Prudential Standard APS 222

Associations with Related Entities

Objectives and key requirements of this Prudential Standard

This Prudential Standard requires authorised deposit-taking institutions to implement prudent measures and set prudent limits to monitor and control contagion risks arising from their associations and dealings with their related entities.

The key requirements of this Prudential Standard are that an authorised deposit-taking institution must:

- have a Board-approved policy that governs its associations and dealings with its related entities;
- monitor, manage and control potential contagion risk between the authorised deposit-taking institution and its related entities;
- meet minimum requirements with respect to dealings with related entities and other associations which may give rise to prudential concerns; and
- ensure exposures to related entities meet prudential limits.

Table of Contents

Authority

1. This Prudential Standard is made under section 11AF of the *Banking Act 1959* (the **Banking Act**).

Application

2. This Prudential Standard applies to all authorised deposit-taking institutions (**ADIs**), on a **Level 1** basis, except **purchased payment facility providers** (**PPF providers**), subject to paragraph 3 of this Prudential Standard.

3. A **foreign ADI** is subject only to the requirements in paragraphs 19 to 28 of this Prudential Standard.

4. This Prudential Standard commences on 1 January 2020.

Interpretation

5. Terms that are defined in *Prudential Standard APS 001 Definitions* (APS 001) appear in bold the first time they are used in this Prudential Standard.

6. Where this Prudential Standard provides for APRA to exercise a power or discretion, this power or discretion is to be exercised in writing.

7. In this Prudential Standard, unless the contrary intention appears, a reference to an Act, Regulations or Prudential Standard is a reference to the Act, Regulations or Prudential Standard as in force from time to time.

Definitions

8. The following definitions are used in this Prudential Standard:

   (a) *associate* has the meaning given in section 50AAA of the *Corporations Act 2001*;

   (b) *control* over an entity includes, but is not limited to, having:

      (i) more than 50 per cent of voting rights over the entity;

      (ii) a voting agreement with other shareholders resulting in control of voting rights over the entity;

      (iii) significant influence over the appointment of persons to or removal of persons from the entity's management, Board of directors (**Board**) or board committees;

      (iv) significant influence over a **senior manager** or senior management of the entity (including influence on the policies of the entity);

(c) *funds management* is the provision of investment and related services for the management of investors' funds;[1]

(d) a *related entity* of an ADI includes, but is not limited to, any of the following:

(i) an associate of the ADI;

(ii) an entity which is directly or indirectly controlled by the ADI;[2]

(iii) an entity which directly or indirectly controls the ADI;

(iv) an associate of an entity referred to in paragraph (ii) or (iii);

(v) a substantial shareholder of the ADI and the substantial shareholder's associates;

(vi) a related individual of the ADI and the related individual's relatives, and their associates; and

(vii) an entity that exposes the ADI to step-in risk to an extent that the ADI's capital or liquidity positions would be materially impacted if the ADI were to step in to support the entity (refer to paragraphs 15 to 16 of this Prudential Standard).

Where appropriate, APRA may require an ADI to treat an entity as a related entity.

(e) a *related individual* of an ADI includes, but is not limited to, a senior manager of the ADI, an individual who is on the Board of the ADI or any other individual that is likely to have direct or indirect control over the ADI, the ADI's senior managers or the ADI's Board; and

(f) a *substantial shareholder* is an entity which has a substantial holding (within the meaning of section 9 of the *Corporations Act 2001*) in an ADI.

The role of the Board

9. The Board of an ADI is ultimately responsible for oversight of the ADI's associations with its related entities and for approving policies governing the ADI's dealings and associations with its related entities. The Board must **ensure** that these policies are reviewed at least annually and that they remain adequate and appropriate for the ADI's risk appetite, risk profile, capital, balance sheet size and the complexity of the ADI's **group**.

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1 A funds management vehicle holds assets and issues securities to (or receives funds from) investors in order to facilitate funds management activities.

2 An entity includes an *entity* within the meaning given in section 9 of the *Corporations Act 2001* for the purposes of Chapter 2E of that Act.

Control of risks arising from related entities

10. An ADI's policies on dealings and associations with related entities must give consideration to contagion risks to the ADI that arise from its group structure and related entities, and form part of the ADI's risk management strategy and **risk management framework** required under *Prudential Standard CPS 220 Risk Management* (CPS 220). An ADI must assess contagion risks to the ADI on a regular basis (at least annually), taking into consideration:

    (a) the number and size of entities within its group and the complexity of the group structure;

    (b) the adequacy of systems, controls and risk management across the group;

    (c) the level of financial and operational interdependence across the group;

    (d) whether other members of the group are regulated entities (i.e. any related entity directly regulated by APRA or by an equivalent banking or insurance prudential regulator overseas);

    (e) whether the location of the ADI's subsidiaries undermines the ability of its subsidiaries to be resolved in a sound and timely manner; and

    (f) badging and product distribution arrangements that might link the ADI's reputation to other entities.

11. An ADI's policies on dealings and associations with related entities must be based on an assessment of material risks to the ADI, using the requirements in paragraph 10 of this Prudential Standard, and at a minimum, cover:

    (a) a requirement that the ADI deal with related entities on an arm's-length basis and on market terms and conditions;[3]

    (b) limits on exposures to related entities at both an individual and aggregate level and on write-offs of exposures to related entities, which are determined with regard to:

        (i) the level that would be approved for unrelated entities of an equivalent credit status; and

        (ii) the impact on the ADI's stand-alone capital and liquidity positions in the event of a failure of a related entity;

    (c) the circumstances in which the limits relating to exposures and write-offs may be exceeded and the authority and processes required for approving such excesses (e.g. by the ADI's Board or a board committee);

[3] A dealing with a related entity includes, but is not limited to, on- and off-balance sheet credit transactions, support arrangements, asset purchases and sales, service contracts, leasing agreements, derivatives transactions, acquisition of real property, provision, restructuring and write-offs.

(d) the authority and processes required for the approval and maintenance of group structures, where the ADI is the head of a group, and establishing and acquiring subsidiaries;

(e) procedures to address risks arising from participation in group-wide operations (refer to paragraphs 26 to 28 of this Prudential Standard);

(f) processes for identifying entities that expose the ADI to step-in risk;

(g) procedures for resolving conflicts of interest arising from dealings with related entities;

(h) processes to ensure the transparency of third-party dealings that are connected with related entities; and

(i) procedures to address material risks to the ADI arising from the ADI distributing financial products of another counterparty and vice-versa (e.g. disclosures are provided to ensure that the roles and responsibilities of the ADI are not confused with the product provider).

12. Terms and conditions imposed by an ADI in relation to dealings with its related entities that are not consistent with terms and conditions that would be negotiated on an arm's-length basis, must first be approved by the Board of the ADI with justifications fully and clearly documented in a register.

13. An ADI must not:

(a) have unlimited exposures to related entities either in aggregate or at an individual entity level (e.g. a general guarantee over the obligations of a related entity); or

(b) agree to cross-default provisions whereby a default by a related entity on an obligation (whether financial or otherwise) triggers or is deemed to trigger a default by the ADI in its obligations.

14. An ADI must ensure that adequate systems and controls are in place to identify, measure, monitor, manage and report exposures arising from dealings with related entities. Where APRA is not satisfied with the adequacy of the ADI's systems and controls or is of the view that the ADI is exposed to substantial contagion risk, APRA may:

(a) require the ADI to maintain higher **Prudential Capital Requirements** (**PCRs**);

(b) impose higher capital adequacy requirements in relation to an ADI's exposure or exposures to its related entities;

(c) require the ADI to establish additional internal controls or a more robust reporting mechanism; and

(d) require an ADI to take measures to reduce the level of contagion risk to its related entities.

Identification and management of step-in risk

15. An ADI is exposed to step-in risk if the ADI is likely to step in to support an entity beyond any legal obligation to do so. Accordingly, the risks that an ADI is exposed to through its relationship with the entity are similar to those arising from control or ownership of the entity.

16. An ADI must identify an entity which exposes the ADI to step-in risk and treat the entity as a related entity if the ADI's capital or liquidity positions would be materially impacted if the ADI were to step in to support the entity. In assessing the likelihood of the ADI providing such support, factors that an ADI must consider include, but are not limited to:

    (a) the nature and extent of an ADI's sponsorship of the entity, including whether the ADI manages or advises the entity, places its securities into the market or provides the entity with liquidity facilities or credit enhancements;

    (b) whether investors expect the ADI to support the entity during a stress scenario;

    (c) whether business arrangements (e.g. distributing or marketing of the other entity's products) with the entity expose the ADI to reputational contagion;

    (d) whether the entity has a limited capacity to access liquidity when facing an unanticipated increase in redemption requests;

    (e) whether the ADI is a major provider of assets, or is perceived to be a major provider of assets, or other financial services to the entity; and

    (f) whether there have been past instances of the entity receiving support from the ADI beyond the ADI's legal obligation.

Provision of support

17. An ADI must not undertake any dealings with unrelated entities with the primary purpose of supporting the business of related entities (e.g. an ADI providing a guarantee over the obligations of an unrelated entity to one or more related entities of the ADI).

18. An ADI must not provide support to related entities, and an ADI must not accept support from its related entities, unless such support is expressed clearly in legal documentation, is fixed as to time and amount, and is in accordance with the prudential requirements set out in paragraphs 9 to 14 of this Prudential Standard.[4]

19. An ADI must be able to satisfy APRA, upon request, that when it purchases assets from or securities (or other forms of liabilities) issued by a related entity, or sells assets and securities to a related entity, that these activities do not constitute the

[4] Paragraph 18 also applies to provision of support by a **foreign-owned ADI** to non-ADI entities operating in Australia directly owned by the ADI's foreign parent or by the parent's subsidiaries (and *vice-versa*).

ADI providing capital support to the related entity. APRA may require an ADI to deduct from **Common Equity Tier 1 Capital** the value of assets or securities or other liabilities involved where it is deemed by APRA to represent capital support. Additional requirements in relation to the provision of liquidity facilities to funds management vehicles are set out in Attachment B of this Prudential Standard.

20. A foreign ADI must not provide support to its subsidiaries operating in Australia, and a foreign ADI must not accept support from its subsidiaries operating in Australia, unless support is expressed clearly in legal documentation and is fixed as to time and amount. A foreign ADI that wishes to give a general guarantee over the obligations of its Australian subsidiaries must be able to demonstrate to APRA that the home supervisor is aware of the obligations and has no objection to the transaction.

Group badging and disclosures

21. An ADI and other members in the group to which it belongs may use a common brand name provided:

    (a) section 66 of the Banking Act governing the use of restricted expressions is complied with; and

    (b) the roles and responsibilities of different group members are clearly and prominently disclosed (refer to paragraph 23 of this Prudential Standard) to reduce the risk of giving the impression that a non-ADI member of the group is an ADI, or that (contrary to the legal position) a group member is guaranteed or supported by an ADI in the group.

22. APRA may require an ADI to not use a brand name in common with a group member if that would give rise to a prudential concern having regard to the following factors:

    (a) the presence of appropriate disclosures;

    (b) the type of entities involved (whether the entity is regulated or unregulated);

    (c) the group member's risk profile, reputation and associations;

    (d) the manner in which various products and services are marketed;

    (e) the types of customers involved with the group member; and

    (f) other factors on a case-by-case basis.

23. Unless otherwise prohibited by the laws of a foreign jurisdiction, an ADI must ensure that when there are financial transactions (e.g. sales of financial products) between an external counterparty and a member of the ADI's group that uses a common brand name with the ADI:

    (a) the external counterparty is provided with a clear and prominent disclosure that:

(i) the group member with whom the counterparty is dealing is not an ADI and that the member's obligations do not represent deposits or other liabilities of the ADI in the group;

(ii) the ADI does not stand behind the group member, unless support is provided for in legal documentation (refer to paragraphs 17 and 19 of this Prudential Standard). Where support is intended to be provided, the nature and limitations of the ADI's obligations arising from its involvement is required to be disclosed; and

(iii) the investor is exposed to investment risk including possible delays in repayment and loss of income and principal invested (where relevant); and

(b) the external counterparty provides an acknowledgement to indicate that they have read and understood the disclosure.

24. An acknowledgement of disclosures is not required under paragraph 23(b) of this Prudential Standard if:

(a) the group member issues securities in substantial parcels;

(b) there is no application form or equivalent documentation completed by prospective investors; or

(c) the external counterparty has already provided the acknowledgement of disclosures to the group member in relation to a previous financial transaction.

25. For group members involved in securitisation, prudential requirements in relation to disclosure and separation are set out in *Prudential Standard APS 120 Securitisation*.

Participation in group-wide operations

26. An ADI must establish policies and procedures to address risks posed to the ADI from participating in group-wide operations including, but not limited to, sharing premises with other group members, centralising back-office functions or outsourcing services to other group members.

27. Where an ADI participates in group-wide operations, the ADI must:

(a) ensure that these operations do not adversely affect the safety and soundness of the ADI as a stand-alone entity (e.g. the ADI's ability to readily conduct its business would not be jeopardised should premises or other services provided by related entities become unavailable);

(b) be satisfied that any exposures generated are addressed by the ADI's policies and procedures on participating in group-wide operations;

(c) ensure dealings with other parties arising from participation in group-wide operations are appropriately documented in written service agreements;[5]

(d) facilitate APRA being able to obtain information required for the supervision of either the ADI or the group as a whole;

(e) ensure that there is a clear obligation under the written arrangements for a service provider to comply with a direction given by APRA in relation to the operations of the ADI; and

(f) ensure that such operations are not likely to lead to confusion for customers about the respective roles and responsibilities of the ADI and the group member.

28. An ADI's participation in group operations must be approved by the Board. In approving such activities, the Board must:

(a) have regard to the risks presented to the ADI on a stand-alone basis as a result of its participation in such activities; and

(b) be satisfied that any exposures to related entities which might arise have been appropriately captured in measures of the ADI's exposures to its related entities.

Limits on exposures to related entities

29. An ADI must ensure that its exposures to related entities comply with the following prudential limits:[6]

(a) related ADIs (or overseas based equivalents):

(i) exposure to an individual related ADI or overseas based equivalent – 25 per cent of an ADI's Tier 1 Capital on a **Level 1 basis**; and

(ii) aggregate exposure to all related ADIs and overseas based equivalents – 75 per cent of an ADI's Tier 1 Capital on a Level 1 basis;

(b) other related entities:

(i) exposure to an individual regulated related entity (other than a related ADI or related overseas-based equivalent) – 25 per cent of an ADI's Tier 1 Capital on a Level 1 basis;

(ii) exposure to an individual unregulated related entity (including related individuals) – 15 per cent of an ADI's Tier 1 Capital on a Level 1 basis; and

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5 Outsourcing of the ADI's material business activities to a related entity must satisfy the prudential requirements set out in *Prudential Standard CPS 231 Outsourcing*.

6 These limits are measured against an ADI's or ELE's Level 1 capital (calculated in accordance with Prudential Standard APS 111 Capital Adequacy: Measurement of Capital) as appropriate.

(iii) aggregate exposure to all related entities including related individuals (other than related ADIs and related overseas-based equivalents) – 35 per cent of an ADI's Tier 1 Capital on a Level 1 basis.

30. An exposure to a subsidiary which has been approved by APRA to be treated as part of an ADI's Extended Licensed Entity (ELE) (refer to Attachment A of this Prudential Standard) is exempt from the prudential limits in paragraph 29 of this Prudential Standard.

31. An ADI's exposures to the foreign parent of the ADI, the foreign parent's overseas based subsidiaries and their directly owned non-ADI entities operating in Australia are required to be within the prudential limits in *Prudential Standard APS 221 Large Exposures* (APS 221).

32. Notwithstanding paragraph 29 of this Prudential Standard, APRA may set specific limits in relation to an ADI's exposure to one or more related entities having regard to the ADI's individual circumstances.

Measuring exposures to related entities

33. An ADI's exposure to a related entity is the aggregate of all claims, commitments and contingent liabilities arising from on- and off-balance sheet transactions in both the banking and trading books with the related entity, and is measured in accordance with Attachment A of APS 221.

34. An ADI's exposure to a regulated related entity is measured in accordance with paragraph 33 and includes any equity exposures and capital support provided to the regulated related entity (including any off-balance sheet exposure arising from guarantee of capital instruments issued by the related entity) that has not been deducted from the ADI's Level 1 capital for capital adequacy purposes.

35. Where an ADI is required to apply the look-through requirement in Attachment A of APS 221 for an exposure to a structured vehicle that is a related entity and the ADI has an exposure to an underlying asset that is another related entity of the ADI, the ADI must recognise the exposure under the prudential limits in paragraph 31 of this Prudential Standard.

36. An ADI's exposure to a related entity excludes exposures which have been excluded from measurement under APS 221.

Prior notification requirements

37. An ADI must notify APRA prior to:

(a) establishing or acquiring a subsidiary other than an entity which is to be used purely as a special purpose vehicle to provide finance to the ADI;

(b) committing to any proposal to acquire (whether directly or indirectly) more than 20 per cent of equity interest in an entity; and

(c) committing to any proposed exposure to a related entity that is greater than, or equal to, 10 per cent of the ADI's Tier 1 Capital.

38. APRA may require an ADI to not proceed with a transaction that has been subject to the prior notification requirements in paragraph 37 of this Prudential Standard, or impose prudential conditions on the transaction or higher capital adequacy requirements on the exposure, if APRA is not satisfied with the ADI's risk assessment. Factors that APRA will consider include, but are not limited to:

    (a) the ADI's assessment of the factors in paragraph 10 of this Prudential Standard;

    (b) the adequacy of the ADI's systems, controls and resources to identify, measure, monitor, manage and report exposures and risks arising from the activity; and

    (c) whether the transaction exposes the ADI to substantial contagion risks or hinders effective supervision.

39. APRA may determine that an ADI is not required to notify APRA prior to committing to proposed transactions that are below a specified threshold, having regard to the robustness of the ADI's risk management framework.

Notification requirements

40. An ADI must notify APRA immediately of any breach of the prudential limits in paragraph 29 of this Prudential Standard or other specific limits imposed by APRA under paragraph 30 of this Prudential Standard, including how the breach arose and remedial actions taken or planned to deal with the breach.[7]

41. An ADI must notify APRA regarding any equity investments that are not subject to the prior notification requirements set out in paragraph 37 of this Prudential Standard, within three months of undertaking the investment.

42. An ADI must notify APRA immediately after it becomes aware of any circumstances that might reasonably be seen as having a material impact or potentially adverse consequences for an ADI in the group or for the overall group. This includes, but is not limited to material changes in the structure of a group which is headed by the ADI and a significant breach of, or material changes in, the ADI's policies on dealings with related entities.

Approval requirements

43. An ADI must obtain approval from APRA prior to undertaking any proposed exposures in excess of the prudential limits set out in paragraph 29 of this Prudential Standard or specific limit(s) imposed by APRA under paragraph 30 of this Prudential Standard. Such approval will only be granted on an exceptions basis taking into consideration the individual circumstances of the ADI and the ADI's assessment of:

    (a) the contagion risks involved with exceeding the prudential limits (including the factors in paragraph 29 of this Prudential Standard) and why the

[7] This does not apply to an exposure that APRA has provided an approval under paragraph 43 of this Prudential Standard.

proposed exposures will not unreasonably expose the ADI to excessive risk; and

(b) how the proposed exposures are consistent with its policies on related entities.

44. An ADI must obtain approval from APRA prior to the establishment or acquisition of a regulated presence domestically or overseas.

Adjustments and exclusions

45. APRA may adjust or exclude a specific prudential requirement in this Prudential Standard in relation to one or more specified ADIs.[8]

Previous exercise of discretion

46. An ADI must contact APRA if it seeks to place reliance, for the purposes of complying with this Prudential Standard, on a previous exemption or other exercise of discretion by APRA under a previous version of this Prudential Standard.

[8] Refer to subsection 11AF(2) of the Banking Act.

Attachment A—Extended Licensed Entity

1. An ADI must obtain approval from APRA to treat one or more of its subsidiaries as consolidated with the ADI itself, to form an ELE for prudential and reporting purposes.[9] Once approved, the ADI's exposures to these ELE subsidiaries, including equity investments, are exempt from the prudential limits in paragraph 29 of this Prudential Standard and requirements in *Prudential Standard APS 111 Capital Adequacy: Measurement of Capital* relating to the treatment of investments in and capital support provided to an ADI's subsidiaries.

2. An ELE subsidiary that no longer meets the criteria will cease to form part of the ELE and must be treated as a non-ELE related entity of the ADI. An ADI must inform APRA as soon as it becomes aware that an ELE subsidiary is likely to or no longer satisfies the criteria set out in this Attachment.

3. In order for a subsidiary to be eligible to be consolidated with the ADI itself to form an ELE:

   (a) the subsidiary must:

      (i) be incorporated in Australia unless the subsidiary has been established to borrow on behalf of the ADI;

      (ii) be wholly owned by the ADI, and the Board of the subsidiary must be composed entirely of members of the ADI's Board or senior management;

      (iii) not be an entity regulated directly by APRA or by an equivalent regulator overseas;

      (iv) not undertake any business that the ADI is prevented from conducting under the Banking Act or an instrument made under the Banking Act;

      (v) not be structured, or undertake business, for the purpose of circumventing APRA's prudential or reporting requirements;

      (vi) not undertake borrowings from, or establish liabilities (either on- or off-balance sheet) to, entities other than the ADI, except where the subsidiary has been established to borrow on behalf of the ADI, and all funds are on-lent directly to the ADI. Taxation liabilities, employee entitlements, administration and operating expenses of the subsidiary are excluded from this requirement; and

   (b) the ADI must:

      (i) have complete information on the individual assets, liabilities and off-balance sheet positions of the subsidiary. The ADI must have access to the stand-alone accounting records of the subsidiary, and must be

[9] For the avoidance of doubt, a reference to an ADI in this Attachment means an ADI as defined in section 5 of the Banking Act, rather than an ELE.

able to provide APRA with full and unfettered access to those records and any other information, at any time;

(ii) have unrestricted control over the composition of the subsidiary's assets and liabilities. The ADI must demonstrate to APRA that there are no legal or regulatory barriers, or any other material risks, to the transfer of any assets or funds (including assets or funds of underlying subsidiaries) back to the ADI. There must be no legal obstacle to the ADI instituting a wind-up of the subsidiary, or any underlying subsidiaries, at any time and placing the remaining assets on the balance sheet of the ADI;

(iii) manage the assets, liabilities and off-balance sheet business of the subsidiary as part of its internal management practices. This includes reporting structures, accounting processes, audit arrangements and risk management and measurement systems. The ADI's risk management processes, management information systems and internal controls must be applied to the operations of the subsidiary. Senior management of the ADI must monitor the operations of the subsidiary to the same extent as the operations of the ADI itself. Systems for monitoring and control over the subsidiary must be included within the internal and external audit programs of the ADI; and

(iv) satisfy APRA that the number and size of subsidiaries (on an individual and aggregate basis) proposed to be included, or currently included, in the ELE does not undermine the ability:

(A) of the ADI and the subsidiaries to be managed and resolved in a sound and timely manner; and

(B) for APRA to assess the soundness of the ADI as a stand-alone legal entity.

4. Where an ADI seeks to include a non-operating holding company (NOHC) as part of its ELE, the ADI may also include the NOHC's subsidiaries as part of the ELE provided these subsidiaries meet the requirements in this Attachment. However, only the first level of subsidiaries below a NOHC are eligible to be treated as part of the ELE.

5. In assessing whether a subsidiary should form part of an ELE, APRA will have regards to the requirements in this Attachment, as well as the substance and form of the subsidiary and its relationship with the ADI. APRA may, at its discretion, require an ADI to provide additional information, including the provision of an accounting or legal opinion, on any of the requirements in this Attachment or deem that a subsidiary is no longer eligible to form part of an ELE.

Attachment B—Funds management

1. The requirements in this Attachment apply to an ADI's associations with a funds management vehicle that is a related entity of the ADI. Where an ADI has an exposure to a funds management vehicle that is an unrelated entity, the ADI is required to meet the requirements in APS 221 (e.g. exposure limits and look-through requirements for structured vehicles).

Separation

2. An ADI must not act as a manager, responsible entity, approved trustee, trustee or any similar role in relation to funds management.

3. An ADI must deal with a funds management vehicle and its investors on an arm's-length basis and on market terms and conditions.

4. An ADI must not:

   (a) have any ownership or beneficial interest in a funds management vehicle, unless otherwise stated in this Prudential Standard; and

   (b) allow any of the ADI's directors, officers or employees to sit on the Board of a funds management vehicle unless the Board is made up of at least four members. The ADI, however, may be represented by one director on a Board of four to six directors and by no more than two directors on a Board of seven or more directors.

5. The requirements in paragraph 4 do not apply to:

   (a) a custodian;

   (b) a life insurance company and its statutory funds regulated by APRA or equivalent regulator overseas;

   (c) an RSE licensee or custodian established under provisions of the *Superannuation Industry (Supervision) Act 1993* or equivalent legislation overseas;

   (d) common funds established pursuant to legislation and complying with Australian Securities and Investments Commission Regulatory Guide 32; or

   (e) a responsible entity of a managed investment scheme, within the meaning of section 9 of the *Corporations Act 2001*, or similar entities registered under like statutory provisions overseas.

Purchase of securities

6. An ADI must not purchase more than 20 per cent of the outstanding value of a funds management vehicle's securities unless the purchase arises as part of an underwriting agreement.

Liquidity facilities

7. An ADI must deduct the value of a liquidity facility provided to a funds management vehicle, from the ADI's Common Equity Tier 1 Capital, if any of the following conditions are met:

   (a) the facility is able to be drawn upon to fund additional assets held by the vehicle, to acquire assets of the vehicle, to fund the final scheduled repayment of investors or to cover against dilution of seller's risk (e.g. the cancellation of assets or breach of warranties);

   (b) the repayments of the facility to the ADI are subordinated to the interests of investors; or

   (c) the facility is provided without another facility being provided by an unrelated entity to the funds management vehicle, unless the ADI provides a liquidity facility that covers less than 10 per cent of outstanding securities and is used for the purpose of:

      (i) providing short-term funding for smoothing time differences in payment flows (excluding the retirement of securities at maturity or on roll-overs);

      (ii) meeting margin payments on futures transactions; or

      (iii) covering delays in settling asset transactions involving the vehicle.

Underwriting of funds management vehicles

8. An ADI that acts as an underwriter or committed dealer for the issue of securities by a funds management vehicle must deduct the value of the facility from the ADI's Common Equity Tier 1 Capital if:

   (a) the funds management vehicle does not have an express right to select an alternative party to provide the facility;

   (b) the ADI does not have the ability to withhold payment, and to terminate the facility if necessary, upon the occurrence of events which would materially and negatively impact the soundness of the ADI; and

   (c) the ADI underwrites 100 per cent of the issue of securities and any of the following conditions are met:

      (i) the ADI cannot demonstrate its ability in placing securities of the type underwritten; or

      (ii) the amount of the ADI's aggregate commitment under all underwriting facilities as sole dealer is more than 20 per cent of the ADI's Tier 1 Capital.

9. An ADI that underwrites the issue of securities by a funds management vehicle must not hold in excess of 20 per cent of the outstanding value of a funds

management vehicle's securities after two months of the underwriting agreement's commencement.