

22 May 2013

By email: exemptiondp@apra.gov.au

Mr Neil Grummitt
General Manager, Policy Development
Policy, Research and Statistics
Australian Prudential Regulation Authority
GPO Box 9836
SYDNEY NSW 2001

Dear Mr Grummitt

Discussion Paper—Banking Act exemptions and section 66 guidelines

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the above discussion paper published by the Australian Prudential Regulation Authority (the **Authority**). In brief, while we broadly support the direction proposed to better protect potential retail investors in registered financial corporations (**RFCs**), our submission raises a number of concerns about the proposals.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action offers free legal advice, pursues consumer litigation and provides financial counselling to vulnerable and disadvantaged consumers across Victoria. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

Authority proposals

The Authority proposes three main amendments to the *Banking Act* exemptions relating to RFCs:

- for RFCs to be restricted from using the words "deposit", "at-call" and derivatives of these words;
- for retail investors in RFCs to be required to wait 31 days before redeeming investments; and
- for RFCs to not be allowed to provide certain transaction facilities, including Automatic Teller Machine (**ATM**) access to an account with the RFC, BPay, Electronic Funds Transfer at Point of Sale (**EFTPOS**) and cheque account facilities.

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We strongly support the direction of these reforms—so that RFCs, through their practices, are less able to create the impression that they are offering products which appear to be like consumer banking products such as deposit and transaction accounts. Our concerns is that if RFCs are able to create such an impression, consumers will believe that they are dealing with entities with stronger consumer protections, including prudential standards, which is not the case. However, we have a number of concerns regarding whether these proposals will be sufficient to achieve this end.

Before outlining our concerns, we note that in its 2012 review of Australia's observance with the *Core Principles for Effective Banking Supervision*,¹ the International Monetary Fund recommended that the Authority revise *Banking Act* exemptions so that RFCs be limited to institutions reliant wholly on wholesale funding. It is not clear from the discussion paper why the Authority has not proceeded with this recommendation. While we acknowledge that there may be some competitive benefits from RFCs, we would welcome further analysis from the Authority about this recommendation.

Terminology

As stated above, we welcome the proposal to restrict RFCs using the words 'deposit', 'at-call', and derivatives of those words. While RFCs have been required to disclose their adherence to certain benchmarks related to equity ratios and liquidity by the Australian Securities and Investments Commission (**ASIC**),² these requirements have been undermined by the way some RFCs operate and present themselves. The use of terms like 'deposit' and 'at-call' in advertising, product names and documentation, and in discussions with consumers, may mean that consumers are left with the impression that the products are similar to banking products. Rather than encouraging consumers to undertake a detailed risk assessment before investing, such words may imply a level of protection that is not the case. We recognise and support ASIC's recent proposal to impose minimum capital and liquidity requirements on RFCs that issue debentures.³ However, consumers considering investments in RFCs will still be required to consider a range of complex risks when assessing whether to invest in debenture products. The banning of certain words that are likely to create confusion when undertaking such an assessment is likely to help investors considering investment decisions.

However, we would warn that there are limits to disclosure requirements as an effective consumer protection measure. Disclosure mandates, particularly a requirement to not use certain words, is unlikely to discourage a consumer from making a certain investment if they have already committed to it. This is particularly the case where consumers have been encouraged to enter into investments by a trusted adviser. For example, with respect to Banksia Securities, Consumer Action understands that there strong associations between local professionals such as lawyers and accountants, and Banksia. Particularly in regional communities which can place trust in community leaders who are seen to have some experience or familiarity, such associations can further mask the risky nature of debentures. We understand that ASIC is proposing to impose further requirements on trustees and auditors as important gatekeepers

¹ APRA, Discussion Paper: Banking Act exemptions and section 66 guidelines, April 2013, page 7.

² ASIC, Regulatory Guide 69: Debentures and notes: Improving disclosure for retail investors, November 2011.

³ ASIC, Consultation Paper 199 Debentures: Reform to strengthen regulation, February 2013.

responsible for monitoring the financial position of RFCs. We believe that consideration should be given to whether there are other gatekeepers in the community that should be also considered as having a role in protecting potential investors.

At-call products

We understand the intent behind the proposal for retail debenture offerings to have a minimum initial maturity period of 31 days. We agree that this measure may encourage some consumers to distinguish between investment in such debentures from at-call deposits in banks and other similarly regulated institutions. However, our concern is that some banks are now promoting 'notice saver' accounts which may confuse investors. For example, Rabo Bank is currently promoting a retail deposit product which require notice periods of between 31 and 90 days.⁴ Rabo Bank promotes this as a consumer benefit, being 'the new way to avoid impulse buying'. It is our understanding that these products are likely to become more popular among banks and other authorised deposit taking institutions due to the BASEL III liquidity standards which state that deposits that have a maturity period of less than 30 days are treated as 'at demand' deposits, and do not qualify for certain standards.⁵ In this context, we believe that some consumers might not readily distinguish between debentures with a maturity period of 31 days, and other bank products with similar requirements—both term deposits, and 'notice saver' accounts.

Use of certain facilities not allowed

We welcome the proposal not to allow RFCs to provide certain transaction facilities, including ATM access, to an account with the RFC, BPAY, EFTPOS and cheque account facilities. We support this as such transaction facilities are likely to indicate to consumers that the product issuer is similar to a bank. However, we would encourage the Authority to go further in relation to two matters. Firstly, it is our understanding that some RFCs host independently-operated ATMs in their branch offices. While the institutions might not allow ATM access to an account with the RFC, it is our view that the availability of an ATM will mean that consumers are likely to consider the outlet in a similar light to a bank branch. We would encourage the banning of ATMs in such offices to reduce the prospect that consumers will consider the RFC to be similar to a bank. Second, we also understand that some RFCs use 'Bank-State-Branch' numbers, commonly known as BSB numbers. Consumers have a good understanding that these numbers are signifiers of a bank or authorised deposit taking institution. These numbers also allow monies to be transferred easily between institutions using internet banking facilities. It is not clear to us whether the Authority's proposal relating to EFTPOS facilities extends to prohibiting RFCs from having BSB numbers and transferring funds through internet banking. We ask that this issue be clarified.

⁴ <http://www.rabodirect.com.au/notice-saver/?hp-kv-1?shortURL=/banners/kv1.aspx>

⁵ <http://www.bis.org/bcbs/basel3.htm>

Please contact me on 03 9670 5088 or at info@consumeraction.org.au if you would like to discuss these matters further/have any questions.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive, flowing style.

Gerard Brody
Chief Executive Officer