



20 November 2020

General Manager, Data Analytics and Insights
Cross-Industry Insights and Data Division
Australian Prudential Regulation Authority
GPO Box 9836
Sydney NSW 2001

By email: dataconsultations@apra.gov.au

Dear Sir/Madam,

Consultation on Confidentiality of Key ADI Metrics

The Australian Financial Markets Association (AFMA) welcomes the opportunity to make comment on APRA's resumed consultation and accompanying proposal to now determine as non-confidential a shorter list of key ADI metrics, to be sourced largely from the *Quarterly Authorised Deposit-taking Institution Performance Statistics* (QADIP). AFMA's comments primarily express the views of our foreign ADI membership, and should be read in conjunction with concerns expressed in our submission of 28 February 2020 in response to APRA's earlier consultation issued 5 December 2019.

AFMA's comments also respond to APRA's Proposal 2, which would add Australian-issued Negotiable Certificates of Deposit (NCDs) into its Monthly ADI Statistics (MADIS) publication. We support Proposal 2.

Data Availability and Transparency Bill

We note in passing some related concerns around the potential for the release of data collected for regulatory purposes for other unrelated purposes as proposed in the *Data Availability and Transparency Bill* currently under consultation by the Office of the National Data Commissioner. AFMA is of the view that this Bill risks undermining the legitimacy of the regulatory data collection regime. This is because the rationale for the release would no longer align with the justification for the initial collection. The Government would risk being seen to find a reason for collection of data and then using it potentially for any other reason. This would not engender trust in the system and a view that the data was being managed appropriately. We expect APRA would share these concerns.

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Further, the approach proposed in the Bill would be damaging to the regulatory system as it would force the regulated population to assume that any data provided to a regulator might end up released publicly, this would decrease the levels of openness that would be possible with regulators.

The approach in the Bill is also not aligned with the approach the Government has taken in the Consumer Data Right which gives individuals and firms rights as 'data subjects' over their data. This approach is more aligned with seeing the data collected by firms as being held in trust for the benefit of the data subject and the purposes for which it was collected. We suggest APRA should similarly see the data it holds from firms as not being APRA data but the data of the entities it regulates held in trust for regulatory purposes.

APRA's Proposals

Data is critical to both the functioning of financial services businesses and to the success of the prudential regulatory function. Data must be supplied by firms for regulatory functions to be possible. The supply to regulators is done for a prudential purpose in the case of APRA.

In relation to APRA's proposals around data release AFMA agrees that there can be entirely appropriate reasons for data to be made public by regulators. In the case of data that assists the public understand the solvency of banking institutions, the release of a certain amount of data can be appropriate. APRA's second proposal in this consultation provides another example of when data release can be appropriate – to better inform the markets that prudentially regulated entities rely on of critical market information that can assist the smooth functioning of those markets. These purposes are aligned with the regulatory function and involve a return to the regulated population.

The reasons for the proposed releases in the letter are limited to a claim that they would be 'a major step in improving the transparency of the risk profiles of ADIs and will aid in the public's understanding of these institutions'. This is an unproven claim of benefit that does not qualify as a justification. With regard to the release of profitability information of foreign ADIs, a large category of the APRA regulated population, it is not the case that the information would assist with understanding of risk profiles, as the solvency of these institutions is determined by the affairs of their parent organisations in other jurisdictions. The release of local branch data may even be misleading to the market. These entities do not maintain capital in the jurisdiction and generally do not have retail depositors.

AFMA has sought additional information directly from APRA on the justification for the release. APRA suggested it was directed at increasing 'transparency'. We would suggest that transparency in the ordinary sense relates to be open about your actions and processes and that it does not extend to the release of the confidential data of others that you have collected through regulatory powers. For example, it would not normally be considered an increase in transparency if the government released confidential records it held on private citizens. A vague desire for 'transparency' with other people's data should not qualify as a justification for the release of the confidential data of businesses.

AFMA suggests that APRA should develop a set of principles through consultation with the industry that should determine when and how it should release data publicly. This should be based on a framework consistent with the APRA Act that has a default setting of maintaining confidentiality and the integrity of the regulatory system. These principles would set out the types of reasons that would justify the release of data and what factors would inhibit the release. Prudential value to the market might be one reason, but this would not justify the release of data from firms where the data would not fit this purpose, such as with foreign ADIs.

We are concerned APRA is currently approaching the issue as if releasing more data is a good in itself. We disagree. Releasing sensitive data is often damaging to the business environment and this is why the APRA Act has an extensive protection regime for the regulatory data of businesses that APRA collects. The business environment is less attractive when competitors are provided with access to the most sensitive firm data. In a liberal economy, this type of release of private information should be avoided where possible, and where the benefits to the prudential landscape make it justified, it must be carefully calibrated and managed.

AFMA sought more information on why disempowering the intent of the Act by declaring all or some data non-confidential on receipt was appropriate. APRA indicated that other government agencies also have confidentiality clauses and actions like these need to be taken in order to release data. We submit that this is not justification. The regulatory framework was designed carefully and should not be undone without a proper process. As the framework is in legislation, we suggest a legislative process is the appropriate approach for amendment and that it is not an appropriate use of powers to render the regime ineffective through excessive use of regulatory determinations.

AFMA is concerned that the 'work-around' approach to the legislated confidentiality of data being proposed by APRA renders data available by FOI processes to the general public before its official release by APRA. The FOI process could be misused for any number of purposes. We note that as a prudent regulator APRA should avoid placing the data it collects at risk of inappropriate release particularly in ways beyond its control that might be detrimental to the market and business environment.

AFMA would like to restate the concerns of our members that their proprietary business models could be exposed by the release of the proposed data relating to profitability and LCR and that the industry is firmly of the view that this release is damaging to the business environment. APRA has not made the case that the release would be of net benefit.

In the context of foreign ADIs, different transfer pricing models could make the release of the data misleading. The commercial detriment would be disproportionate to any benefit gained given the relative scale of foreign ADI data. We note that this commercial detriment is not addressed by time delay. While older data is less sensitive, if data is released within a particular timeframe to be of interest it then would also be commercially damaging.

The release of potentially misleading data risks misinformed commentary that could unfairly damage firm reputations.

Specially the parts of concern are:

Return on assets (after tax) Financial statements & performance

ARF_330_0_C/L	PL10297
ARF_320_0, ARF_322_0 & ARF_323_0	BSAO11072
ARF_320_0	BSAO11278 & BSAO11280
ARF_720_0A/B	BSAO27545

Return on equity (after tax) Financial statements & performance

ARF_330_0_C/L	PL10297
ARF_320_0, ARF_322_0 & ARF_323_0	BSE00400
ARF_720_0A/B	BSE11775

Net interest income (\$m) Financial performance ARF_330_0_C/L PL10220

Other operating income (\$m) Financial performance ARF_330_0_C/L PL10080

Total operating income (\$m) Financial performance ARF_330_0_C/L PL10290

Operating expenses (\$m) Financial performance ARF_330_0_C/L PL10291

Net profit (loss) after tax (\$m) Financial performance ARF_330_0_C/L PL10297

Charge for bad or doubtful debts Financial performance ARF_330_0_C/L PL10084

Publishing these numbers at an entity level may have a broader reputational impact for many global entities e.g. a loss for a tier 1 US bank or an LCR <100% for an EU bank while of no relevance for the parent, is at risk of misinterpretation in the global context.

Members are also opposed to the release of the proposed level of detail in the LCR as this compromises business structure confidentiality and thereby reduces incentives for competition. Specifically the following items:

Total LCR liquid assets (\$m) Liquidity ARF_210_1A BSAO24320

Net cash outflows (\$m) Liquidity ARF_210_1A BSL20744

Liquidity coverage ratio (LCR) Liquidity ARF_210_1A BSAO24442, BSAO24443 & BSL20744

AFMA's strong preference is for foreign ADIs to have this data excluded from publication. If APRA did wish to publish this data aggregated across all foreign ADIs this would not have the same impact on individual firms.

Comments specific to the resumed consultation

AFMA holds that in addition to the aforementioned concerns the financial performance metrics, particularly revenue, expense and profitability of foreign ADI branches should be exempted from disclosure to the general public, for the following reasons:

- a) Foreign ADI branches concentrate on wholesale banking operations and their retail footprint is de minimis, representing less than 0.05% of household deposits¹ held by ADIs;
- b) Foreign ADI branches are not locally incorporated, are not required to hold regulatory capital and are not covered under the Financial Claims Scheme (FCS);
- c) Supervision is a shared responsibility with the home country prudential regulator;
- d) Foreign ADI branch business models rely on the commercial advantage that the parent bank can bring to the Australian marketplace: Disclosure of financial performance metrics will impart knowledge to competitors and so diminish this commercial advantage, and
- e) Foreign ADI branch financial performance metrics, when viewed in isolation of those of the parent foreign bank, do not provide a clear picture of the performance of the parent company, and so will not provide any clarity to the Australian public: Rather publication may serve to spread confusion amongst the general public.

APRA should not release this data unless a sound principled case is made to do so. APRA has said it prefers not to make exemptions for different types of firms, but where there is no prudential reason for the release it is incumbent upon APRA to abide by the intent of its enabling legislation and hold these records confidential.

Proposal 2

APRA's 'Proposal 2', i.e. to publish ADI's Australian-issued Negotiable Certificates of Deposit (NCDs) holdings is considered to have merit. In contrast to proposal 1 for which we are unable to see a justification there is a clear prudential benefit to the release of the Proposal 2 data. It would better inform a market that is relevant to the prudential health of regulated entities and that sets the most important national financial benchmark.

We would suggest that in addition to publishing the individual ADIs aggregate of the four data points, APRA also give consideration to publishing either individual ADI or the industry aggregate of '**Short-term negotiable certificates of deposit issued in Australia (AUD)**' given its relevance to the BBSW benchmark rate. Prime Banks NCDs outstanding are the foundation underpinning the trading volumes used in the calculation of this rate, and this data would serve the broader market as one indicator of the ongoing robustness of the benchmark rate, or conversely its susceptibility to a trigger point for a shift to an alternative benchmark. For this reason, regular updates as provided by publication of the outstanding NCDs of ADIs serves the public good, assisting investors and all participants in the OTC markets to draw their own conclusions about this benchmark rate's fundamental integrity.

¹ APRA statistics 30 August 2020

Concluding remarks

We reiterate our concern that APRA must prioritise its role as a prudential regulator including ensuring sensitive data is not released or available through FOI, above a misplaced understanding of the concept of transparency.

AFMA would welcome the opportunity to contribute to the development of a framework to guide APRA's data release approach that would ensure the protection of the integrity of the data collection process and the good functioning of the regulatory system.

Yours sincerely

A handwritten signature in black ink that reads "Damian Jeffree". The signature is written in a cursive, slightly slanted style.

Damian Jeffree

Senior Director of Policy