

Banking Amendment Regulations 2003 (No. 1) 2003 No. 185

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 185

Issued by the Treasurer

Banking Act 1959

Banking Amendment Regulations 2003 (No. 1)

Subsection 71(1) of the *Banking Act 1959* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 71(2) of the Act provides, in part, that the regulations may confer functions on the Australian Prudential Regulation Authority (APRA) regarding supervision of Authorised Deposit-taking Institutions (ADIs) in relation to prudential matters.

Subsection 71(3) provides that the Governor-General shall not make regulations for ADIs in relation to prudential matters except in accordance with the recommendation of the Treasurer. Subsection 71(4) requires that before making a recommendation, the Treasurer must consult with APRA.

The Act provides for the regulation of banking activity in Australia. Section 5 of the Act defines "banking business". The Act specifies that only the Reserve Bank of Australia (RBA) and ADIs are eligible to carry out "banking business". It also states how the regulators, APRA and the RBA, are to carry out the task of supervising ADIs.

As part of the RBA's reform of credit card schemes, the RBA would like to open the Australian-based credit card schemes to more competition. The RBA wishes to increase the number of participants in these schemes without increasing the systemic risk to these schemes. Both of these objectives can be achieved by expanding the definition of "banking business" to include credit card services.

If "banking business" includes credit card services then credit card providers will be subject to prudential supervision. If credit card providers are subject to prudential regulation, then APRA can release standards that will specify how a class of ADIs, composed of ADIs that provide credit card services, may operate. Section 11AF of the Act allows APRA to make standards in relation to prudential matters to be complied with by ADIs or a class of ADIs.

APRA intends to authorise and supervise a new class of ADIs specifically providing credit card services. These ADIs will be known as specialist credit card institutions (SCCIs). SCCIs will not be able to accept deposits, but will be able to offer credit card services. SCCIs will be able to apply to offer credit card services only with the schemes of Visa, MasterCard and Bankcard.

The purpose of the proposed regulations is to expand the definition of "banking business" to include the activities of credit card acquiring and issuing, which the proposed regulations would define. Credit card acquiring and credit card issuing are the main activities of credit card providers. The effect of expanding the definition of banking business would be to make credit card acquiring and credit card issuing, by SCCIs, subject to prudential supervision.

Details of the Regulations are set out in the Attachment.

The Office of Regulation Review has advised that no Regulation Impact Statement is required in relation to the Regulations as one was prepared for the package of reforms in relation to credit cards released by the RBA on 27 August 2002.

The regulations commenced on 23 July 2003.

ATTACHMENT

Summary of Regulations: *Banking Amendment Regulations 2003 (No. 1)*

Regulation 1: The title of the regulations is the *Banking Amendment Regulations 2003 (No. 1)*

Regulation 2: The regulations commenced on 23 July 2003.

Schedule 1

Item [1]: The regulation adds definitions relevant to credit card acquiring and credit card issuing and to the expanded definition of "banking business". The item includes new definitions for constitutional corporation, credit card issuing, credit card acquiring, credit card transaction, holder of stored value, merchant, participant and payment system.

Item [2]: This regulation limits the application of the expanded definition of "banking business" under section 5 of the *Banking Act 1959*. The activities of credit card acquiring and credit card issuing are only considered to be "banking business" if carried out by members of credit card schemes that were designated by the Reserve Bank of Australia, under section 11 of the *Payment Systems (Regulation) Act 1998*, on 11 April 2001.