



29 April 2022

Redacted

General Manager, Policy
Australian Prudential Regulation Authority

By email: Redacted

Dear Mr Redacted

Strengthening crisis preparedness - Discussion Paper

The Australian Financial Markets Association (AFMA) welcomes the opportunity to comment on the *Strengthening crisis preparedness - Discussion Paper* (Discussion Paper)

AFMA has considered this Discussion Paper in consultation with the Australian Banking Association (ABA) and the Insurance Council of Australia. While agreeing with the policy objective of strengthening crisis preparedness through providing entities with certainty in regard to regulatory requirements through standards in this area, AFMA is aware of the concerns with the standards development process our association colleagues are raising with APRA and we are from an industry wide perspective supportive of the need to address those concerns. We are at the Discussion Paper initial stage in this standards development process and we see there is still much dialogue with industry required before their finalisation.

Given the ample technical feedback you are receiving from the ABA on the Discussion Paper regarding domestic ADIs, the focus of AFMA's comments is directed to the views of our foreign ADI membership. In this regard reliance is placed on the following points from the FSB's *Key Attributes of Effective Resolution Regimes for Financial Institutions*:

- d. *(home authorities) Review and further develop proportionate resolution-related*
 - i. *cooperation and information sharing arrangements with host authorities:*
 - ii. *for non-G-SIBs that are subject to resolution planning and have operations in foreign jurisdictions that are material to the group;*
 - iii. *for G-SIBs that have systemic presence in foreign jurisdictions but where the host authorities are not represented on the [Crisis Management Groups] CMG.*

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- e. *(host authorities) Participate in cross-border coordinating arrangements and, for non CMG hosts, engage with home authorities on the group resolution strategy*

In this context it is AFMA's understanding that APRA has in place cross-border cooperation and information-sharing arrangements to support effective recovery and resolution planning and resolution execution capability which provide a means for the discussion and agreement of resolution strategies and planning and coordination of recovery plan and resolvability assessments. The type and granularity of the information required varies depending on the resolution strategy for the firm and the nature of the firm's operations in the relevant jurisdictions.

Given the predominance of foreign ADIs operating through branches in Australia the implicit assumption is that foreign banking groups can in principle draw more readily on resources from the entire group to help local operations that have suffered a shock. The ability to withstand shocks depends ultimately on the solvency and resilience of the

group as a whole. The support of branch operations entails stronger engagement, in principle, on the part of the parent institution, as it is not a legal entity of its own. The extent to which a parent institution supports its branch is ultimately a function of the group's solvency and funding pattern rather than the branch seen in isolation. Information on the commitment and resilience of a foreign banking group with an Australian branch is important for assessing the potential effects on domestic credit, particularly where a branch may have a significant market share.

AFMA does not believe that the financial contingency planning requirements for branches are meaningful, given branches do not have stand-alone capital requirements and liquidity is typically managed centrally at a parent level. It is also inconsistent with the approach taken in other international jurisdictions (e.g. the UK, US and the EU) where branches are not required to provide stand-alone recovery plans.

Given that foreign ADIs in Australia predominantly have home authorities with equivalent resolution regimes and requirements for crisis preparedness planning, relevant recovery and resolution planning information can be provided to APRA through presentation of such home authority report /plans, such as the US law Title I plans submitted to the Federal Reserve, the FDIC and the Federal Systemic Oversight Council.

A. Framework Design

1. *Is the approach to proportionality well-balanced and appropriate?*

AFMA supports the Option 2 approach in regard to ADIs other than foreign ADI branches and agrees with the proposition that the proportional approach to the proposed new requirements should mean that smaller entities are not disproportionately impacted by additional compliance costs. Simpler requirements are appropriate to their size, the less complex nature of their businesses and the risks they pose to financial safety and system stability. The administrative burden for ADIs arising from crisis preparedness should not be disproportionate to the significance of the ADI from a resolution perspective.

2. *What are the estimated compliance costs to meet the new requirements?*

It continues to be difficult to gather compliance cost data at an industry level with any degree of confidence in the accuracy of the data. To some extent there is overlap with other compliance measures associated with corporate governance and regulatory reporting in the prudential regulation space, which makes it difficult to attribute compliance costs to particular sources of regulation. This is not to say that the industry does not feel heavily burdened by compliance costs and associated management time. There is strong public policy case for devising a means to make an accurate regulatory impact assessment.

Ad hoc questioning in the form of this question in a discussion paper will not in our common experience with the regulators produce much in the way of useful material. As a suggestion AFMA sees merit in APRA conducting a study along the lines and methodology of the European Banking Authority (EBA) [Study of the Cost of Compliance with Supervisory Reporting Requirements Report EBA/Rep/2021/15](#), across a broader range of APRA compliance requirements including crisis preparedness.

B. Financial contingency planning

3. *Should APRA indicate preferred contingency options?*

Generally, the preference is for APRA not to take a prescriptive approach for foreign ADIs. AFMA suggests that APRA should not indicate preferred contingency options as Foreign ADIs would expect to leverage the global frameworks they have in place to satisfy home authorities for the limited sections of CPS 190 that are applicable, and add a local component for the Australian component to meet the APRA requirements.

It is noted Discussion Paper indicates that foreign ADIs which operate through Branches would be classified as a non-Significant Financial Institution (SFI) and so comply with paras 1 to 12 and 33 to 46. For foreign branch ADIs, our recommendation would be that APRA look through to the ADI's home authority recovery plan to meet these requirements given they cover the parent as well as the branch network, rather than create branch specific plans which are less meaningful.

AFMA also notes that para 5 b) leaves open the possibility that a branch could also be deemed to be an SFI "if determined as such by APRA, having regard to matters such as complexity in its operations or its membership of a group". AFMA requests further clarity around this point.

4. *Are the proposed contents of the financial contingency plan comprehensive?*

It is suggested that APRA already gains comfort on contingency funding of foreign ADIs (including branches) through the contingency funding plan requirement in APS 210. So in terms of the stress continuum from Business As Usual through mild stress, severe stress (covered by the CFP) and ultimately to recovery, the financial contingency requirements as outlined in CPS 190 are focussed specifically on

defining APRA requirements at this heightened stress level beyond CFP, where the stress leads to actions to either recover financial resilience or exit regulated activity.

Where possible AFMA members would like to leverage the existing recovery and planning work that the foreign ADI already has in place. Some members with larger branches advise us that they have robust arrangements in place where the Australian branch is specifically included in the bank's group wide plan.

The preference is for APRA to give full recognition to the parent level plan. In this case, the question arises as to what would give APRA comfort on the parent plans, with the suggestion of giving APRA access to the parent document (with home authority approval). This is consistent with how other authorities have implemented similar recovery style requirements in respect of branches.

5. *Are the frequency and type of reviews appropriate?*

Our members advise that contingency plans are generally reviewed and updated annually as well as submitted annually or every two years to the home regulator, so are subject to regular appropriate review and challenge. It is important that the scheduling for home authority reporting cycles is taken into account and this should be tailored to individual foreign ADI circumstances.

C. Resolution planning

6. *Is the scope of the entities subject to CPS 900 appropriate?*

AFMA seeks confirmation from APRA that foreign ADIs are out of scope for resolution planning requirements. This clarification is sought as CPS 900 might allow for their inclusion in scope if *"determined as such by APRA, having regard to matters such as complexity in its operations or its membership of a group"*. It is unclear whether APRA would ever include a foreign branch ADI in scope, but if they did it is uncertain whether APRA would have the legal basis through which to enforce the items mentioned in para 14 – *"resolution options such as a solvent wind-down, transfer, or recapitalisation of the entity or entities"* given APRA is regulating the branch rather than the parent entity offshore. Further, resolution tools applied at a group level by the home resolution authority would also benefit and apply to branches in Australia.

AFMA considers that specific provision be made in CPS 900 for foreign ADIs which operate through branches and these be specifically removed from the scope of the CPS 900 to the extent APRA has assessed there is an equivalent regulation and responsibility to its home authority. For these entities APRA should look through to the parent and home authority for how the branch would be managed in a resolution scenario. APRA could also consider listing the equivalent home authorities in an Appendix to clarify the application of the prudential standard.

7. *Is the frequency and type of review appropriate?*

With regard to foreign ADIs, if they are out of scope as indicated above we make no comment. Otherwise the response to Question 5 above applies here as well.

Please contact David Love either **Redacted** in regard to this letter.

Yours sincerely

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David Love
General Counsel & International Adviser