



# Class approval

## Foreign ADI disclosure statements

### *Banking Act 1959*

---

I, Heidi Richards, delegate of APRA:

- (a) APPROVE, under paragraph 11E(2)(b) of the *Banking Act 1959* (the Act), the manner set out in the Schedule for a foreign ADI to inform a person in Australia, referred to in paragraph 11E(2)(a) of the Act, of the requirements of the Act to which the foreign ADI is not subject; and
- (b) REVOKE, under subsection 33(3) of the *Acts Interpretation Act 1901*, the class approval made under paragraph 11E(2)(b) of the Act on 4 September 2015.

This instrument commences on 1 March 2020.

Dated: 30 October 2019

[signed]

Heidi Richards  
Executive General Manager (Acting)  
Policy and Advice Division

## **Interpretation**

In this Determination:

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

*APRA* means the Australian Prudential Regulation Authority.

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

*Note 1* Under subsection 11E(2) of the Act, a foreign ADI commits an offence if it accepts a deposit from a person in Australia, and, before accepting the deposit, the foreign ADI does not inform the person, in a manner approved by APRA, of the requirements of the Act to which the foreign ADI is not subject because of subsection 11E(1B) of the Act.

*Note 2* This Approval relates solely to paragraph 11E(2)(b) of the Act. Separately, foreign ADIs must comply with any conditions in relation to the taking of deposits imposed on their authority to carry on banking business in Australia under subsection 9AA(1) of the Act.

## Schedule

(a) Prior to the earlier of:

- (i) the opening of an account;
- (ii) the transfer of an account from another person; or
- (iii) the taking of an initial deposit,

a foreign ADI must provide a person with a written disclosure statement (the Statement).

(b) The Statement must be prominently displayed and clearly written in plain language.

(c) The Statement must disclose, at a minimum, the following matters:

- *Provisions of the Banking Act 1959 for the protection of depositors generally do not apply to foreign ADIs, including [insert name of foreign ADI making this disclosure]. For example, depositors with foreign ADIs do not receive the benefit of the following protections:*

- *Deposits are not covered by the financial claims scheme and are not guaranteed by the Australian Government.*
- *Deposits do not receive priority ahead of amounts owed to other creditors.*

*This means that if a foreign ADI were unable to meet its obligations or otherwise is in financial difficulties and ceases to make payments, its depositors in Australia would not receive priority for repayment of their deposits from the foreign ADI's assets in Australia.*

- *A foreign ADI is not required to hold assets in Australia to cover its deposit liabilities in Australia.*

*This means that if the foreign ADI were unable to meet its obligations or otherwise is in financial difficulty and ceases to make payments, it is uncertain whether depositors would be able to access the full amount of their deposit.*