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people's
 choice
 CREDIT UNION

16 February 2018

Royal Commission into Misconduct in the
 Banking, Superannuation and Financial Services Industry

Attention: Mr Simon Daley

By email: FSRCsolicitor@royalcommission.gov.au

Dear Mr Daley

Invitation to make an early written submission to the Royal Commission

1. We refer to your letter of 8 January 2018 advising of the Commission's invitation to make an early written submission addressing a number of questions.
2. We are grateful to be given the opportunity to make this early submission.

Background information in relation to People's Choice

3. Australian Central Credit Union Ltd, which trades under the business name People's Choice Credit Union ('People's Choice'), is:
 - 3.1 A credit union;
 - 3.2 A public company under the *Corporations Act 2001*;
 - 3.3 An authorised deposit-taking institution ('ADI'), authorised by the Australian Prudential Regulation Authority ('APRA') under the *Banking Act 1959* to carry on banking business;
 - 3.4 The holder of an Australian financial services licence, issued by the Australian Securities & Investments Commission ('ASIC') under the *Corporations Act 2001*, authorising it to carry on a financial services business;
 - 3.5 The holder of an Australian credit licence, issued by ASIC under the *National Consumer Credit Protection Act 2009*, authorising it to engage in credit activities.
4. Our origins date back to 1949 and People's Choice is now one of Australia's largest credit unions with approximately 360,000 members across Australia and branches and advice centres in South Australia, the Northern Territory, Victoria, Western Australia and the Australian Capital Territory.
5. As a credit union, the vast majority of our customers are our members. We only issue member shares and our Constitution provides that each member may only hold one member share. The subscription price for a member share is \$2.00. The subscription price is repaid when a member ceases to be a member. We do not pay dividends on member shares.
6. Our principal objectives, as set out in our Constitution, are:

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- 6.1 To encourage savings and wealth management amongst members;
 - 6.2 To provide products and services to members to assist them to meet their financial, economic and social needs; and
 - 6.3 To further the interests of members and the communities within which they work and live.
7. The majority of our Directors are member-elected. They have 3 year terms (and may nominate for re-election). Each member has one vote in an election of Directors, and therefore:
- 7.1 Members, as a whole, have very direct control over the composition of our Board; and
 - 7.2 No particular member or members have particular influence upon the composition of the Board.

The unique characteristics of the customer owned banking sector

- 8. People's Choice is part of the customer owned banking sector which includes credit unions, mutual banks and building societies. It is an active member of COBA.
- 9. Customer owned ADIs are subject to the same regulatory framework as other ADIs, but what distinguishes them is that their reason to exist is to meet the needs of their members. As a customer owned ADI, our ethos and fundamental objectives compliment rather than conflict with our desire to comply with our regulatory obligations.
- 10. In a customer owned ADI, staff understand that the key stakeholder is the member and that the fundamental objective is to serve the member as a customer.
- 11. Our staff are educated about the customer owned banking model to ensure that they understand the core proposition: that each member/customer is an equal owner of the business and the business exists to serve its members. The education process is delivered through induction programs, ongoing training and is directly reinforced by senior management.
- 12. We emphasise our member/customer focused culture during regular briefings, ongoing training, refresher courses, and events such as staff conferences.
- 13. The customer owned banking sector has for many years consistently recorded market leading levels of customer satisfaction. The customer owned banking sector has very positive net promoter scores which demonstrate high levels of customer loyalty and likelihood to recommend.
- 14. The latest net promoter score for People's Choice, in December 2017, was +43, which was 35 points above the market average main financial institution net promoter score (excluding People's Choice). This is the second highest score nationally out of all the financial institutions that we track. Last year, we received the second highest customer satisfaction rating (822 out of 1000) in the annual J.D. Power 2017 Australia Retail Banking Satisfaction Study, and won Mozo awards for Highly Trusted and Staff Friendliness. We have also recently been advised that we will be named Building Society/Credit Union of the Year in the Roy Morgan Customer Satisfaction Awards for the third time in four years. These awards are based on independent surveys of our members and other banking customers.

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15. Customer owned ADIs have relatively conservative lending standards. This has been noted by Moody's (credit rating agency) which has stated that the *"delinquency performance of mutual home loans has been consistently lower than that of the major banks, which testifies to the more conservative underwriting practices of mutual institutions."*¹ Similarly, KPMG has noted that a fall in provisions in 2016 reflects the "high quality of the mutuals loan portfolios."²

Our relevant compliance obligations

16. As a public company, ADI, financial services licensee and credit licensee, we are subject to numerous regulatory obligations. These obligations include:
- 16.1 Our obligation, as an ADI, to comply with prudential standards determined by APRA³; and
- 16.2 Our obligations, as a financial services licensee⁴ and credit licensee⁵ to:
- (a) Do all things necessary to ensure that the financial services and credit activities covered by our licenses are provided efficiently, honestly and fairly;
 - (b) Have in place adequate arrangements for the management of conflicts of interest;
 - (c) Comply with the financial services laws⁶ and the credit legislation⁷ and take reasonable steps to ensure that our representatives (including our employees) comply with the financial services laws;
 - (d) Comply with our licence conditions, which include an obligation to establish and maintain compliance measures that ensure, so far as is reasonably practicable, that we comply with the financial services laws; and
 - (e) Have a dispute resolution system which complies with the requirements of the *Corporations Act 2001*.
17. We are a subscriber to the Customer Owned Banking Code of Practice and so we are bound to comply with the Code in our dealings with our members. The Code establishes higher standards than the law in a range of areas, and addresses issues not addressed by the law.

Identifying, recording and reporting compliance breaches.

18. Our Compliance department maintains a compliance obligations register which identifies our key compliance obligations and the senior leader with responsibility for each obligation. At regular intervals throughout the year senior leaders are required to attest to compliance with key obligations for which they have responsibility and to include in the attestation evidence to support it.

¹ Moody's Mutual Outlook 2017, p. 9

² KPMG Mutuals Industry Review 2016, p. 7

³ Banking Act 1959, s. 11AF.

⁴ Corporations Act 2001 s. 912A(1)

⁵ National Consumer Credit Protection Act 2009, s.47(1).

⁶ That is, various provisions of the Corporations Act 2001 and the ASIC Act 2001 and other Commonwealth, State and Territory legislation that covers conduct relating to the provision of financial services.

⁷ That is, the National Consumer Credit Protection Act 2009, certain provisions of the ASIC Act 2001, and other Commonwealth, State and Territory legislation that covers conduct relating to credit activities.

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19. Our compliance measures include a number of activities which enable us to monitor our compliance with our legal and other obligations and to identify any compliance breaches, such as:
- 19.1 Branch operations reviews;
 - 19.2 Branch manager compliance attestations;
 - 19.3 Branch assurance reviews;
 - 19.4 Lending assurance reviews;
 - 19.5 Financial planning client file reviews;
 - 19.6 Internal audits; and
 - 19.7 External audits.
20. Findings resulting from these activities are reported and escalated in ways which reflect the their nature and materiality, and appropriate action is taken to address any findings that indicate that there has been, or may be, any failure to satisfy our obligations, or where there is scope for improvement. Examples of the types of action taken include conducting additional staff training, disciplinary action of staff, modifying processes and procedures, making IT system changes, and taking remedial action in respect of any detriment suffered by members (which may include paying compensation).
21. We maintain a breach register in which we record all identified breaches of our obligations as well as events that could possibly be breaches or be considered to be breaches.
22. As a financial services licensee, we have an obligation to report breaches, or likely breaches, of some obligations to ASIC⁸, and we comply with that obligation.
23. As a subscriber to the Customer Owned Banking Code of Practice, we have an obligation to provide an annual report to the Code Compliance Committee, and we comply with that obligation.

Complaints and Dispute resolution

24. We maintain a complaints register in which we record all complaints made by members and others. If a complaint results in us identifying a breach then that breach is recorded in the breach register.
25. We have a dispute resolution system which complies with the requirements of the *Corporations Act 2001*.
26. We are a member of the Financial Ombudsman Service Ltd ('FOS'), an external dispute resolution scheme approved by ASIC.

Our approach to answering the Commission's questions

27. We note that the questions use the language of the Terms of Reference.

⁸ Corporations Act s. 912D

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Conduct that is misconduct and conduct that we consider falls below community standards and expectations

28. The provision of financial services is highly regulated and many of the applicable laws and codes are complex and technical, and so it is inevitable that from time to time a financial services provider will contravene the requirements of applicable laws and codes. In our submission *any* such contravention, no matter how isolated or trivial, could potentially be regarded as misconduct, as defined in the Terms of Reference, and/or conduct that falls below community standards and expectations.
29. Therefore, we respectfully submit that in order to address the Commission's questions in what we consider to be a helpful and meaningful way it is appropriate to limit our response to any identified conduct to which particular criteria apply.
30. As to those criteria, we submit that:
- 30.1 In addressing the Commission's invitation, it is appropriate to have regard to what appears to be the Commission's focus.
- 30.2 The Terms of Reference, read as a whole, suggest that the Commission's focus is upon any misconduct, or conduct that falls below community standards and expectations, that has had, or may have had, an adverse impact upon consumers of financial services. The fourth paragraph of the preamble notes that all Australians have the right to be treated honestly and fairly in their dealings with financial services providers, and paragraph (e) refers to the effectiveness of mechanisms for redress for consumers who suffer detriment as a result of misconduct by financial services entities.
31. Therefore, we have limited our answers to the Commission's questions to misconduct, and any conduct that we consider falls below community standards and expectations, that:
- 31.1 Is relevant to the provision of financial services (including credit activities) to consumers; and
- 31.2 Has had, or may have had, an adverse impact upon those consumers.

Offences

32. As to misconduct that would constitute an offence against a law, we submit that an appropriate frame to apply is one which reflects our obligations as a financial services licensee and credit licensee to comply with the 'financial services laws' and the 'credit legislation' (see paragraph 16.2(c) above) – effectively legislation relating to the provision of financial services or to credit activities.

Misleading and/or deceptive conduct, unconscionable conduct

33. As to conduct which is 'misleading, deceptive or both', or 'unconscionable', we note that the ASIC Act prohibits conduct in relation to financial services that is misleading or deceptive⁹, or unconscionable¹⁰. While contraventions of many of the relevant provisions are offences, contraventions of some of them are not. Nevertheless, in our submission an appropriate test

⁹ ASIC Act 2001, Part 2 Division 2 Subdivision D

¹⁰ ASIC Act 2001, Part 2 Division 2 Subdivision C

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for determining whether conduct is misleading or deceptive or unconscionable is whether it is conduct which contravenes the relevant ASIC Act provisions.

34. Therefore our answer to those parts of question 1 that relate to any identified misconduct that has constituted an offence against a Commonwealth, State or Territory Law, or to any identified conduct that has been misleading and deceptive or unconscionable, relates to any conduct we have identified which:
- 34.1 Has constituted an offence under any financial services law (as defined in the *Corporations Act 2001*) or credit legislation (as defined in the *National Consumer Credit Protection Act 2009*); and/or
 - 34.2 Constitutes misleading and deceptive conduct or unconscionable conduct within the meaning of the *ASIC Act 2001*; and
 - 34.3 Has had, or may have had, an adverse impact upon consumers.

Professional standards and benchmarks for conduct

35. Subparagraph (d) of the definition of 'misconduct' refers to 'professional standards or a recognised and widely adopted benchmark for conduct'.
36. The standards and benchmarks which we consider to be relevant to us are:
- 36.1 The following codes to which we are a subscriber:
 - (a) The Customer Owned Banking Code of Practice; and
 - (b) The ePayments Code; and
 - 36.2 The FPA Code of Professional Practice by which our financial planners are bound as practitioner members of the Financial Planning Association of Australia Ltd.
37. Therefore our answer to that part of question 1 that relates to any identified misconduct that has breached professional standards or a recognised and widely adopted benchmark for conduct relates to any identified conduct which:
- 37.1 Has breached the Customer Owned Banking Code of Practice, the ePayments Code or the FPA Code of Professional Practice; and
 - 37.2 Has had, or may have had, an adverse impact upon consumers.

Community standards and expectations

38. The Customer Owned Banking Code of Practice represents the common understanding of COBA members as to what relevant community standards and expectations are and how they should be met.
39. The preamble to the Code states: '*The Customer Owned Banking Association and its members believe that the Code establishes a strong benchmark for industry and is a clear statement of the commitment customer-owned banking institutions make to their customers. Customers of Code subscribers can have confidence in knowing they are covered by a market leading, plain English commitment to fair and responsible banking.*'

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40. The Introduction to the Code states: *"This Code establishes higher standards than the law requires in a range of areas, and addresses issues not addressed by the law. In adopting this Code, mutual building societies, credit unions, mutual banks and other mutual ADIs agree to abide by the higher standards and additional requirements set out in the Code."*
41. The Code includes 10 key promises, which are:
1. *We will be fair and ethical in our dealings with you. We will always act honestly and with integrity, and will treat you fairly and reasonably in all our dealings with you.*
 2. *We will focus on our customers. We will place a high priority on service, competitiveness and customer focus. We will provide friendly and reliable service to our customers. Our customer service standards will be appropriately tailored where we are aware that you have special needs (for example, because of your age or a disability, because you are an indigenous person, because English is not your first language, or because you are unfamiliar with financial products and services).*
 3. *We will give you clear information about our products and services. We will provide clear and accessible information about our products and services, so you can make an informed decision about the product you want. We will disclose interest rates, fees and charges in an accessible and clear format and provide you with regular account statements. We will give you information on how to minimise fees and charges. Our advertising and promotional material will not be misleading.*
 4. *We will be responsible lenders. We will lend responsibly, and will try to assist you if you find yourself in financial difficulties.*
 5. *We will deliver high customer service and standards. We will issue and distribute products and provide services that are useful, reliable and of value to our customers. We will make sure our staff and agents or representatives are well trained. We will promote secure and reliable banking and financial services, and keep you up to date on any changes to the products and services we provide to you. We will treat your personal information as private and confidential.*
 6. *We will deal fairly with any complaints. We will handle complaints promptly and fairly and provide you with information on avenues for resolving disputes if we are not able to reach agreement with you.*
 7. *We will recognise our customers' rights as owners. As customer owned banking institutions our customers are our owners. We will ensure that you receive information that is balanced and adequate on the benefits, costs and impacts of any reasonable proposal to change our ownership structure. As far as possible, we will ensure that any information on proposals to change our ownership structure provided to you by other parties is fair and not misleading.*
 8. *We will comply with our legal and industry obligations. We will be responsible, prudent managers of our institution, and will comply with all our obligations under the law and relevant codes of practice. We will act fairly and consistently with good banking and financial service industry practice.*
 9. *We will recognise our impact on the wider community. The customer owned banking sector has a strong community focus. We will take account of the impact of our operations on staff, the communities we serve and our customers. We will promote community engagement and will contribute to community activities and projects.*
 10. *We will support and promote the Customer Owned Banking Code of Practice. We will promote the Customer Owned Banking Code of Practice, ensure that our staff is trained to put it into practice, and support its monitoring and effectiveness.*

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42. Therefore our answer to question 2 relates to any identified conduct, practice, behaviour or business activity which:

42.1 We consider has fallen below the standards reflected in the Customer Owned Banking Code of Practice; and

42.2 Has had, or may have had, an adverse impact upon consumers.

Nature, extent and effect

43. In answering those parts of the Commission's questions 1 and 2 that enquire as to the nature, extent and effect of identified conduct, we have taken into account the materiality of that conduct.

44. As we have submitted in paragraph 28 above, it is inevitable that from time to time a financial services provider will contravene the requirements of applicable laws and codes¹¹.

45. We have referred above to our obligations and practices in respect of recording breaches and complaints, and, briefly, to our obligations in respect of reporting some breaches and likely breaches.

46. In the annual compliance report which we provide to the Code Compliance Committee in respect of our compliance with the Customer Owned Banking Code of Practice we must provide information about breaches of the Code which we have identified in the relevant year¹². This information is provided in a summarised form, providing numbers of identified breaches by reference to particular Code obligations, product types (e.g. deposit taking, credit investments etc), issue type (e.g. advice, charges, disclosure, financial difficulty etc) and outcomes. In the report we must also identify whether reported breaches were 'significant'. The significance of a breach is to be determined by reference to the following criteria:

46.1 Similar breaches of the same nature that have occurred in the organisation;

46.2 The number of customers affected;

46.3 The adequacy of arrangements to ensure compliance with the Code;

46.4 The extent of any customer detriment;

46.5 The rectification and other costs incurred; and

46.6 The duration over which the breach occurred.

47. These criteria reflect, and are no more narrow than, those which must be taken into account to determine whether a breach, or likely breach, of certain obligations by a financial services licensee is significant, and therefore must be reported to ASIC, for the purposes of section 912D of the *Corporations Act 2001*, which are:

47.1 The number or frequency of similar previous breaches;

¹¹ We note that a breach of legal obligations is also a breach of the Customer Owned Banking Code of Practice, Key Promise 8.

¹² Breaches of the Code include breaches of legal obligations.

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- 47.2 The impact of the breach or likely breach on the licensee's ability to provide financial services;
 - 47.3 The extent to which the breach indicates that the licensee's arrangements to ensure compliance with the relevant obligations is inadequate; and
 - 47.4 The actual or potential financial loss to customers.
48. We have therefore adopted the criteria used for determining significance for Customer Owned Banking Code of Practice reporting services to determine materiality for the purposes of answering the Commission's questions in relation to the nature, extent and effect of identified conduct.

Our answers to the Commission's questions

49. Against the background of our approach to answering the Commission's questions, as described above, our answers to questions 1 and 2 and, where applicable, question 3, are set out in the Schedule.
50. Question 4 is not relevant to us.

Please contact us should further information be required.



Steve Laidlaw
Managing Director



THE SCHEDULE

OUR ANSWERS TO QUESTIONS 1 AND 2 AND, WHERE APPLICABLE, TO QUESTION 3

[Please note: These answers must be read in conjunction with the information we have provided in relation to our approach to answering the Commission's questions.]

1. Our answer to the first part of question 1 is 'yes' – we have identified some conduct over the relevant period that was, or may have been, misconduct.
2. Our answer to the first part of question 2 is 'yes' – we have identified some conduct over the relevant period which we consider fell below, or may have fallen below, community standards and expectations.
3. As to the second parts of questions 1 and 2, and question 3:
 - 3.1 In the information provided below we have not differentiated between conduct to which question 1 applies and conduct to which question 2 applies, given that the definition of 'misconduct' includes breaches of widely adopted benchmarks for conduct and that conduct which falls below community standards and expectations includes contraventions of the law.
 - 3.2 We have provided detailed information in relation to the nature, extent and effect of identified instances of relevant conduct which we consider to be significant, taking into account the approach to answering the Commission's questions which we have described.
 - 3.3 In relation to identified instances of relevant conduct which we do not consider to be significant, we have provided information in relation to the nature, extent and effect of the conduct by category.
 - 3.4 In relation to each instance and category of identified conduct our answer to each of paragraphs (a) to (d) of question 3 is 'no'. Our answers to paragraph (e) of question 3 are included in the information we have provided in relation to each instance or category.

Instances of identified conduct which we consider to be significant

4. In March 2008 we identified, during a review of data by Product Management, that approximately 200 members who held Mortgage Repayment Insurance (MRI) policies had not had their policies cancelled when the related loan was paid out and so premiums had continued to be charged. In order to rectify the issue we arranged cancellation of the relevant MRI policies backdated to when the loans were paid out. Affected members were refunded for the amounts overpaid with an additional sum to reflect the period over which the issue had extended (approximately \$390,000 in aggregate) and communications were sent to them explaining the situation.
5. In January 2010 we identified that 220 members had been incorrectly charged fees which had not been properly disclosed in our Fees & Charges booklet. There were 1,056 relevant charging events. The fees, totalling \$3,056.95, were refunded and explanatory letters were sent to the affected members.
6. In December 2010 we identified, following a member complaint, that a member who used our financial planning services had requested that advice be provided on redeeming investments

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(based on discussions the member had had with an external adviser). Due to a delay in our planner providing the advice, the redemption was delayed and the member incurred a loss of \$70,068. We reimbursed the member for the full amount of the loss.

7. In March 2011 we identified that, as a result of a technical integration error, 160 members had been provided with an outdated version of a Product Disclosure Statement (PDS), which was branded incorrectly and disclosed incorrect fees. It was determined that 64 members had been charged fees in excess of what was stated in the PDS provided to them and that the fees overcharged totalled \$4,604.38. A further 96 had been charged lower fees than those stated in the PDS provided, but no action was taken in relation to those fees. To remediate, overcharged members were reimbursed to the extent of the overcharge in fees and an interest adjustment was applied to their personal loan. A letter was sent to the affected members explaining the error and a current copy of the PDS was provided.
8. In March 2011 we identified that two separate privacy infringement incidents had occurred in respect of joint account holders over a period of 5 months. The first incident affected 408 members who were joint account holders residing at separate addresses and where one or more also held a separate account with us. When account statements were provided, the account holder nominated as 'the primary' account holder for the purposes of the joint account also received the account statement information for the separate account(s) of the other joint account holder or holders. Six complaints were received in relation to this issue, four of which were resolved with an apology from us. In relation to two complaints we made ex gratia compensation payments totalling \$2,000 due to the unique circumstances pertaining to those members. The second incident affected 1,000 members who were joint account holders residing in the same place where one or more also held a separate account with us. Statements and tax summaries for both the joint account and any separate account(s) were addressed in the names of the joint parties. That is, each envelope was addressed to the joint parties, but may have included the separate personal account/tax summaries of one or more of the parties. No complaints were received in relation to this second incident. To prevent future occurrences, staff training, processes, policies and procedures were reviewed and changes were made.
9. In or about April 2011 we identified a number of technology based errors following technology integration related to a merger. The errors were:
 - 9.1 Approximately 430 members were affected by statement errors including - incorrect billing amount, no billing amount displaying and/or wrong billing date.
 - 9.2 Approximately 14,000 monthly statements for March were not distributed as a separate March statement.
 - 9.3 Approximately 1,244 business members did not receive a monthly statement for a Visa card account.
 - 9.4 Approximately 1,400 members were affected by an issue where the running balance on a statement was missing a period of time during the month of March. Therefore interest disclosed on statements was missing a period.

The remedial action we took in relation to affected members included:

- 9.5 April statements were reviewed and all errors were corrected prior to the statements being distributed.

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- 9.6 Statements were produced and provided covering both the March and April periods. Affected members received this combined statement in May 2011.
- 9.7 May statements were produced and provided which covered the period March, April and May 2011.
10. In or about April 2011 we identified that, due to a system error during technical integration related to a merger, 470 members had not had withholding tax charged for the month of March 2011. To remediate, adjustments were made to the affected members' accounts and communications were issued to affected members.
11. In August 2011 we identified that approximately 5,800 members were affected by a system error which resulted in monthly account and transaction fees being charged that should have been waived. To remediate all overcharged fees were refunded and affected members received communications advising them of the error.
12. In January 2012 we identified that approximately 18,000 account statements which we had issued contained errors, and the details of 200 term deposits were affected, due to an IT patching issue. To remediate, corrected statements were issued to the affected members and manual adjustments were made to the term deposits to correct them. A member communication was also sent to the affected members.
13. In or about December 2012 we identified that members holding insurance obtained via us, who were entitled to a waiver of a direct debit fee of \$1.25, had not had that fee waived since 1 May 2011, due to processing errors following a change in the insurance provider. 2,759 members were affected. To remediate, overcharged fees, totalling approximately \$10,000, were refunded to affected members on 17 January 2013. To prevent future occurrences, technology changes were made and this matter was flagged as an issue for consideration in relation to any future insurance conversion projects.
14. We offered an 'Actively Managed Service' (AMS) as part of our financial planning service, and as we did not hold a relevant Australian financial services licence authorisation for this service we relied on a "no action" letter which had been issued by ASIC. The "no action" letter imposed certain conditions including that members seeking to use the service must provide us with a Limited Power of Attorney to enable us to make changes to members' investments without seeking the members' prior consent. In about December 2012 we identified that Limited Powers of Attorney had not been obtained from any members using the AMS service and, in this regard, the conditions of the "no action" letter had not been met. Although no member was adversely affected, the matter was reported to ASIC in December 2012. To rectify the matter, we obtained Limited Powers of Attorney from the relevant members or transferred them, with their consent, out of the AMS. We also wrote to all affected members explaining the matter and inviting them to contact us to discuss any concerns they had.
15. In February 2013 we identified that Direct Debit Default notices sent to approximately 569 members had not been fully compliant with the requirements of the National Credit Code. To prevent future occurrences the form of the notice was reviewed and changed, so that it was compliant. A communication was also sent to all affected members to correct the erroneous information previously provided.
16. In March 2013 we identified that on 15 March 2013 approximately 89,417 members were incorrectly charged a Visa debit fee of \$10. The issue was investigated and on 3 April 2013 the charging of the fee was reversed and backdated to 15th March. To prevent future occurrences a technology change was made.

17. In March 2013 we identified that some statements of advice provided to members in relation to financial planning services did not include adequate disclosure of commissions which would be payable to us upon the rollover of an investment. We reported the matter to ASIC. In order to remedy the matter all commissions received but not disclosed by us were paid to affected members together with interest calculated on the relevant amount from the date that we received the commission. In respect of affected members whose investments had not yet rolled over, we wrote to them and disclosed the deficiency. In addition, we arranged for all commissions which would have otherwise been payable upon rollover to be switched off (i.e. not paid to us) until such time as those members had provided their written consent for us to receive those commissions.
18. In July 2013 we identified that a number of members who were entitled to a waiver of transaction account keeping fees and annual credit card fees, because they held home loan packages, had been charged those fees due to staff manual processing errors. 894 members had been affected and fees totalling \$31,478 had been overcharged. We refunded \$31,478 to the affected members, and we took steps to ensure that fee waivers entitlements were correctly processed.
19. In October 2013 we identified that on 2,065 occasions since 2011 some ATM fees had been incorrectly charged to members due to a technology issue. A small number of ATM's were affected and the issue only occurred during the period over which an overnight process was run. There were approximately 1,537 members affected and fees totalling \$516.25 had been incorrectly charged. To remediate, refunds were processed to the affected members' accounts.
20. In November 2013 we identified that, due to a technology error, certain fees had been charged incorrectly to 1,151 members. The result was that all affected accounts were charged fees based upon the previous month's fee assessment criteria. The total of the amount overcharged was \$68,886.70. To remediate, all affected members were reimbursed for the overcharged fees.
21. In November 2013 we identified that 725 transaction accounts had been classified as 'written off' in our system, because they had debit balances, and deposits had subsequently been received into those accounts which resulted in them having a credit balance. Because the accounts were classified as 'written off', our system did not generate and issue statements on the accounts and in some instances interest which would otherwise have been payable on the credit balances was not paid. We notified affected members, paid them the interest which they should have been paid, and rectified how the accounts were classified on our system so that interest was paid and statements were generated.
22. In November 2013 we identified that some members who held insurance policies did not have those policies linked to their membership number. This was as a result of staff errors in entering data and the fact that where policies were arranged online, membership numbers were not always captured. In some instances, the linkage of the policy to the membership number may have entitled to the member to a waiver of transaction fees if certain other criteria were satisfied. The information we have been able to source from historical records on this matter does not include the specific details of members impacted and we are therefore unable to provide a conclusive view of the extent of the impact to relevant members. In the course of preparing our submission, we have identified that the steps taken to address this matter have not been wholly effective and accordingly, we are in the process of investigating this matter further. To the extent that we identify that any transaction fees have been incorrectly charged, we will reimburse those fees with interest. We have taken immediate steps to ensure that all new insurance policies purchased by members will be linked to their respective membership numbers.

23. In June 2014 we identified, following a member complaint, that a delay had occurred in the provision of advice and actioning of that advice by a financial planner in respect of new insurance policies for a member. The planner had also made an error in relation to the timing of the cancellation of an existing insurance policy, which detrimentally affected the member who came to suffer a terminal illness. To address the issue, we paid the member \$150,000 by way of compensation and also assisted the member with successful claims under other policies. Additional controls were put in place within our financial planning team to better manage the timeframes for delivery of Statements of Advice and the processing of instructions, and risk insurance was given a service level priority to ensure instructions in relation to it were actioned quickly.
24. In December 2014 a member complaint was considered by FOS. We had approved a loan to enable the member to pay a deposit in relation to a purchase of land. The member had advised us that his intention was to later build a residence on the land, but subsequently we declined an application by the member for a further loan he required to fund that. FOS determined in favour of the member. An amount of compensation of \$34,610.16 was paid to the member.
25. In April 2015 we identified that a financial planner provided advice to a new member in relation to additional superannuation contributions without providing a new Statement of Advice (SoA) or Record of Advice (RoA), relying on the SoA from the member's previous financial planner at an unrelated licensee. Advice in relation to a further contribution was later given and a RoA was provided, but due to an administrative error this further contribution was not made for a period of time. To remediate we paid \$15,347 compensation to the member.
26. In September 2015 we identified that following a restructure of our internal retail departments there had been a failure to provide our Welcome Pack to some new members. The Welcome Pack contains disclosure documents including our Financial Services Guide and Accounts and Access Facilities Terms and Conditions. Our investigations indicated that 2,749 members were affected. All identified affected members were communicated with regarding the matter and a copy of our Welcome Pack was provided to each of them.
27. In November 2015 we identified that some members who were eligible for a fee waiver on their Everyday Accounts because they held home loan packages were incorrectly charged fees. 1,061 accounts were affected by the issue on this occasion and a total of \$29,799 was incorrectly charged. The affected members were contacted and advised of the error and the incorrectly charged fees were refunded. To prevent future occurrences, exception reporting was established to enable us to identify and correct any future processing errors.
28. In March 2016 we identified, following a member complaint, that the member, who was paying ongoing financial planning service fees, had not received timely advice and had suffered a loss. The member complained that earlier advice should have been proactively updated following legislative changes, in a more timely fashion. The legislative changes affected the member's Centrelink pension entitlement. We paid the member \$20,000 by way of compensation.
29. In September 2017 we identified that as a result of an administrative error 22 members who used our financial planning services had their funds remain invested in an Ausbil Microcap managed fund when the funds should have been transferred to an alternate fund based on advice from our asset consultants in 2015. To remediate, the members' funds were transferred to the alternative funds and a total sum of \$26,106 was paid to the affected members by way of compensation.

30. In November 2017 we identified that over a period of at least 6 years some members who had complained to People's Choice in relation to allegedly unauthorised transactions on their Visa accounts had been incorrectly informed that because the complaint was greater than 120 days after the transaction was performed we could not assist them, because of Visa chargeback rules. We failed to inform them of their rights under the ePayments Code which provides to the effect that a complaint that a transaction is unauthorised transactions must be investigated if it is made not more than 6 years after the disputed transaction occurred. We notified ASIC of the matter in December 2017. We identified 130 affected members and we are in the process of refunding approximately \$32,000 plus interest in total to these members. We are also currently reviewing our processes and procedures.

Instances of identified conduct which we do not consider to be significant

31. The following information in relation to identified conduct by categories does not apply to particular incidences of conduct which we consider to be significant and have described above.
32. The vast majority of the conduct described below involved isolated instances of human error or misjudgement which affected only one, or a relatively small number, of members.
33. The conduct was not, in our opinion, significant by reference to the criteria we have described in our letter.
34. *Advertising compliance*
- 34.1 On a few occasions, over the period referred to in the Commission's questions, ASIC has contacted us to advise that particular advertisements published by us may have been potentially misleading to consumers, and/or to draw our attention to technical contraventions of advertising requirements (e.g. a failure in some banner advertisements to identify an advertised comparison rate as a comparison rate).
- 34.2 Whether a particular advertisement is potentially misleading involves a subjective judgment.
- 34.3 On each relevant occasion we have given careful consideration to ASIC's concerns and have responded by modifying our advertising so as to address those concerns.
- 34.4 On none of these occasions has ASIC taken any action against us other than to raise its concerns.
- 34.5 The number of advertisements in relation to which ASIC has raised concerns is negligible and immaterial in the context of the vast number of advertisements that we have published over the relevant period, and there is no evidence that any such advertisements have in fact misled consumers or that any consumer has suffered any loss or detriment as a result of those advertisements.
- 34.6 On each occasion we modified our advertising so as to address ASIC's concerns and taken ASIC's concerns into account when designing subsequent advertisements. There is no evidence of there having been any detriment to consumers.
35. *Responsible lending obligations*
- 35.1 As a credit licensee we have responsible lending obligations, which include:

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- (a) Making reasonable inquiries about the financial situation of a loan applicant¹³;
- (b) Taking reasonable steps to verify the financial situation of the applicant¹⁴;
- (c) Make an assessment as to whether the proposed loan will be unsuitable for the applicant¹⁵;
- (d) Assess the proposed loan as being unsuitable if (inter alia) it is likely that the applicant will be unable to comply with the applicant's financial obligations under the loan contract, or could only comply with substantial hardship¹⁶; and not enter into an unsuitable loan contract¹⁷.

- 35.2 As a credit union, we adopt prudent lending practices, and these are reflected in our lending policies, credit assessment process and the loan application assessment criteria we apply.
- 35.3 As part of our lending assurance reviews, referred to in paragraph 19.4 of our letter, we review samples of loan files, selected by reference to predetermined sampling criteria. Those reviews include reviewing whether information about the applicant's financial situation has been obtained and verified, and loan affordability has been assessed, correctly in accordance with our policies and lending criteria.
- 35.4 The results of such reviews are used to inform the training we provide to lending staff and to improve our lending processes, as part of both our compliance measures and the process of continuous improvement.
- 35.5 Over the period referred to in your letter our lending assurance reviews have identified a small numbers of loan files, in which findings have been made to the effect that all information about an applicant's financial position has not been obtained and/or verified, and/or loan affordability has not been calculated, strictly in accordance with our policies and lending criteria.
- 35.6 However, given that our lending standards are relatively conservative, it does not necessarily follow that the loan was unsuitable for the borrower simply because our policies and criteria were not strictly applied – i.e. that necessarily the borrower would be unable to comply with their financial obligations under the contract or could only do so with substantial hardship.
- 35.7 It follows that we have not identified any actual contravention of our obligation to not enter into unsuitable credit contracts over the relevant period, although obviously any failure to comply with lending policies and to apply lending criteria correctly gives rise to a risk that such contraventions could have occurred from time to time.
- 35.8 There is no evidence of there having been any detriment to consumers except in one instance that we have referred to in our references to significant matters. We continue to diligently monitor and review our lending processes and decisions to avoid potential

¹³ National Consumer Credit Protection Act 2009, s. 130(1)(b)

¹⁴ Ibid. s. 130(1)(c)

¹⁵ Ibid. s. 129

¹⁶ Ibid. s. 131

¹⁷ Ibid. s. 133.

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contraventions, and we provide ongoing and regular training to our lending staff in relation to the correct application of our lending processes and assessment criteria.

36. *Privacy obligations*

- 36.1 From time to time, over the relevant period, we have identified instances in which we have, actually or potentially, inadvertently disclosed a member's personal information to a third party or allowed that information to be potentially accessible by a third party, in a way that is inconsistent with our obligations under the *Privacy Act 1988*.
- 36.2 We have apologised to affected members, asked relevant third parties to destroy information received where applicable and, in a very small number of instances, have paid compensation to members, predominantly on an ex gratia basis.
- 36.3 We continue to monitor and review our compliance with our privacy obligations, and we provide ongoing and regular training to our staff in relation to those obligations.

37. *Complaints in relation to selling and disclosure of information about products*

- 37.1 Over the relevant period an exceptionally small number of members have made complaints to us to the effect that we have sold or attempted to sell products to them they may not have really wanted or needed or provided inadequate information in relation to products.
- 37.2 As one of our objects is provide products and services to members to assist them to meet their financial, economic and social needs, it is inevitable that from time to time staff members will encourage a member to acquire a product or service because the staff member considers that it is in the best interests of the member to acquire that product or service, but the member will disagree.
- 37.3 The complaints have been isolated, infrequent and insignificant in number taking into account the numbers of members we have and the interactions we have with our members.
- 37.4 In each instance we have investigated and resolved the member's complaint.
- 37.5 We provide ongoing and regular training to our staff in relation to appropriate selling practices.

38. *Overcharging of interest or fees*

- 38.1 There have been occasions, over the relevant period, when we have charged individual members or groups of members fees or interest in excess of what should have been charged in accordance with our terms and conditions. In general these instances have arisen because of IT system functionality issues and/or human errors.
- 38.2 When such issues have been identified, we have taken prompt remedial action to ensure that affected members are reimbursed for amounts overcharged and the cause of the issue is addressed.

39. *Provision of disclosure documents*

- 39.1 We have identified some instances where individual members, or groups of members, have not been provided with required disclosure documents (e.g. FSGs, PDSs,

privacy statements) when they should have been, or have been provided with disclosure documents which are not up to date (because we have prepared a new version).

- 39.2 We have provided affected members with the relevant, up to date, disclosure documents, promptly after such instances have been identified, invited them to contact us if they consider that they have suffered any detriment, and dealt with claims by relevant members on a case by case basis.
- 39.3 We continue to monitor and review our compliance with our obligations in relation to the provision of disclosure documents, and we provide ongoing and regular training to our staff in relation to those obligations.

40. *Processing errors*

- 40.1 We process vast numbers of transactions for our members each year. They include individual transactions (such as transactions conducted or initiated by members) and arranging and processing recurrent transactions such as direct debits and periodical payments.
- 40.2 From time to time processing errors are made. Causes vary but the predominant causes are IT system malfunction and human error by staff.
- 40.3 In general processing errors are quickly brought to our attention by our internal assurance activities or affected members, and when we become aware of them we act promptly to take corrective action.
- 40.4 The majority of processing errors have simply been reversed and affected members have not suffered any adverse consequences. Where we have identified that members have suffered adverse consequences as a result of processing errors made by us we have taken appropriate remedial action which, in some cases, has included the payment of compensation.
- 40.5 We continue to monitor and review our systems and processes, and we provide ongoing and regular training to our staff, to minimise the risk of processing errors being made.