15 August 2025

Senior Manager, Licensing
Australian Prudential Regulation Authority
GPO Box 9836
Sydney NSW 2001

Via email: licensing@apra.gov.au

Banking Act 1959 Section 66 Instruments

Dear Senior Manager, Licensing,

The Australian Financial Markets Association (**AFMA**) appreciates the opportunity to respond to the Australian Prudential Regulation Authority's (**APRA**) consultation on Banking Act 1959 Section 66 (**section 66**) Instruments.

AFMA is supportive of APRA's initiatives to expand the exempt classes to section 66 requirements (Banking exemption No. 1 of 2018 (BOE2018)), to foreign banks, foreign bank holding companies and multilateral development banks.

However, we encourage APRA to broaden the scope of the exemption, while maintaining strict limitations, to further reduce unnecessary regulatory burden, increase competition and expand the products and services available to Australian companies. We believe this can be achieved in a manner that makes the "framework simpler and more proportional without creating unacceptable risk"[1] or threatens the integrity or safety of Australia's banking system. Additionally, doing so would better align to the facilitative approach taken by the Reserve Bank of New Zealand[2] (**RBNZ**) which has encouraged increased servicing of New Zealand firms.

Noting the cessation of Australia's Offshore Banking Unit regime as at the end of the 2022/23 income year, AFMA is supportive of allowing the related instrument to sunset. AFMA does not have a position regarding remaking the instrument on the use of 'credit cooperatives'.

Key findings and recommendations

AFMA is supportive of safeguards regarding the use of certain words, such as 'bank', 'banker' or 'banking' and words of like import[3]. As highlighted by APRA[4], restricting terms, such as 'bank', help maintain community trust, and that it is "*important that the general public has confidence about whether or not they are dealing with an authorised bank*". In our view, the proposed changes could be more facilitative, while maintaining these safeguards and the community's trust.

For example, for some entities, the proposed changes would maintain the need to periodically apply for exemptions for those entities to engage with customers in Australia. APRA's pragmatic approach

[1] Lonsdale, J. (2025) *Striking the right balance between regulation and risk*, speech, 24 July
[2] Reserve Bank of New Zealand (2021) *Reserve Bank's approach to section 65 authorisations for overseas banks,* Guidance Note, 17 June
[3] Throughout this submission the term 'bank' is used interchangeably and as shorthand for 'bank, banker, banking and work of similar import'.
[4] APRA (2020) *APRA Explains: Applying to APRA to use restricted words*, APRA Insight – Issue Four 2020

of historically providing relief to impacted entities is welcomed by industry. However, maintaining the need for periodic applications for some entities creates compliance costs and regulatory uncertainty.

Additionally, as drafted, the proposed changes unhelpfully restrict the range of products and services exempted entities can offer to Australian customers. These restrictions occur despite impacted entities being part of international banking groups, being well capitalised, and well regulated, with home offices located in a BCBS compliant jurisdiction. Ultimately, as identified by the RBNZ[5], these restrictions lead to less competition and consumer choice.

To remove these regulatory inhibitors, while maintaining appropriate safeguards, we recommend modifying the proposed change and APRA's regulation of section 66, as summarised below and detailed in Appendix A.

AFMA recommends that APRA:

1) Expand the scope of paragraph 2.1 in the schedule of the draft Banking exemption No. [number] of 2025, or create a separate exemption, to allow exempt foreign banks to provide a limited set of wholesale services to sophisticated corporate and wholesale clients, while using the word 'bank', 'banking' or 'banker' (or words of like import) in their business name; and
2) Cease the practice of encouraging some foreign banks and foreign bank holding companies to seek consent to issue in Australia, when those entities do not in practice use 'bank', 'banker' and 'banking' (or words of like import) in their client engagement or offer documents.

AFMA would welcome the opportunity to discuss this submission further and would be pleased to provide further information or clarity as required. Please contact Brendon Harper at brendonh@afma.com.au or 0411 281 562.

Regards,

Brendon Harper
Head of Banks and Prudential

About AFMA and its members

The Australian Financial Markets Association is the peak industry body for Australia's financial markets industry – including the capital, credit, derivatives, foreign exchange, and other specialist markets. AFMA represents more than 130 industry participants from Australian and international banks, leading brokers, securities companies, government treasury corporations to asset managers, energy firms, carbon market participants, and industry service providers.

AFMA promotes efficiency, integrity, and professionalism in Australia's financial markets enabling the markets to continue to support the Australian economy, high skilled job markets and the energy transition.

[5] Reserve Bank of New Zealand (2021) *Reserve Bank's approach to section 65 authorisations for overseas banks*, Guidance Note, 17 June.

Appendix A

AFMA provides the following additional comments and observations for APRA's consideration.

Paragraph 2.1 in the schedule of the draft Banking exemption No. [number] of 2025

AFMA is supportive of paragraph 2.1 in the schedule of the draft Banking exemption No. [number] of 2025 allowing covered entities to (para 2.1.a)) "raising funds in the Australian wholesale capital markets by way of issuing debt securities" and (para 2.1.b)) "distributing information and documents to wholesale investors in Australia in connection with the Issues".

However, as drafted, the proposals limit the range of products available to Australian businesses. Broadening the scope of products covered by the exemption would provide benefits to Australian businesses and the Australian economy. We believe minor changes to the exemption would support Australian business, promote productivity and reduce regulatory burden while balancing financial system safety and stability. To strike this balance, we advocate strict limitations still apply to the products, services and entities covered by the exemption, for example, limiting the provision of products and services to wholesale and institutional clients.

In considering the operation of foreign banks in New Zealand, and weighing up the potential benefits and risk of broadening the scope of entities and offerings permitted, the RBNZ found that:

> *"allowing overseas banks to carry on limited activities in New Zealand may bring efficiency benefits. These benefits could include increased competition and choice for New Zealand firms. There may also be some niche banking products and services that registered banks do not offer.*
>
> *Weighing these concerns up, the Reserve Bank is of the opinion that there are limited situations where authorising an overseas bank to undertake limited activities in New Zealand using restricted words in its name or title will be unlikely to mislead the public and could have a net positive impact on the soundness and efficiency of the New Zealand financial system."*[6]

This facilitative approach was made for the benefit of New Zealand firms, whereas the current regime in Australian deprives investors, such as the superannuation industry, from such benefits in circumstances based solely on the historical name of certain foreign financial institutions.

Example products and benefits currently restricted

Australian superannuation funds are increasingly investing globally, a trend that is likely to increase. As a result, superannuation funds will increasingly need products and services to assist them manage the risks associated with these global investments.

One key growing risk facing superannuation funds is their exposure to global currency changes (**FX risk**). Managing this material risk will require counterparties who have access to significant pools of FX liquidity and a strong credit rating.

Global banks can provide FX risk management services for multi-billion dollar deals, across multiple currencies. By way of illustration, some global banks provide access to specialist, external currency managers, who work with the banks to hedge and manage risk for global pension and asset management clients. These specialist services are typically unavailable to wholesale clients from

[6] Reserve Bank of New Zealand (2021) *Reserve Bank's approach to section 65 authorisations for overseas banks*, Guidance Note, 17 June, *p2*

Australian banks in the same manner or form or with the same advantages, as would be available to these clients directly from global banks' entities based outside Australia.

Another example is the offering of bespoke credit solutions to pension funds and sovereign wealth funds in the Asia-Pacific region. These unique offerings can involve total trades of over USD1bn, with hundreds of obligors, diversified across countries and industries. Due to the global reach and strong credit rating of such global banks, clients can receive excess returns over publicly traded instruments. Such products can sometimes only be provided from the balance sheets of global banks' offshore based entities. At present, some banks cannot offer such products to Australian superannuation funds due to the current operation of section 66.

The creation of these bespoke credit solutions speaks to a broader point. Global banks (including entities based offshore) have the size, reach and capability to create and test innovative financial solutions for large, sophisticated customers worldwide. Preventing Australian wholesale customers from accessing these solutions, and benefiting from this ability to innovate, disadvantages Australian companies and the Australian market more broadly.

Adding further support for more facilitative settings, the potential benefit to Australian companies and their clients is aptly described in the exposure draft explanatory memorandum for the proposed licensing exemptions for foreign financial services providers, which states:

> *"Foreign financial services providers provide investors with access to global investment opportunities and increase competition in the Australian market. In particular, access to foreign financial services providers enables Australia's superannuation industry to diversify investment of Australia's significant retirement savings."*[7]

Restriction of competition and disparity with similar markets to Australia

The circumstances outlined above deprive Australian companies and wholesale investors of the chance to increase efficiencies and benefit from increased competition and innovation.

These inefficiencies and regulatory barriers could be reduced by removing the regulatory anomaly whereby different requirements apply to international banks with the same risk profiles and public standing, based on if they have 'bank' in their name and/or if the group contains an entity regulated by APRA.

Aligning the regulatory approach: International banks with and without 'bank' in their name

Currently, there are restrictions on the products and services an offshore entity within an international bank can provide if that entity has 'bank' in its name. No such barrier exists for offshore entities of international banks that do not have 'bank' in their name.

There are also examples where the offshore entity of an international group (*with* 'bank' in its name), containing an APRA regulated entity within its structure, has less flexibility to engage with wholesale clients in Australia compared to an offshore entity of an international group (*without* 'bank' in its name), that does *not* contain an APRA regulated entity within its structure. Arguably, APRA has greater influence and visibility over an international bank which contains an APRA regulated ADI within the group than one that does not. As such, the former arguably potentially poses lesser risk to the Australian system and Australian customers.

[7] Australian Government, Treasury (2023) *Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Licensing exemptions for foreign financial services providers*, *Exposure Draft Explanatory Memorandum,* page1

Aligning the treatment of these two groups – offshore units of global banks that do not have 'bank' in their name and those that do – would align with the Australian Treasury's and APRA's goals of reducing compliance costs and making the prudential framework simpler and more proportional.[8]

AFMA is not aware of a comparable situation where corporations offering like-for-like services are prohibited from providing them to customers merely because of historical names, where retail customers and financial stability can be protected, and appropriate regulatory oversight will be in place. This rationale appears to have underpinned the decision of the Reserve Bank of New Zealand (RBNZ) to provide a class exemption permitting eligible overseas banks "*to use a name or title that includes a restricted word"* in respect to a range of wholesale banking, capital market, foreign exchange and derivative activities[9].

In its guidance note on the use of restricted words by overseas banks, the RBNZ described the potential benefit of the limited operation of overseas banks when it said (as highlighted above) *"…allowing overseas banks to carry on limited activities in New Zealand may bring efficiency benefits. These benefits could include increased competition and choice for New Zealand firms. There may also be some niche banking products and services that registered banks do not offer*"[10].

The current settings also mean that clients operating in New Zealand are able to access a greater level of service from international banks than those operating Australia.

Potential solution

AFMA recommends that APRA allow exempted entities to provide a limited set of wholesale services to sophisticated corporate and wholesale clients, while using the word 'bank' in their business names. This could be achieved through with expanding the scope of paragraph 2.1 in the schedule of the draft Banking exemption No. [number] of 2025, or create a separate exemption.

The permitted services could be limited to wholesale banking, capital market, foreign exchange and derivative activities.

As noted above, AFMA advocates that strict limitations be maintained in any expansion of the current (draft) exemption. Specifically, we propose the following conditions:

1. The consent/exemption would only apply in circumstances where the overseas bank is restricted from providing services in Australia merely because of the restricted word forming part of an existing business name held prior to the issuing of the consent/exemption;
2. The consent/exemption only apply to foreign corporations authorised as a bank by a comparable regulator in its home country;
3. The overseas bank will only offer services to wholesale customers (excluding all retail clients), consistent with the definitions proposed in the exposure draft of licensing exemptions for foreign financial services providers[11]; and
4. Prior to providing the services, the overseas bank will follow the disclosure requirements currently in the draft exemption (Schedule 2.4.).

[8] Lonsdale, J. (2025) *Striking the right balance between regulation and risk*, speech, 24 July
[9] Reserve Bank of New Zealand Act (Overseas Banks) Class Authorisation Notice 2019
[10] Reserve Bank of New Zealand (2021) *Reserve Bank's approach to section 65 authorisations for overseas banks*, Guidance Note, 17 June, p2
[11] Australian Government, Treasury (2023) *Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Licensing exemptions for foreign financial services providers*, *Exposure Draft* proposed additions to paragraph 911A(2)

AFMA recommends that APRA:

- Expand the scope of paragraph 2.1 in the schedule of the draft Banking exemption No. [number] of 2025, or create a separate exemption, to allow exempt foreign banks to provide a limited set of wholesale services to sophisticated corporate and wholesale clients, while using the word 'bank', 'banking' or 'banker' (or words of like import) in their business name.

Practice of encouraging the seeking of consent when 'bank' or similar term not present

AFMA understands that APRA has a practice of encouraging some foreign banks and foreign bank holding companies, who do not in practice use 'bank', 'banker' and 'banking' (or words of like import) in their client engagement or offer documents, to seek consent to issue debt in Australia. We understand this to be on the basis that there is perception over a strong connection with the entity itself or its subsidiary engaging in banking business. Given the policy intent of the proposed changes to the exemption, initiatives to make the prudential framework simpler and more proportional, and a lack of legal or regulatory requirements for such entities to seek consent in the first place, AFMA encourages APRA to discontinue this practice to further reduce regulatory burden, cost and uncertainty.

AFMA recommends that APRA:

- Cease the practice of encouraging some foreign banks and foreign bank holding companies to seek consent to issue in Australia, when those entities do not in practice use 'bank', 'banker' and 'banking' (or words of like import) in their client engagement or offer documents.