ensure that Complaints are resolved efficiently and effectively;
 - (b) dealing with the Board's reporting obligations;
 - (c) dealing with the expulsion, suspension or reinstatement of a Member;
 - (d) dealing with other matters raised in relation to the Board's powers and functions under COSL's Constitution; or
 - (e) dealing with changes to the law, Government regulation, and the finance industry generally.
125. All Board Directions are binding on the Complainant, the Member, COSL and all other parties to a Complaint to COSL.
126. To the extent to which a Board Direction applies to the Complainant or the Member or the subject of the Complaint, the Board Direction must in the manner determined by the Board be given to the Complainant and the Member.

Previous COSL decisions

127. COSL will not be bound by any previous decision of COSL, but will endeavour to be consistent in its decision-making. *
- * *Rule 127 amended on 20 August 2009*
128. A previous decision of COSL includes but is not limited to a Determination and an Award. *
- * *Rule 128 amended on 20 August 2009*
129. If COSL thinks it is appropriate, COSL will send the Complainant and the Member a copy of or extract from a COSL policy that COSL thinks is relevant to their Complaint.

COSL decisions are final and binding

130. Every COSL decision and every Board Direction is final and binding on a Member and may be reviewed or reopened only in

the circumstances allowed in these Rules or the COSL Guidelines. *

** Rule 130 amended on 20 August 2009*

131. Subject always to these Rules, the Complainant and the Member are expected to comply with every COSL decision and every Board Direction applicable to the Complaint. *

** Rule 131 amended on 20 August 2009*

132. The Credit Ombudsman's Determination (in respect of which both the Complainant and the Member have signed an acceptance) and an Award are each binding on the Complainant and the Member. The Complainant is at liberty at all times to reject any other COSL decision or a Board Direction and pursue other remedies in relation to the subject matter of the Complaint in the Courts or any another forum. If the Complainant does this, COSL can declare the Complaint closed and no COSL decision or Board Direction will have any force or effect against the Member in relation to the Complaint.

133. A COSL decision includes but is not limited to a Determination or an Award by the Credit Ombudsman. *

** Rule 133 amended on 20 August 2009*

134. If upon the Credit Ombudsman's own motion or upon application by a party within 28 days after the date on which a Determination or Award was sent to that party, the Credit Ombudsman is satisfied that in relation to that Determination or Award:

- (a) there is a clerical mistake; or
- (b) there is an error from an accidental slip or omission; or
- (c) there is a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
- (d) there is a defect in form; or
- (e) the terms of the Determination or Award do not reflect the Credit Ombudsman's actual intentions,

the Credit Ombudsman may:

- (i) make whatever amendments to the Determination or Award it thinks appropriate; or
- (ii) re-issue the Determination or Award; or
- (iii) give such directions as it thinks appropriate (including directions about times for compliance) in connection with the Determination or Award.

135. A Member who institutes legal proceedings to challenge any COSL decision or a Board Direction must comply with all the following requirements:

- (a) the legal proceedings must be instituted within 28 days after the Credit Ombudsman sends the Member the Determination or Award, COSL notifies a party about the COSL decision or the Board Direction; and
- (b) as a condition of commencing legal proceedings the Member must pay on a solicitor and client basis the legal costs of, and must pay the disbursements incurred by, each of the Member concerned, COSL and the Complainant in relation to the legal proceedings and any appeal; and
- (c) if COSL so specifies, the Member must furnish security for costs and disbursements in relation to the legal proceedings and any appeal as COSL reasonably requires.

A Member who fails to institute legal proceedings within 28 days or otherwise fails to satisfy all the requirements of this Rule forever waives its rights to institute legal proceedings to challenge any COSL decision or a Board Direction.

Providing information to any person

136. For the purposes of these Rules and COSL's Constitution, COSL may give or send any information or document (including but not limited to any COSL decision, Board Direction, Determination, Award, notice, or correspondence) to any person by whatever means and in whatever manner COSL regards as appropriate to bring the information or document to the attention of that person.

Effect of Member's cessation of membership (including by resignation)

137. If the membership of a Member that is or has been the subject of a Complaint ceases in accordance with COSL's Constitution (for the avoidance of doubt, including by way of resignation of membership or suspension from membership), that cessation of membership:
- (a) does not preclude or restrict in any manner whatsoever COSL exercising its powers under these Rules to deal with a Complaint received by it before the date on which the Member's cessation of membership took effect in accordance with COSL's Constitution and to require the Member to comply fully with the Member's obligations under these Rules in respect of that Complaint; and
 - (b) does not prejudice or diminish in any manner whatsoever the Member's obligations under these Rules in respect of a Complaint received by COSL before the date on which the Member's cessation of membership took effect in accordance with COSL's Constitution; and
 - (c) does not preclude or restrict in any manner whatsoever the making of an Award by the Credit Ombudsman or the due enforcement by COSL of any Award made by the Credit Ombudsman as regards that Member pursuant to these Rules in respect of a Complaint received by COSL before the date on which the Member's cessation of membership took effect in accordance with COSL's Constitution.

Reporting to ASIC

138. Subject to COSL's Constitution, in carrying out its functions as an ASIC approved EDR scheme, COSL collects and records such information as it thinks necessary for it to report to ASIC in accordance with ASIC's policy requirements. ASIC's policies impose significant reporting obligations on COSL.

Publicising the Credit Ombudsman Service

139. The Board and all Members must ensure that the Credit Ombudsman Service is appropriately and effectively publicised. For example, the Credit Ombudsman Service is publicised on

COSL's web site. Also, copies of the COSL Rules are to be available on request from a Member.

Immunity from liability

140. COSL, members of the COSL Board, any person authorised by the Credit Ombudsman to carry out any responsibilities or exercise any powers or discretions of COSL or the Credit Ombudsman and COSL employees, contractors and agents shall not be liable to a party to a Complaint for any loss or damage arising directly or indirectly in the course of carrying out the COSL function. *

* *Rule 140 amended on 20 August 2009*

Protection from defamation

141. The Member must not instigate defamation action of any kind against a Complainant in respect of allegations made to COSL by the Complainant about the Member. *

* *Rule 141 amended on 20 August 2009*

Dictionary

142. Certain words and phrases have the special meanings set out below:

"Aggregator"

means an intermediary who operates as such in the Credit Industry and includes an intermediary who channels applications for credit to Credit Providers with whom it has agency arrangements on behalf of other intermediaries who do not have such arrangements with Credit Providers and who disburses commission received by the Aggregator from Credit Providers to the relevant intermediary in accordance with prior written arrangements

"applicable code of practice"

means the MFAA Code of Practice or other Recognised Code of Practice

"ASIC"

means Australian Securities and Investments Commission

"ASIC Act"

means the Australian Securities and Investments Commission Act 2001

"Award"

means the binding Determination made by the Credit Ombudsman

"Board"

means the board of directors of COSL "Board Direction"

means a direction issued by the Board under COSL's Constitution

"Complainant"

means a Consumer who makes a Complaint to COSL about a Member or Members

"Complaint"

means:

- (a) for the purpose of IDR, an expression of dissatisfaction made to a Member, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected; and
- (b) for the purpose of EDR, an expression of dissatisfaction about a Financial Service that has been recorded by COSL as a complaint *

* *Definition of "Complaint" amended on 20 August 2009*

"Complaint Summary"

means a summary of the Complaint and the Member's response in whatever manner and form COSL thinks appropriate

"Conciliation and Investigation Phase"

means the conciliation and investigation phase of the Credit Ombudsman Service process

"Consumer"

means an individual or individuals (whether acting as a trustee or otherwise), a partnership comprising individuals or a Small Business, but does not include:

- (a) a Member; or
- (b) an individual that COSL determines is not a consumer for the purposes of the COSL Rules

because of the assets, wealth, or both, that the person has, holds or controls *

* *Definition of "Consumer" amended on 20 August 2009*

"Consumer Representative"

means a director of COSL appointed to that office under COSL's Constitution

"COSL"

means the Credit Ombudsman Service Limited and, unless the context indicates the contrary, includes the Credit Ombudsman

"COSL Rules" or "Rules" or "these Rules"

mean the Credit Ombudsman Service Rules - and includes as appropriate any Practice Note, By-law or other rule made by the Board under COSL's Constitution

"COSL's website"

means the web site maintained by COSL at www.cosl.com.au

"Credit"

means any form of credit or financial accommodation, including pawn broking and margin lending *

* *Definition of "Credit" amended on 20 August 2009*

"Credit Contract"

means a loan regulated by the Uniform Consumer Credit Code or, when enacted, the National Consumer Credit Protection Act 2009

* *Definition of "Credit Contract" inserted on 20 August 2009*

"Credit Industry"

means the market for Credit generally, and includes lending by Credit Providers and credit intermediation by various individuals, firms and corporations dealing with Credit, whether as loan introducers, sub-originators, Mortgage Brokers, Originators, Finance Brokers, Mortgage Managers, Aggregators, servicers, securitisers, trustees, or otherwise

"Credit Ombudsman"

see Rules 20 to 22

"Credit Ombudsman Service process"

means the process for dealing with a Complaint under these Rules

"Credit Provider"

means a person who provides any form of Credit to another person

"Determination"

means the Credit Ombudsman's Determination (or decision about the merits) of a Complaint, and the word 'determine' has a corresponding meaning*

"Determination Phase"

means the phase during which the Credit Ombudsman makes a Determination and, as required, an Award

"Direct Loss"

means direct loss suffered by the Complainant including but not limited to costs incurred in having to obtain Credit or alternative Credit

"EDR"

means External Dispute Resolution - a process for resolving complaints without resorting to legal proceedings

"enforcement action"

means, in relation to a loan contract or a guarantee or mortgage (including a goods mortgage):

- (a) proceedings in a court to recover a payment due under the contract or the guarantee; or
- (b) taking possession of property under a mortgage or taking any other action to enforce a mortgage *

* *Definition of "enforcement action" inserted on 20 August 2009*

"Finance Broker"

means a person who negotiates or arranges any form of Credit for another person, and includes those intermediaries who are suppliers of goods and services and who negotiate or obtain Credit for the purchase of those goods and services

"Financial Services"

mean:

- (a) the provision of, or the conduct of the Member in relation to, a financial product within the meaning of section 12BAA of the ASIC Act or section 763A of the Corporations Act 2001; or
- (b) the taking of, or the conduct of the Member in relation to, a guarantee or security for financial accommodation provided by the Member; or
- (c) the exercise of rights under a loan agreement or guarantee by, or the conduct of, a Member who is a debt collection agency, invoice discounter, factor or debt agreement administrator; or
- (d) where the Member is a mutual, the provision of, or the conduct of the Member in relation to, a financial product issued or provided by a third party through the agency of the mutual; or
- (e) the provision of, or the conduct of the Member in relation to, Credit (whether as a Mortgage Broker, Finance Broker, Originator, Aggregator, Mortgage Manager, Credit Provider or otherwise), including the provision of Credit or advice on Credit, the brokering of Credit, the provision of budget monitoring or mortgage minimisation services, the processing and administering of Credit facilities, credit management and debt recovery, the processing of financial transactions and credit intermediation,

whether in the capacity of a principal or an intermediary, agent, employee or contractor of another person. *

* *Definition of "Financial Services" amended on 20 August 2009*

"IDR"

means internal dispute resolution involving a procedure adopted by a Member to consider a Complaint *

* *Definition of "IDR" inserted on 20 August 2009*

"lender"

means a Credit Provider

"loan"

means the provision of Credit

"loss"

see Rules 31 and 32

"Member"

means a person, firm or corporation which is a member of COSL

"Member Representative"

means a director of COSL appointed to that office under COSL's Constitution

"MFAA"

means the Mortgage and Finance Association of Australia (formerly the Mortgage Industry Association of Australia)

"MFAA Code of Practice"

means the Code of Practice promulgated by the MFAA as in force from time to time

"monetary compensation limit"

means an amount not exceeding \$250,000, increasing to \$280,000 on and from 1 January 2012, and thereafter adjusted every three years using the higher of the increase in the Consumer Price Index (CPI) or Male Total Average Weekly Earnings (MTAWE), with rounding to the nearest \$500 *

* *Definition of "monetary compensation limit" inserted on 20 August 2009*

"Mortgage Broker"

means a person who operates as such in the Credit Industry and includes a person who negotiates or arranges any form of Credit for another person

"Mortgage Manager"

means a person who manages loans on behalf of a Credit Provider or who sources loans from Originators; or a person who may act as an Originator

"Objection Notice"

means a notice given by a Member under Rule 97

"Originator"

means a person who provides loans funded by a wholesale securitiser (and whose role may include credit functions and post settlement functions, such as collecting arrears), or a person who has an arrangement with a Credit Provider to offer Credit promoted under a single brand, trademark or business name

"Recognised Code of Practice"

means a code of conduct or practice in the finance industry approved by the Board

"Recognised Industry Body"

means a body whether incorporated or unincorporated that represents or purports to represent persons carrying on Financial Services, as approved by the Board *

* *Definition of "Recognised Industry Body" amended on 20 August 2009*

"Settlement Agreement"

means the agreement for withdrawing or resolving the Complaint reached between the Complainant and the Member in whatever form COSL regards as appropriate to the circumstances

"Small business"

means a business employing fewer than:

- (a) 100 full-time (or equivalent) employees, if the business is or includes the manufacture of goods; or
- (b) otherwise, 20 full-time (or equivalent) employees *

* *Definition of "Small business" amended on 20 August 2009*

"Third Party Member"

means a Member joined as a party to the Complaint by COSL under Rules 106 to 110.

143. Unless the context suggests otherwise:
- (a) the singular includes the plural and vice versa;
 - (b) any reference to a party to a Complaint includes that party's executors, administrators or permitted assigns;
 - (c) a reference to one gender includes every gender;
 - (d) headings are for reference purposes only; and
 - (e) references to any Act of Parliament or other law include regulations and other instruments made under it and to consolidations, re-enactments, amendments or replacements of it.
144. In calculating compliance with a time period by reference to a number of "days", include weekends but disregard any public holiday.
145. Whenever these Rules refer to information, they include information or evidence in any form and from any source, but do not include information or evidence that has been or appears to be illegally obtained. *

* *Rule 145 amended on 20 August 2009*

146. If any provision in these Rules is inconsistent with any provision of the Constitution of the Credit Ombudsman Service Limited, the provision of the Constitution will always prevail.

Footnote

Note: Credit Ombudsman Service Rules - Fifth Edition: 20 August 2009.