04 May 2026

Mr Joe Madden
Advisory, Policy
Australian Prudential Regulation Authority
GPO Box 9836
Sydney NSW 2001

Via email: licensing@apra.gov.au
CC: joe.madden@apra.gov.au and Oliver.Grocholewski@apra.gov.au

Banking Act 1959 Section 66 Instruments: Additional Information

Dear Mr Madden,

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

In line with our 15 August 2025 submission, AFMA remains 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, as well as locally incorporated entities within global financial services groups which are not themselves carrying on banking business.

Building on that submission and in response to your request for further information on our first recommendation (reproduced below), we provide additional information for your consideration in Appendix A.

AFMA recommendation one from 15 August 2025 submission, 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.

If it would assist APRA, we are available to meet to discuss this submission and/or to provide further information. We look forward to further engagement on this important matter.

Please feel free to contact me 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 140 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.

Appendix A

Foreign Bank Exemption Review – Response to APRA questions

Overseas banks that are not authorised deposit-taking institutions (**ADIs**) regulated by APRA, but which are seeking to provide non-banking financial services to wholesale clients in Australia may operate under ASIC's Foreign Financial Services Provider (**FFSP**) relief or rely on other exemptions, unless they hold an Australian Financial Services Licence (**AFSL**).[1]

Similarly, offshore and locally incorporated non-ADI entities that are part of global financial services groups which are not themselves carrying on banking business in Australia also operate on the same basis. However, where such an entity (foreign or local) includes the word "bank" (or other restricted terms) in its name or to describe its activities, restrictions apply: actively marketing financial products or soliciting/inducing Australian clients may be viewed as carrying on a financial business in Australia under a restricted term.

AFMA is seeking relief, through broadening of the section 66 instrument to permit banks, including both foreign banks as well as both offshore and locally incorporated entities within global financial services groups, to use restricted terms subject to conditions, enabling these entities operating under an AFSL or AFSL exemption to market financial products and services in Australia and to solicit/induce wholesale clients.

Such relief would assist allowing covered entities to provide products and services to wholesale investors[2] on a level playing field with other overseas banks already covered by the existing section 66 banking exemption order (**BOE2018**). This is particularly important given the growth in the Australian debt capital markets (its rising global significance and integration), the ongoing need and growth of the derivatives market and other risk management activities which are critical to the broader functioning of the local financial markets and the increasing demand from Australian sophisticated investors for products and services, such as those discussed in section 1, below. Additionally, such an expansion would also deliver efficiency benefits to industry and APRA by reducing the administrative burden from applications for bespoke exemptions and the need for regular renewals.

This relief will also align with the objectives of the new statutory licensing exemptions for FFSPs, passed by Federal Parliament on 1 April 2026, and expected to commence on 8 April 2027. As Treasury noted in the Explanatory Memorandum[3], FFSPs "*provide investors with access to global investment opportunities and increase competition in Australian financial markets. In particular, access to foreign financial services providers enables investment diversification of Australia's significant retirement savings.*" While the new exemptions create a clear pathway for FFSPs to provide financial services to

[1] We note that on 1 April 2026 the *Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Bill 2026* (the **Bill**) passed Parliament. Schedule 2 to the Bill introduces a new statutory framework for foreign financial service providers (including overseas banks) seeking to provide financial services in Australia without holding an AFSL. While the changes provide regulatory certainty for industry, they will not remove the challenges highlighted in this letter.
Additionally, we appreciate the changes are outside the scope of APRA's consultation on Banking Act 1959 Section 66 Instruments. We encourage interagency engagement to ensure no additional issues with the use of "bank" (and related terms) arising in light of the new regime.

[2] For avoidance of doubt, AFMA members are not seeking to provide any of the products or services discussed in this letter to retail clients. To leverage an existing definition and to align to banks' existing systems, we recommend the revised instrument refer to the definition under s761G of the Corporations Act when defining customer scope.

[3] Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Bill 2025 – Parliament of Australia

wholesale clients in Australia, entities (foreign or local) that includes the word "bank" (or other restricted terms) in its name will continue to face the restrictions described above, perpetuating an uneven regulatory outcome and a less level playing field.

(1) Specific activities foreign banks would be interested in providing (in addition to FX risk management for superannuation funds)

If relief is granted, offshore banks and other non-ADIs could proactively market a broader suite of financial products and financial services (as defined under the Corporations Act), to wholesale clients in Australia, rather than relying on reverse solicitation, particularly where local subsidiaries lack equivalent capability or capacity.

There are instances where AFMA Member Banks have been unable to offer certain financial products and services (including a range of non-banking business activities) as a direct result of the current restrictions or require bespoke manual workarounds on global banking initiatives for wholesale clients. Examples include:

- An Australian superannuation fund seeking to execute a **strategic risk transfer (SRT)** transaction into offshore assets was unable to progress discussions with an AFMA Member Bank. The transaction required the appointment of an offshore related entity to facilitate the risk transfer; however, the offshore related entity's name included the term "bank", which triggered restrictions on proactive marketing and travel to Australia for in-person discussions.

  As Australian superannuation funds increasingly allocate capital globally, they require large scale solutions to deploy capital diversifying risk. Executing **SRT** transactions into offshore assets may necessitate appointing an offshore entity (including foreign banks) to facilitate the risk transfer, leveraging their balance sheet capacity, structuring expertise, corporate connectivity, execution capability and accessing client facing entities. These transactions have historically traded at a premium to public market credit transactions offering a yield pick-up to investors.

- An AFMA Member Bank was restricted from distributing **equity- and credit-linked notes** to a large Australian Wealth Manager. Distribution of the product required involvement of an offshore related entity due to its automated infrastructure, competitive funding and balance sheet strength; however, the offshore entity was restricted from proactively marketing its products.

  Australian Wealth Managers offer tailored structured notes to meet demand for yield enhancement, diversification and exposure to global markets, with customised tenors, currencies and hedging features. Due to the global reach and balance sheet strength, foreign banks can provide broader structuring capability, potentially more competitive pricing and higher funding rates while also providing automated distribution infrastructure. Limitation on access to these offshore capabilities may reduce product choice, increase costs, and adversely impact market competitiveness.

- An AFMA Member Bank was unable to market the **precious metals custody services** of a related offshore entity to an Australian ETF provider, because the current restrictions require the service to be provided only on the basis of a client reverse solicitation.

  As ETF issuers expand commodity and inflation-hedging offerings (including precious metals ETFs) in response to growing investor demand for diversification and defensive exposure, they may require precious metals custody services for the secure safekeeping, movement, and reporting of bullion across global markets. Foreign banks may be appointed where they offer established vaulting and logistics networks, robust controls, and advanced servicing

technology (for example, automated reconciliation and integrated settlement/collateral workflows). These custody services are often most efficiently delivered through offshore-based entities with the scale, infrastructure, and specialist expertise to support high-volume, multi-jurisdictional precious metals programmes.

- Australian superannuation funds may experience barriers when seeking to **hedge foreign exchange risks**, for example under a foreign exchange derivative, or **manage liquidity**, for example through entry into a repurchase agreement or securities loan. Such arrangements may be required with a relative degree of urgency. Furthermore, there is potential for a significant increase in demand for superannuation funds entering into these products, with a broader range of counterparties (including international counterparties). Such as was conveyed by Deputy Governor of the Reserve Bank, Andrew Hauser, in a recent speech:

  "The first of these factors alone [being total super fund assets are projected to grow from around 150 per cent to 180 per cent of GDP over the next decade] could see the superannuation sector's total FX hedge book, currently estimated to be of the order of AUD½ trillion, to double over the next decade. The other two factors will increase this number by some further multiple over the coming years… So it is likely that super funds will have to extend and diversify their pool of hedge providers over time to avoid hitting concentration limits. They may also be asked to meet increased margining and collateral requirements on their hedging positions."[4]

  The current position on restricting banks facing Australian superannuation funds could adversely affect this access of our superannuation funds to key sources of liquidity and risk management.

Similarly, other activities that could be provided to Australian wholesale clients, should accommodative changes be implemented, include:

- Securities financing (for example. financing against equities, bonds, CLOs and other assets);
- Securities lending and liquidity (agency lending, repos and reverse repos);
- FX risk management for large, multi-currency exposures (including access to specialist external currency managers working with offshore bank entities);
- FX and flow rates activity (including leveraging treaty benefits and improved economics);
- Derivatives and hedging (for example. interest rate swaps, precious metal prepayment structures, deal contingent, other hedging solutions and exchange traded derivatives);
- Specialist credit / structured solutions (bespoke credit and credit yield enhancement solutions supported by offshore balance sheet);
- Wholesale capital markets activity (including equity and debt mandates and broader advisory/financing solutions for Australian asset owners) commonly described as 'investment banking' within the financial services industry; and
- Financial product advice to Private Bank clients from bank affiliates regulated in other countries under AFSL/AFSL exemptions.

[4] Hauser, A. (2025) *A Hedge Between Keeps Friendship Green: Could Global Fragmentation Change the Way Australian Investors Think About Currency Risk?*, Speech 16 September

(2) Benefits to the Australian financial system and broader economy, including to regulatory burden and competition

Globally, Australia and New Zealand are outliers in the restrictions placed on the offering of bank services by entities containing the term "bank" (or similar terms) in their names. As highlighted in our 15 August 2025 submission, the Reserve Bank of New Zealand concluded 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."*[5]

Given the similarities between Australia and New Zealand, vis-à-vis the rest of the world, we expect benefits to flow to Australian firms, should APRA allow a wider range of entities to provide financial products and services to Australian businesses. Some of those benefits were highlighted in our previous submission. Building on this, these benefits could include:

- Greater competition and choice for wholesale clients by removing an uneven barrier that currently disadvantages certain non-ADI entities, particularly entities within a global financial services groups, because their legal or trading name (including an acronym) contains with the term "bank" or they provide what is commonly known as an "investment banking service". Addressing this anomaly would support more competitive outcomes for Australian wholesale clients;
- Improved access to specialist and innovative solutions not readily available domestically or not feasible without an offshore balance sheet;
- Increased opportunity for superannuation funds and wholesale investors in Australia to invest in securities and instruments locally issued/offered by investment grade rated international banks; and
- Reduced regulatory burden and improved certainty, by limiting the need for repeated, entity-specific individual relief applications, with accompanying efficiency benefits for APRA.

These benefits could be realised while maintaining safeguards regarding the use of certain words, such as 'bank', 'banker' or 'banking' and words of like import; safeguards that AFMA continues to support as important for the protection of public confidence in financial markets, financial market participants and, financial products and services more generally. We believe this can be achieved while maintaining compliance with applicable prudential standards including Prudential Standard APS 222: Associations with Related Entities as roles and responsibilities of related entities within group containing ADIs can be clarified and disclosed. It is not the intention to derogate from compliance with applicable prudential standards.

(3) Products/services currently unavailable that could become available if the exemption is broadened

Currently, non-ADI entities using "bank" in their name or activity/service descriptions avoid proactive marketing or solicitation due to the risk of being considered to be conducting a financial business in Australia without appropriate authorisation, and therefore rely on client-initiated requests. Broader

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

relief would enable proactive marketing and solicitation to wholesale clients, expanding access to the full suite of relevant financial products and services.

The products and services we envisage would become available, or available at more favourable prices, including those listed in our response in section 1.

(4) Expected uptake by foreign banks if APRA proceeds

As demonstrated by the examples in section 1 above, there is already demand from Australian sophisticated corporate and wholesale clients for the products and services discussed in this submission.

AFMA members expect that they would be able to meet that demand of these customers expediently following accommodative changes to the Banking Act 1959 Section 66 Instruments. Members also expect that the consumption of such products would grow, initially as other sophisticated corporate and wholesale clients become aware of their availability, and over the longer term as demand increases, for example due to the increasing volume of superannuation investments flowing offshore.

Additional Observations: Use of the words “investment bank”, “investment banking” and “investment banker” by offshore and locally incorporated non-ADIs which are not themselves carrying on banking business but that are part of global financial services groups

An additional restrictive element of the current requirements regarding the terms ‘bank’, ‘banking’ and ‘banker’, is the inability of certain firms to use terms such as ‘investment bank’, ‘investment banking’ and ‘investment banker’. By way of example, offshore and locally incorporated non-ADIs, which are not themselves carrying on banking business but that are part of global financial services groups (“**Non-ADI Entities**”), are unable to use such terms, though they would commonly be considered the plain English description of their operations and offerings. This restriction can create unnecessary complications when Non-ADI Entities describe and market themselves, for example, to potential clients and even potential employees.

As discussed below, allowing such Non-ADI Entities to use the expressions 'investment bank', 'investment banking' and 'investment banker', in relation to their business, would reduce an unnecessary barrier and allow for more precise articulation of the entities’ activities, without causing members of the public to wrongly believe that such Non-ADI Entities are regulated by APRA.

We believe such an accommodative approach could be adopted while maintaining the important protections provided by section 66 of the Banking Act. The following points further explain our position.

(a) First, the expression 'investment banking' has a generally accepted meaning that does not correspond to 'banking business' for the purposes of the Banking Act, and the business activities of Non-ADI Entities are consistent with that generally accepted meaning. The Macquarie Dictionary (2023, online) defines an 'investment bank' as a 'merchant bank', which it in turn is defined as 'a private banking firm engaged chiefly in accepting and endorsing bills of exchange, underwriting new issues of securities and advising on corporate strategy'. Similarly, the Oxford English Dictionary defines 'investment banking' as 'the business of investing or raising large sums of capital on behalf of clients (typically other firms) in various ways'. Neither of these activities involve the taking of money on deposit (or in deposit-like

circumstances, such as a purchased payment facility), which is the essential element of banking business. Therefore, if Non-ADI Entities were to describe themselves as an investment bank and as providing investment banking services, and their staff as investment bankers, it is reasonable to expect members of the public to know that it will be referring to the aforementioned kinds of activities. Further, since those activities are outside APRA's regulatory ambit, there is little risk that Non-ADI Entities using 'investment bank', 'investment banking' and 'investment banker' would cause the public to mistakenly believe that such entities carry on banking business regulated by APRA and covered by the depositor protections in the Banking Act.

(b) Second, following on from the above, Non-ADI Entities deal only with large, sophisticated organisations which seek financial advisory, dealing and underwriting services. These organisations are invariably well-resourced and employ experienced professionals who understand the difference between investment banking and 'ordinary' banking or deposit-taking and will understand that they are not dealing with an APRA-authorised bank but rather with an entity that provides investment banking services.

(c) Third, other entities within the wider corporate group of Non-ADI Entities use the expressions 'investment bank', 'investment banking' and 'investment banker' in other jurisdictions to describe the group's Investment Banking line of business, including the relevant subsidiaries, activities and personnel. Further, personnel and entities from different jurisdictions work in close collaboration and, on transactions with a cross-border aspect, present to counterparties as one team rather than as members of separate legal entities by jurisdiction. AFMA submits that, in this context, the widespread and well-understood global use of the expression 'investment bank' (and derivative expressions) to refer to that line of business and its members, consistently with the ordinary meaning of 'investment banking', reduces the likelihood that wholesale clients dealing with a Non-ADI Entity would be misled by such an entity using those expressions.

We support maintaining the need for appropriate disclosures to the relevant counterparties, for example articulating that the entities using the terms "investment bank" or like expressions are not regulated by APRA (with similar additional disclosures regarding no access to depositor protection as already exist in other circumstances).

AFMA is available to provide further details of the proposed use of the restricted words 'investment bank', 'investment banking' and 'investment banker' by Non-ADI Entities to describe themselves, their activities and their personnel, if this would assist APRA's considerations.