

Banking exemption No. 6 of 2011

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Banking Act 1959, subsection 11(4)

Under subsection 11(1) of the *Banking Act 1959* (**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. Under subsection 11(4) of the Act, APRA may, in writing, vary or revoke a determination made under section 11(1).

Banking exemption No. 6 of 2011 (**Determination No.6**) varies Banking exemption No. 1 of 2011 which was made on 17 June 2011, as varied (**Determination No.1**). Determination No. 6 will come into force on the day that it is registered on the Federal Register of Legislative Instruments.

1. Background

Sections 7 and 8 of the Act prohibit a person or a body corporate from carrying on banking business in Australia unless authorised by APRA to do so (**the prohibition**).

Determination No. 1 determined that the charitable development funds (**Funds**) listed in Schedule 1 of Determination No. 1 are exempt from the prohibition provided that they comply with the conditions specified in Schedule 2 of Determination No. 1.

APRA has received an application from EFKS Financial and Investment Services for this body to be exempted from the prohibition. APRA considers that this body is not currently acting inconsistently with any of the conditions set out in Schedule 2 of Determination No. 1, and will comply with all of these conditions when engaging in conduct that would otherwise contravene the prohibition. Further APRA has determined that this body should be exempt from the prohibition on the conditions set out in Schedule 2.

2. Purpose of the amending instrument

The purpose of Determination No. 6 is to further vary Determination No. 1 by adding the name of EFKS Financial and Investment Services to the list of Funds in Schedule 1 of Determination No. 1.

3. Consultation

APRA has consulted with the individual fund affected by Determination No. 6 and the Office of Best Practice Regulation (**OBPR**). The OBPR confirmed that no further regulatory analysis in the form of a regulatory impact statement is required due to the minor and machinery nature of this extension.