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Via email: PolicyDevelopment@apra.gov.au

Governance Review Discussion Paper

Dear Mr Beckett,

The Australian Financial Markets Association (**AFMA**) appreciates the opportunity to respond to the Australian Prudential Regulation Authority's (**APRA**) Governance Review Discussion Paper (**Discussion Paper**). AFMA and its members also appreciate APRA's open and constructive engagement during the consultation period.

AFMA is supportive of APRA's initiatives to strengthen the prudential governance framework for banks, insurers and superannuation trustees. A well governed financial sector is ultimately in the best interests of all participants. APRA's eight proposals are a positive step to increasing the overall quality of governance across the industry.

Key findings and recommendations

Governance frameworks, which leverage the guidance and requirements of APRA and other regulators, form an important component of how firms in the finance industry manage risks and drive innovation. However, the burden of these requirements should not be underestimated. As noted in the Discussion Paper, APRA's prudential framework alone creates "around 150 requirements for a typical entity board" (p.25). It is unsurprising that, as a result of these and other requirements, "many boards were spending less than 30 per cent of their time on forward-looking strategy and risk oversight" (*ibid.*).

To continue to serve the Australian community effectively and to compete internationally, it is vital that Boards have the capacity to support and drive growth and innovation within their organisations. Clarifying the role of the Board and when they can delegate their responsibilities, in addition to appropriately streamlining and/or removing requirements, will free up Board time and allow them to concentrate on forward-looking strategy and risk oversight. Through this lens, AFMA makes the following recommendations to APRA and provides further feedback in the attached appendix.

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Detailed Response to Discussion Paper

AFMA provides the following additional comments and observations for APRA's consideration. These are provided under the eight proposals contained in the Discussion Paper plus additional matters specific to Foreign ADIs.

Proposal 1: Skills and capabilities

Limited candidates in some skills areas

AFMA is supportive of APRA's initiatives to ensure that Boards contain the right mix of skills and experience. For in-demand skills, such as cybersecurity and generative artificial intelligence, there are limited candidates available to serve on regulated entities' Boards. As such, it may be difficult for some regulated entities, particularly smaller entities, to acquire these skills on their Boards.

Upskilling current Board members to the required level of expertise, as an alternative, will take time.

Given these challenges, AFMA asks that APRA pragmatically consider the ability of Boards to acquire in demand skills and experiences. APRA should allow Boards to complement their existing skills and experience by receiving advice from both internal and external subject matter experts and making decisions based on that advice. Allowing boards to make decisions based on proper advice in new and development areas, as opposed to directors being expected by APRA to have skills and capabilities for every possible scenario, will result in better risk management by Boards. This is supported by section 189 of the *Corporations Act 2001* (Cth) which permits directors and officers to reasonably rely on the advice of experts.

Individual director skill disclosure

Industry would appreciate greater clarity regarding APRA's thinking on the minimum individual director skills to be disclosed in board skill matrices (as opposed to collective skills of board).

While AFMA agrees that sole reliance on director self-assessment questionnaires is not good governance practice, self-assessment questionnaires have recently been enhanced by AFMA members. AFMA asks that APRA clarify in guidance that self-assessment questionnaire remain one useful tool (among others) for assessing directors' skills and capabilities.

Proposal 2: Fitness and propriety

Board appointment and APRA consultation

The process to appoint new Board members can be sensitive and the culmination of many rounds of discussions. Industry notes that there may be frictions regarding continuous disclosure in addition to confidentiality considerations for Board appointments. APRA's discretion and flexibility in working with firms' appointment processes is important to not inhibit industry's ability to appoint directors.

Further clarity regarding the pre-consultation on director appointments and succession planning (informal or formal) would assist industry better understand APRA's expectations in this area.

Interaction with FAR

AFMA notes APRA's intended use of the FAR accountability obligation to deal with APRA in an 'open, constructive and cooperative way' to: (a) enable APRA to require an entity-led reassessment of a prospective directors fitness and propriety; (b) require Significant Financial Institutions (SFIs) (and non-SFIs subject to heightened supervision) to keep APRA informed of succession plans and nominations prior to appointment and public announcement; and (c) in the prudential practice guidance note that APRA may request an interview with any candidates for responsible person roles, prior to appointment or reappointment.

The equivalent conduct rule under the UK Senior Managers Regime ('You must be open and cooperative with the FCA, the PRA and other regulators') has not been interpreted as imposing a positive obligation on individuals or entities to volunteer information in the absence of the regulator relying on an underlying power to require provision of the information. Regulatory guidance of this conduct rule in COCON 4.1.11 of the FCA Handbook is focused on, for example, an individual answering regulator questions or supplying information/documents in response to requests from a regulator.

APRA's proposed usage of this FAR accountability obligation, which has been adopted from the equivalent obligation in the UK, is novel and goes beyond the UK interpretation by requiring entities to volunteer information (not in response to specific APRA questions) and for APRA to request to interview candidates. There are separate obligations on UK firms and senior managers to provide to the regulators all information of which the regulators would reasonably expect notice (Senior Manager Conduct Rule 4) which was not adopted by Treasury for inclusion in BEAR and the FAR accountability obligations (despite an initial proposal to do so which was subsequently removed from the BEAR consultation papers).

In line with the above, industry would appreciate clarity on how pre-consultation would add to/interact with those powers. We encourage APRA to avoid any duplication or unnecessary addition to this process. We also encourage APRA to reconsider its approach to the FAR accountability obligation in these circumstances. Should APRA wish to proceed with the FAR accountability obligation, AFMA recommends the associated prudential practice guide include guidance comparable to COCON 4.1.11 that the obligation does not impose positive obligations to volunteer information (without request) to APRA. AFMA understands that APRA would only seek to interview potential appointments on an exceptional basis, articulation of how and when APRA may seek such engagements would assist industry.

Proposal 3: Conflicts management

Public disclosure of registers

As noted in the Discussion Paper, SPS 521 requires RSE licensees to, *inter alia*, develop registers of relevant duties and relevant interests and make them public.

There are compelling reasons why this public disclosure obligation should not be extended to banks. The types of conflicts that arise in superannuation funds are distinct in the context of beneficiaries reliance on trustees. The exact same level of public disclosure may not be as relevant or beneficial in the context of banking given banks have customers and/or owners (including shareholders). Public disclosure without adequate context may also lead to misinterpretation by the public, investors or media, potentially causing unwarranted reputation damage. This, in turn, may deter qualified individuals from serving on the boards of banks and insurers due to concerns about privacy and the potential for public scrutiny of their personal and professional interests.

Industry would appreciate clarity from APRA regarding the need for ADIs to publicly disclose registers of duties and outside interest.

Proposal 4: Independence

Subsidiaries of APRA regulated entities versus all subsidiaries

AFMA understands that regarding APRA's proposal that subsidiaries of APRA regulated entities should have a majority of independent directors, APRA intends this requirement apply *only* to *APRA-regulated subsidiaries* of regulated entities, and not all subsidiaries. Applying this to all subsidiaries

would be unachievable for industry, as major corporate groups can have circa 100+ subsidiaries the vast majority of which do not currently have independent directors.

Clarity on this understanding would assist industry.

[Proposal 5: Board performance review](#)

AFMA is supporting of APRA's Board performance review proposals.

[Proposal 6: Role clarity](#)

Industry supportive of role clarity

Industry is particularly supportive of clarifying what can be delegated to Board Committees and senior management. Such clarity should provide greater comfort to Boards, resulting in greater delegation of some matters and allowing the Board to have a greater focus on strategy and risk.

Though, we note that some organisations have well documented processes and procedures already in place regarding delegations. In clarifying the role of the Board, AFMA recommends that APRA create guidance that is accommodative of the mature approaches already in place.

Overlapping categories of 'responsible persons'

AFMA encourages APRA to take this opportunity to also provide greater clarity between related terms, such as senior management and responsible persons.

There remain unhelpfully too many 'buckets' of 'responsible persons' in regulated entities. Currently, this includes 'responsible persons' (**RP**), 'accountable persons' (**AP**), 'senior manager', 'material risk taker' (**MRT**) plus 'risk and control personnel'. These categories of persons overlap, with the resultant regulatory burden appearing to outweigh the regulatory benefit.

As such, industry encourages APRA to use this governance review to resolve some inconsistency and duplication over senior accountable staff between the CPS 520 responsible persons regime, the FAR accountable persons regime and other prudential standards as relevant (e.g. CPS 511 on specified roles subject to remunerations review/control). As the appendices to the CPS 520 identify responsible persons, APRA has the opportunity to align these roles with legislatively set roles, such as FAR accountable persons. APRA could, for example, consider applying the fit and proper requirements only to those persons deemed to be accountable under the FAR. Such an approach should reinforce the appropriateness of the existing FAR definition for identifying APs, without expanding its capture.

Optimally, overlapping and/or duplicative requirements would be removed. Failure to review these categorisations would be a lost opportunity in reducing regulatory burden and to improve the efficiency of the regulatory system.

Exacerbated impact on Foreign ADIs

For Foreign ADIs, this challenge is exacerbated by residency requirements attached to some of these roles.

The RPs and APs largely overlap in terms of the concept/scope as they refer to "senior managers" (or MRTs in CPS 511) who have material prudential impact to the Foreign ADI. There is, however, inconsistency in the residency conditions attached to the RPs, such that an offshore based AP cannot become an RP (save for the SOOA position which is by definition based offshore). This was unfortunately not resolved as part of the Governance reform with changes made to CPS 510 and CPS 520.

We encourage APRA to include these considerations in the current governance review, with the aim, potentially, of removing/revising the residency condition or removing the RPs altogether and combining them into the FAR or CPS 511 (e.g. MRTs). It is also noted that for the specified roles in CPS 511 (e.g. MRTs, risk and control personnel), the fit and proper requirements in CPS 520 do not apply.

Guidance from APRA on how these various senior accountable positions in Foreign ADIs are meant to interact or relate would assist industry, particularly if they are meant to remain unchanged as part of this governance review.

Proposal 7: Board committees

AFMA does not have any comments on this proposal.

Proposal 8: Director tenure and board renewal

Default tenure limit of 12 years recommended

AFMA is supportive of implementing a default tenure limit as a mechanism of reducing the occurrence of some Board members remaining on Boards for long periods. However, we do concur with APRA's assessment that the 10 year default tenure limit "is significantly more prescriptive than overseas frameworks and standards" (Discussion Paper, p.11).

AFMA recommends APRA adopt a default tenure limit of 12 years, for non-executive directors. Doing so would better align to good industry practice and allow for a better maintenance of challenge between Boards and Senior Management.

Some organisations with mature Board succession planning frameworks currently work towards a tenure limit of 12 years. This is seen as the appropriate length of time for a Board member to develop into a potential Chair and have sufficient time in the role of the Chair before needing to step down from a Board. A shorter limit would limit this development time and/or time in the role of the Chair.

An additional benefit of having some Board members with longer tenure is to offset the, at times, longer tenure of Senior Management (for which there are not tenure limits). Having a greater 'tenure' balance can assist the Board in its ability to rigorously challenge Senior Management.

Foreign ADI specific operations and questions

In addition to the items above, AFMA highlights for APRA's consideration additional observations and recommendation regarding the proposals potential impact on Foreign ADIs.

Application of Board obligations to the SOOA

Clarity from APRA regarding which "Board" obligations are expected to apply to the SOOA for Foreign ADIs (refer to proposals 1 and 6) would assist industry.

AFMA encourages APRA to consider developing a digital SOOA guide, similar to APRA's Guide for Directors (and associated spreadsheet of requirements) and/or a prudential guide specifically clarifying APRA's expectations regarding SOOAs.

Application to foreign subsidiaries and branches

Industry would welcome clarity from APRA on the extent to which Foreign ADIs, that are bank branches or Australian subsidiaries of foreign banks (i.e. the local subs are not direct subs of the foreign branch) which typically have only executive directors, are in scope of the director and board committee proposals (refer to proposals 4,7,8).

Tenure limit not applicable to SOOA

AFMA understands that the tenure limit is only applicable to the directors of locally incorporated reporting entities and, as such, not to the SOOA of Foreign ADIs. Written confirmation of this would assist industry.

Classification of the SOOA

Industry would appreciate clarification as to whether the SOOA is to be considered as a senior manager or Board given the SOOA has oversight responsibility and not management responsibility. Foreign ADIs senior management team generally comprises of the GM, Deputy GM, CRO, etc. The senior management team is responsible for the day-to-day operation and decision making in the Branch. The SOOA is not necessarily involved in the day-to-day decision making.

Application of Fit and Proper to SOOA

AFMA understand that when a Head Office's processes align with APRA's requirements, a reporting entity can rely on the Head Office's processes to determine the SOOA's fitness and propriety, without having to undertake a separate fit and proper assessment in accordance with the local policy.

Written clarification of this position would assist industry.

AFMA Response to Discussion Paper Questions

Impact: AFMA is supportive of APRA's initiatives to strengthen the prudential governance framework for banks, insurers and superannuation trustees. AFMA considers the proposals, with the calibration outlined above, will achieve APRA's goal of strengthening governance.

AFMA members generally have mature governance frameworks and practices. As such, the proposals are not expected to materially increase costs for in-scope AFMA members.

AFMA members are interested in ensuring a vibrant market for director talent. The unintended consequences of the governance proposals may impact on the availability of directors with the skills and capabilities required by the industry at this time, including cyber security and AI experience.

Regulatory Burden: As noted above, the Discussion Paper does not consider the application of the governance principles to Australian branches of Foreign ADIs or SOOAs. AFMA is supportive of APRA rule-making and guidance that does not impose a one-size-fits-all model, but instead allows for the distinct nature of Foreign ADIs and their federated management structures, often set globally.

Transition: Given the proposed go-live of the prudential standard in 2028, AFMA considers industry will have sufficient time to prepare for the new governance requirements. APRA should allow for a considerable consultation period on the draft standards and guidance to be published in 2026 in addition to undertaking roundtables and bilaterals (including with AFMA). If the consultation on the standards and guidance slips, it may be appropriate to adjust the 'go-live' date accordingly.

Proportionality: AFMA is supportive of the governance proposals distinguishing between SFIs, non-SFIs and non-SFIs subject to heightened supervision. AFMA is also supportive of all proposed measures to enhance proportionality including, for example, allowing non-SFIs with more time to meet the updated requirements and that a consideration of the minimum skills criteria should be in line with the regulated entity's business needs, size and complexity.

Board delegation: Boards can struggle with the operational burden of approving the myriad of policies an organisation is required to have. As noted by APRA, many Boards are "spending less than 30 per cent of their time on forward-looking strategy and risk oversight" (Discussion Paper, p.25). Allowing Boards to delegate approval to board committees and/or senior management, with appropriate oversight, will lighten the load and enable Board time to be more focused on the key strategic and risk issues facing APRA-regulated institutions. AFMA is supportive of APRA guidance which identifies policy approvals as a matter by which the Board may delegate to board committee and senior management.

Reducing overlap: As noted above, the industry encourages APRA to use this governance review to resolve some inconsistency and duplication over senior accountable staff between the CPS 520 responsible persons regime, the FAR accountable persons regime and other prudential standards as relevant (e.g. CPS 511 on specified roles subject to remunerations review/control). As the appendices to the CPS 520 identify responsible persons, APRA has the opportunity to align these roles with legislatively set roles, such as FAR accountable persons. No primary legislative change would be required for APRA to harmonise and rationalise these overlapping concepts.