
THE BANKING REGULATION REVIEW

EDITOR
JAN PUTNIS

LAW BUSINESS RESEARCH

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EDITOR'S PREFACE

Legal and regulatory areas of concern come and go in their perceived importance. It is, however, very difficult to recall any other occasion when a subject regarded by many lawyers as so obscure and arcane as international banking regulation has come to such prominence in such a short period of time.

Before the onset of the financial crisis in western economies in 2007, banking regulation was regarded by many as a discipline practised by technocrats who were, to put it politely, best left to themselves. The subject has risen up the agenda so quickly since then that few lawyers who advise financial institutions have had time to draw breath and assess the position now reached. The reality, of course, is that no final position has been reached and none is ever likely to be reached: banking regulation will continue to evolve, punctuated by bursts of activity every time there is a serious crisis to manage. What has happened is that the importance of this subject, and its rightful place amongst legal disciplines, has finally been recognised. This means that there is now great demand, from the banks themselves, but also from governments and regulators, for accessible and user-friendly explanations of the applicable rules.

The continual evolution of the rules makes any survey of banking regulation very difficult to write without risking almost immediate obsolescence. This book is an attempt to rise to that challenge and it is hoped that future editions will address the many further developments in this area that are expected to take place in the coming months and years. The book is aimed principally at lawyers and others who need access to an overview of the applicable rules in the important areas that the book covers and a commentary on recent developments. It also includes commentary on many of the areas of banking regulation that are of critical importance to the major cross-border transactions in which banks become involved.

The book illustrates the many and differing approaches that governments and banking regulators have taken to addressing what they perceive to be the problems affecting the banks that they regulate. To that extent, the lack of international coordination is a potential source of dismay amongst politicians and others who have spent so much time over the past three years trying to develop common approaches to the international challenges highlighted by the financial crisis.

It is, however, to be hoped that surveys of the kind in this book also inform the continuing debate about how to minimise the risk of a further crisis on anything like the scale that we have just seen. It will, quite literally, pay for governments to appreciate that further significant financial crises are inevitable in the future, and that the principal aim of reform should, therefore, be to minimise their likely impact, both on the lives of the millions of people who rely on banks and on local and regional economies.

It is a tribute both to the contributors and the publishers that so many leading banking and regulatory lawyers have made themselves available to write chapters for this book. I would like to thank them all for the support and encouragement that they have provided at a time when many of them have been almost overwhelmed with work on other projects emerging from the financial crisis. Many of the contributors have also been involved in initiatives designed to stabilise and reform the banking sectors in their countries. I would also like to thank Gideon Robertson and his colleagues at the publishers for their efforts in coordinating the project that this book has become, and in bringing it to fruition.

Jan Putnis
Slaughter and May
London
June 2010

Chapter 3

AUSTRALIA

*Louise McCoach and David Landy**

I INTRODUCTION

Australia has a sophisticated and stable banking industry, which provides a full range of banking and financial services and products

The banking market is dominated by four major Australian banks: Australia and New Zealand Banking Group Limited, Commonwealth Bank of Australia, National Australia Bank Limited and Westpac Banking Corporation. Their market concentration has increased in recent years, with the Commonwealth Bank of Australia acquiring Bank of Western Australia in October 2008 and Westpac Banking Corporation acquiring St George Bank Limited in December 2008.

The banking market includes significant foreign banks, investment banks, a number of regional banks and non-bank financial institutions carrying on banking business, including credit unions, building societies and friendly societies.

At 30 April 2010, there were 185 authorised deposit-taking institutions ('ADIs') authorised by the Australian Prudential Regulation Authority ('APRA') to carry on banking business in Australia, comprising 21 Australian ADIs¹ (being 12 Australian banks and nine subsidiaries of foreign banks), 34 foreign ADIs,² 11 building societies, 108 credit unions, three non-operating holding companies ('NOHCs') and eight others.

Commercially speaking, the Australian banking industry can be said to be deregulated; however, it cannot be said (commercially or legally) to be unregulated.

* Louise McCoach and David Landy are partners at Clayton Utz. The authors would like to acknowledge the contribution of Tony Gregg, Eugene Bong and Greta Burkett for their research in this chapter.

1 That is, an ADI incorporated in Australia, whether as a subsidiary of a foreign bank or not.

2 That is, ADIs not incorporated in Australia.

II THE REGULATORY REGIME APPLICABLE TO BANKS

i General

Overall regulation of the banking and finance system is divided between the Reserve Bank of Australia ('the RBA'), APRA and the Australian Securities and Investments Commission ('ASIC').³

The RBA (established by the Reserve Bank Act 1959 (Cth)) is Australia's central bank and is responsible for the overall stability of the financial system and for monetary policy. Determination and implementation of RBA policy is vested in the Payments Systems Board and the Reserve Bank Board. However, RBA has no role in prudential supervision of ADIs (or other financial institutions).

Technically, exchange control is an RBA function; however, at a practical level, there is no need for RBA approval where foreign exchange transactions are conducted through money market dealers and foreign exchange dealers authorised by RBA.

APRA (established by the Australian Prudential Regulation Authority Act 1998 (Cth)) ('the APRA Act') is responsible for the licensing and prudential supervision of all ADIs and NOHCs authorised by APRA. It is also responsible for the prudential supervision of life and general insurance companies and superannuation funds. Its supervisory powers come from a range of legislation; principally, from the Banking Act⁴ (and the Life Insurance Act 1995 (Cth)).

APRA is charged with regulating financial sector bodies in conformity with Commonwealth laws, which provide for prudential regulation or retirement income standards. APRA is required:

*to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in balancing these objectives, to promote financial system stability in Australia.*⁵

Although APRA is subject to Australian government direction on its policies and priorities⁶ it is government's intention that APRA should have operational independence, free from government intervention.⁷ Accordingly, the Minister is prohibited from giving a direction to APRA in relation to a particular case.

ASIC (established by the Australian Securities and Investments Act 2001 (Cth)) has responsibility for monitoring and promoting market integrity and consumer protection, and for licensing in relation to financial products and services.

The sole regulator of Australian registered companies and a regulator of financial services
The Banking Act 1959 (Cth).

5 APRA Act, Section 8(2).
APRA Act, Section 12(1).

7 See Explanatory Memorandum, Australian Prudential Regulation Authority Amendment Bill 200 (Cth), Paragraphs .18 and .19.

ii *ADI authorisation*

To carry on any banking business requires authorisation by APRA as an ADI⁸ or exemption by APRA.⁹ Further approval is required to use the description 'bank'.¹⁰

Banking business is defined in the Banking Act¹¹ both by reference to:

- a specific prescribed activities which includes a business that consists, to any extent, of taking money on deposit and making advances of money; and
- b a more general concept of banking within the meaning of Paragraph 51(xiii) of the Australian Constitution (the case law with respect to this concept is not entirely clear; however, it suggests that accepting of deposits alone may constitute carrying on banking business).

There are three options relevant to ADI authorisation:

- a a public company incorporated in Australia can apply for ADI status (in this context 'public' does not mean listed on the Australian Securities Exchange ('ASX'); it means a company that can access the public and the markets generally for funds);
- b a non-operating holding company of a group of companies that holds one or more ADIs can apply for NOHC status (this allows a group to diversify across, for example, banking, insurance, funds management and securities); and
- c a foreign bank can apply for ADI status to operate in Australia through one or more branches, which will require the foreign bank to register in Australia as a foreign company under the Corporations Act¹² (that registration will not, at a practical level, impose obligations greater than those that the bank will assume in maintaining ADI status)

APRA does require a foreign body corporate that is seeking approval to carry on banking business in Australia to provide detailed information about that foreign body corporate to APRA as part of the application process. Specifically, APRA requires details about the supervisory arrangements to which the foreign body corporate is subject in its home jurisdiction.¹³

There are two key restrictions on operating through branches as a foreign ADI that typically make it impractical for foreign banks to carry on retail operations as a foreign ADI:

- a foreign ADIs are not permitted to accept initial deposits from Australian residents of less than A\$250,000;¹⁴ and

8 APRA Act, Section 12().

9 Banking Act, Section 11.

10 Banking Act, Section .

11 Banking Act, Section 5

12 Corporations Act 2001 (Cth), the Australia-wide legislation relating to corporations, securities, financial products and related markets

13 Australian Prudential Regulatory Authority Guidelines, 'ADI Authorisation Guidelines', April 2008, p17.

14 APRA: ADI Authorisation Guidelines, Paragraph 5

- b* foreign ADIs must disclose to prospective depositors that the ‘depositor protection’ provisions of the Banking Act (see Section III, *infra*) do not apply to it.¹⁵

As a result of these restrictions, typically foreign banks have incorporated local subsidiaries to carry on retail operations in Australia. However, foreign banks can (and do) operate concurrently through two ADIs: an Australian ADI and a foreign ADI; in that case, APRA requires that banking transactions between the foreign ADI and the Australian ADI should be at arms’ length and on commercial terms and conditions

iii *Cross-border activities by non-ADI foreign banks*

A non-ADI foreign bank may:

- a* operate a representative office in Australia for liaison purposes only – that office will require registration with ASIC as a foreign company, as the liaison activities will constitute carrying on business in Australia;
- b* access the domestic capital markets to raise funds – the occasional issue of debt securities should not, alone, constitute carrying on business in Australia and so avoids the need for registration with ASIC as a foreign company and for any specific approval for the issuance of the debt securities;
- c* apply the proceeds of debt securities issued in Australia for its own purposes outside Australia without the need to register with APRA as a financial corporation under the Financial Sector (Collection of Data) Act 2001 (Cth);
- d* use the word ‘bank’ (or similar) when issuing debt securities in Australia provided that:
- the debt securities are offered or traded in parcels of at least A\$500,000; and
 - all documentation clearly states that the issuer is not an ADI; and
- e* avoid the need to apply for and hold an Australian Financial Securities Licence (‘AFSL’) for some arranging, underwriting and intermediating services in ‘financial products’ (which is widely defined) where those services are provided to wholesale investors¹⁶ and where the foreign bank is regulated by the APRA equivalent regulator in its domestic jurisdiction;¹⁷ however, unless that service was occasional only, the bank would need to register with ASIC as a foreign company carrying on business in Australia

15 Banking Act, Section 11E(2).

16 See Section IV, *vii, infra*.

17 Corporations Act, Section 911A(2)(h).

III PRUDENTIAL REGULATION

Relationship with APRA

i Prudential supervision function

Under the Banking Act, APRA has the power to establish and enforce prudential standards designed to enable APRA to discharge its prudential supervision function over ADIs, NOHCs, life and general insurance companies and superannuation funds.

Each prudential standard that is currently in force is set out in full on APRA's website at www.apra.gov.au. They cover a broad range of topics including capital adequacy, funds management and securitisation, liquidity management, large exposures, equity associations, credit quality, corporate governance and outsourcing matters in an ADI's business.

APRA is entitled to determine¹⁸ whether a prudential standard applies to all ADIs (that is, all Australian ADIs and all foreign ADIs¹⁹) or all NOHCs or a specified class of ADIs (for example, only Australian ADIs²⁰ as opposed to foreign ADIs) or NOHCs or one or more specified ADIs or authorised NOHCs. The standards therefore vary in their application to ADIs and NOHCs.

The regulatory model adopted by APRA requires those bodies to which the prudential standards apply, to be largely responsible for the implementation and monitoring of those standards. While APRA does require regular reports from ADIs, NOHCs and their subsidiaries in relation to specified matters, the Banking Act²¹ and the prudential standards make it clear that the onus rests with those bodies to immediately notify and provide APRA with a written report once they become aware of any significant breach or prospective significant breach of any prudential standard. Such notice must be given to APRA as soon as practicable, and in any case no later than 10 business days, after becoming aware of the breach.²² To this extent the prudential standards are largely self-regulating. Failure to notify APRA of a significant breach is an offence that carries a penalty of 200 penalty units.²³ In extreme circumstances, officers of the relevant ADI may also be criminally liable. APRA can also waive any non-compliance with a prudential standard if an ADI satisfies APRA that it is appropriate to do so.

If APRA has reason to believe that an ADI or NOHC has contravened or is likely to contravene a prudential standard, APRA has the power to issue directions to that ADI or NOHC requiring compliance with the standards (an APRA Direction).²⁴

18 Banking Act, Section 11AF.

19 See APS11, 115, 117, 120, 150, 210, 220, 222, 21, 22, 20, 10, 510 and 520 and 10.

20 See APS110 to 112, 11, 11, 221 and 0.

21 For example, see Banking Act 1959, Section 2A(1B).

22 Banking Act, Section 2A(1B)(c). Note 'significant' is defined in Section 2A(1C) for the purposes of Section 2A(1B).

23 Banking Act, Section 2A(1B). Under the Crimes Act 191 (Cth), Section 4A, one penalty unit currently equates to A\$110.

24 Banking Act, Section 11CA(1).

Non-compliance with an APRA Direction is an offence,²⁵ which carries a penalty of 50 penalty units. If an ADI or NOHC fails to comply with an APRA Direction, APRA has the power to revoke its authorisation.²⁶

ii Other functions

APRA also has a statistical information collection function under the Financial Sector (Collection of Data) Act 2001(Cth).²⁷ This Act requires all ADIs, NOHCs and their subsidiaries to provide financial data in regular standardised reports to APRA. General reporting forms require them to provide (except in the case of liquid assets which only applies to specified ADIs) data relating to exposures, impaired assets, liquid assets, commercial property and securities held, securities issued and financing arrangements.²⁸ Other reporting forms separately require Australian ADIs or their NOHC to provide information to APRA on capital adequacy, market risk, repricing analysis, off-balance sheet business, securitisation, specialised lending and other exposures.²⁹

Foreign ADIs are also required to provide information to APRA in relation to their Australian branches, regarding standardised credit risk (off-balance sheet exposures), repricing analysis, off-balance sheet business, and securitisation.

iii Consequences of an Australian ADI failure

Under the Banking Act, APRA has broad powers to investigate the affairs of an Australian ADI that is likely to be unable to meet its obligations relating to its depositors or is likely to suspend payments,³⁰ including powers to:

- a* require the ADI to provide information with respect to financial stability;
- b* appoint administrators to take control of the ADI's business if the ADI informs APRA that it considers or APRA considers it is likely to become unable to meet its obligations or that it is about to suspend payment or the ADI does become unable to meet its obligations or suspends payment; and
- c* having appointed an administrator, to apply to the Federal Court of Australia to have the ADI wound up.³¹

25 Banking Act, Section 11CG (1).

26 Banking Act, Section 9A.

27 Financial Sector (Collection of Data) Act 2001, Section 1 .

28 Australian Prudential Regulation Authority, Reporting forms and instructions accessed 29 March 2010 at www.apra.gov.au/Statistics/Reporting-forms-and-instructions-exclude-Basel-II.cfm

29 Australian Prudential Regulation Authority, Reporting forms and instructions accessed 29 March 2010 at www.apra.gov.au/Statistics/Basel-II-reporting-forms-and-instructions-for-all-ADIs.cfm. APRA Reporting Forms ARF 112.2A, 117, 118 and 120.2.

30 Banking Act, Section 1 A.

31 Banking Act, Section 1 F.

It is an offence if an Australian ADI does not immediately inform APRA if it considers that it is likely to become unable to meet its obligations, or that it is about to suspend payment. The offence carries a penalty of 200 penalty units³²

APRA's investigative powers under the Banking Act do not extend to foreign ADIs³³

If an ADI is unable to meet its obligations or is likely to suspend payments, the RBA has a discretion to act as a lender of last resort.³⁴ This discretion arguably allows the RBA to lend monies to any ADI (regardless of whether or not that ADI is an Australian ADI or a foreign ADI). That said, the RBA will only lend to an ADI if it is experiencing solvency difficulties and the RBA considers that the rest of the Australian financial system would be seriously affected by the failure of that ADI.³⁵

Since Australia's Federation in 1901, last-resort support has been provided sparingly by the RBA (or its predecessor), including support to the Primary Producers Bank in 1931, and three private banks in their efforts to fund illiquid building societies between 197 and 1979.³⁶

If an ADI is not able to meet its obligations or suspends payment, Sections 13A(3) (for Australian ADIs) and 11F (for foreign ADIs) of the Banking Act requires the Australian assets of that ADI to be available to meet deposit liabilities in Australia in priority to other liabilities of the ADI. An Australian ADI must first meet certain liabilities and debts to APRA before meeting its deposit liabilities³⁷

Management of banks

i The Corporations Act

In its regulation of directors and officers of a corporation, the Corporations Act applies only to Australian ADIs

The Corporations Act requires an Australian ADI to have a minimum of three directors, at least two of whom must ordinarily reside in Australia. There is no statutory requirement for any other organ of management (board committees, supervisory boards, etc.). Nor is there any statutory rule governing the make-up of the board. The ultimate responsibility for management remains at the board level: the existence, role and responsibilities of board committees (including credit committees) are an internal management matter and do not receive any recognition under the Corporations Act, other than by Section 198D, which provides that decisions made by validly delegated board committees are as effective as decisions made by the board itself.

32 Banking Act, Section 1 .

33 Banking Act, Section 11E.

34 Reserve Bank Act 1959 (Cth), Sections 8 and 2 .

35 RBA Summary of Australian Financial Regulation, www.rba.gov.au/fn_stability/reg_framework/index.html.

36 Bryan Fitz-Gibbon & Marianne Gizycki, 'A History of Last Resort Lending and Other Support for Troubled Financial Institutions in Australia' Research Discussion Paper 2001-07, System Stability Department Reserve Bank of Australia, (2001) p 8

37 Banking Act, Section 1 A.

There are three main actors in the management of Australian ADIs (in common with all Australian incorporated companies): executives, executive directors and non-executive directors. Directors (both executive and non-executive) are subject to statutory duties of care, diligence and good faith. Those statutory duties also apply to non-directors who are involved in making decisions that affect a substantial part of the company's business or who have the capacity to affect significantly the company's financial standing.

Directors and executives owe their duties to the corporate entity, rather than to shareholders. The constitution of a wholly owned subsidiary can include a provision enabling its directors to act in the interests of the sole shareholder. Otherwise, the Corporations Act does not relevantly distinguish between holding and subsidiary companies.

The Corporations Act does not prescribe any limits on the remuneration of directors and executives, although there are limits on the level of retirement benefits that can be paid without shareholder approval.

ii APRA Prudential Standard APS 510

APS 510 is APRA's corporate governance code for all ADIs (although foreign ADIs only have to comply with selected provisions).

Under APS 510, among other things:

- a* there are rules for the size and composition of boards and management of ADIs;
- b* ADIs must have a written remuneration policy which, although not subject to quantitative limits, must comply with general rules to ensure that remuneration is aligned with long-term financial soundness and prudent risk-taking and which must prohibit directors and senior officers from hedging equity-linked deferred remuneration before it is fully vested;
- c* all ADIs must have a board audit committee; and
- d* Australian ADIs must have a board remuneration committee.

iii ASX Listing Rules

If listed on ASX, an ADI needs to comply with the ASX Listing Rules, which require each listed entity to publish an annual report that indicates whether the entity has complied with the guidelines set out in ASX's Corporate Governance Principles and, if it has not complied, why it has not.

Regulatory capital

The prudential standards relating to regulatory capital do not apply to foreign ADIs which are expected to meet comparable capital adequacy standards in their home jurisdictions as required by their home country supervisors. That home regulation must be consistent in all substantial respects with the Basel II framework.³⁸

³⁸ ADI Authorisation Guidelines, April 2008, Paragraphs 15 and 17. The framework set out in the paper *Basel II: International Convergence of Capital Measurement and Capital Standards: A Revised Framework – Comprehensive Version* published by the Basel Committee on Banking Supervision in June 2004.

The prudential standards relating to regulatory capital are found in APS110 to APS117. They are based on the standards set down in the Basel II framework,³⁹ and aim to (among other things) ensure that ADIs ‘maintain adequate capital, on both an individual and group basis, to act as a buffer against the risks associated with their activities’,⁴⁰ including by:

- a* holding the minimum levels and ratios of certain types of capital;
 - b* establishing and maintaining internal processes to monitor that capital and to notify APRA if any ‘significant changes’ in any capital occurs;
 - c* having a process for applying ‘risk weights’ to each credit risk to which the ADI is exposed;
 - d* having a process for ‘quantifying certain credit risk components to determine capital requirements for a given credit exposure’;
 - e* keeping their retail banking, commercial banking and other banking businesses separate and apply different operational risk capital requirements to each area of business; and
 - f* keeping separate internal processes to ‘manage, measure and monitor’ operational, market and interest rate risks
- i* *Regulatory capital requirements for Australian ADIs*

Under APS110, an ADI is required to maintain, at all times, a minimum level of capital for capital adequacy purposes that, as a ratio of its total risk-weighted assets, exceeds its prudential capital ratio (‘PCR’). An ADI must also maintain a risk-based capital ratio in excess of its PCR.⁴¹

An ADI’s PCR is typically 8 per cent of its total risk weighted assets. APRA may increase an ADI’s PCR above 8 per cent where APRA believes that there are prudential reasons for doing; so, for example, APRA would normally set a newly established ADI’s PCR above 8 per cent during its formative years.⁴²

For the purposes of determining an ADI’s risk-based capital ratio (and compliance with its PCR), its total risk-weighted assets is calculated as the sum of:⁴³

- a* its risk-weighted on-balance sheet and off-balance sheet assets determined based either on a standardised approach using external credit ratings or on an internal ratings based approach as approved by APRA;⁴⁴
- b* 12.5 times the sum of capital charges relating to its operational and market risks and interest rate risks on its banking books;⁴⁵ and
- c* its exposures (on a risk weighted adjusted basis) to securitisations.⁴⁶

39 APRA Annual Report 2009, Australian Prudential Regulation Authority (2009), p9. (Note: APRA also joined the Basel Committee on Banking Supervision in 2009.)

40 APS110

41 APS110 Paragraph 1 .

42 APS110 Paragraph 15 and Attachment F.

43 Paragraph , Attachment D APS110

44 As determined in accordance with APS112 and 11 .

45 As determined in accordance with APS11 , 115, 11 and 117.

46 As determined in accordance with APS120

Under APS111, the capital to be maintained by an ADI in order to meet its PCR may be comprised of tier 1 capital and tier 2 capital, net of all specified deductions and amortisations, provided that at least half of such net capital is maintained in the form of tier 1 capital.⁴⁷ APRA may, in its discretion, require an ADI to hold more than half of its required PCR in the form of tier 1 capital.⁴⁸

Tier 1 capital comprises capital that satisfies certain essential characteristics, including a permanent and unrestricted commitment of funds and which rank behind the claims of depositors and other creditors in the event of a winding-up. Tier 1 capital is divided into two categories: (1) fundamental tier 1 capital, which comprises an ADI's paid-up ordinary shares, general reserves, retained earnings, current-year earnings, foreign currency translation reserve, capital profits reserve and minority interests arising from consolidation of tier 1 capital of subsidiaries, and (2) residual tier 1 capital, which comprises an ADI's perpetual non-cumulative preference shares that satisfy certain specific criteria and all other residual tier 1 capital instruments that satisfy certain other specified criteria (innovative tier 1 capital).⁴⁹

Tier 2 capital comprises all other components of capital that fall short of tier 1 capital but nonetheless contribute to the overall strength of the ADI as a going concern. Tier 2 capital is divided into two categories: (1) upper tier 2 capital, which comprises an ADI's perpetual cumulative preference shares, perpetual cumulative mandatory convertible notes, perpetual cumulative subordinated debt, any tier 1 capital that is ineligible to be included as part of tier 1 capital due to limits prescribed by APRA as described below, any other hybrid capital instrument of a permanent nature approved by APRA, certain bonus shares issued after 1 January 1992 and certain general reserves, revaluation reserves and post-acquisition reserves, and (2) lower tier 2 capital, which comprises an ADI's term-subordinated debt, limited life redeemable preference shares and any other similar limited life capital instruments approved by APRA.

The amount of tier 1 and tier 2 capital to be included in an ADI's capital base for capital adequacy purposes on and after 1 January 2008, net of all required deductions as described below, is subject to the following limits:⁵⁰

- a* fundamental tier 1 capital must constitute at least 75 per cent of net tier 1 capital;
- b* residual tier 1 capital is limited to 25 per cent of net tier 1 capital;
- c* innovative tier 1 capital is limited to 15 per cent of net tier 1 capital;
- d* total tier 2 capital is limited to a maximum of 100 per cent of net tier 1 capital; and
- e* total lower tier 2 capital is limited to a maximum of 50 per cent of tier 1 capital.

There is no minimum amount of ordinary share capital required to be maintained by an ADI. However, given that ordinary shares do form part of an ADI's fundamental tier 1 capital and an ADI is required to maintain at least 50 per cent of its capital for capital

47 APS11Q, Paragraph 1 and APS111, Paragraph 57(a)(ii).

48 APS11Q, Paragraph 1 (a).

49 The criteria is specified in APS111, Attachments A and C.

50 APS111, Paragraph 57.

adequacy purposes in tier 1 capital, it is likely that an ADI's ordinary share capital would comprise a substantial portion of its regulatory capital.

For the purposes of determining capital for capital adequacy purposes, certain deductions are required to be made by an ADI to its tier 1 and tier 2 capital.⁵¹ The deductions to be made from tier 1 capital include the following items: asset impairment, deferred tax, fair value gains and losses arising from certain assets, any amounts included in general reserves for credit losses, certain goodwill and intangibles, all holdings of own tier 1 capital instruments, amounts deriving from the ADI's share of undistributed profits or losses in an associate, certain revaluation of assets, gains from sale of assets to a securitisation and any surplus or deficit in certain ADI sponsored superannuation funds

An ADI must also deduct all holdings of its own upper or lower tier 2 capital instruments, and any unused trading limit in such instruments, from its tier 2 capital.

Further, the following items are required to be deducted as to 50 per cent from an ADI's tier 1 capital and as to 50 per cent from its tier 2 capital: equity exposures and other capital investments in other ADIs or equivalent overseas entities subject to certain exceptions, equity exposures and other capital instruments in an insurer or other financial institution where such exposure is above a certain prescribed percentage, equity exposures and other capital investments in non-subsidiaries above a certain percentage, equity exposures and other capital investments in non-regulated subsidiaries, certain guarantees and credit default swaps, any non-repayable loans made by the ADI under APRA's industry support schemes, securitisation exposures that are required to be deducted under the relevant prudential standards prescribed by APRA, shortfalls in provisions for credit losses and unsettled non-delivery versus payment transactions

In addition, APRA may require an ADI to deduct an amount to cover the undercapitalisation of a non-consolidated subsidiary of the ADI from its tier 1 capital and tier 2 capital.⁵²

iii Impact on business

Regulatory capital requirements play an important role in the business activities of an ADI particularly given the different risk weights assigned to various assets in determining the ADI's risk-based capital ratio. Accordingly, regulatory capital considerations have a significant influence over the types of transactions entered into by an ADI and the manner in which it conducts its activities

For example, changes to APS120 that were proposed by APRA in December 2009 include assigning higher risk weights for resecuritisation exposures to better reflect the increased risk inherent in these products.⁵³ This measure could reduce the level of investment and activity in these products by ADIs going forward.

51 APS111, Paragraphs 9 to 57.

52 APS111, Paragraph 7.

53 APRA has introduced new prudential standards to implement all of the components of the Basel II enhancements including releasing a revised draft of the APS120 prudential standard relating to securitisations to include the changes to risk weights for resecuritisation exposures

Other changes to the capital adequacy standards proposed by APRA in December 2009 include limiting the predominant form of Tier 1 capital to common equity and retained earnings, harmonising deductions from capital and requiring full disclosure of all components of the capital base. This will impact on the capital planning activities of ADIs and restrict the range of instruments that they will be able to issue to satisfy their capital adequacy requirements.

iv Any significant areas of divergence of the local regime from Basel II

The Basel II Framework has been progressively implemented in Australia since January 2008 without any significant areas of divergence. Consistent with this, in December 2009, APRA announced proposals to implement the Basel Committee's enhancements (announced in July 2009) to the Basel II Framework in Australia by 1 January 2011.⁵⁴

v Consolidated supervision

The prudential standards impose specific requirements on ADIs that form part of a conglomerate group. Under APS222, each Australian ADI that forms part of a conglomerate group is required to provide APRA with details of the ADI's group members, group management structure, its intra-group support arrangements and any intra-group exposures.⁵⁵

Australian ADIs are also required to notify APRA in advance of any intended changes in the composition or operations of its group structure which has the potential to alter materially the overall risk profile of the ADI.⁵⁶

In addition, Australian ADIs are required to include in their published annual report an outline of their group risk management policies and the procedures used to measure and manage overall group risk exposure.

As the prudential supervisor of Australian insurance companies and pension funds, APRA also has powers to ensure the prudent management of these entities within an Australian banking group.⁵⁷

Finally, APRA has broad powers to direct Australian ADIs to take or refrain from taking specific actions. These powers could be used to limit the range of activities the consolidated banking group may conduct or to restrict its overseas operations.

APS222 also imposes certain requirements on foreign ADIs (and their subsidiaries operating in Australia) and to non-ADI entities operating in Australia which are directly owned by the foreign parent of an ADI or by the parent's subsidiaries.

54 APRA, *Discussion Paper: Enhancements to the Basel II Framework in Australia*, 21 December 2009 www.apra.gov.au/Policy/Proposed-Basel-II-Enhancements-2009.cfm (accessed 1 April 2010).

55 APS222, Paragraph (a).

56 APS222, Paragraph .

57 Superannuation Industry (Supervision) Act 1993 Section 6, Retirement Savings Accounts Act 1997 Section .

IV CONDUCT OF BUSINESS

i Confidentiality

Banks in Australia have a strict duty of confidence in relation to customer account details. At common law, there is a duty not to disclose to third parties the state of a customer's account or any transactions on the account. The leading authority is the English case of *Tournier*.⁵⁸ The duty covers all information relating to the account, including information obtained as a consequence of the relationship between the customer and the bank.

The four commonly agreed exceptions to the duty in *Tournier* are when the use or disclosure is: consented to by the customer, compulsory under law, pursuant to a public duty or necessary for the interests of the bank.

ii Consumer credit legislation

The Uniform Consumer Credit Code ('UCCC') is a comprehensive source of regulation covering the provision of credit in Australia. It will be largely replaced by the National Credit Code ('NCC'), which will come into effect on 1 July 2010.

The NCC provides a national consumer protection framework for consumer credit and related transactions. It regulates all credit providers (including banks) who provide credit (widely defined) to individuals (and some unincorporated bodies) where the purpose of the credit is predominantly for a personal, domestic or household purpose, or relates to investment in residential property.

When the NCC applies to a particular transaction, it comprehensively affects the credit provider's conduct of business, and contains numerous sources of civil and criminal liability for failure to comply. The NCC regulates disclosure obligations and processes on a wide range of issues (e.g. default notices and applications for variation on the grounds of hardship).

The key obligations under the NCC are that all providers of relevant credit must hold an Australian Credit Licence (from 1 July 2010) and comply with the NCC's 'responsible lending' provisions.

iii Privacy

The National Privacy Principles regulate the collection, use and disclosure of 'personal information'.

Part IIIA of the Privacy Act 1988 (Cth) comprehensively regulates the conduct of banks and credit reporting agencies in relation to customer credit histories (or credit reports). The Act ensures that customers can know what is on their credit report and are informed when a bank might make an adverse comment on their credit report (and how a customer can avoid this happening).

58 *Tournier v. National Provincial and Union Bank of England Ltd* [1924] 1 KB 461; [1923] All ER Rep 550

iv Anti-money laundering

The Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Cth) (AML Act) imposes obligations on 'reporting entities' who provide 'designated services' (which is widely defined to include many financial transactions). Reporting entities include banks.

The AML Act requires reporting entities to perform a number of duties and which include implementing a compliance program, verifying the identity of customers, reporting specified types of transactions and suspicious matters, performing ongoing customer due diligence and maintaining accurate records.

v Consumer protection

The Australian Securities and Investments Commissions Act 2001 (Cth) regulates consumer protection in relation to financial services, and covers unconscionable conduct, misleading and deceptive conduct and false or misleading representations.

The Trade Practices Amendments (Australian Consumer Law) Bill will (when passed) introduce an Unfair Terms Regime (with a commencement date of 1 July 2010 at the earliest). At the heart of the regime is the rule that unfair terms in standard form contracts will be void. A term will be unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract and it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term.

vi Banking ombudsman

Banks and credit providers are often required by ASIC to be members of an ASIC-approved external dispute resolution scheme. To date, there are two: the Financial Services Ombudsman and the Credit Ombudsman Service Limited.

vii Australian financial services licences ('AFSL')

Subject to limited exceptions, a person who carries on a 'financial services business' in Australia must hold an AFSL covering the provision of the financial services.⁵⁹

'Financial service' includes the provision of financial product advice, dealing in a financial product and making a market for a financial product, where 'financial product', 'dealing' and 'making a market' are widely defined to include many banking products and services.⁶⁰

An exemption from the need for an AFSL in respect of the provision of a financial service is available to an APRA-regulated body where the service is one in relation to which APRA has regulatory or supervisory responsibilities and the service is provided only to wholesale clients.⁶¹

A body regulated by APRA includes an ADI and an NOHC.⁶²

59 Corporations Act, Section 911A(1).

60 Corporations Act, Section 7 A.

61 Corporations Act, Section 911A(2)(g).

62 APRA Act, Section (2).

The distinction between a wholesale client (in respect of whom the exemption applies) and a non-wholesale (or retail) client is, of course, critical. There are specific categories of wholesale client (for example 'sophisticated clients', 'professional investors' and persons certified as having a gross income of A\$250,000 or net assets of A\$2.5 million). However, the most commonly used criterion to be certain that the financial services provided are to a wholesale client is the A\$500,000 test: persons who invest more than A\$500,000 in respect of a financial product or service will be 'wholesale' for that investment.⁶³

It follows that the provision of financial products and services by an ADI to a non-wholesale (or retail) client requires an AFSL.

An application for AFSL is made to ASIC; therefore it is additional to the application to APRA for ADI authorisation. It is unlikely that an ADI will not satisfy the requirements of ASIC in relation to the AFSL licence. In short the application to ASIC must provide evidence of ability to satisfy statutory obligations and which involves providing ASIC detailed information in relation to internal management and operations and information demonstrating the experience and qualifications of management. Once licensed, an AFSL holder must provide periodic reports to ASIC as regards compliance with its AFSL.

The Corporations Act imposes onerous requirements upon AFSL licensees in relation to disclosures to retail clients, although there is some relief in relation to basic deposit products

V FUNDING AND LIQUIDITY

i Funding sources

In order to support their lending, Australian ADIs primarily source their funds from customer deposits and (domestic and international) wholesale markets

Typically, about 50 per cent of domestic banks' funding comes from deposits, a further 25 per cent from short-term wholesale funding, and 25 per cent from long-term wholesale funding.⁶⁴

Due to the recent global financial crisis, by the end of September 2009, these proportions moved slightly to 52 per cent of Australian banks' funding coming from retail deposits, 21 per cent from short-term wholesale funding and 27 per cent from long-term wholesale funding.⁶⁵ At the end of September 2009, 54 per cent of the total \$ 7 billion in Australian banks' wholesale funding was attributed to offshore financial markets (80 per cent of which was long-term funding).⁶⁶

63 Corporations Act, Sections 7 1G and 7 1GA.

64 These proportions will vary from bank to bank. 'Banking facts and figures', Australian Bankers' Association Inc, www.bankers.asn.au/default.aspx?ArticleID=1, accessed on 25 March 2010.

65 These proportions will vary from bank to bank. 'Bank funding – key issues', Australian Bankers' Association Inc, www.bankers.asn.au/Bank-Funding/default.aspx, accessed on 25 March 2010.

66 *Ibid.*

ii *Impact on liquidity standards*

A critical aspect of bank funding activities is the need for ADIs to maintain adequate liquidity. To this end, the liquidity prudential standard (APS210) aims 'to ensure that all ADIs have sufficient liquidity to meet obligations as they fall due across a wide range of operating circumstances'.⁶⁷ It vests an ADI's board of directors and management with the responsibility to maintain an appropriate liquidity management strategy.⁶⁸ That strategy is required to address at least two scenarios – the 'going concern' scenario (which 'refers to the normal behaviour of cash flows in the ordinary course of business') and the 'name crisis' scenario (which 'refers to the behaviour of such cash flows in adverse operating circumstances specific to the ADI, where it has significant difficulty in rolling over or replacing its liabilities')⁶⁹ and must be regularly reviewed by the ADI to ensure it reflects current circumstances.

iii *Financial claims scheme and government guarantee scheme for large deposits and wholesale funding*

The global financial crisis of 2008-9 prompted the Australian government in October 2008 to put two schemes in place to guarantee deposits with ADIs, namely the Financial Claims Scheme ('FCS'), which applied to Australian ADIs only, and the Guarantee Scheme for Large Deposits and Wholesale Funding ('the Guarantee Scheme').

APRA was appointed as the administrator of the FCS.⁷⁰ The FCS was intended to provide support to account holders of certain 'protected accounts'⁷¹ up to A\$1 million held at an Australian ADI from losses that may be incurred if the ADI were to become a 'declared ADI'.⁷² Under the Banking Act, an ADI will become a 'declared ADI' if APRA has applied to the Federal Court of Australia to wind up that ADI and the Minister has made a declaration under Section 1 AD of the Banking Act.⁷³ The FCS is currently intended to stay in place until 12 October 2011.⁷⁴

The Guarantee Scheme is administered by the RBA and was 'designed to promote financial stability and ensure the continued flow of credit throughout the economy at a time of heightened turbulence in international capital markets'.⁷⁵ Under the Guarantee

67 Australian Prudential Regulation Authority, Prudential Standard APS210 – Liquidity, p1.

68 Australian Prudential Regulation Authority, Prudential Standard APS210 – Liquidity, p2.

69 *Ibid.*

70 The FCS was given force by the Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008 (Cth), and the Banking Amendment Regulations 2008 (No.1).

71 Banking Act, Sections 5(),(5),() and (7).

72 Banking Act, Section 5

73 Banking Act, Section 1 F and Section 1 AD.

74 Australian Prudential Regulation Authority, Discussion Paper: Financial Claims Scheme for Authorised Deposit-taking Institutions dated 6 January 2010, p6, accessed 29 March 2010 at www.apra.gov.au/Policy/upload/DP-FCS-for-ADIs-Jan-2010.pdf.

75 Australian Government Treasury paper, 'Australian Government's 2008 Deposit and Wholesale Funding Guarantees – Design and Operational Parameters', accessed 29 March 2010 at www.treasury.gov.au

Scheme, customers with total deposit balances over A\$1 million at a single Australian ADI and Australian residents with total deposit balances over A\$1 million at a single foreign ADI were entitled, subject to their ADI making an application to the RBA for the Guarantee Scheme to apply to such deposits, to the benefit of a guarantee on the portion of their balances over A\$1 million (with the first A\$1 million of a customer's deposit held with any Australian ADI falling under the FCS). Up until 2 March 2010 'eligible institutions' (which included Australian ADIs and, subject to certain additional requirements, foreign ADIs) were also able to apply to the RBA for the Guarantee Scheme to extend to certain types of wholesale funding liabilities. For Australian ADIs, those liabilities had to, amongst other things, be senior unsecured debt instruments with a term of no more than 60 months.⁷⁶ For foreign ADIs those liabilities had to be senior unsecured debt instruments with a term of no more than 15 months (i.e., short-term wholesale funding liabilities). The Guarantee Scheme closed to new liabilities on 1 March 2010.⁷⁷ It closed to all term deposits and 'at call' deposits held at any Foreign ADIs by an Australian resident on 1 December 2009.⁷⁸

The Guarantee Scheme will remain in force:

- a* for all guaranteed liabilities until maturity for guaranteed wholesale funding up to 60 months from 31 March 2010;
- b* for term deposits held at Australian ADIs up to 60 months from 31 March 2010; and
- c* for 'at-call deposits' held at Australian ADIs to October 2015

While APRA and the RBA were given responsibility for administration of these two schemes, the Australian government accepted ultimate financial responsibility.⁷⁹

treasury.gov.au/documents/111/PDF/Design_and_operational_parameters_281008.pdf.

76 Australian Government Guarantee Scheme for Large Deposits and Wholesale Funding Rules, Schedule 1, accessed 2 March 2010 at www.guaranteescheme.gov.au/rules/pdf/scheme-rules-2010.pdf.

77 Australian Government Guarantee Scheme for Large Deposits and Wholesale Funding website, accessed 2 March 2010 at www.guaranteescheme.gov.au.

78 Australian Government Guarantee Scheme for Large Deposits and Wholesale Funding Rules, Schedule 1.

79 The Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Act 2008 provided funding for the Guarantee Scheme. The Financial Claims Scheme (ADIs) Levy Act 2008 (Cth) and the Financial Claim Scheme (General Insurers) Levy Act 2008 (Cth) allow for recovery of funds via industry levies under the Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008 (Cth).

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

Control regime

i Corporations Act

An Australian ADI that has more than 50 shareholders, or which is listed on the ASX, is subject to the takeovers provisions of the Corporations Act (Chapter 6), which prohibit the acquisition of more than 20 per cent of the voting shares in a company unless the acquirer follows one of a number of prescribed routes which require the terms applicable to that acquisition to be made available to all shareholders for acceptance or rejection.

Related provisions require the public disclosure of shareholdings of 5 per cent or more in a company listed on ASX and allow both a listed company and ASIC to issue compulsory tracing notices to uncover the beneficial owners of shares held through nominees and trustees.

ii Foreign Acquisitions and Takeovers Act 1985 (Cth) ('FATA')

FATA imposes a regime under which certain acquisitions of interests in Australian companies, including Australian ADIs, must be notified to the Australian government. The government can refuse permission for an acquisition which is contrary to the national interest.

The following transactions are compulsorily notifiable:

- a* the acquisition by a foreign person of a substantial interest in an Australian corporation with total assets which exceed A\$231 million (unless the acquirer is a US investor, in which case the notification threshold is A\$1,000 million);
- b* takeovers of offshore companies whose Australian subsidiaries' gross assets exceed A\$231 million; and
- c* direct investments by foreign governments and their agencies irrespective of size, including proposals to establish new businesses.

A person is taken to hold a substantial interest in a corporation if that person, alone or with any associates, is in a position to control 15 per cent or more of the voting power in the corporation or holds interests in 15 per cent or more of the issued shares in the corporation. (The terms 'control', 'interest' and 'associates' have extensive meanings.)

According to the policy statement of the Foreign Investment Review Board (FIRB),⁸⁰ foreign investment in the Australian banking sector needs to comply with the Banking Act, the Financial Sector (Shareholdings) Act 1998 (Cth) ('FSSA') and banking policy, including prudential requirements. Any proposed foreign takeover or acquisition of an Australian bank will be considered on a case-by-case basis and judged on its merits.

Acquisitions of interests in financial sector companies, as defined by the FSSA (which includes banks), are exempt from FATA. The FSSA continues to apply.

The government will permit the issue of new banking authorities to foreign owned banks where APRA is satisfied the bank and its home supervisor are of sufficient

80 Australian Foreign Investment Policy, September 2009.

standing, and where the bank agrees to comply with APRA's prudential supervision arrangements

iii Financial Sector (Shareholdings) Act 1998 (Cth) ('FSSA')

A person wishing to hold more than 15 per cent voting control of a financial sector company must apply to the Treasurer (being a cabinet minister of the Australian government) and provide the required supporting information.⁸¹ The Treasurer may only grant the application if the Treasurer is satisfied that the proposed acquisition is in the national interest.

iv Banking Act

Although the Banking Act regulates banking business in Australia, there is no formal approval required by APRA under the Banking Act for the acquisition of shares in an Australian ADI. However, given the ambit of APRA's powers, it is customary when acquiring a large stake in an Australian ADI to include a condition precedent to address the possibility that APRA could act to block or impose conditions on a proposed acquisition.

Transfers of banking business

The Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cth) ('FS Act')⁸² gives effect to a statutory regime that allows an Australian ADI to transfer all or part of its banking business to another Australian ADI. The transferring body and receiving body must be established in an Australian state or territory that has enacted legislation that ensures that the receiving body is taken to be the successor in law to the transferring body to the extent of the transfer. All Australian states and territories (other than Western Australia and the Australian Capital Territory) have enacted such legislation.

For a voluntary transfer of business to take effect, APRA must receive a complying application, the transfer must be adequately adopted by the transferring body and the receiving body in accordance with specified transfer rules (for example, by approval of the body's members in general meeting), the transfer must be approved by APRA, and APRA must issue a certificate of transfer stating the transfer is to take effect. APRA may also approve mechanisms specified by either or both the transferring body or the receiving body for determining things that are to happen, or that are taken to be the case, in relation to assets and liabilities that are to be transferred, or in relation to the transfer of business that is to be effected.

Once a certificate of transfer from APRA comes into force, the receiving body becomes the successor in law of the transferring body to the extent of the transfer. That is, the transferred assets and liabilities become assets and liabilities of the receiving body without any transfer, conveyance or assignment, and to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body

81 Set out in Section 1 of the FSSA.

82 Formerly the Financial Sector (Transfers of Business) Act 1999.

apply to the receiving body. The terms and conditions of employment (including any accrued entitlement to employment benefits) of employees of the transferring body are not affected by these successor arrangements. Subject to certain exceptions, a transfer effected under the Act does not cause the receiving body, transferring body or any other person to be in breach of an Australian law or any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability, or release any surety from all or any of the surety's obligations.

In granting its approval, APRA must have regard to the interests of the depositors of the transferring body and the receiving body, and the interests of the financial sector as a whole. APRA must also consult with the Australian Competition and Consumer Commission, ASIC and the Commissioner of Taxation in deciding whether to approve the transfer (unless those agencies have notified that they do not wish to be consulted). APRA may impose conditions as part of its approval.

APRA may also issue internal transfer certificates under the FS Act that enable the transfer of assets or liabilities (or both) between two bodies corporate that are part of the same company group as part of a proposal by an Australian ADI for a restructure that would make the Australian ADI a subsidiary of a non-operating holding company.

APRA may also make a determination under the FS Act that a compulsory transfer of a business from one ADI to another Australian ADI occur where the transferring body has breached the Banking Act, the transferring body has informed APRA that it considers it is likely to become unable to meet its obligations or that it is about to suspend payment, and in other limited specified circumstances.

VII THE YEAR IN REVIEW

APRA is in the process of implementing a number of reforms to Australia's regulatory capital and liquidity standards in order to align them with the Basel II enhancements announced by the Basel Committee in 2009.

Consistent with the work underway by the BIS Committee on Payment and Settlement Systems and the International Organisation of Securities Commission, the RBA, APRA and ASIC are also working to promote safe, efficient and robust practices in the Australian over-the-counter ("OTC") derivatives market. One aspect of this is promoting the use of central clearing and settlement facilities for OTC derivative transactions.

The regulation of credit and debit products issued by Australian deposit-taking institutions has also come under scrutiny since the global financial crisis. A number of current and proposed reforms have focused on the area of consumer protection. In February this year, the Australian government passed legislation setting out a comprehensive licensing regime for all providers of consumer credit and services, imposing responsible lending requirements on all licensees (see consumer credit legislation in Section IV, *supra*).

The second half of 2009 also saw a flurry of personal property securities-related activity in Australia, culminating in the enactment in late December of legislation harmonising more than 70 different pieces of Commonwealth, state and territory law. This new legislation is designed to improve the ability of individuals and businesses,

particularly small to medium-sized businesses, to employ all their property in raising capital.

2009 also saw a number of amendments to the Australian Bankers' Association Code of Banking Practice, which is the banking industry's customer charter on best banking practice standards. These amendments include a commitment to responsible lending taking a proactive approach in identifying and helping customers facing financial difficulties and making full disclosure of exception fees to customers.

VIII OUTLOOK AND CONCLUSIONS

The Australian government is in the process of reviewing the nature and operations of a number of key banking related areas, having (in 2009) commissioned comprehensive reports into Australia's superannuation system, tax system and financial products and services. Preliminary or final reports into these areas have been delivered to the government, and it is expected the government will formally respond to these reports throughout the course of 2010.

A report on financial products and services in Australia, released in November 2009, recommends that ASIC be given more power, investors be given better education and that there ought to be better (or at least greater) disclosure. For the product origination and distribution industry there are calls for more self-regulation, greater responsibility to investors and restrictions on commissions.⁸³

A report on Australia as a financial centre, released in January 2010, notes that despite a solid domestic base and the enormous opportunities in offshore markets, the Australian financial sector's engagement in cross-border activities within the Asia-Pacific region and beyond is not well developed. According to the report, there are many reasons for this, including tax and regulatory policy settings. The report details 19 recommendations on how to substantially boost trade in financial services and further improve the sector's competitiveness and efficiency.

Australia's corporate bond market remains underdeveloped. There is potential for significant growth in this area. In May 2010, ASIC provided class order relief to allow certain offers of 'vanilla' corporate bonds to be made to retail investors under a simplified prospectus.⁸⁴ The aim of the relief is to facilitate the development of a retail corporate bond market in Australia by reducing the time and expense involved in the issue of such bonds.

Overall, Australia's banking system has remained relatively stable throughout the global financial crisis, which has meant that regulatory reform of the Australian banking system has been on a much smaller scale compared with other G20 countries. However, as key international bodies continue to progress their regulatory reform agendas, there will almost certainly be regulatory changes in Australia to conform with changes adopted globally.

83 Parliamentary Joint Committee on Corporations and Financial Services, *Financial products and services in Australia*, 2 November 2009.

84 ASIC Class Order [CO 10/ 21].

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