



21 May 2020

Senator the Hon Jane Hume
Assistant Minister for Superannuation, Financial Services
and Financial Technology
Parliament House
CANBERRA ACT 2600

Via email: Senator.Hume@aph.gov.au
CC: Shelby.Brinkley@treasury.gov.au

Dear Assistant Minister,

Financial Sector (Collection of Data) (reporting standard) determination No. 3 of 2020 [F2020L00328]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instruments, and seeks your advice about this matter.

Incorporation of external materials

Senate standing order 23(3)(f) requires the committee to scrutinise each legislative instrument as to whether it, and any document it incorporates, may be freely accessed and used.

The instrument requires an authorised deposit-taking institution (ADI) to report counterparty countries using the English name of the relevant country, assigned in accordance with international standard ISO 3166. It also requires ADIs to report the Legal Entity Identifier (LEI) for a counterparty (if available), issued in accordance with ISO 17442. The instrument provides links to online databases where country codes, country names and LEIs may be obtained.

The explanatory statement states that although the instrument refers to ISO 3166 and ISO 17442, these standards are not intended to be incorporated, as the standards are not relevant to understanding the terms of the instrument. The explanatory statement also states that the online databases, LEI codes and country names are not intended to be incorporated.

However, it appears to the committee that, in practice, an ADI may be obliged to refer to ISO 3166 and ISO 17442 to comply with the instrument. In particular, the committee notes that the definition of 'counterparty country' requires ADIs to report the English name of a counterparty country, 'assigned...to a country code defined under the International Organisation for Standardisation's International Standard ISO 3166'. ADIs may be obliged to examine ISO 3166 to ensure that the ADI complies with their reporting requirements. ADIs may similarly be obliged to examine ISO 17422 to ensure compliance with reporting requirements relating to LEIs. This is notwithstanding the statement in the explanatory statement that it would not be possible to 'determine' an LEI by referring to ISO 17422. In light of these matters, it is not clear to the committee that ISO 3166 and ISO 17422 are not incorporated.

Further, even if ISO 3166 and 17442 are not incorporated by reference, it appears that the online databases (that is, the online browsing platform and the LEI database) may be incorporated—as it appears that an ADI would be required to access these databases in order to comply with the instrument. The committee was previously advised that 'up-to-date information about...[country] names and codes is only available via the Online Browsing Platform or by purchasing the Country Codes Collection'. The committee was also advised that 'LEIs are only searchable via an online database' (see *Delegated Legislation Monitor 13 of 2018*, p. 99). The committee also notes that the explanatory statement to the present instrument does not indicate any other means by which LEIs, country names and country codes may be located.

Where an instrument incorporates a document by reference, the instrument or its explanatory statement should indicate the manner in which the document is incorporated (as in force from time to time or as in force at a particular time), and should indicate where the document may be accessed free of charge. In this respect, the committee notes that the explanatory statement provides web references for where the databases may be freely accessed. However, the instrument and its explanatory statement are silent as to where ISO 3166 and ISO 17442 may be accessed free of charge, and as to the manner in which the standards and the associated databased are incorporated.

Finally, the committee notes that the enabling legislation for the instrument allows for the incorporation of certain documents as in force from time to time. However, it appears that the exercise of that power is restricted to matters related to reporting under the *Major Bank Levy Act 2017*. It is therefore unclear that the power to incorporate documents as in force from time to time would extend to the incorporation of ISO 3166, ISO 17442, or the associated online databases.

The committee therefore requests your advice as to whether international standards ISO 3166, ISO 17442, and the associated online databases, are incorporated by the instrument; and if not, why not.

If the advice is that either the standards or the associated online databases are incorporated, the committee also requests your advice as to:

- **where the standards may be accessed or viewed free of charge;**
- **the manner in which the standards and/or the online databases are incorporated; and**

- **if it is intended to incorporate either the standards or the online databases as in force from time to time, the power in the enabling legislation or other Commonwealth law that is relied on to incorporate the documents in this manner.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

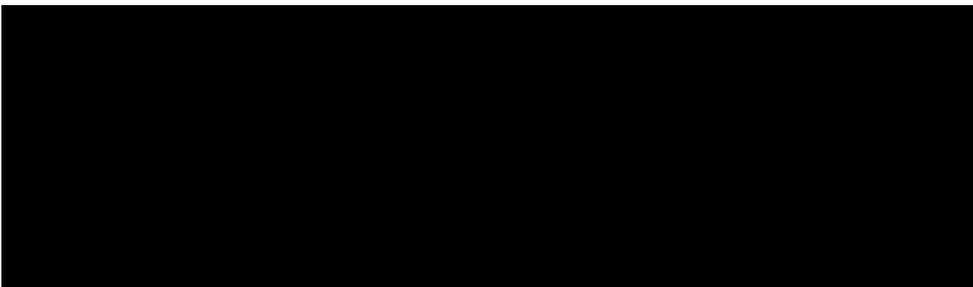
Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **4 June 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,



Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation



SENATOR THE HON JANE HUME
ASSISTANT MINISTER FOR SUPERANNUATION,
FINANCIAL SERVICES AND FINANCIAL TECHNOLOGY

Ref: MS20-001028

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
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11 JUN 2020

Dear Senator ~~Fierravanti-Wells~~

I am writing to you in response to your letter dated 21 May 2020, on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation, requesting further information in relation to the *Financial Sector (Collection of Data) (reporting standard) determination No. 3 of 2020* [F2020L00328] (the Determination).

The Committee has requested more information in relation to the following:

- whether international standard 3166 (ISO 3166), international standard 17442 (ISO 17442), and the associated online databases, are incorporated by the instrument; and if not, why not; and
- if the advice is that either the standards or the associated online databases are incorporated, where the standards may be accessed or viewed free of charge, the manner in which the standards and/or the online databases are incorporated and if it is intended to incorporate either the standards or the online databases as in force from time to time, the power in the enabling legislation or other Commonwealth law that is relied on to incorporate the documents in this manner.

In responding to the Committee's concerns, I have sought advice from the Australian Prudential Regulation Authority (APRA). In APRA's view, the international standards are not incorporated by reference into the Determination as they are not relevant to understanding the terms of the instruments.

APRA also considers that the associated online databases are not incorporated by reference into the Determination as the databases are only modes for the reporting entities to obtain the information they need to complete the reporting forms.

The Determination revokes the *Financial Sector (Collection of Data) (reporting standard) determination No. 41 of 2018* (the 2018 Determination), and replaces the previous version of ARS 221.0 made under the 2018 reporting standard, with the current reporting standard. Under subsection 13(2) of the *Financial Sector (Collection of Data) Act 2001*, a reporting standard may include matters relating to (among other things) the forms of reporting documents and the information to be contained in reporting documents.

Paragraphs 5 to 7 of the Determination require authorised deposit-taking institutions and, where applicable, their authorised non-operating holding companies to provide the information required in Reporting Form ARF 221.0 or ARF 221.1. These reporting forms capture information about the reporting entity's large exposure to individual counterparties or groups of connected counterparties.

APRA advises that in order to assist the reporting entities to report accurately and consistently, the reporting standards include Instruction Guides designed to assist in completing the reporting forms. In the specific instructions of the instruction guides to both reporting forms, the reporting entities are required to report the Legal Entity Identifier in the reporting form, and to state "N/A" if the entity does not have a Legal Entity Identifier.

In the Definitions section of the Determination, the Legal Entity Identifier is defined as the 20-digit code issued by a Local Operating Unit in accordance with ISO 17442. The definition notes that the Legal Entity Identifier is available on a free online searchable database at <https://search.gleif.org/#/search/>. The Specific Instructions of the instruction guide to ARF 221.0 also require locally incorporated reporting entities to report the counterparty country of the government-related entity for each exposure.

In the Definitions section of the Determination, counterparty country is defined as the country where the counterparty is domiciled. As such, the reporting entities are required to report the English name of the relevant country as assigned by the ISO 3166 Maintenance Agency to a country code defined under ISO 3166. The definition notes that the ISO 3166 Maintenance Agency maintains a free online browsing platform (OBP) setting out the names of countries and their corresponding codes, available at www.iso.org/obp/ui/#search/code/.

The references to the ISO standards and the associated databases appeared in the 2018 reporting standard and the wording has not been changed in the reporting standard except to update a hyperlink. The references to the ISO standards were considered by the Committee in Delegated Legislation Monitors 11 and 13 of 2018, in relation to the 2018 Determination. As suggested by the Committee in Delegated Legislation Monitor 13 of 2018, APRA has included the information provided by the Treasurer to the Committee in relation to the 2018 Determination in the explanatory statement to the Determination.

APRA considers that ISO 17442 is not incorporated by reference into the reporting standard as the Legal Entity Identifiers are not contained in ISO 17442, and the contents of ISO 17442 are not relevant to understanding the terms of the reporting standard. Similarly, ISO 3166 is not incorporated by reference into the reporting standard as the reporting entities are not expected to refer to the standard in order to determine the English names of the countries. In APRA's view, these codes are the equivalent of postcodes or Australian Company Numbers (ACN); they simply serve as internationally recognised identifiers. If it were accepted that requiring entities to provide these codes was an incorporation by reference of the databases that contain them then it would follow that the requirement in delegated legislation to provide an ACN would be incorporation by reference of the Australian Securities and Investments Commission's Register of Companies.

As noted in the explanatory statement to the Determination, APRA has included the link to the online searchable database and the OBP to assist the reporting entities to locate information about Legal Entity Identifiers and counterparty countries. However, the reporting entities are not required to use the online searchable database, and are not precluded from obtaining information about the Legal Entity Identifiers directly from the counterparties or other sources. Similarly, as noted in the explanatory statement, information about the country names is available on the OBP or by purchasing the Country Codes Collection.

According to information on the International Organization for Standardization's website, the ISO 3166 Maintenance Agency provides the downloadable Country Codes Collection in 3 different formats (.xml, .csv and .xls) with update notifications for a fee at www.iso.org/obp/ui/#search. APRA considers that the online searchable database and OBP are not incorporated by reference into the instruments as the reporting entities are not precluded from obtaining the Legal Entity Identifiers and country names through other modes.

I trust this information will be of assistance to you.

Yours sincerely



Senator the Hon Jane Hume



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

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www.aph.gov.au/senate_sdmc

27 August 2020

Senator the Hon Jane Hume
Assistant Minister for Superannuation, Financial Services
and Financial Technology
Parliament House
CANBERRA ACT 2600

Via email: Senator.Hume@aph.gov.au

CC: tsrdlos@aph.gov.au; committeescrutiny@treasury.gov.au;
Shelby.Brinkley@treasury.gov.au

Dear Assistant Minister,

**Financial Sector (Collection of Data) (reporting standard) determination No. 3 of 2020
[F2020L00328]**

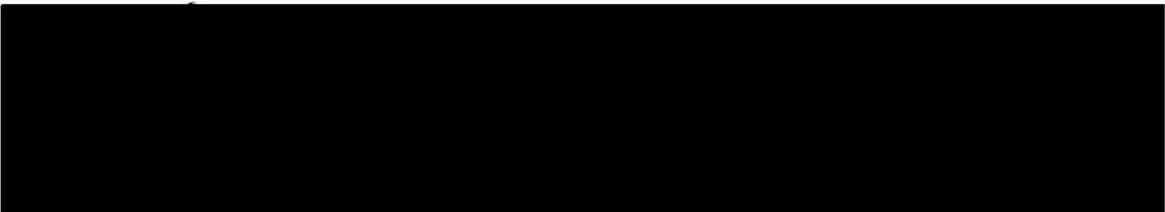
Thank you for your response of 11 June 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 26 August 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

Thank you for your assistance with this matter.

Yours sincerely,



Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation