



19 June 2015

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

By email: s11@apra.gov.au

Dear Mr Brennan

CLASS APPROVAL UNDER SECTION 11E OF THE BANKING ACT TO FOREIGN ADIS

The Australian Financial Markets Association (AFMA) is providing collective feedback on behalf of its foreign ADI members in relation to the proposals set out in APRA's letter of 12 May to foreign ADIs, concerning APRA's proposal to grant class approval under section 11E of the Banking Act to foreign ADIs.

AFMA supports the proposal to use a class approval instead of individual approvals. AFMA agrees that the principle of putting non-institutional depositors on notice is sound to ensure that people are not confused when they become aware that Australia has a financial claims scheme and make casual, uninformed assumptions about its coverage.

There are several points where clarification would be desirable so that understanding around how the current approvals apply in practice should be expressly stated for the benefit of future users of the class approval.

1. The statement only needs to be provided to new depositors when opening an account or making an initial deposit (whichever is earlier).
2. Bank bills and negotiable certificates of deposit (NCDs) do not fall within the definition of a protected account under the Financial Claims Scheme (FCS) which relies on the definition contained in section 5 of the *Banking Act 1959*. Accordingly the obligation to provide the s11E statement does not apply in respect of bank bills and NCDs.

In our view the statement is not suitable in the context of institutional banking activities as it imposes an unnecessary administrative burden in providing information which an institutional client should already have and would generally be of no relevance to them.

These statements are part of the Financial Claims Scheme arrangements, designed to put on notice individuals and non corporate institutions in Australia looking to make prospective initial deposits of more than \$250,000 who might make incorrect assumptions about coverage of the scheme. Accordingly we recommend that:

1. The statement should only be required to be provided to individuals and non corporate institutions which are located in Australia when looking to make an initial deposit.
2. The statement should not be used in the context of institutional banking when the foreign ADI is dealing with other ADIs.
3. The statement should be not be required when non-residents, incorporated entities and their employees are considering making a deposit.

The above sets out the scope of the regulatory obligation to provide the statement. Beyond this scope it should be left to the discretion of foreign ADIs to decide where and when it is appropriate to inform their depositors about the coverage of the Australian financial claims scheme.

While the letter allows for the option of a foreign ADI choosing 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, prudent regulatory risk management practices tend to lead to reliance on texts proposed by regulators. However, AFMA believes that the current proposed wording is fairly legalistic in nature and may not be conducive to ready understanding by the lay reader. AFMA therefore proposes that a plain English standard form of wording be developed that is acceptable to APRA. AFMA would be pleased to arrange a working group to collaborate with APRA to develop acceptable standard plain English wording for the statement.

In addition, as many of the foreign ADIs have non-English speaking depositors and rely on foreign language documentation when accepting deposits it should be made clear that the obligation to provide the statement can be satisfied by giving it in another language.

Finally, AFMA's understanding is that once the language of the statement has been finalised, foreign ADIs will not be required to provide the statement to existing depositors, but will be required to provide the statement to any new depositors opening an account or making an initial deposit (whichever is earlier) going forward.

AFMA would be please to assist APRA in arranging an industry meeting to discuss this matter. Please contact me at _____ on _____ to arrange such a meeting or if further clarification or elaboration is desired.

Yours sincerely



David Love
General Counsel & international Adviser