

Mr Neil Grummitt
General Manager, Policy Development
Policy, Research and Statistics
Australian Prudential Regulation Authority
GPO Box 9836
SYDNEY NSW 2001
e: exemptiondp@apra.gov.au

Copied to: James Mason
Lawyer, Corporations
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001
email: [REDACTED]

Dear Mr Grummitt,

Discussion Paper: Banking Act exemptions and section 66 guidelines

The Financial Services Council (FSC) welcomes this opportunity to make a submission on APRA's abovementioned discussion paper.

The FSC represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees.

Within the corporate trustee sector of their businesses, licensed trustee company members act as trustee for debenture issuers. Some of these debenture issuers are Registered Financial Corporations (RFCs) and issue 'at call' debentures to retail investors. While the FSC membership includes a small number of companies that issue debentures, this submission is made from a debenture trustee perspective.

The FSC and its members are highly concerned with the policy proposition titled, 'Transition', in section 2.4 of the discussion paper. We acknowledge that this part of the paper is open to interpretation and we would welcome APRA's clarification on the practical effect of the proposed transition period, particularly in relation to 'at call' products for RFCs. However, for the purpose of this submission we have presumed that APRA intends to implement the proposed changes by 1 July 2013 and that 'at call' access to retail (debenture) investment accounts will be prevented from that date.

It is our strong position that removal of 'at call' access to retail debenture investment accounts for RFCs from 1 July 2013 would have a profound, negative impact on the industry as whole, including on retail clients of these 'at call' products.



Without a realistic and practicable timeframe in which to transition retail clients out of 'at call' products, there is a significant risk that affected issuers will lose these clients and a large proportion of their liquid funds in a disorderly manner. From an issuer perspective, this will likely compromise its ability to comply with the relevant trust deed, the relevant offer document and ASIC's benchmarked liquidity standard. A failure to meet the liquidity benchmark would have flow on effects in terms of an issuer's stress-testing of liquidity and disclosures to prospective clients and the relevant debenture trustee.

From a trustee perspective, there would be inadequate time in which to make necessary amendments to the trust deed and to review the relevant offer document. In addition, we expect there will be confusion around whether the trustee should exercise its discretionary powers to trigger an event of default or an automatic winding up of the issuer in circumstances where the issuer is unable, within the proposed timeframe, to adjust its operations and financing so as to comply with the deed.

Debenture trustees are concerned that they may be faced with a risk event, whereby they are supervising affected issuers of 'at call' debentures who are incapable of complying with the new requirements in the specified timeframe for practical reasons (such as communicating with retail investors) though without breaching other fundamental requirements (such as maintaining sufficient liquidity). Debenture trustees understand that these issuers would otherwise be capable of fully complying with the proposed changes if a reasonable timeframe was available for transition, thus minimising the immediate negative impacts on the issuers, their retail clients and the industry as a whole.

From a consumer perspective, we note a range of potential detriments that are likely to be suffered by current retail clients of debenture products on 'at call' and other terms. If an issuer's liquidity is jeopardised by a run on certain 'at call' products, this will lead to adverse and unfair consequences for the remaining retail clients of the issuers. In addition, the proposed timeframes are insufficient for current clients invested in 'at call' products to:

- make new arrangements for existing direct debits;
- make new arrangements for stockbroking settlements and margin lending; and
- make new arrangements for managing finances generally, especially where clients are elderly and changes will be disruptive.

The transition timeframe proposed in the discussion paper in relation to existing and new 'at call' products is unrealistic and unworkable. We ask that APRA revise the timeframe for implementation of the full ban on 'at call' products and the ban on offering new 'at call' products. Issuers should have at least six months in which to stop offering new 'at call' products and at least 12 months in which to comply with a full ban on 'at call' products. The former will be absolutely essential for issuers whose business model relies heavily on 'at call' products, so as to give those issuers time to develop a new product with different terms, for offer to retail clients.

Please note that the debenture trustees do not fundamentally object to the overarching policy propositions in APRA's discussion paper. However, if these policy propositions are to be implemented, then a realistic and workable transition period in which to comply is absolutely necessary so as to protect the interests of the retail clients of these products and to minimise unintended disruption to the sector generally.

If you have any questions regarding the FSC's submission, please do not hesitate to contact Martin Codina, Director of Policy, or myself on [REDACTED].

Yours sincerely



EVE BROWN

Senior Policy Manager - Trustees