

25 June 2013

Payments Consultation
Banking and Credit Team
Floor 1, Red
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Email: PaymentsConsultation@hmtreasury.gsi.gov.uk

Dear Madam or Sir,

APCA Submission to "Opening up UK Payments"

The Australian Payments Clearing Association (APCA) is pleased to make the following submission to the consultation paper "Opening up UK payments", issued on 26 March 2013.

APCA is the Australian payments industry self-regulator and primary industry vehicle for payments industry collaboration in Australia. It exists to advance the common interest of members and the interests of the Australian public in improving the Australian payments system. APCA seeks to do this by enabling competition and innovation, promoting efficiency and controlling risk in the Australian payments system. More information about APCA can be found at www.apca.com.au.

As an Australian organisation, APCA would ordinarily not make a submission to an inquiry in another jurisdiction. However Australia and the United Kingdom share common features in respect to payments regulation and we feel APCA's experience during the Reserve Bank of Australia's *Strategic Review of Innovation in the Payments System* is particularly instructive and relevant to the current UK consultation.

Question 1

Would giving the role of payments systems regulator to the FCA or to one of the existing economic regulators be the most likely to deliver the Government's aims in the payments system sector? Are there other options for the regulator that would better deliver these?

We note that the objectives of the UK Government is to have payments systems that i) operate for the benefit of end users including consumers; ii) facilitate competition by permitting access; and iii) provide stability, reliability and efficiency. As well, the Government is seeking a UK payments industry that promotes and develops new payment systems.

We would question whether the introduction of "a formal system of utility-style regulation" is necessarily the only or the best way to meet these objectives.

Australia is an example of defining the respective roles of public regulation and self-regulation and in structuring that relationship in a way that has, in our submission, better prospects of meeting public policy goals of the kind outlined above.

The Payments System Board (PSB), which sits within the Reserve Bank of Australia, has existed as the payments system public regulator since 1998. While the PSB has some of the powers that would be granted to a new regulator, as outlined in the “Opening up UK payments” proposal, the PSB has generally treated these powers as a last resort. Instead, it has been most effective when consulting, defining high-level public policy and encouraging self-regulatory solutions rather than initiating a formal regulatory response. A recent and notable example of this is the PSB’s *Strategic Review of Innovation in the Payments System*, initiated in May 2010. The PSB consulted closely with industry, including through APCA, and, in its conclusions, articulated a series of high-level strategic objectives for the Australian payments system. Industry participants responded at the end of 2012 by presenting a proposal for a new payments platform for Australia by 2016. This proposal was endorsed by the PSB in February 2013 and is currently being implemented.

In our submission, designating an independent public body with accountability for ensuring a safe, efficient and innovative payments system is an important, but not sufficient step towards effective system regulation. Public regulation is often a blunt policy tool focussed on the prevention of undesirable activity but poorly suited to encouraging desirable activity. It cannot by itself deliver optimal systemic innovation in a market economy and, if done poorly, may inhibit such innovation. Moreover, public bodies are skilled at enunciating policy objectives for the benefit of the economy and the community, but often lack the resources as well as technical, operational and market expertise to define and deliver detailed solutions.

There also needs to be a venue and mechanism by which industry participants can explore their common interest in enhancement of the payments system, so as to coordinate their expertise, resources and business interests towards that end. They must, of course, do so within the framework of competition law and policy, but enhancement of the systemic platform on which they all compete is more likely to promote competition, than the reverse.

Such venues typically exist in every jurisdiction, because network industries like payments cannot function without a significant degree of coordination amongst network participants, even as participants compete in providing services to customers. Both the UK Payments Council and APCA are examples of such venues.

As noted in the *ICPACE Principles of Payments Industry Self-Governance*, originally published in 2007:

“Industry self-governance – that is the direction, development, administration and regulation of any industry with the involvement of industry participants – is an important feature of modern economies. Done well, it can correct market failures, deliver certainty, ensure equity amongst industry participants, promote efficient competition and innovation and deliver on other important policy goals.”

A copy of this document is attached to this submission.

Finally, there need to be effective structure and processes by which public and common industry objectives are aligned to lead to a widely supported outcome. This process can be time-consuming and appear fractious, but generally delivers better enduring outcomes than “pure” public regulation.

Although Australian arrangements have taken some time to evolve, and have not been without controversy on particular issues, in our submission arrangements of this kind present the best prospects of consistently addressing the public policy concerns of the regulator and the commercial realities confronted by the industry participants who will ultimately pay for

and use any new infrastructure. This, in turn, results in the best longer term outcomes for system end users and the economy.

Question 2

Is the Government's proposed position of the role of the payments regulator in relation to the other regulatory bodies in the sector the best way to achieve its aims?

While defining the respective roles of the public regulator and industry is important, so too is structuring the relationship between them. Having an industry-regulator dialogue, so that it is open and consultative, yet structured, was another component in achieving an agreed way forward on systemic change in Australia.

The "Opening up UK payments" consultation paper, particularly at paragraphs 3.34 and 3.35, appears to consciously exclude the UK Payments Council from any role within payments regulation – consigning it to scheme administration and trade body activities. In our submission this represents a lost opportunity for Government to consider how public regulators and industry self-regulatory bodies can actually work together to achieve beneficial outcomes.

If you have any questions or require any further information on the matters raised in this submission, please do not hesitate to contact Dr Brad Pragnell, Head of Industry Policy, APCA at bpragnell@apca.com.au.

A handwritten signature in black ink, appearing to read 'CHAM', is positioned above the typed name of Chris Hamilton.

Chris Hamilton
CHIEF EXECUTIVE OFFICER

Cc Adrian Kamellard, CEO, Payments Council