

28 May 2013

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Australian Prudential Regulation Authority

By email: exemptiondp@apra.gov.au

Dear Neil

### **Proposed changes to section 66 guidelines**

Abacus welcomes the opportunity to comment on APRA's discussion paper "*Banking Act exemptions and section 66 guidelines*." This is one of two submissions in response to the discussion paper, with this submission addressing APRA's proposed amendments to the section 66 guidelines and the other submission addressing exemptions.

The customer owned model is the proven alternative to the listed model in the Australian retail banking market. Customer owned ADIs have 4.5 million customers, a strong share of the household deposit and new home loan markets, and are consistent leaders in customer satisfaction and responsible lending.

Abacus notes that the current version of the section 66 Guidelines has been in place since January 2006, and that the Guidelines as currently drafted have provided effective guidance to ADIs and other stakeholders about the consents and exemptions associated with the use of a range or restricted terms.

While some minor modifications to the Guidelines may be appropriate to accommodate the recent introduction of mutual banks as a class of ADIs, we believe that the changes proposed by APRA go well beyond this and will have a significant detrimental impact on many of our credit union and building society members.

Abacus has two main concerns about APRA's proposed changes to the section 66 Guidelines:

- Restrictions on the term 'banking' by credit unions and building societies (paragraph 25 of the Guidelines);
- Restrictions on the use of the terms credit union and building society by mutual banks (paragraph 41 of the Guidelines).

We believe that these two proposals unnecessarily constrain the capacity of customer owned ADIs to manage their brands and to market their status as regulated banking institutions.

### **Use of the term 'banking' by credit unions and building societies**

Rules around the use of the word "banking" by credit unions and building societies are underpinned by the Consent instrument issued by APRA on 19 May 2000. In relation to

this issue, the Consent states that *"A Building Society or Credit Union may use the expression 'banking' in relation to its banking activities."* The Consent does not impose any further restrictions on the use of the term by building societies or credit unions, and does not refer anywhere to restrictions on the use of the term in an organisation's name.

The 2006 Guidelines also use the same language with respect to this restriction, and state that *"ADIs listed on the APRA web site as credit unions or as building societies may use the word 'banking' in relation to their banking activities."* Once again, the Guidelines do not include any restrictions around the use of the term in an organisation's name.

In contrast, the proposed 2013 Guidelines state that *"the restricted terms 'bank,' 'banker' and 'banking' may not be used as part of a registered corporate, business or trading name or internet domain name."* This would appear to represent a significant tightening in the interpretation of the Consent.

In fact, APRA has previously advised in written correspondence that the original Consent does allow mutual ADIs to use the term 'banking' in their names, and stated in 2007 that *"The use of the term 'banking' in the business name of a credit union would be appropriate so long as it was used in relation to its banking activities."*<sup>1</sup>

The proposed new Guidelines represent a significant policy shift by APRA, and the change will impact on a large number of our members.

While we have not completed a comprehensive check of all of our members, we are aware of at least three building societies and credit unions which currently use the word "banking" in their registered business name. In all three cases, the business name was registered after APRA issued its 2006 Guidance. A number of other members include the word "banking" in their registered trademark, and in total, we are aware of 25 credit unions and building societies that use the word "banking" in their name, brand or logo.

APRA's proposed restrictions will impose significant costs on these members. Most have developed their names and branding over an extended period of time, and often based on extensive market research and testing. A number of members have also invested significant amounts in building brand awareness. Forcing these members to change their names will require them to go through complete rebranding processes, and undermine existing levels of brand awareness. In addition to the direct costs of rebranding, members will face indirect costs as the impact on brand awareness results in lower levels of new customers.

We understand from APRA that it does not see the revised Guidelines as representing a policy change, and it is of the view that credit unions and building societies have never been allowed to use the word "banking" in their name. We find this position surprising given that:

- We are not aware of APRA ever having issued any guidance to this effect;
- APRA has explicitly permitted the use of the word "banking" in a credit union's name through written correspondence;

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<sup>1</sup> APRA letter to a member ADI, 2007.

- Despite a significant number of credit unions and building societies using the word “banking” in their name for a number of years, we are not aware of APRA raising concerns about this in a supervisory review of a member.

We understand from APRA that it is concerned that allowing a credit union or building society to use the word “banking” in its name could mislead customers into thinking that the financial institution is a bank. Abacus does not see this as a realistic concern.

We accept that APRA has a firm view that credit unions and building societies should not be able to use the word “bank” in their name unless they have been through a formal approval process. We are not contesting that view in this context and we accept that if a credit union or building society was to call itself a bank this could be misleading. However, we do not believe that the word “banking” creates the same issues. In particular, we note that no evidence has been provided by APRA or any other body that consumers are being misled by those institutions currently using the “banking” terminology.

Members do not seek to use the word “banking” in order to appear like a bank, they use the word “banking” in their names because they want customers to understand that they provide banking services. All ADIs, including credit unions and building societies, are able to provide banking services, but this is not always well understood by customers. With recent collapses of non-ADI institutions like Banksia making customers more cautious about their deposits, it is important that credit unions and building societies are able to employ terminology that draws attention to the banking services they provide.

This distinction is apparent when looking at the use of the word “banking” by our members in practice. Of the 25 credit unions and building societies that use the word in their name or brand, the vast majority also use the word credit union or building society (or the abbreviation CU) in the organisation’s name or brand.

Further, if members do want to be perceived by customers as “banks,” many are able to apply to APRA for recognition as a mutual bank, which allows them to use the word bank in their name. To date, seven credit unions and one building society have made this transition.

Given that no policy case has been made for a change in the Guidelines, Abacus is strongly of the view that they should remain unchanged in this area. Changes of this kind are far from merely cosmetic. Consumer perceptions about security and prudential standing are critical factors in the banking market. Restricting the use of the term “banking” in business names can undermine consumer perceptions about the customer owned banking sector, and further tilts the regulatory environment in favour of large banks.

We also note that APRA is proposing to prevent the use of the word “banking” in internet domain names. We note that at least one member is already using the word “banking” in a domain name – not of the credit union, but in a related site drawing attention to the institution’s banking services. The website, “banking on football,” is designed to promote the work of the credit union in supporting local football clubs. The credit union provides cash donations to local clubs, sponsors a number of clubs and

players and holds fundraising events for clubs. The banking on football website in no way purports or implies that the credit union is a bank, and indeed, the name of the credit union (which includes the words "credit union") is prominently displayed on the website.

We believe changes to the section 66 Guidelines which would prevent our members from sharing information in this fashion is unwarranted and unreasonable.

### **Use of the terms "credit union" and "building society" by mutual banks**

Under APRA's proposed Guidelines, mutual banks will *"not be permitted to continue to use the expressions 'credit union' ... or 'building society.'"* We note that this approach is consistent with the current policy position under the Consent and the 2006 Guidelines, whereby the use of these terms was restricted solely to credit unions and building societies respectively. However, we note that the current position is the result of mutual banks not existing as a concept when the Consent and Guidelines were introduced, rather than a conscious decision that this exclusion should apply to these institutions.

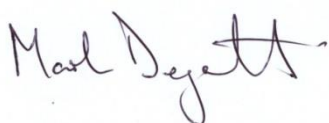
We agree that it is important that banks be prevented from using these terms, in the same way that it is important that credit unions and building societies not be able to use the word "bank" in their names. However, we also believe that there are circumstances where it may be appropriate for a mutual bank to have the capacity to use a credit union or building society branding.

For example, some further consolidation in the ADI sector is likely over coming years, and it is easy to envisage a scenario where a mutual bank merges with a smaller mutual ADI. If this were to occur, it is possible that the mutual bank may wish to retain the existing credit union or building society brand for commercial reasons. Such an approach would be entirely consistent with the APRA approved approach taken by the banks, where many of them have maintained the individual brands of smaller banks they merged with during the global financial crisis.

We believe that mutual banks should be given the option of adopting a similar approach should similar mergers occur in the mutual sector.

Please contact me on [REDACTED] or Micah Green, Senior Policy Adviser, on [REDACTED] to discuss any aspect of our submission.

Yours sincerely



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