



Banking exemption No. 1 of 2018

Foreign Bank Securities

Banking Act 1959

I, Pat Brennan, delegate of APRA:

- (a) under subsection 11(4) of the *Banking Act 1959* (the Act) REVOKE Banking (Exemption) Order No. 82 made on 23 September 1996; and
- (b) under paragraphs 11(1)(b) of the Act, DETERMINE that section 66 of the Act does not apply to the class of persons described in the attached Schedule, while this determination continues in force; and
- (c) under paragraph 11(2)(c) of the Act, MAKE this determination subject to the conditions specified in the attached Schedule of conditions.

This instrument commences on the day it is registered on the Federal Register of Legislation.

Dated: 21 March 2018

[Signed]

Pat Brennan
Executive General Manager
Policy and Advice Division

Interpretation

In this Determination:

APRA means the Australian Prudential Regulation Authority.

person in accordance with section 2C of the *Acts Interpretation Act 1901*, includes a body corporate as well as an individual.

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

Note 2 Under subsection 11(3) of the Act, a person is guilty of an offence if the person does or fails to do an act and doing or failing to do that act results in a contravention of a condition to which a determination under section 11 is subject (being a determination that is in force and that applies to the person). The penalty is 200 penalty units or, by virtue of subsection 4B(3) of the *Crimes Act 1914* in the case of a body corporate, a penalty not exceeding 1,000 penalty units. By virtue of subsection 11(3A) of the Act, an offence against subsection 11(3) is an indictable offence. Under subsection 11(3B) of the Act, if a person commits an offence against subsection 11(3), 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 person committing the offence continue (including the day of conviction for any such offence or any later day).

Schedule – the class of persons to whom this determination applies

1. Any foreign corporation, authorised as a bank in its home country, which raises funds in the Australian wholesale capital market by way of issuing securities.

Schedule of conditions

1. The exemption is limited to permitting the use of the terms “bank”, “banker” or “banking” and words of like import.
2. The securities being offered and/or traded by the foreign corporation are in parcels not less than \$500,000.
3. It is clearly stated on securities, and in statements prominently displayed in any promotional, marketing, disclosure and other similar material, whether in paper, electronic, website or other form, related to the issue of the securities that:
 - a. the securities are issued by an entity that is not authorised under the *Banking Act 1959*, and the entity is not supervised by the Australian Prudential Regulation Authority; and
 - b. an investment in securities issued by the entity is not covered by the depositor protection provisions in section 13A of the *Banking Act 1959*, and will not entitle holders of securities to claim under Division 2AA – Financial claims scheme for account-holders with insolvent ADIs in the *Banking Act 1959*.