

Banking (prudential standard) determination No. 2 of 2013

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Banking Act 1959, section 11AF

Under subsection 11AF(1) of the *Banking Act 1959* (the Act), APRA has the power to determine standards (prudential standards), in writing, in relation to prudential matters to be complied with by authorised deposit-taking institutions (ADIs) and authorised non-operating holding companies (authorised NOHCs). Under subsection 11AF(3) of the Act, APRA may, in writing, vary or revoke a prudential standard.

On 24 June 2013, APRA made Banking (prudential standard) determination No. 2 of 2013 (the instrument) which revokes *Prudential Standard APS 910 Financial Claims Scheme* made under Banking (prudential standard) determination No. 10 of 2011 and determines a new *Prudential Standard APS 910 Financial Claims Scheme* (APS 910).

The instrument commences on 1 July 2013.

1. Background

Prudential Standard APS 910 Financial Claims Scheme (APS 910) came into effect on 1 January 2012 and required locally incorporated authorised deposit-taking institutions (ADIs) to establish a 'single customer view' (SCV) for balances in accounts protected under the Financial Claims Scheme (FCS).

In consulting on that standard in 2011, APRA indicated that a further prudential standard (or amended standard) would be developed to implement the FCS payment, reporting and communications requirements.

This new APS 910 sets out further proposals for implementation of the FCS. It proposes that ADIs be required to implement the systems needed to ensure that they can:

- generate and transmit payment instructions to a paying agent appointed by APRA;
- generate and disseminate APRA reports to account-holders and other parties in respect of FCS payments;
- facilitate communications with stakeholders; and
- comply with testing, audit and CEO attestation requirements.

2. Purpose and operation of the instrument

The purpose of the instrument is to revoke the previous APS 910 and to replace it with the new APS 910. The new APS 910 sets out operational requirements that ADIs must meet in order to ensure the effective operation of the FCS, which came into effect with amendments to the Act on 17 October 2008.

The FCS is designed to protect account-holders of an insolvent ADI from loss on their deposits, and to provide them with timely access to those deposits, up to the maximum amount payable under the FCS. APRA is responsible for the administration of the FCS. In order to ensure the FCS operates as intended it is necessary to set out

the APRA requirements that industry must meet in order to give effect to the FCS. The instrument does this by requiring an ADI to put in place systems for the identification of protected accounts for each account-holder, to the extent practicable, and present an aggregated view ('single customer view') of each account-holder and meet payment, reporting, communications, testing and assurance requirements. This will help to ensure that, in the event of the Minister declaring an ADI to be subject to the FCS, APRA will be able to pay out account-holders of the ADI in a timely and effective manner. More generally, the effective operation of the FCS will also help to ensure continued confidence in the financial system.

APS 910 sets out the minimum requirements an ADI must meet to ensure that it is pre-positioned to enable APRA to effect the timely payment of account-holders of an insolvent ADI in the event that the Minister declares, under section 16AD of the Act, that subdivision C of Division 2AA of Part II (of the Act) applies to that ADI. APRA has determined two payment methods are to be used to effect FCS payments – electronic funds transfer facilitated by and/or cheque drawn on the Reserve Bank of Australia. ADIs are to provide reports to APRA, account-holders and the Australian Taxation Office, to enable APRA to meet its reporting obligations under the Act.

The instrument will take effect on 1 July 2013.

3. Consultation

APRA has undertaken extensive consultation on the proposed implementation of the FCS over the last three years. APRA has engaged with industry through formal consultation on the proposed requirements as well as through industry workshops and meetings with parties affected by the proposals. The formal consultation included:

1. Industry Discussion Paper released in January 2010;
2. Response Paper and draft standard released in August 2010;
3. A further Response Paper and revised draft standard released in September 2011;
4. The previous APS 910 released in December 2011 for single customer view requirements, commenced 1 January 2012;
5. Industry Discussion paper and revised amended APS 910 released in November 2012 in relation to payment, reporting and communications requirements; and
6. A further Response Paper and new APS 910 released in June 2013.

APRA has, in finalising the prudential standard, given consideration to issues raised by industry and modified its proposals where appropriate to address these matters, while ensuring that the proposals continue to allow for the objectives of the FCS to be met.

APRA has increased the transition period before ADIs are required to comply with the prudential standard in order to address concerns expressed by some ADIs about their ability to put in place the necessary systems changes in the time period APRA

had initially proposed. Provision for an extended transition period has also been made for those ADIs which can demonstrate to APRA the need for a longer period to comply with the prudential standard. APRA has clarified that systems capacity, communications and testing requirements are to be in line with business continuity planning arrangements. APRA has also sought to amend the required attestation by the chief executive officer and the audit sign-off to reflect issues raised by industry in the consultation process.

4. Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for this legislative instrument.

5. Statement of compatibility prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

A Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at Attachment A to this Explanatory Statement.

ATTACHMENT A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

Overview of the Legislative Instrument

The purpose of the instrument is to revoke the previous *Prudential Standard APS 910 Financial Claims Scheme* and to replace it with the new *Prudential Standard APS 910 Financial Claims Scheme* (APS 910). The new APS 910 sets out operational requirements ADIs must meet in order to ensure the effective operation of the Financial Claims Scheme (FCS), which came into effect with amendments to the *Banking Act 1959* in October 2008.

The FCS is designed to protect account-holders of an insolvent ADI from loss on their deposits, and to provide them with timely access to those deposits, up to the maximum amount payable under the FCS. APRA is responsible for the administration of the FCS. In order to ensure the FCS operates as intended it is necessary to set out the APRA requirements that industry must meet in order to give effect to the FCS. The new APS 910 does this by requiring an ADI to put in place systems for the identification of protected accounts for each account-holder, to the extent practicable, and present an aggregated view ('single customer view') of each account-holder and meet payment, reporting, communications, testing and assurance requirements. This will help to ensure that, in the event of the Minister declaring an ADI to be subject to the FCS, APRA will be able to pay out account-holders of the ADI in a timely and effective manner. More generally, the effective operation of the FCS will also help to ensure continued confidence in the financial system.

APS 910 sets out the minimum requirements an ADI must meet to ensure that it is pre-positioned to enable APRA to effect the timely payment of account-holders of an insolvent ADI in the event that the Minister declares, under section 16AD of the Act, that subdivision C of Division 2AA of Part II (of the Act) applies to that ADI. APRA has determined two payment methods are to be used to effect FCS payments – electronic funds transfer facilitated by and/or cheque drawn on the Reserve Bank of Australia (RBA). ADIs are to provide reports to APRA, account-holders and the Australian Taxation Office, to enable APRA to meet its reporting obligations under the Act.

Human rights implications

APRA has assessed the instrument against the international instruments listed in section 3 of the HRPS Act and determined that only Article 17 of the International

Covenant on Civil and Political Rights (ICCPR) is potentially of relevance to the instrument. Article 17 of the ICCPR prohibits the arbitrary or unlawful interference with a person's privacy, family, home and correspondence, and attacks on reputation. Article 17 is exclusively concerned with prohibiting interference with the privacy and/or reputation of individual persons. It does not extend to the privacy and/or reputation of corporate entities.

An ADI is required under the new APS 910 to disclose certain personal information in relation to the identification of each unique account-holder to APRA for payment and reporting purposes, and to any person (paying agent) nominated by APRA for payment purposes and to the ATO for reporting purposes. APRA's paying agent is the RBA. The disclosed information includes information relating to account-holder's personal details such as full name, address and date of birth and details of accounts held by the account-holder, both at the declared ADI and at an alternative ADI.

The purpose of APS 910 is to ensure that, in the event that an ADI becomes a declared ADI, payment can be made quickly to each unique account-holder who holds a protected account. Without access to FCS payments, account-holders would face indefinite delays in accessing funds. The personal information of account-holders for payment purposes will be confined to APRA, which operates under strict secrecy obligations imposed under section 56 of the *Australian Prudential Authority Act 1998* and is subject to the *Privacy Act 1988*, and to persons appointed as paying agent by APRA (the RBA). The RBA is bound by strict secrecy obligations imposed under section 79A of the *Reserve Bank Act 1959* and is also subject to the *Privacy Act 1988*. Personal information must also be given to APRA and to the ATO in relation to income and tax for the financial year in which the payments are made.

FCS payments cannot be made without using an account-holders' personal information. Given the objective of the FCS, the disclosure of personal information in this limited manner is both reasonable and proportionate.

Conclusion

This Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.