RESPONSES TO QUESTIONS TAKEN ON NOTICE: House of Representatives Standing Committee on Economics hearing on 23/10/2015

Australian Prudential Regulation Authority

Question One: Mr Lundy (transcript page 5)

CHAIR: Do you choose a random sample to look at? …. [relating to auditors also attesting that what the trustee has done is reasonable, but that does not necessarily get down to that micro level and the individual investment options of super funds]
Mr Chapman: We tend to have done that on the basis of looking at funds. It has not been random. Like most things we do, we look at all regulated institutions at a particular depth and then when there are issues we will delve deeper for particular institutions. It would be more like, 'There is something here that we need to be aware of' or 'We need to look at this more,' or that we have seen a problem in this type of investment somewhere else and 'Are we comfortable that these people are doing it in a better way or in a sound way?'
CHAIR: To use a specific example: Port Botany in New South Wales—and Port Kembla as well, I guess. But Port Botany was leased on a 99-year lease by the state government for around $4.3 billion. A syndicate was put together and, to the best of my knowledge, four of the five of the syndicate partners were industry super funds. It is my understanding that it was a tender process that was entered into by all participants in the lease process. The successful tender was almost twice the price of the under bidder. Given the gravity of the size of that acquisition and the amount that was paid in excess of the under bidder, is that something that would trigger APRA to look at how that was valued and revalued over time?
Mr Chapman: The short answer to your question is it did not. We did not see it as our role to look at the valuation process that was gone through to achieve that sale.
CHAIR: Mrs Rowell, I guess this question passes to you in terms of conflict. The owner of Port Botany has a business operator there and the staff working on the ports are highly unionised. Is that something that would find its way onto the conflicts registrar?
Mrs Rowell: I would need to take that on notice.

Answer:

Under *Prudential Standard SPS 521 Conflicts of Interest* (SPS 521), Registrable Superannuation Entity (RSE) licensees are required to have an up-to-date register of relevant duties and an up-to-date register of relevant interests. SPS 521 defines a relevant duty and a relevant interest as: '…one that might reasonably be considered to have the potential to have a significant impact on the capacity of the RSE licensee, the associate of the RSE licensee or the responsible person with the relevant duty or holding the relevant interest, to act in a manner that is consistent with the best interests of beneficiaries.'

The Australian Prudential Regulation Authority (APRA) expects an RSE licensee to undertake a robust due diligence process commensurate with the nature, characteristics and complexity of the investment. Typically this will include consideration of the investment's risk/return profile, appropriateness, any material factors that will impact the investment's performance and any potential or actual conflicts of interest that may arise. APRA expects an RSE licensee to manage these potential or actual conflicts of interest by having in place adequate arrangements to maintain integrity of the investment selection process. Also relevant is the requirement in section 109 of the

Superannuation Industry (Supervision) Act 1993, which requires superannuation investments to be made and maintained on arm's length basis.

APRA has not undertaken an analysis of this particular transaction as individual investment decisions are a matter for RSE licensees. APRA understands, however, that the transaction was managed by Industry Funds Management which has 20 years' experience in infrastructure investment. Press reports indicate that competition for the assets, commonly known as NSW Ports, was intense and that the final bid prices were quite close. NSW Ports is governed by an independent board and the superannuation funds which are part of the investment consortium that bid for the assets are not directly represented on the board. Given this governance structure, the fact that it is NSW Ports that leases out most of the operations of the port, and the outcome of the competitive bid process, the extent of any specific material conflicts that may have arisen for the RSE licensees is unclear but would appear to be limited. As such, APRA does not anticipate that scenarios such as this would be likely to give rise to interests that would be required to be disclosed on the RSE licensee's conflicts register.

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Question Two: Mr Lundy (transcript page 19)

CHAIR: The last one is a little out of whack and little particular. You have control at APRA over the use of the term 'bank'. As I understand it, there are some discussions that you are proposing to control the term 'banking'. Is that correct?

Mr Byres: We have some guidance. It is called section 66 guidelines. Section 66 is the section of the Banking Act that says APRA controls the use of the word 'bank' or 'banking'. We had some guidance out for many years. We have recently updated that guidance, which was, in our view, not changing the nature of what our policy was but designed to give more guidance to people who were thinking about whether they needed approval to use aname, because essentially it is a prohibition on financial businesses using the word 'bank' or 'banking' in their business name if they are not a bank. There is a question about what is a financial business et cetera. So we were trying to provide some more guidance about when and how, if you needed approval, you would go about applying for it and give some more guidance about your chances of success

CHAIR: Just on notice—and why it is so obscure—I have been contacted by a Lismore based credit union that has an existing program called www.bankingfootball.com. It is a community based program. They are worried that they will no longer be able to use that URL. It is a well-known program within the community, and they are a credit union, obviously. So just inform me of where that line of questioning comes from. You do not have to answer that now. You can come back to me with whether or not that would get caught up. As a government—and I think it is a bipartisan approach—we do not want to unnecessarily tie people up in red tape that is stopping something like that.

Mr Byres: I know there is an awareness of this issue within APRA, but I will take it on notice because I am not aware of the facts.

Answer:

As noted during the Australian Prudential Regulation Authority's (APRA's) appearance at the House of Representatives Standing Committee on Economics hearing on 23 October, the use of the terms 'bank', 'banker' and 'banking' is restricted under section 66 of the *Banking Act 1959*, unless APRA consents to the use of these terms. Authorised Deposit-taking Institutions (ADIs) that are authorised as banks by APRA will be granted unrestricted consent to use the terms 'bank', 'banker' and 'banking'. This includes the use of these terms in corporate, business or trading names.

APRA is working with a small number of ADIs who are not banks and who currently use the term 'banking' in business names and internet domain names on an individual basis. It is not APRA's intention to cause undue disruption or expense to such ADIs. A number of such ADIs have used such terms without prior communication with APRA.

Background

Under a Class Consent dated 19 May 2000 (2000 Consent), APRA consented to Credit Unions and Building Societies using the term 'banking' in relation to their banking activities.

However this consent for the use of the word 'banking' was not unrestricted, as it is with ADIs approved as banks.

APRA has published Guidelines for Implementation of Section 66 of the Banking Act 1959. Guidelines published in 2006 (2006 Guidelines) confirmed that ADIs approved by APRA as banks have unrestricted consent to use the words 'bank', 'banker' and 'banking', including in corporate, business or trading names. The 2006 Guidelines also confirm that Credit Unions and Building Societies may use the term 'banking' in relation to their banking activities. No allowance was made for use by Credit Unions or Building Societies of the word 'banking' in corporate, business or trading names.

In August 2015 APRA released updated Guidelines for Implementation of Section 66 of the Banking Act 1959 (2015 Guidelines). Further on 6 August 2015 APRA issued a Class Consent for Credit Unions and Building Societies that replaced the previous 2000 Consent.

The 2015 Guidelines and consent do not reflect a change in position from the 2006 Guidelines and are consistent with APRA's long-standing position on the use of the words 'bank', 'banker' and 'banking'. In particular the 2015 Guidelines provide further clarification of APRA's long standing position on the use of the restricted words 'banker' and 'banking' by Credit Unions and Building Societies.

The 2015 Guidelines clarify the prior restriction, which is that a Credit Union may use the expressions 'banker' and 'banking' (but not 'bank') in marketing and branding material to describe its banking activities. The relevant clarifications are that the restricted terms 'banker' and 'banking' may not be used as part of a registered corporate, business or trading name, or in an internet domain name.

APRA has recently written to ADIs on the issue of banking brands as part of APRA's role as administrator of the Financial Claims Scheme (FCS). APRA is moving to establish a dedicated FCS website that will include a list of ADIs covered under the FCS. The FCS covers depositors up to $250,000 per eligible ADI with this including, as part of the one amount, any banking brands the ADI operates. The website will list all business names (or ADI brands) that each ADI owns and operates for the purpose of carrying on banking business. Having this information on the FCS website will help inform members of the public how the FCS works and what deposits are covered under the FCS. Collecting this information may bring to light some additional cases where ADIs have inappropriately used protected terms. APRA will consider these cases on a case by case basis with the overall objective of ensuring the appropriate use of protected terms.