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Member Update

Accreditation Training - Strong Start to New Financial Markets Certificate

The new *Financial Markets Certificate* program, offered by Macquarie Business School, commenced this month with the first cohort of students at full capacity well before the enrolment period closed. This reflects significant interest from a good cross-section of AFMA member firms.

This development is consistent with the positive reaction to AFMA's collaboration with Macquarie Business School on the Certificate program. The related announcement in February was well received by AFMA members and other stakeholders, including the official sector, with ASIC's Chair, James Shipton, commenting that:

"The AFMA and Macquarie Business School partnership for accreditation in financial markets is a positive initiative to promote professionalism and to focus attention on risk management."

The Certificate program continues the traditional practical focus of AFMA's accreditation, while incorporating more advanced teaching methods and resources that will help students to more readily access, absorb and apply knowledge that is vital to their effectiveness in a financial markets role.

Accreditation is also an integral part of AFMA's program to promote and support professionalism in Australia's financial markets, providing an essential complement to the market conventions and conduct standards that we issue for the wholesale financial markets. Members have made this a strategic priority for AFMA in recent years and it in part reflects the expectation of the industry regulators.

Financial Markets Certificate

Financial Market Certificate participants must complete the three core units and one of three elective units, covering Debt market, Foreign exchange markets and Energy financial markets.

The three core units are:

Financial Markets
Concepts

Financial Markets
Transactions

Risk Management
Principles

At the end of the program, participants should be able to:

- Analyse financial market products, their relevance and how to execute transactions within a risk management framework and in accordance with relevant regulation.
- Evaluate ethical issues and develop relevant actions using the AFMA ethical decision-making framework.
- Apply skills in a specified product area, selected from debt, foreign exchange or energy.
- Interact appropriately with clients and colleagues by using effective communication skills.

To find out more about the Certificate, please contact Macquarie University's Corporate and Professional Education team at: <https://mq.edu.au/business/credentialed-programs>

Any related enquires about AFMA Accreditation program should be directed to our Accreditation Manager, Jason Sheil at jsheil@afma.com.au.

AFMA Online CPD Courses Released - Free of Charge for Accredited Individuals

AFMA has released two online short courses on Risk and Regulation that are suitable for CPD purposes.

- The Regulatory Environment for Financial Markets – 5 CPD hours
- Risk Management for Financial Markets – 5 CPD hours

For more information please see the [Brochure](#) for the courses.

The courses are available free of charge to current AFMA Accredited Individuals in recognition of their ongoing support for our Accreditation program. They are ideal for Accredited Individuals who completed the Financial Markets Program before 2018 and are seeking to update their knowledge and skills in the regulatory and risk management areas. The courses are currently not available to non-accredited individuals.

If you would like to register then please email education@afma.com.au or alternatively contact AFMA's Accreditation Manager, Jason Sheil at jsheil@afma.com.au for more information.

New Member - Barrenjoey

AFMA welcomes Barrenjoey Capital Partners Pty Limited as a new Financial Markets Member. We thank you for your support and look forward to your involvement with AFMA.

Barrenjoey^{*}

Partnering with  **BARCLAYS**

Policy Secretariat

IBOR Fallbacks Major Developments – March 2021

David Love

2021 is the key year for the transition from IBOR benchmark rates. The following important developments have already occurred in the first quarter of this year:

- ISDA Fallbacks Supplement now in effect;
- LIBOR Spread Adjustment fixed on 5 March 2021;
- RBA Consultation on draft repo eligibility criteria;
- AFMA IBOR Market Responses Group Recommendation to follow ISDA methodology for FRN fallbacks and conform to RBA criteria; and
- AFMA IBOR FRN Fallbacks Working Group established.

ISDA Fallbacks Supplement now in effect

The International Swaps and Derivatives Association (ISDA) IBOR Fallbacks Supplement to the 2006 ISDA Definitions and the ISDA 2020 IBOR Fallbacks Protocol took effect on 25 January 2021. New contracts that reference ISDA's standard interest rate definitions executed from January 25 include new fallbacks linked to key Interbank Offered Rates (IBORs). Legacy non-cleared derivative contracts where both counterparties bilaterally agreed to include the definitions or have adhered to the ISDA 2020 IBOR Fallbacks Protocol will include the new fallbacks.

Fallback Spread Adjustment

Spread adjustment is an important part of the overall fallback rate, and reflects a portion of the structural differences between interbank offered rates (IBORs) and the Alternative Reference Rates (ARRs) used as a basis for the fallbacks – IBORs incorporate a credit risk premium and other factors.

A spread adjustment is needed to account for the fact that IBORs incorporate a bank credit spread and liquidity premium whereas the ARR does not. ISDA consulted globally with the industry to determine a market consensus on the methodology used to calculate the adjustment spread to address the term and credit differences between LIBOR and the ARR and other factors such as liquidity and fluctuations in supply and demand. These consultations established that market participants prefer to use the compounded setting in arrears rate to address differences in tenor between IBORs and overnight ARRs, and the historical median spread over a five-year lookback period approach.

Under the ISDA Supplement, a spread adjustment is applied based on the "compounded setting in arrears rate" approach, where the relevant ARR is observed over the relevant IBOR term and compounded daily during a two-day shifted period. The spread adjustment is the "historical median approach" based on the median spot spread between the IBOR and the adjusted ARR

Risk-Free Rates in brief

It was the Financial Stability Board (FSB) in 2014 that set in motion the reform to major interest rate benchmarks by transitioning them to near risk-free rates (RFRs) based on more active and liquid overnight lending markets, instead of IBORs where appropriate. It was left up to national authorities to nominate the RFR for their currency. This led to the RBA Cash Rate aka AONIA being nominated for AUD transactions by the RBA, being equivalent to rates such as SONIA in the United Kingdom and SOFR in the United States.

RFRs are typically backward-looking overnight rates based on actual transactions and reflect the average of the interest rates that certain financial institutions pay to borrow overnight on an unsecured basis from wholesale market participants for unsecured RFRs.

RFRs do not include or imply any credit or term premium of the type seen in LIBOR. In documents such as the ISDA Fallbacks Supplement the term Alternative Reference Rate (ARR) is used as the defined term for RFRs.

calculated over a five-year look-back period prior to the relevant announcement. The fallback rate is equal to the term-adjusted ARR plus the spread adjustment.

LIBOR Spread Adjustment fixed on 5 March 2021

Upon an announcement of permanent or pre-cessation, the spread adjustment under the ISDA Fallbacks for LIBOR becomes fixed. On 5 March 2020 the UK Financial Conduct Authority (FCA) issued an [announcement](#) regarding the future cessation or loss of representativeness of the 35 LIBOR benchmark settings currently published by ICE Benchmark Administration (IBA), an authorised administrator, regulated and supervised by the FCA. As a result, ISDA announced that 5 March 2021 is the 'Spread Adjustment Fixing Date' for all LIBOR Tenors across all LIBOR currencies.¹

From 5 March 2021 the 'Fallback Rate' calculated for each 'Rate Record Day' uses the fixed Spread Adjustment provided by Bloomberg. For example, the LIBOR USD 3 months rate fixed spread adjustment is 0.26161%. All Fallback Rates calculated for a Record Day prior to 5 March 2021 use the Spread Adjustment previously published by Bloomberg for the applicable Rate Record Date.

Details about the spread adjustment, including definitions and calculation methodologies can be found in the ISDA [LIBOR Fallback Rate Adjustments Rule Book](#).

Bloomberg has been publishing the LIBOR fallback rates in accordance with ISDA's agreed methodology, starting from 21 July 2020. The real time data can be accessed via FBAK <GO> on Bloomberg Terminals, and is publicly available, with a delay, on the Bloomberg website.

RBA Consultation on Fallbacks

On 18 March RBA Assistant Governor Christopher Kent gave an [address](#) to ISDA Benchmark Strategies Forum Asia Pacific, emphasising that orderly transition away from LIBOR is important for the smooth functioning of financial markets and the stability of the financial system.

RBA recently conducted a consultation on draft repo eligibility criteria, which will require fallbacks for new BBSW-linked securities issued on or after 1 July 2022. Securities issued before 1 July 2022 will be grandfathered, except for internal asset-backed securities (self-securitisations).

All floating rate notes (FRNs) and asset-backed securities issued on or after 1 July 2022, where BBSW is the relevant interest rate for the purposes of calculating coupons, must meet the following criteria in order to be eligible for purchase by the Reserve Bank under repo:

- Include at least one 'robust' and 'reasonable and fair' fallback for BBSW in the event that it permanently ceases to exist.
- A 'robust' fallback is one that clearly specifies the method for the calculation of interest that would apply for the purposes of calculating coupon payments. The fallback must also specify a clear and unambiguous trigger event after which the fallback would apply. Acceptable fallbacks would include those that reference AONIA (including AONIA plus or minus a fixed spread). Fallbacks that reference another benchmark interest rate may also be accepted at the Reserve Bank's discretion.
- A 'reasonable and fair' fallback is one that reasonably mitigates the impact on the economic value of the security in the event the fallback is invoked. A fixed-rate fallback would not be considered reasonable and fair for the purposes of these criteria.

¹ For those unfamiliar, the announcement does **not** cover BBSW and AUD.

- The robust and reasonable and fair fallback(s) must sit above any other fallbacks that rely on collecting dealer quotes, or on discretion – whether by the issuer, the calculation agent, or any other related or third party – in the fallback waterfall.

All self-securitisations, regardless of the date of issue, will also be required to include at least one robust and reasonable and fair fallback in order to be eligible.

FRNs and other asset-backed securities issued before 1 July 2022 will not be subject to this requirement for eligibility. Nevertheless, the inclusion of robust and reasonable and fair fallbacks for such securities, depending on their length of time to maturity, is recommended as a matter of prudent risk management.

The criteria do not specify the fallback language to be included in security documentation as RBA expects this to be developed by industry participants. AFMA responded to the consultation supporting the criteria and the encouragement to the market to develop and incorporate robust fallback language for securities in general.

FRN Fallback Language Development

Robust fallback language is required in financial contracts to enable a smooth transition in the event of a benchmark cessation event.

Fallback language comprises three key components: fallback trigger event, benchmark replacement and benchmark replacement adjustment. In addition to the fallback language, firms need to consider other key contractual features that may impact the IBOR transition, including maturity date, firm's role in the contract, benchmark use, amendment and consent provision, governing law and jurisdiction and force majeure provisions.

The IBOR Transformation Australian Working Group (ITAWG) meeting on 4 February 2021 considered the consequences of the adoption of the ISDA Protocol and the release of the RBA consultation. They decided that as a national priority there is a need for fallback language for FRNs to be agreed by the market.

AFMA IBOR Market Responses Group Recommendation

The AFMA IBOR Market Responses Group met on 9 February. After briefing on the state of play on IBOR transition issues and developments, and the direction of the ITAWG, the Group focused its deliberation on the fallback for FRNs.

An important consideration that weighed on their arriving at the recommendation was the need to use the officially identified RFRs and an objectively set spread adjustment, which would meet conduct expectations set by ASIC - particularly with regard to fairness by having a generally accepted standard. Other factors cited were global consistency and alignment with fallbacks for related hedges because of possible basis risk.

The Group recommended that fallbacks for securities such as FRNs should follow the ISDA Protocol methodology and satisfy the RBA fallback criteria.

IBOR FRN Fallbacks WG

In response to the AFMA IBOR Market Responses Group recommendation, the AFMA DCM Legal Committee set up a further working group to develop template FRN fallback language. The IBOR FRN Fallbacks working group had its first meeting on 25 March 2021.

AFMA has established liaison with parallel work streams in the Asia Pacific Loan Market Association (APLMA) and the Australian Securitisation Forum (ASF) with consistency across product categories being an important object. When draft template FRN fallback language is created it will be socialised across the market. Such template language will be only an advisory guide to assist the market and it will be up to individual issuers to determine for themselves what fallback language they use.

International IBOR Updates

<p>Global</p>	<p>On 5 March ICE Benchmark Administration (IBA) announced intentions to cease the publication of panel-based LIBOR immediately after end-2021 (except for certain US dollar LIBOR settings).</p> <p>UK Financial Conduct Authority (FCA) has announced that it will consult on the use of the proposed powers under the UK Financial Services Bill to require IBA to publish the 1-month, 3-month and 6-month JPY LIBOR settings on a synthetic basis (synthetic LIBOR) for one additional year after end-2021.</p> <p>ISDA produced guidance covering how the terms of the ISDA 2020 IBOR Fallbacks Protocol and the IBOR Fallbacks Supplement apply in relation to euro LIBOR, sterling LIBOR, Swiss franc LIBOR, US dollar LIBOR, yen LIBOR, the Singapore dollar Swap Offer Rate and the Thai Baht Interest Rate Fixing.</p> <p>The Global Financial Markets Association (GFMA) published a guide on 31 March outlining the various parts and players in the IBOR transition process.</p>
<p>UK & Europe</p>	<p>Following the February meeting of the Bank of England SONIA stakeholder advisory group, the FSMB has produced a draft standard on the use of Term SONIA reference rates for consultation. The Standard sets out certain expected behaviours of markets participants when using or issuing Term SONIA products in light of the reduced systemic risks associated with overnight risk-free rates.</p> <p>The Working Group on Sterling Risk Free Reference Rates (RFRWG) has published the Path to Ending New Use of GBP LIBOR-linked derivatives which offers guidance related to GBP LIBOR dealings after the end of Q1 2021.</p> <p>On 11 January 2021, Refinitiv Benchmark Services (UK) Limited and the ICE Benchmark Administration (IBA) began publishing forward-looking SONIA term risk-free rates. The published Term SONIA is available for one, three, six, and 12-month tenors.</p>
<p>Asia</p>	<p>The Steering Committee for Swap Offered Rate (SOR) & Singapore Interbank Offered Rate (SIBOR) Transition to Singapore Overnight Rate Average (SORA) (SC-STO) published a document which outlines steps and activities in support of the transition to SORA. Key steps outlined include broadening and deepening liquidity in SORA markets, early cessation of new SOR and SIBOR contracts, and supporting active transition of SOR linked legacy contracts.</p> <p>The Steering Committee on Commercial Banks' Preparedness on LIBOR Discontinuation and the Bank of Thailand (BOT) set out transition milestones for financial institutions to move away from the Thai Baht Interest Rate Fixing (THBFIX) and to expedite the adoption of Thai Overnight Repurchase Rate (THOR), the Thai Baht risk free rate. The milestones indicate that financial institutions should cease offering new loans, bonds and structured products referencing THBFIX with maturity after 2021 by 1 July 2021, and that the publication of THBFIX is targeted to cease by end-2024.</p>
<p>US & Canada</p>	<p>The United States Federal Reserve Board, Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency has previously issued supervisory guidance encouraging banks to cease entering into new contracts that use USD LIBOR as a reference rate as soon as practicable and in any event by 31 December 2021. New contracts entered into before 31 December 2021 should either utilise a reference rate other than LIBOR or have robust fallback language that includes a clearly-defined alternative reference rate after LIBOR's discontinuation.</p> <p>The New York Fiscal Year 2022 Executive Budget includes the Alternative Reference Rates Committee (ARRC)'s proposed New York LIBOR legislation. The bill, if passed, would allow contracts where the contract language is silent or the contract's fallback provisions recommend the use of LIBOR, to use replacement rates as recommended by the Federal Reserve, the New York Fed, or the ARRC.</p> <p>ARRC has published a white paper that contains a formula to calculate a fallback from the USD LIBOR ICE Swap Rate to a spread-adjusted SOFR Swap Rate.</p> <p>Refinitiv Benchmark Services (UK) Limited, the administrator for Canadian Dollar Offered Rate (CDOR) announced that the calculation and publication of the 6-month and 12-month CDOR tenors will cease on 17 May 2021 with the final publication for the 6-month and 12-month CDOR tenors on 14 May 2021. In response, ISDA provided guidance on how to manage over-the-counter derivatives that may be affected by the cessation of the publication of 6-month and 12-month CDOR.</p>

Amendments to Offshore Banking Unit Regime

Rob Colquhoun

On 12 March the Government [announced](#) plans to effectively abolish the Offshore Banking Unit (OBU) Regime, with enabling legislation introduced into Parliament on 17 March. Broadly, the effect of the legislation is to amend the tax rate applicable to eligible OB-activities from 10% to 30% from the end of the 2022-23 income year, with the interest withholding tax exemption that currently applies ceasing from 1 January 2024.

AFMA issued a [Media Release](#) in response to the Treasurer's announcement, acknowledging that the Government needed to act decisively given the likely determination by the OECD Forum of the OBU as a harmful tax practice and the consequent approach adopted by the EU to securitisation regulation. The likely conclusion of the OECD Forum is disappointing given the flaws in the framework through which the OBU regime was assessed, particularly given the preferential tax outcomes that are offered by competitor jurisdictions for mobile financial centre business.

The two-year transition period represents a key opportunity for Australia to replace the OBU regime with tax settings that both allow Australia to its considerable advantages to attract and retain financial centre business and are acceptable to the OECD. The removal of the OBU interest withholding tax concession should be the catalyst for more enduring withholding tax reform, consistent with the recommendations of the Henry Tax Review and the Johnson Report.

AFMA will actively engage with Government and Treasury regarding alternate settings – please contact [Rob Colquhoun](#) if you would like to discuss.

Global Foreign Exchange Committee's Review of the FX Global Code

Mark McCarthy

The [FX Global Code](#) (the Code) was launched in May 2017 and provides a common set of guidelines to promote the integrity and effective functioning of the wholesale foreign exchange market. The Code has been welcomed by the foreign exchange market as evidenced by the more than one thousand [Statements of Commitment](#) that have been signed by market participants to demonstrate their adherence to the Code and published to the Global Index of Public Registers maintained by the Global Foreign Exchange Committee (GFXC).

The Code was developed through the collaboration of local foreign exchange committees in sixteen global jurisdictions. AFMA was a founding member of the RBA's Australian Foreign Exchange Committee (AFXC) and contributed to the development and implementation of the Code by establishing one of the first Public Registers in the world. The initial market participants that submitted Statements of Commitment to AFMA's register were among the first to be published to the Global Index.

When the Code was launched, the GFXC committed to undertaking a review of the Code every three years to ensure that its guidance remained appropriate and continued to contribute to an effectively functioning market. When announcing the inaugural review ahead of the third anniversary, the chair of the GFXC and Reserve Bank of Australia Deputy Governor Guy Debelle noted that while "wide-ranging feedback" from market participants confirmed that the Code remained fit for purpose, there were a few key areas where closer review was warranted as the FX market is constantly evolving.

Increasing adherence to the Code

One such area of focus is getting greater adherence and commitment to the Code from buy side market participants. Only a small fraction of all Statements of Commitment have been signed by non-sell-side firms despite local FX committees in each jurisdiction reaching out to buy-side firms to encourage them to sign. Deputy Governor Debelle noted that while more than half of the top thirty global asset managers had signed a statement, there is still scope for further progress. A number of non-sell-side institutions have published statements to AFMA's register including QANTAS, Australian Super, AMP Capital Investors, Q Super, QIC and Vic Super.

Several reasons were cited to account for the reluctance of buy-side firms to submit a Statement of Commitment, including the perception that many of the Code's fifty-five principles are only relevant to sell-side market participants. In addition, the buy-side has not had the same incentive to sign up to the Code because the sell-side faced pressure from regulators and their customers to demonstrate their commitment. Peer pressure from other participants also encouraged sell-side firms to sign a Statement of Commitment and signing a statement was not a priority for many buy-side firms given other important issues they were dealing with.

Consideration was given to developing a simpler version of the Code for buy-side market participants to encourage more commitment but the GFXC's firm conclusion was that a single Code remains the best way of ensuring there is a common market standard that constitutes good practice. Additional guidance will however be developed to assist firms in identifying the principles contained in the Code that are the most appropriate for them given the nature of their practices.

Aspects of the Code under review

The GFXC is also looking to provide more guidance around "Last Look" and pre-hedging. Last look is the practice where a liquidity provider provides a quote rather than a firm price into a trading system or execution venue and may choose to accept or reject the trade if a counterparty decides to accept the quote. Last look and pre-hedging trading practices are challenging to understand and evaluate given the different sets of disclosures that can be produced by a single entity and a lack of consistency in how they are provided.

The GFXC is looking to increase transparency for these practices through better disclosures to provide greater clarity about how these practices are used and what considerations market participants should take into account. Solutions will be developed that will allow participants to compare information across different disclosure documents and facilitate access to disclosure information.

The rapid adoption of algorithmic trading in FX markets has presented its own challenges. Algorithmic trading now accounts for up to 20% of spot trading and while algos can improve market functioning they can also increase risk. It is important for users of algo platforms to understand how these platforms operate and whether the disclosures made by the providers are adequate to ensure that users have enough information to be able to make useful comparisons between providers.

Another key issue in the FX market has been settlement risk, given the increasing number of trades being settled without "Payment vs Payment" (PvP) protection. The reasons for the increase in non PvP trading are not clear but can be partly explained by the rise in trading of non-CLS currencies. CLS settles eighteen currencies and market participants that choose CLS to settle their FX transactions mitigate settlement risk through the operation of CLS's PvP settlement service. Another reason for the increase in non PvP protection could be greater rates of internalisation by market-makers which would mean that settlement risk is being mitigated without having to use PvP services. Settlement risk is a significant risk which can lead to other risks such as credit risk. As part of the current review of the Code, the GFXC will be looking to emphasise the need for market participants to sufficiently monitor and manage their settlement risks.

The effort to create the Global Code was a collaborative one and developed by a broad cross section of the foreign exchange market. AFMA will continue to support and promote the Code through our representation on the AFXC and by maintaining AFMA's Public Register of Statements of Commitment. We encourage all FX market participants from buy-side and sell-side institutions to declare their recognition of the Code and commitment to adopting the good practices set out in the Code by submitting a Statement of Commitment. More information about how to lodge a Statement of Commitment can be found at:

<https://fxglobalcoderegister.afma.com.au>

The GFXC does not anticipate any significant changes to the Code given the positive feedback from the market that the Code is largely fit for purpose. The Code remains an important document that provides market participants with appropriate guidance, but it is equally important that the Code is reviewed regularly to ensure that it remains relevant in an evolving market. The GFXC is aiming to complete the first review of the FX Global Code by mid-2021.

Please contact Mark McCarthy if you have any enquiries at: nmccarthy@afma.com.au

Modernising Business Registers (MBR) Program – Director Identification Number Requirement

Natalie Thompson

In the 2018-19 Budget, the Australian Government announced plans to modernise the Australian Business Register (ABR) and the ASIC business registers by unifying them onto a single platform administered by the Commonwealth Registrar (Registrar) under legislation and as a separate statutory function of the ATO. The package of legislation assented to on June 22 2020 sets up a new consolidated Commonwealth Business Registry regime and a new director identification number (Director ID) requirement through the establishment of the [Commonwealth Registers Act](#) and various amendments to existing laws.

The introduction of a Director ID aims to prevent the appointment of fictitious directors and facilitate traceability of their profile and relationships with companies over time. The Director ID requirement² will require all company directors to register (with proof of identity) to get a unique, permanent identifier. The Registrar will have the power to exempt a person or class of persons from the requirement to obtain a Director ID.

Under the regime, persons seeking to be appointed directors must apply for a Director ID prior to their appointment. An individual may not apply for multiple Director IDs or misrepresent a Director ID to a government or registered body, with the consequence for failure to comply with these obligations a maximum penalty of 12 months imprisonment (or 100 penalty units, equivalent to \$21,000).

Failure to hold a Director ID gives rise to a strict liability offence and maximum penalty of up to \$12,600 under the *Corporations Act*. An eligible officer will bear the evidential burden of establishing that they have made an application for a Director ID which has not been processed, or that they have been appointed without their knowledge.

The obligation for existing directors to obtain a Director ID will come into force once the Minister species the transitional application period. Officers newly appointed within the first 12 months of the regime will have a further 28 days to make an application.

Data Standard and Disclosure Framework Consultation

Treasury is [consulting](#) on a new data standard and disclosure framework which support the commencement of the Director ID regime, with a further consultation on draft legislative instruments relating to transitional application periods for directors to apply for a Director ID expected in coming weeks.

The standard prescribes the information required to apply for a Director ID under the *Corporations Act*, including how the information is to be provided, used, and stored.

From the content of the standard and explanatory statement it appears that key issues were not considered in the design of the regime that require clarification for AFMA members. Key concerns centre around the application of the regime to foreign financial services firms operating in Australia through a branch without a locally incorporated subsidiary. Under the regime, directors of registered foreign companies are expected to apply for a Director ID while being subject to their own regulatory regimes. We note that the administrative burden placed on these directors is disproportionate given that these individuals are unlikely to be the expected target of the regime with respect to fraud deterrence and eradication of illegal phoenixing activity.

The Data Standard does not sufficiently explain the approach that foreign directors are expected to take with respect to making applications with foreign identity documents, nor does it provide a process for approving local agents to make applications on behalf of directors.

AFMA is making a submission based on feedback from members prior to the 1 April due date.

² Introduced in Schedule 2 of the [Treasury Laws Amendment \(Registries Modernisation and Other Measures\) Act 2020](#).

UPCOMING SUBMISSIONS

Consultation	Description	Contact	Deadline
APRA Consultation on Revisions to ADI Capital Framework	<p>APRA is proposing to revise the ADI Capital Framework through changes to:</p> <ul style="list-style-type: none"> Prudential Standard APS 110 Capital Adequacy; Prudential Standard APS 112 Capital Adequacy: Standardised Approach to Credit Risk; and Prudential Standard APS 113 Capital Adequacy: Internal Ratings-based Approach to Credit Risk. <p>AFMA is making a submission and will seek concessions on the credit conversion factor (CCF) applicable to retail margin lending activities.</p>	Murray Regan	1 April
Treasury Consultation on Draft Director Identification Number Data Standard	<p>Treasury is consulting on a Draft Director Identification Number Data Standard in relation to the introduction of a Director Identification Number regime that aims to prevent the appointment of fictitious directors and facilitate traceability of their profile and relationships with companies over time. AFMA is making a submission to outline issues for directors of registered foreign companies that were not considered in the design of the regime that require clarification or modification.</p>	David Love	1 April

RECENT SUBMISSIONS

ASIC Review of Derivative Transaction Rules (Reporting) 2013

- **Contact:** [David Love](#)

ASIC is conducting a review of the ASIC Derivative Transaction Rules (Reporting) 2013 through a two-stage consultation in 2021. The first round of consultation through [CP 334](#) set out initial proposals to harmonise the rules to international standards and remove outdated provisions to ensure the rules are fit for purpose.

ASIC Margin Lending and Instalment Warrants Relief

- **Contact:** [David Love](#)

AFMA sent a submission on 5 March to seek an extension to the relief provided in the ASIC Class Order *Margin lending relief for ASX-traded instalment warrants* (CO 10/1034) due to sunset on 1 April. The purpose of CO 10/1034 is to exempt certain types of instalment warrants from the additional obligations imposed on margin lenders under Part 7.8 of the *Corporations Act 2001* (Cth) (Corporations Act). The relief was extended by the release of *ASIC Corporations (Margin Lending Relief for Exchange-Traded Instalment Warrants) Instrument 2021/194* on 24 March. The Instrument applies the relief to certain instalment warrants that are admitted to quotation on a licensed market operated by an Australian domestic market licensee.

ASIC - AFMA comments on REP 668

- **Contact:** [David Love](#)

AFMA sent a letter to ASIC on March 17 outlining member observations on particular aspects of Report 668 which outlines ASIC expectations around best practices for allocations in debt capital markets. Main observations related to matters concerning the role of compliance, joint lead manager (JLM) orders and inflated bids.

ASX Netting and Settlement Flows

- **Contact:** [Damian Jeffree](#)

AFMA responded to the ASX consultation paper on proposed changes to the CHES replacement project functionality. AFMA raised concerns that the reduced functionality increased risks and costs for clearing brokers. Our submission noted that the industry was interested to understand alternatives to the proposed approach and suggested that an external risk

analysis of the impact of the proposed changes on both the exchange and broker systems should be undertaken before consideration could be given to proceeding with the proposed changes.

RBA Consultation on Draft Repo Eligibility Criteria

- **Contact:** [David Love](#)

AFMA sent a submission to the RBA on 12 March in response to a [consultation](#) on the plan to publish new eligibility criteria in the first half of 2021 which will require fallbacks for new BBSW-linked securities issued on or after 1 July 2022. AFMA made a submission after reviewing the draft criteria proposed for fallback provisions, noting that member feedback indicated general support for the Bank's planned course.

AUSTRAC Phase 1.5 Rules

- **Contact:** [Rob Colquhoun](#)

AFMA made a detailed submission on the proposed Rules to support the "Phase 1.5" amendments to the AML/CTF Act. The proposed Rules relevant to the AFMA membership cover changes to correspondent banking, reliance (both within a corporate group and also with unrelated reporting entities) and more efficient sharing of information to disrupt financial crime. Broadly the proposed amendments have support from AFMA members.

Our submission focussed on areas to align the proposed Australian requirements with other jurisdictions to mitigate regulatory fragmentation, ensuring sufficient lead times to allow for members to update systems and processes and reducing proscription around certain matters, instead allowing reporting entities to adopt a risk-based approach.

The Phase 1.5 amendments commence on 3 June 2021 and it will be important for the final Rules to be in place well before then. AFMA will continue to work with AUSTRAC as the proposed Rules are refined.

COMMITTEES

Members that do not have representatives on a particular committee may suggest items for inclusion on meeting agendas by contacting the [AFMA Secretariat](#).

Note - Committees generally convened via virtual conferencing.

Market Committees

- The **Swaps Committee** met on Friday 5 February where the members discussed appropriate benchmark rates in cross currency swaps post LIBOR. Given cross currency swaps can no longer be priced with the Bills/LIBOR basis and with the US near risk free rate of SOFR replacing USD LIBOR, swaps traders will need to consider a basis market with a forward-looking benchmark rate (BBSW) against a backward-looking benchmark rate (SOFR). Conceptually, pricing an AONIA/SOFR may not be difficult, but operationally, market participants' systems may need to be modified to implement trading in the new swaps and this could take some time. The committee queried when the ASX was looking to introduce half tick increments for the front two bank bill futures contracts. The ASX is considering the implementation of the half tick now that cash settlement of bank bill futures has been implemented but timing remains uncertain.
- The **Inflation Products Committee** met on Tuesday 9 February where the AOFM gave an update on Treasury Indexed Bond issuance. The AOFM has issued \$1.35 billion and total issuance of \$2-2.5 billion continues to be the expectation for FY 2021. The committee had previously noted that Markitwire does not support booking ZCS with less than a year to maturity which often requires traders having to book trades manually into their systems. Members are reviewing methods to input such swaps. Members noted that market conditions remain poor but there has been an uptick in interest given a slight increase in global inflation expectations.

- The **Repo Committee** met on Wednesday 10 February and discussed the apparent reluctance of some market participants to accept semis as GC repo, notwithstanding the active and liquid market in the underlying stock. Potential causes included concentration limits, HQLA treatment and semis credit ratings, and served to introduce settlement frictions. The committee re-convened on 9 March as settlement frictions had become more pronounced, mainly the result of the magnitude of the RBA bond purchase program and its specificity to stock lines widely sought by the marketplace. RBA clarified the procedure by which market participants could borrow stock lines, AFMA clarifying that under the repo conventions, market participants were entitled to claim use of funds at the going market rate. Settlement frictions are now reported to have eased.
- The **Debt Capital Markets Committee** met on Friday 12 February. Representatives from Bloomberg contacted AFMA to advise they were considering establishing a central repository for DCM documents. Bloomberg was invited to present ideas and advised members that they have held discussions with several buy-side market participants and consulted with some sell-side market participants who are members of the DCM committee. The initiative is being implemented through the global data team and is similar to other Bloomberg repository initiatives in other offshore centres. Representatives of the IBOR Transformation Working Group (ITWG) attended as guests, noting current priorities around developing fallback language for FRNs and BBSY. Members noted that the RBA has proposed that a fallback “waterfall” be included in documentation that recommends adopting the relevant near-risk free rate (plus spreads for credit, term, and liquidity) in the event the prevailing benchmark fails. The latest draft of the DCM guidelines will be sent to the DCM Legal Committee to review in light of ASIC’s REP 668 and, when approved, should be released in the near future.
- The **NTI Committee** met on Monday 15 February and discussed the increments in the Bank Bill contract, currently 1 tick (0.01%) and prospects for greater granularity given the prevailing low interest rate environment. There was consensus supporting this, it being suggested that 0.005% increments may be warranted. The committee also discussed the potential to reduce the minimum NBBO price quotation to 0.005 in alignment with any change to the Bank Bill Futures. ATVs were asked to review changes required to support pricing to 3 decimal places on screen.
- The **Debt Securities Committee** met on Tuesday 16 February where the ASX provided a trading update on the new 5yr Bond Futures contract. The contract was launched on 30 November 2020 and is starting to gain traction after a quiet period over Christmas. The AOFM advised that it is comfortably ahead of pro-rata on its 20-21 funding program with more than 70 per cent of planned term issuance completed. As per the market update released in mid-January, issuance via tender will be at a rate of \$2-3 billion in most weeks while a new Treasury Bond line maturing in November 2032 will be launched by syndication sometime before financial year end. Members of the committee were unaware of issues in the Repo market regarding the acceptance of semi-government securities in GC repo transactions, committing to raise the issue internally at their organisations and provide feedback at the next meeting. Members agreed that the new practice adopted by the state borrowing authorities to provide more frequent information about the outstanding balances of existing bonds had been beneficial to the market. However, institutional investors are still troubled by reverse enquiry of large transactions and whether these transactions should be included in the index.
- The **Cash Committee** met on Wednesday 17 February, with discussion focussed on the current highly elevated level of Exchange Settlement Account balances, the impact of this on bilateral dealings underpinning the benchmark cash rate, and on RBA’s use of expert judgement when setting the rate. Market quality remains good.
- The **Electricity Committee** met on Tuesday 23 February and discussed a range of issues, with a particular focus on upcoming regulatory changes in the National Electricity Market by the ESB and NSW government that will have implications for contract markets, OTC transparency developments, the availability of 5-minute caps on the ASX and the launch of FEX Global in March 2021.
- The **Environmental Products Committee** met on Tuesday 2 March, with members discussing concerns around fragmented communication by scheme administrators and proposed amendments to the market documentation. Convention and Spot Contract amendments were circulated for final approval.

- The **Interest Rate Options Committee** met on Wednesday 3 March, members noting recent volatility in yields and the impact this has had on market quotation / transparency and on liquidity across swaption and cap/floor product.

Governance Committees

- The **Professionalism Committee** met on Wednesday 10 February. Key areas of discussion were developments in state government bond market transparency, plans for a post-COVID-19 review, the finalisation of AFMA's consequence management standard, a review of AFMA's code of conduct and the need for harmonisation of international industry standards to avoid further fragmentation.
- The **Market Governance Committee** met on 19 February, discussing current challenges facing financial markets. AFMA will consider undertaking a review of the effectiveness of the financial markets during the pandemic and make observations on measures that may improve their future operation.
- The **Operations Committee** met on Thursday 4 March where members received an update from ASX on aspects of Market Repo settlement and messaging. Key discussion topics covered were the Payments System Review, the ASX consultation on changes to Netting and Settlement Workflow, APRA-announced CPS 234 compliance audits, PDDO, AFMA's correspondence with ASIC on the 2020 ASX outage and ASX Guidance Note 10.

Business Line Committees

- The **Retail Committee** met on Monday 22 February where members discussed APRA Margin lending changes, ASX Trust monies consultation and ASX E-Statements. Members also discussed investor education implications based on the social media led ramping for GameStop. Members discussed the FASEA wind-up and related policy concerns, ASX consultation on changes to Netting and Settlement Workflow and their views were sought by AFMA on PDDO guidance.
- The **Equities Steering Committee** met on Thursday 11 March, where nominations were invited for a new Committee Chair. Members discussed ASIC activities around buy-backs and noted that clearer guidance from ASIC on what constitutes "on-market" would be beneficial. Other matters discussed included equity swaps/give ups, the ASIFMA IOI Charter, CHES replacement and the 2020 ASX Outage.
- The **Futures Steering Committee** met on Tuesday 16 March and discussed matters including:
 - The recent 250% increase in ASIC cost recovery charges for futures exchange participants.
 - Overnight margin processes.
 - Developments in the 5-year bond contract.
 - MCM functionality, EFP functionality, and other matters.

Policy Committees

- The **Information Security Committee** met on Wednesday 3 February where members discussed APRA-announced tripartite audits for assessing firms' compliance to CPS 234. Members also discussed AFMA's submission to Senate select committee on Fintech and Regtech, the CORIE Framework, FS-ISAC engagement and the ASIC/RBNZ cyber breaches.
- The **Documentation Committee** met on Monday 8 February. Key topics covered were updates to the ISDA legal opinions on the OTC guide, plans for ISDA fallback definitions and the need to update the FX Master Agreement.
- The **COO Forum** met on Thursday 11 February, discussing a range of items on AFMA's policy agenda including executive accountability (APRA CPS 511 and the Financial Accountability Regime), Foreign Financial Service Provider licensing, financial system development, IBOR transition and OTC derivative reporting.
- The **Equities Compliance Committee** met on Monday 15 February, with members discussing an ASX consultation on amendments to the ASX Clear Operating Rules and Procedures and Guidance Note 12 (Trust and Client Segregated Accounts) and ASIC communications with industry around the ASX outage in November 2020.

- The **Regulatory Reporting Committee** met on Tuesday 16 February, noting AFMA's response and recommendations to APRA's consultation on ARS 220 Credit Exposures and Provisions.
- The **Tax Committee** met on Thursday 18 February. Members discussed a range of taxation related matters including justified trust reviews, ATO engagement on COVID-19 guidance, bail-in issues and LIBOR transformation, and updates related to OBU and the Senate Committee Inquiry into Fintech/Regtech.
- The **Markets IT Committee** met on Friday 26 February where AFMA noted its engagement with ASIC over the ASX outage in 2020. Members also discussed the ASX consultation on changes to Netting and Settlement Workflow and its implications, APRA audits for CPS 234 compliance and noted upcoming APRA consultation on a new Data Management Standard based on CPG 235.
- The **Anti-Monday Laundering (AML) Committee** met on Monday 1 March discussing the AUSTRAC consultation on the draft Phase 1.5 Rules and commencement of related reforms, timing of a Phase 2 consultation paper and a range of industry issues.
- The **FICC Markets Compliance Committee** met on Tuesday 2 March to discuss DCM allocations and the AFMA DCM Guidelines, the ASIC consultation on OTC Derivative Rules, IBOR transition.
- The **Equity COO Committee** met on Wednesday 3 March and welcomed Barrenjoey as a member. Items discussed included the ASIFMA IOI Charter, product design and distribution obligations, CHES replacement, ASIC expectations stemming from the ASX outage and ASX Guidance Note 10.
- The **ECM Legal Committee** met on Thursday 4 March. Key topics covered were the potential for a scheme similar to 10b-5-1 plans to be introduced (as discussed in the Senate Select Committee Issues Paper on FinTech and RegTech, implementation of Product Design and Distribution Obligations and potential amendments to ECM terms and JLM interest joint activity wording.
- The **Futures Compliance Committee** met on Monday 8 March, with members discussing the need for clarification from ASX on best practices for Exchange for Physical (EFP) transaction reporting and some improvements to trade portal functions. A letter will be sent to ASX in due course.
- The **DCM Legal Committee** met on Tuesday 9 March. Members discussed the letter to ASIC in response to REP 668, a revised draft of the DCM Guidelines, JLM joint activity email wording and Bloomberg progress on a deal document repository.
- The **Energy Regulatory Committee** met on Wednesday 10 March, with discussion focused on a recent meeting with the Energy Security Board and plans for further engagement as the Post 2025 project progresses, as well as engagement with the NSW government on the Electricity Infrastructure Roadmap to clarify details of key aspects that may have implications for contract markets.
- The **ESG Risk Forum** met for its inaugural meeting on Thursday 18 March where members discussed potential risk areas that need to be understood and addressed under sustainable finance. AFMA noted its Board's focus on ensuring legal and litigation risks emanating from insufficiently defined ESG factors and members echoed related concerns. Other concerns discussed included Taxonomy development, ESG Ratings, scenario assessments and accounting standards.
- The **Heads of Compliance Committee** met on Wednesday 24 March. The Committee welcomed Mersina Mouhtariss as the new Committee Chair and discussed ASIC's new Immunity Policy and engagement with ASIC about the ASX Outage. Key items on the agenda were upcoming deadlines for FFSL compliance and the introduction of the Director ID regime, for which further engagement with ASIC is needed.
- The **Data Management Committee** (previously Data Governance) met on Monday 29 March where AFMA partner member Refinitiv provided Australian anecdotes from their survey into the role of the data Scientist and use of AI and ML in financial services industry. AFMA also noted its collaboration with the Enterprise Data Management Council (EDM Council) to conduct a benchmarking exercise for the industry to assess the landscape of data management capabilities within financial institutions. Members also discussed the upcoming industry-co-design process for the rules around critical infrastructure reforms and the expansion of the CDR.

Markets Update

DOCUMENTATION

Market Conventions

Any questions regarding convention amendments generally should be directed to [Murray Regan](#), Director Markets and Rates or [Mark McCarthy](#), Director Markets.

Amendments to Environmental Product Conventions

Following consultation with members, the Environmental Products conventions will be amended effective 31 March 2021 to indicate the typical market practice of physical settlement for forward contracts, with cash settlement being used as a fallback. Further changes include amendments to the definition of spot contract, to clarify that spot transactions are intended to be settled within a few business days of a trade being negotiated, and updates to the descriptions of the various Environmental Commodities.

Any questions should be provided to [Natalie Thompson](#).

Environmental Products Spot Contract

Changes to the Environmental Products Spot Contract have been finalised, with an amended contract now available on the AFMA [website](#).

- The amendments introduce a Seller Delivery Default provision at clause 6 which will cover situations where a seller fails to transfer the agreed quantity of environmental products on the transfer date (unless the transfer is affected by a settlement disruption event).
- While the contract leaves it open to parties to agree on the replacement cost per each undelivered unit, the standard wording provides for the Buyer to determine the market value of the commodity on the transfer date. This is because in the event that a Seller fails to deliver the agreed quantity to the Buyer, the Buyer will need to acquire units from other parties to cover any shortfall.
- Instances of buyer payment default remain covered by the Interest provision at clause 5, with the buyer required to pay a default interest rate on any late payment.

International Updates

IOSCO – AFMA Submission to consultation on International Equity Market Data Costs

AFMA made a submission on 26 February on IOSCO's consultation report '[Market Data in the Secondary Equity Markets](#)', which outlined the concerns raised by industry participants and welcomed industry views on both the issues and possible regulatory responses to them.

AFMA's submission endorsed the principles set out in the joint response to the consultation by the International Council of Securities Associations (ICSA) and the Global Financial Markets Association (GFMA). The ICSA/GFMA submission provides information and analysis that illustrate both the causes of high market data costs and the market efficiency consequences.

In summary, AFMA agreed with and recommended the following propositions:

1. The price of market data and connectivity should be based on the efficient cost of producing and distributing the data with a reasonable mark-up and measured against a recognised cost benchmark.
2. Trading venues should standardise key market data contract definitions, terms, and interpretations.
3. Market data licensing contracts should be simplified to ease the burden of administration burden on broker-dealers and avoid unnecessary audits.

AFMA's submission was consistent with member feedback which was also aligned with the ICSA/GFMA comments. Members can contact AFMA for more information on this issue.

IOSCO – Urgent Need for Globally Consistent, Comparable, and Reliable Sustainability Disclosure Standards

IOSCO published a [media release](#) drawing urgent attention to globally consistent, comparable, and reliable sustainability disclosure standards since financial markets rely on full, accurate, and timely disclosure of financial results and other information that is material to investment decisions. IOSCO's Sustainable Finance Task Force (STF) has made progress in its work on securities issuers' sustainability disclosures, asset managers' disclosures and investor protection, and the role of ESG data and ratings providers. This is in response to proliferation of related frameworks and lack of harmonisation between approaches to disclosures.

To assist in these objectives, IOSCO is working with the IFRS Foundation Trustees and other stakeholders to increase focus on:

1. **Establishing an SSB with a Strong Governance Foundation** to deliver an effective system architecture for setting sustainability disclosure standards which is compatible with existing accounting reporting standards and promotes good governance of sustainability-related disclosures among preparers. This architecture could form the basis for the development of an audit and assurance framework.
2. **Building on Existing Efforts** of sustainability-related reporting frameworks. IOSCO supports a "climate first" approach in the near term.
3. **Encouraging a "Building Blocks" Approach** to establishing a global sustainability reporting system. This would provide a consistent and comparable baseline of sustainability-related information that is material to enterprise value creation, while also providing flexibility for coordination on reporting requirements that capture wider sustainability impacts.

IOSCO believes that these initiatives will collectively help deliver high-quality international disclosure standards that provide the content that capital markets need, within a transparent standard-setting architecture and a robust and inclusive governance structure.

IOSCO – Review of Recommendations for Liquidity Risk Management for Collective Investment Schemes

IOSCO has commenced a [review](#) of the implementation of liquidity risk management recommendations from issued in 2018 as well as a joint analysis of market participants' responses to COVID-19 induced market stresses.

To conduct their review IOSCO has released a [survey](#) for market participants designed to collect information from responsible entities both on their adoption and practical implementation of the Recommendations as well as specific targeted information on their liquidity risk management practices and experiences during the March 2020 market turmoil. Responses are due on 16 April.

IOSCO - Statement on Going Concern Assessments and Disclosures During COVID-19 Pandemic

IOSCO has released a [statement](#) outlining key takeaways from recent International Accounting Standards Board educational [material](#) for the preparation of annual financial statements and annual audit, noting the importance of providing investors to receive high-quality information about the existence of material uncertainties that may cast significant doubt on an entity's ability to continue as a going concern.

The statement reminds issuers, audit committees and/or those charged with governance (TCWG), and external auditors of the important role each plays in providing investors with high quality, reliable, timely, and transparent financial information, especially in times of heightened uncertainty. IOSCO noted that it remains the responsibility of the external auditor to perform high-quality assurance services in accordance with professional standards on the financial information with which they are associated.

Regulatory Updates

APRA – Revisions to the Authorised Deposit-Taking Institution (ADI) Capital Framework

As previously noted, APRA is consulting on proposed [revisions to the authorised deposit-taking institution \(ADI\) capital framework](#) aimed at embedding 'unquestionably strong' levels of capital, improving the flexibility of the framework, and improving the transparency of ADI capital strength. These revisions will be introduced through changes to the following prudential standards:

- Prudential Standard APS 110 Capital Adequacy;
- Prudential Standard APS 112 Capital Adequacy: Standardised Approach to Credit Risk; and
- Prudential Standard APS 113 Capital Adequacy: Internal Ratings-based Approach to Credit Risk.

Key points of the revisions:

- ADIs are not expected to be required to raise additional capital;
- More-differentiated risk weights for various types of residential mortgages;
- Reduced risk weights for small business lending (not secured by residential property);
- Inclusion of a default level of the countercyclical capital buffer (CCyB), to be set at 1 per cent of RWA (currently zero per cent of RWA), to apply to all ADIs. The CCyB is operationalised as an extension of the capital conservation buffer (CCB);
- Expansion of the CCB for Internal Ratings-based (IRB) ADIs by an additional 1.5 per cent of RWA, and
- Common basis disclosure of capital ratios to assist reconciliation of the Australian framework with that of international peers and the Basel III framework.

Submissions to APRA close 1 April 2021. Please direct any feedback to [Murray Regan](#)

APRA – Letter to ADIs regarding Indemnities in Divestments

APRA has issued a [letter](#) to ADIs providing guidance around risks related to indemnities provided to acquiring entities as part of divestment transactions. Some of the expectations outlined include that:

- any indemnities that give rise to a material contingent liability for an ADI are reviewed and approved by the Board, as part of the oversight of significant transactions;
- an appropriate level of capital should be held for risk exposures; and
- there should be ongoing oversight and monitoring by senior management and the Board of these indemnities, to ensure the associated risks are effectively managed.

ASIC – Immunity Policy

On 24 February ASIC released a new [Immunity Policy](#) that outlines how ASIC will grant immunity to individuals who have been involved in misconduct in contravention of a provision in Part 7.10 of the *Corporations Act*.

The policy outlines that ASIC will consider the granting of immunity provided that the application satisfies certain conditions, for example that the applicant is not the instigator of misconduct, and that ASIC has not commenced an investigation into the contraventions.

The policy does not apply to immunity from administrative or compensation proceedings, and while it is modelled on the ACCC's immunity policy applicable to those involved in cartel conduct, the ASIC policy is available only to individuals.

ASIC – Electronic Lodgement of Documents

On 24 March ASIC approved [ASIC Corporations \(COVID-19 Email Lodgement Service—ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/785\) Instrument 2021/152](#) to facilitate the electronic lodgement of documents for the purposes of relief under [ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/785](#).

The instrument allows the lodgement of deeds of cross guarantee, variation deeds, assumption deeds, revocation deeds, notices of disposal, certificates and opt-in and opt-out notices by email. The instrument does not currently facilitate electronic execution of deeds, which must be executed in accordance with s127 of the Corporations Act. Deeds may not currently be executed or signed using a cloud-based signature platform, though documents other than deeds may still be signed electronically.

Deeds of cross guarantee, assumption deeds and certificates must be lodged before the end of the relevant financial year in order to obtain the benefit of the relief. Lodging parties must comply with the terms of the [ASIC Email Lodgement Service: User Agreement for ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/785](#) (ELS User Agreement) that was re-issued on 24 March 2021. Documents being lodged electronically should be emailed to: Corporations.Lodgements@asic.gov.au.

ASIC – Product Intervention Order for Issuance and Distribution of CFDs to Retail Clients

ASIC's product intervention order imposing conditions on the issue and distribution of contracts for difference (CFDs) to retail clients took effect on 29 March.

The order reduces CFD leverage available to retail clients and targets CFD product features and sales practices that amplify retail clients' CFD losses, such as providing inducements to become a client or to trade. Under the order the maximum CFD leverage available to retail clients will range from 30:1 to a 2:1, depending on underlying asset class.

Industry Collaboration

Guest Article – PwC - APRA CPS 234 Tripartite Independent Cyber Security Reviews

Will I be impacted?

The short answer is yes if you are one of the entities defined in paragraph 2 of CPS 234.

What is the CPS 234 Tripartite?

In November 2020, APRA released their [2020-2024 Cyber Security Strategy](#). This included a focus on establishing a baseline of cyber controls by reinforcing the embedding of non-negotiable cyber practices, facilitating better sharing of cyber information and enabling more effective incident response processes noting they are still seeing too many basic cyber hygiene issues across the industry. APRA aims to enable Boards/Senior officer outside Australia (SOOA) and executives to oversee cybersecurity exposures and provide direction for correction and remediation where required. Boards/SOOA should be properly equipped to oversee cyber matters and direct corrective action where necessary.



As part of the announcement, APRA also shared their intention to request independent tripartite cyber security reviews across all APRA regulated entities as defined in paragraph 2 of CPS 234. These are to be performed by external audit firms and reported back to APRA and the entity and will cover a period of 12 months preceding the date of starting the review. At another level, it's sending a message about the seriousness of this issue, and the need for greater accountability for meeting what are now legal obligations. Nine entities have been selected by APRA to participate in a pilot of the CPS 234 tripartite with reports issued by 1 June 2021.

Areas to consider



Board/SOOA oversight & governance: Evidence suggests that there is a need to increase challenge and demonstrate stronger decision making relating to cybersecurity by appropriately skilled Boards/SOOA and senior executives. To enable Boards/SOOA to discharge their duties, adequate cyber security reporting is required to increase visibility of cyber threats, along with evidence of demonstrable actions resulting from this reporting.



Understanding the control sets for each relevant entity: Challenges for many entities include:

- Having formal controls in place against each paragraph of the standard
- Where there are multiple entities under a group structure, do the compliance controls differ? Are these homogeneous?
- Obtaining comfort over group/parent/offshore operated controls.



Evidence of the operation of controls: Where controls operate within an entity's ecosystem to achieve compliance with CPS 234, the formality of the evidence that exists may vary. The tripartite requires testing of the design and operating effectiveness of these controls. As such, evidence of their operation will need to be documented and retained.



Third parties: CPS 234 requires that where information assets were managed by third parties, the standard will apply in relation to those information assets from the earlier of the next renewal date of the contract with the third party or 1 July 2020. Some entities received extensions from APRA, to 31 December 2020. Therefore the processes and controls for managing information security in the context of third party suppliers may be newly implemented. This could mean entities have not yet embedded or independently tested controls over the suppliers.



Role of internal audit: APRA noted the importance of an appropriately skilled and well resourced internal audit function that provides effective challenge to the Board and management on cyber risk, gaps and the progress on remediation. To enable this, the internal audit plan should provide breadth and depth of information security controls coverage, in a timeframe commensurate with the risk of the information assets being protected.

What happens once the review is completed?

APRA are looking to expedite positive change to protect institutions, the customers that rely on them and the broader financial system. This is in line with their “constructively tough” enforcement philosophy, which can include forcing entities to issue a breach notice and create a rectification plan, where this is not provided voluntarily. As the tripartite is about the identification and swift rectification of compliance issues, the focus will therefore be on the action taken by Boards/SOOAs to expedite the resolution of any material control gaps.

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AFMA Policy Agenda

Theme	Issue	Relevant Regulator/ Policy Maker	Developments	Contact
ADIs	APRA APS 210 and RBA's Committed Liquidity Facility	APRA RBA	<p>On 6 January 2021 APRA announced a further \$46 billion reduction in the aggregate amount of the Committed Liquidity Facility (CLF) established between the Reserve Bank of Australia (RBA) and certain locally incorporated ADIs that are subject to the Liquidity Coverage Ratio (LCR). This reflects the expansion in both state and federal government debt on issue sufficient to largely satisfy HQLA demands. This follows APRA's 6 November announcement of a \$35 billion reduction in the aggregate amount of the CLF, when it also conveyed further reductions in 2021.</p> <p>AFMA will monitor developments and consider related matters that may be raised by our committees and where appropriate engage with the RBA and APRA on issues arising.</p>	M Regan
	Proposed revisions to ADI's capital framework	APRA	<p>APRA has released for consultation revisions to the authorised deposit-taking institution (ADI) capital framework aimed at embedding 'unquestionably strong' levels of capital, improving the flexibility of the framework, and improving the transparency of ADI capital strength. The consultation covers full drafts of</p> <ul style="list-style-type: none"> • APS 110 Capital Adequacy; • APS 112 Capital Adequacy: Standardised Approach to Credit Risk; • APS 113 Capital Adequacy: Internal Ratings-based Approach to Credit Risk. <p>The credit conversion factor on undrawn margin lending facilities has been raised as an issue, and our response will propose ways to address this. Responses are due 1 April.</p>	M Regan
AML/CTF	Phase 1.5 Bill	ATO AUSTRAC	<p>AFMA actively participated in consultations on the Phase 1.5 Bill which provides for changes to strengthen Australia's capabilities to address money laundering and terrorism financing risks. AFMA has also provided a submission to AUSTRAC regarding proposed Rules to support the Phase 1.5 reforms.</p>	R Colquhoun
Data & Technology	Protecting Critical Infrastructure and Systems of National Significance - Banking and Finance Sector	Home Affairs (CIC) APRA	<p>The Critical Infrastructure Centre is proposing a new framework to deliver critical infrastructure security and resilience across a range of key sectors, including banking and finance. AFMA made submissions in September and November and will be involved in future consultations on industry-specific standards into 2021.</p>	N Dhanraj
	Confidentiality of Data	APRA	<p>In October APRA resumed its consultation on the confidentiality of data submitted by authorised deposit-taking institutions (ADIs), proposing a shorter list of key data items to be determined non-confidential. AFMA made a submission on 20 November.</p>	M Regan D Jeffrey

	Data Management Standard, Outsourcing and use of AI and ML in financial markets	APRA IOSCO	<p>AFMA is closely following the development of APRA's Data Management Standard based on CPG 235, through its Data Management Committee to ensure it is developed in a rationalised, non-duplicative and efficient manner.</p> <p>AFMA has responded to IOSCO consultations on Outsourcing Principles and the use of AI and ML by financial intermediaries.</p>	D Jeffree N Dhanraj
Derivatives	OTC Derivatives Regulation	ASIC	<p>AFMA continues to work with APRA and ASIC to improve the functioning of the OTC Derivatives regulation regime. AFMA obtained an extension of relief for certain trade reporting identifiers and a two-year extension of the clearing exemption for FRAs up to March 2022. In addition, AFMA sought and obtained revision of the implementation of initial margining measures with a deferral of Phases 5 and 6 by one year.</p> <p>ASIC has since initiated a review of the <i>ASIC Derivative Transaction Rules (Reporting) 2013</i>. AFMA made a submission to the first round of consultation in March.</p>	D Love
Energy	Energy Market Transition	AEMC ESB NSW DPIE	AFMA and members continue to work through financial market implications of proposed changes to the energy markets as a result of the ESB's post -2025 Market Design, the AEMC's transmission access reform project and state government initiatives.	N Thompson
	OTC Electricity Derivative Transparency	AEMC AER	AFMA and members continue to work with the AER and AEMC to increase transparency in the OTC Electricity Derivatives Market.	N Thompson
	Five-Minute Settlement	AEMC ASX	ASX is expected implement 5-minute caps by March 2021. Revised Confirmations have been finalised in the OTC Guide, pending further revision for the October 2021 start date.	N Thompson
	Stakeholder Engagement	VIC DELWP ESC NSW DPIE IPART	AFMA and members are working through issues related to fragmented market communications in the VEU and ESS. AFMA is engaging with regulators on the issues identified.	N Thompson
	Environmental Products Documentation	CER NSW DPIE VIC DELWP	The Environmental Products Committee and Documentation Working Group are finalising amendments to the Spot Contract and Conventions to address issues around cash settlement and delivery default.	N Thompson
Equity	Give-Ups	ASIC	AFMA has renewed its efforts to put equity give-ups (swap-based trading) on a surer regulatory footing with a renewed request for relief. ASIC has indicated continuing concerns with give up trading in view of a recent settlement failure. Near term change unlikely.	D Jeffree
ESG/ Sustainable Finance	ESG Forum	APRA ASIC	AFMA has set up a Sustainable Finance Forum and an ESG Risk Forum to address matters around market practices and the policy issues related to ESG and sustainable finance, and help develop a clear, harmonised approach to sustainable finance.	N Dhanraj M McCarthy D Love
Fixed Income & Money Market	Retail Corporate Bonds	TSY	AFMA made a submission to the Parliamentary inquiry into the Australian retail corporate bond market in June 2020 and gave testimony to the Committee on 6 November 2020.	R Colquhoun

	DCM Guidelines	ASIC	ASIC has been examining market practices during the primary issuance process as part of their review of Australia's OTC markets. Report 668 was released in September. AFMA and DCM Committee continue work on updated DCM Guidelines.	M McCarthy D Love
	Zero/Negative Interest Rates	RBA	Conventions for Floating Rate Notes with Zero Floor Coupon have been implemented but, to date, interest rates (plus margins) have not reached the zero bound.	M McCarthy
Foreign ADI Related	Foreign Financial Service Provider (FFSP) Licensing	ASIC	AFMA continues to make the case that ASIC's FFSP regime will be damaging to the provision of services to Australian investors.	D Love
Foreign Exchange	FX Global Code Review	GFXC	The inaugural triennial review of the FX Global Code commenced in Q1 2020. GFXC (Global Foreign Exchange Committee) is planning to complete its review by mid-2021.	M McCarthy
General	Royal Commission Draft Legislation	APRA ASIC TSY	AFMA remains actively engaged with issues relating to the development and implementation Hayne Royal Commission recommendations. Further legislation, including changes to ASIC breach reporting regimes, passed in late 2020.	D Love D Jeffrey
	IBOR Transition	APRA ASIC RBA	ISDA provided a straightforward solution to IBOR transition through a Supplement and Protocol which launched on 23 October 2020. ASIC and other regulators released a statement on 13 October 2020 urging Australian institutions to adhere to the ISDA Protocol and Supplement. AFMA has cooperated with ISDA in the development of the Protocol and is continuing to work with its members and the market more generally on the important issues associated with IBOR transition in the Australian market.	D Love
	Financial Regulator Reform Bill	APRA ASIC TSY	AFMA made a submission to support the proposed Bill with additional requests to require APRA and ASIC to check with each other before making an information request of a jointly regulated entity and to these entities to satisfy requirements by responding to one regulator only.	D Love
HR & Executive Accountability	Financial Accountability Regime (FAR)	APRA TSY	Treasury has consulted on the FAR regime, which will replace and extend BEAR. Treasury policy work has been delayed since the February 2020 consultation. AFMA understands that the regime will not be extended beyond APRA regulated entities as part of the near-term reform legislation.	D Love
	APRA Remuneration Standard	APRA	APRA is finalising a new standard for remuneration that requires deferred variable rem, clawbacks and other restrictions for CEOs and Highly Remunerated Risk Takers. AFMA has been engaging on the issues with APRA and made a submission to the consultation in February.	D Love D Jeffrey
Professionalism	Consequence Management Standard	APRA ASIC	AFMA is finalising a consequence management standard for firms to use with accredited individuals.	D Jeffrey

	Review of International Standards	APRA ASIC	AFMA is conducting a review of international standards geared towards developing a set of principles to govern the recognition and adoption of relevant conduct standards by AFMA, to ensure that international conduct standards operate together in a coherent manner.	N Thompson
Retail	Product Design and Distribution Guidelines	ASIC	ASIC released CP325 consultation in March 2020 on design and distribution rules and guidance as a final element in the implementation of the new law. ASIC to published regulatory guidance on product design and distribution obligations in RG274 in December 2020.	D Love
	FASEA Financial Planners & Advisers Code of Ethics 2019 Guide	ASIC	AFMA actively represented to FASEA that better and consistent development of standards and codes should supplement the legislative frameworks instead of countering them. With FASEA now terminated we will move these discussions to Treasury and ASIC.	D Jeffree
Taxation	Tax Characterisation of Bail-In Instruments	ATO	AFMA continues to work with the ATO in relation to mitigating uncertainty regarding the Australian tax characterisation of instruments that contain a prudential regulatory trigger, to the extent that the ATO has suggested that the existence of such a trigger may cause the instrument to no longer be debt for tax purposes. Issue has been raised with Treasury and ATO has confirmed no further action from their perspective pending legislative change.	R Colquhoun
	Justified Trust	ATO	Acting as industry liaison with the ATO in respect of the review of the Top 1,000 for justified trust. AFMA to produce a compendium of issues and perspectives, particularly detailing cases where a high level of assurance was not reached.	R Colquhoun
	Offshore Banking Unit	ATO	The Government has announced the effective abolition of the OBU regime with a two-year transition period. This is in response to the OECD Review which would designate the OBU as a harmful tax practice. AFMA will actively consult with the Government and Treasury regarding replacement tax settings to retain Australia's attractiveness as a financial centre.	R Colquhoun