



# Banking exemption No. 1 of 2015

## *Banking Act 1959*

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I, Charles Littrell, a delegate of APRA:

- (a) under subsection 11(4) of the *Banking Act 1959* (the Act), REVOKE Banking (Exemption) Order No. 96 made on 22 May 2003;
- (b) under paragraphs 11(1)(a) and 11(2)(a) of the Act, DETERMINE that section 8 of the Act does not apply to a registered entity that complies with the conditions specified in the attached Schedule.

This instrument takes effect upon registration on the Federal Register of Legislative Instruments.

Dated: 18 March 2015

[Signed]

Charles Littrell  
Executive General Manager  
APRA

### **Interpretation**

In this Notice

**APRA** means the Australian Prudential Regulation Authority.

**registered entity** has the meaning in section 5 of the *Financial Sector (Collection of Data) Act 2001*.

*Note 1* This determination is a legislative instrument (see subsection 11(6) of the Act).

*Note 2* Under subsection 8(1) of the Act, a body corporate is guilty of an offence if it carries on any banking business in Australia, the body corporate is not the Reserve Bank or an authorised deposit-

taking institution and there is no determination in force under section 11 of the Act that subsection 8(1) does not apply to the body corporate. The maximum penalty is 200 penalty units. By virtue of subsection 8(2) of the Act, an offence against subsection 8(1) is an indictable offence. Under subsection 8(3) of the Act, if a body corporate commits an offence against subsection 8(1), the person is guilty of an offence against that subsection in respect of the first day on which the offence is committed and each subsequent day (if any) on which the circumstances that gave rise to the body corporate committing the offence continue (including the day of conviction for any such offence or any later day).

*Note 3* Under subsection 11(1) of the Act, APRA may, in writing, determine that any or all of the provisions of the Act referred to in paragraphs 11(1)(a) to (e) do not apply to a person while the determination is in force.

*Note 4* Under subsection 11(2) of the Act, a determination under subsection 11(1) may be expressed to apply to a particular person or to a class of persons, may specify the period during which the determination remains in force and may be made subject to conditions.

*Note 5* Under subsection 11(4) of the Act, APRA may, in writing, vary or revoke a determination made under section 11.

## **Schedule of conditions**

### **Restriction on issuing at-call products**

1. Where a registered entity:
  - (a) offers, issues or sells a debenture to a retail investor; or
  - (b) continues to make available to a retail investor, a debenture that was offered, issued or sold before 30 June 2015,the debenture must meet the requirements of Condition 2.
2. Where a registered entity offers, issues or sells a debenture to a retail investor:
  - (a) the debenture must have a maturity period of at least 31 days; and
  - (b) subject to Condition 4, the retail investor must not be able to redeem any funds for 31 days from the date they are invested in the debenture.

### **Rollover and repayment on maturity of debentures**

3. When a debenture that is issued or sold by a registered entity to a retail investor reaches maturity, the registered entity must:
  - (a) roll over the retail investor's funds into another debenture with a maturity period of at least 31 days; or
  - (b) if the retail investor requests that the investment not be rolled over into another debenture, repay the retail investor's funds in the form of cash, cheque or direct credit to an account held at an ADI.

### **Early release of funds**

4. A registered entity may, upon written request from a retail investor at any time, pay to the investor some or all of the funds invested in a debenture, provided that the registered entity is satisfied that the investor has demonstrated that he or she is subject to exceptional circumstances that may lead to hardship and that it is appropriate to release the funds.
5. A registered entity may only release funds under Condition 4 if the release complies with a written procedure prepared by the registered entity. The procedure must set out the basis upon which the registered entity will determine whether exceptional circumstances that may lead to hardship exist that would warrant the early release of funds.

### **Prohibition on use of certain transaction facilities**

6. A registered entity must not offer the following facilities to retail investors in relation to an investment product:

- (a) Automatic Teller Machine (ATM) facilities;
- (b) BPAY facilities offered by BPAY Pty Limited ACN 079 137 518;
- (c) Electronic Funds Transfer at Point of Sale (EFTPOS) facilities; or
- (d) cheque account facilities.

**Restriction on use of certain words and expressions**

- 7. A registered entity must not use or assume the words or expressions *deposit* or *at-call*, or any other word or expression (whether or not in English) of like import, in relation to an investment product offered, issued or sold to a retail investor.
- 8. A reference to a word or expression being used or assumed includes a reference to the word or expression being used or assumed:
  - (a) as part of another word or expression; or
  - (b) in combination with other words, letters or other symbols.

**Obligation to give a warning where a registered entity offers securities and must make disclosure under Part 6D.2 of the Corporations Act**

- 9. Where:
  - (a) a registered entity takes money on deposit by offering, and issuing or selling, securities; and
  - (b) the offer of the securities needs disclosure to the investor under Part 6D.2 of the Corporations Act,

a prudential supervision warning must be clearly and prominently set out in each disclosure document relating to the securities.

**Obligation to give a warning where a registered entity issues or sells a financial product and must make disclosure under Part 7.9 of the Corporations Act**

- 10. Where:
  - (a) a registered entity takes money on deposit by issuing or selling a financial product; and
  - (b) the issue or sale of the financial product requires a Product Disclosure Statement to be or to have been given to the investor under Part 7.9 of the Corporations Act,

a prudential supervision warning must be clearly and prominently set out in the Product Disclosure Statement.

### **Obligation to give a warning in other cases**

11. Where a registered entity takes money on deposit in circumstances that are not covered by Conditions 9 or 10, a prudential supervision warning must be given to the investor in the following manner:
  - (a) if, before the investment product is issued or sold to the investor, information relating to the investment product is given to the investor in one or more paper documents (whether or not such information is also given to the investor in another form) – the warning must be clearly and prominently set out in one of those documents;
  - (b) if, before the investment product is issued or sold to the investor, information relating to the investment product is given to the investor in one or more electronic communications (whether or not such information is also given to the investor in another form) – the warning must be clearly and prominently set out in one of those electronic communications; or
  - (c) in any other case – the warning must be clearly and prominently set out in a paper document or electronic communication that is given to the investor before the investment product is issued or sold to the investor.

### **Exceptions to the obligation to give a warning**

12. Despite Conditions 9 to 11, a prudential supervision warning does not have to be given in any of the following circumstances:
  - (a) where the investor is a related body corporate of the registered entity;
  - (b) where the registered entity believes, on reasonable grounds, that the investor is a professional investor;
  - (c) where the registered entity believes, on reasonable grounds, that the investment product is provided for use in connection with a business that is not a small business;
  - (d) where the registered entity believes, on reasonable grounds, that the investment product is issued or sold to an investor who already holds an investment product of the same kind;
  - (e) where the investment product is issued or sold by an exempt public authority;
  - (f) where the investment product is not issued or sold in the course of carrying on a business of issuing or selling investment products;

- (g) if the investment product is not an option – where no consideration is provided for the issue or sale of the investment product;
- (h) if the investment product is an option – where:
  - (i) no consideration is provided for the option; and
  - (ii) no consideration is provided for the underlying rights or interests on the exercise of the option;
- (i) where the registered entity believes, on reasonable grounds, that the following conditions are satisfied:
  - (i) the investor has previously been given a paper document or electronic communication before 1 January 2016, containing a statement that:
    - (A) the registered entity is not authorised under the Banking Act and is not supervised by APRA; and
    - (B) an investment in a particular kind of investment product, or in all investment products, issued or sold by the registered entity will not be covered by the depositor protection provisions in section 13A of the Banking Act; or
  - (ii) the investor has previously been given a paper document or electronic communication on or after 1 January 2016, containing a statement that:
    - (A) the registered entity is not authorised under the Banking Act and is not supervised by APRA;
    - (B) an investment in a particular kind of investment product, or in all investment products, issued or sold by the registered entity will not be covered by the depositor protection provisions in section 13A of the Banking Act; and
    - (C) an investment in a particular kind of investment product, or in all investment products, issued or sold by the registered entity will not be covered by the financial claims scheme established under Division 2AA of the Banking Act;
  - (iii) the statement was displayed clearly and prominently so as to make it reasonably likely to be read by the investor;
  - (iv) since being given the statement the investor has not received any information from the registered entity or a representative of the registered entity suggesting that the warning is no longer operative; and

- (v) the investment product meets the description of the investment products that, according to the statement, will not be covered by the depositor protection provisions in section 13A of the Banking Act;
- (j) where APRA tells the registered entity, in writing, that APRA is satisfied that the protection of investors' interests does not require a prudential supervision warning to be given:
  - (i) to the investor;
  - (ii) to a specified class of investors to which the investor belongs;
  - (iii) in respect of the investment product; or
  - (iv) in respect of a specified class of investment products to which the investment product belongs;
- (k) where an application for the investment product was received by the registered entity before 1 June 2003;
- (l) where the following conditions are satisfied:
  - (i) the investment product is securities;
  - (ii) the offer of the securities needs disclosure to investors under Part 6D.2 of the Corporations Act;
  - (iii) the securities are issued or sold in response to an application that complies with subsection 723(1) of the Corporations Act;
  - (iv) the disclosure document which included or accompanied the application form was dated before 1 June 2003; and
  - (v) the application was received by the registered entity on or before the expiry date of the disclosure document; or
- (m) where the following conditions are satisfied:
  - (i) the investment product is a financial product;
  - (ii) the issue or sale of the financial product needs a Product Disclosure Statement to be or to have been given to the investor under Part 7.9 of the Corporations Act;
  - (iii) the financial product is issued or sold pursuant to an eligible application;
  - (iv) the Product Disclosure Statement which included or accompanied the application form was dated before 1 June 2003; and

- (v) the eligible application was received by the registered entity within one year after 1 June 2003.

**Prudential supervision warning**

- 13. For documents, electronic communications or other material described in Conditions 9 to 11 that are given before 1 January 2016, a prudential supervision warning is a statement that:
  - (a) the registered entity is not authorised under the Banking Act and is not supervised by APRA; and
  - (b) the investment will not be covered by the depositor protection provisions in section 13A of the Banking Act.
  
- 14. A registered entity required to give a prudential supervision warning in accordance with condition 13 must also give to the holder of the investment product a notice that the investment will not be covered by the financial claims scheme established under Division 2AA of the Banking Act, by the earlier of:
  - (a) the next rollover date of the investment product; or
  - (b) 30 June 2016.
  
- 15. For documents, electronic communications or other material described in Conditions 9 to 11 that are given on or after 1 January 2016, a prudential supervision warning is a statement that:
  - (a) the registered entity is not authorised under the Banking Act and is not supervised by APRA;
  - (b) the investment will not be covered by the depositor protection provisions in section 13A of the Banking Act; and
  - (c) the investment will not be covered by the financial claims scheme established under Division 2AA of the Banking Act.

**Commencement**

- 16. In the table below, the conditions in column 1 apply in relation to the products in column 2 commencing on the dates specified in column 3.

<b>Conditions</b>	<b>Products</b>	<b>Commencement</b>
Conditions 1 to 5	Debentures issued or sold on or before 30 June 2015	1 January 2016.
	Debentures issued on or after 1 July 2015	1 July 2015.
	Term products	On the earlier of the next rollover date or 30



		June 2016.
Conditions 6 to 8	At-call products issued or sold on or before 30 June 2015	1 January 2016.
	Term products	On the earlier of the next rollover date of the product or 30 June 2016.
	All other investment products	1 July 2015.
Conditions 9 to 15	Investment products issued or sold on or after 1 June 2003	On the commencement date of this determination.

## Definitions

17. In this Schedule:

**ADI** has the meaning given in section 5 of the *Banking Act 1959*.

**application**, in relation to an investment product, means a paper or electronic application to acquire the product.

**APRA** means the Australian Prudential Regulation Authority.

**at-call product** means a debenture payable on demand or up to and including 30 days from when a retail investor makes an investment in a retail product.

**authorised representative** has the meaning given in section 761A of the Corporations Act.

**Banking Act** means the *Banking Act 1959*.

**Corporations Act** means the *Corporations Act 2001*.

**debenture** has the meaning given in section 9 of the Corporations Act.

**disclosure document** has the meaning given in Part 6D.2 of the Corporations Act.

**eligible application** has the meaning given in section 1016A of the Corporations Act.

**exempt public authority** has the meaning given in section 9 of the Corporations Act.

**financial product** has the meaning given in Division 3 of Part 7.1 of the Corporations Act, but does not include securities.

**given**, in paragraphs (a), (b) and (c) of Condition 11 and subparagraph (i)(i) of Condition 12, means given or sent in a way that would satisfy the requirements of section 1015C of the Corporations Act if the paper documents or electronic communications mentioned in those paragraphs or that subparagraph were Statements to which that section applies.

**investment product** means:

- (a) securities; or
  - (b) a financial product; or
  - (c) any other arrangement;
- that involves the taking of money on deposit.

**investor** means the person to whom an investment product is issued or sold.

**issue:**

- (a) in relation to securities – has the same meaning as in Part 6D.2 of the Corporations Act; and
- (b) in relation to any other investment product – has the same meaning as in Part 7.9 of the Corporations Act.

**offer** has the meaning given in Part 6D.2 of the Corporations Act.

**Product Disclosure Statement** has the meaning given in section 761A of the Corporations Act.

**professional investor** has the meaning given in section 9 of the Corporations Act.

**prudential supervision warning** has the meaning in Conditions 13 and 15.

**registered entity** has the meaning given in section 5 of the *Financial Sector (Collection of Data) Act 2001*.

**retail investor** means a person who would be a retail client under section 761G of the *Corporations Act 2001*.

**retail product** means an investment product offered, issued or sold to a retail investor.

**representative**, in relation to a registered entity, means:

- (a) an authorised representative of the entity; or
- (b) an employee or director of the entity; or
- (c) an employee or director of a related body corporate of the entity; or
- (d) any other person acting on behalf of the entity.

***sale:***

- (a) in relation to securities – has the same meaning as in Part 6D.2 of the Corporations Act; and
- (b) in relation to any other investment product – has the same meaning as in Part 7.9 of the Corporations Act.

***securities*** has the same meaning as in Part 6D.2 of the Corporations Act.

***small business*** has the meaning given in subsection 761G(12) of the Corporations Act.

***term product*** is an investment product that is not an at-call product.

Whether a body corporate is ***related*** to another body corporate for the purposes of paragraph (a) of Condition 12 is to be determined in the same way as under the Corporations Act.

A reference to ***an Act or provision of an Act*** is a reference to that Act or provision as in force from time to time.