

12 May 2015

To all foreign bank branches (foreign ADIs)

PROPOSAL TO GRANT CLASS APPROVAL UNDER SECTION 11E OF THE BANKING ACT TO FOREIGN ADIs

Under the *Banking Act 1959* (Banking Act), a foreign ADI is required to disclose to a prospective Australian depositor, in a manner approved by APRA, that it is not subject to certain depositor protection provisions in the Banking Act ('section 11E disclosures'). This requirement is set out in APRA's *ADI Authorisation Guidelines*¹ and has historically been met through approvals granted to individual foreign ADIs on a case by case basis.

A review by APRA has highlighted inconsistencies in the wording and application of this requirement by foreign ADIs. Also, there have been amendments to the depositor protection provisions to include the financial claims scheme since the time when most foreign ADIs were originally granted authority to carry on banking business in Australia.² To address these issues, APRA now proposes to issue a class approval setting out the manner in which section 11E disclosures are to be made by foreign ADIs. The proposed wording of the class approval conditions is contained in the Appendix to this letter.

Overview of the proposed section 11E class approval

The proposed class approval provides that, before accepting an initial deposit from a person in Australia, a foreign ADI must provide a written statement to the prospective depositor that clearly sets out that depositor protection provisions in the Banking Act do not apply. The matters that must be disclosed are listed in the Appendix to this letter. A foreign ADI may choose to adopt the statement as set out in the Appendix or adopt its own wording, as long as it provides an equivalent or greater level of disclosure.

Transition for foreign ADIs with existing individual section 11E approval

APRA proposes that the class approval will replace existing individual section 11E approvals, which would be revoked after a six-month transition period during which a foreign ADI would need to take steps to meet the proposed disclosure measures. However, APRA may approve alternative arrangements, where the foreign ADI is able to demonstrate that special circumstances exist that warrant an individual consent.

¹ Refer to <http://www.apra.gov.au/adi/Documents/ADI-Guidelines-11-4-081.pdf>, April 2008, paragraphs 36-41.

² Strictly, foreign ADIs are only required to provide disclosure in relation to the requirements in Part II, Division 2 of the Banking Act which do not apply to foreign ADIs. While the financial claims scheme is set out in Part II, Division 2AA of the Banking Act, Note 1 to subsection 16AD(1) of the Banking Act is to the effect that the financial claims scheme does not apply to foreign ADIs by virtue of section 11E.

Invitation to comment

APRA invites feedback on the proposals in this letter. Submissions should be provided by 19 June 2015 by email to s11@apra.gov.au addressed to:

Mr Pat Brennan
General Manager
Policy, Statistics and International
Australian Prudential Regulation Authority

Yours sincerely

A handwritten signature in black ink, appearing to read 'Charles Littrell', written in a cursive style.

Charles Littrell
Executive General Manager
Policy, Statistics and International

Appendix

Proposed conditions of class approval

- (a) Prior to the earlier of:
- (i) the opening of an account;
 - (ii) the transfer of an account from another person; or
 - (iii) the taking of an initial deposit,
- the foreign ADI must provide the person with a written disclosure statement (the Statement).
- (b) The Statement must be prominently displayed and clearly written in plain language.
- (c) The Statement must disclose, at a minimum, the following matters:
- *The ADI is a foreign authorised deposit-taking institution (foreign ADI) and is not subject to the 'depositor protection' provisions contained in Part II, Division 2 of the Banking Act 1959 (Banking Act).*
 - *The key depositor protections in the Banking Act which do not apply to foreign ADIs are as follows:*
 - *Deposits with a foreign ADI are not covered by the financial claims scheme and are not guaranteed by the Australian Government.*
 - *Deposits with a foreign ADI do not receive the benefit of statutory priority under subsection 13A(3) of the Banking Act.*

In summary, this means that in the event that a foreign ADI were to become unable to meet its obligations or suspends payment, the foreign ADI's depositors in Australia would not receive priority payment from the foreign ADI's assets in Australia.
 - *A foreign ADI is not obliged to hold assets in Australia equal to or greater than its deposit liabilities in Australia.*
 - *APRA does not have power to appoint an ADI statutory manager to take control of a foreign ADI.*
 - *A foreign ADI is not obliged to immediately inform APRA if it considers that it is likely to become unable to meet its obligations, or that it is about to suspend payment.*