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Head of Payments Policy Department  
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Dear Dr Richards,

**APCA Submission to “Review of Card System Access Regimes: A Consultation Document”**

The Australian Payments Clearing Association (APCA) is pleased to make this submission to the “Review of Card System Access Regimes: A Consultation Document” (“the Consultation Document”), issued on 28 May 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.

Please note that the views contained in this submission do not necessarily reflect the views held by individual APCA member organisations.

**Question 4 - Is it appropriate to retain the access regimes in the current form?**

APCA maintains a strong preference for market-based outcomes. However, if regulation is required to ensure competition, efficiency and security, then industry self-regulation is preferred.

The Consultation Document notes that “the access regimes in their current form may no longer be fulfilling their original objective” and that the access regimes “may now be preventing prospective scheme participants from entry”.

APCA welcomes the RBA reviewing the need for existing regulatory instruments, particularly ones that potentially restrict or inhibit commercial activity. We would similarly encourage the RBA to explore other areas when existing restrictions on commercial activity, such as interchange fee regulation, may no longer be required. On this basis, we welcome an exploration of how to enhance access and competition in payments.

A threshold public policy question for this consultation is whether card issuing and acquiring should remain subject to prudential oversight. Prudential oversight exists to help ensure financial promises made by institutions are met. In this context, prudential oversight of card issuing and acquiring exists to help ensure the financial promises made to cardholders and merchants are met. APCA would see this need as remaining the case and would support the on-going prudential oversight of these activities, although APCA reserves the right to review this position as more information comes to light as a result of this consultation. Once

a decision has been made on the need for prudential oversight, then decisions can be made on how this is to be applied.

We note that the current access regimes, together with the Specialist Credit Card Institution (SCCI) category, provide for both prudential oversight and have enabled new entrants, notably GE Capital and Tyro Payments, to participate in the Australian card issuing and acquiring market in a transparent, controlled and even-handed fashion.

#### **Question 5 - How should the access regime be varied?**

SCCI requirements provide for prudential oversight, a clear avenue for new entrants and certainty for other issuers and acquirers, particularly important given the certainty, security and efficiency expected from all participants within a network. If there are particular issues in respect to the SCCI requirements, such as the requirements being particularly onerous to comply with, then we would encourage the Reserve Bank to liaise with APRA, in the first instance.

As the SCCI regime does provide APRA with powers to revoke or vary conditions, including capital requirements, it would be worthwhile to explore how the current SCCI requirements might be reformed, amended, or where relief might be provided for potential new entrants based on well-considered criteria and within an open and transparent process.

The Consultation Document identifies the importance of the *Banking Act 1959* and related regulations and legislation that inform the statutory framework within which the access regimes have been constructed. We would suggest that any reform of the access regimes should be coordinated with the necessary changes to *Banking Act 1959* and any related regulations and legislation to avoid piecemeal reform.

#### **Question 7 - What would be the potential effect on incumbent participants of extending eligibility for participation?**

APRA's power to approve and regulate ADIs, including SCCIs, provides consistency and regulatory neutrality and minimises opportunities for regulatory arbitrage.

The Consultation Document suggests that access would be 'widened' under Option 1. This suggests that the SCCI route would remain open to new entrants.

Providing multiple routes, potentially administered by different regulators, presents the market with the risk of regulatory arbitrage and regulatory inconsistency and the opportunity for 'forum shopping'. This would particularly be the case if a modified version of ASIC-administered Australian credit licence (ACL) operated alongside the APRA-administered SCCI route.

It could be argued that relaxing the current requirements is unfair to those organisations which have gone through the cost and effort to obtain and hold their SCCI status. It remains unclear what options would be available to existing SCCI holders (for instance, could they easily convert from SCCI status to some new 'less onerous' status).

Further, it is unclear what public policy benefit or benefit for potential entrants in the competitive issuing and acquiring market would be derived from extending access to include those organisations conducting a banking business. This would simply facilitate the RBA being able to issue or acquire credit cards. This has not been an area where the RBA has provided services in the past and, it could be reasonably argued, an area that is already well serviced by the private sector.

**Question 8 - Do scheme participants need to be authorised and subject to prudential oversight by APRA and what is the purpose of APRA oversight should it continue?**

Scheme participants being authorised and subject to prudential oversight protects cardholders and merchants and provides regulatory consistency. The current regime reflects two legacies: that ADIs have historically been the primary issuers and acquirers of cards in Australia; and that regulation for ADI integrity is the responsibility of APRA. While consideration might now be required in relation to how this regime continues to be implemented by APRA, it has successfully provided reasonable proxies for financial standing, efficiency and dependability standards that would be expected from issuers and acquirers and has served the industry and the public interest well. It should only be significantly reformed if there is a good public policy reason to do so.

The fact that potential new entrants or existing schemes wish to minimise or eliminate their own interaction with APRA or avoid the perceived onerous nature of the current requirements would not seem reason enough to substantially rework the current regime. Importantly, the regime accords with current legislation and regulation, has served to provide access and promote competition, has not adversely affected efficiency or security and ensures regulatory consistency. For example, competition amongst issuers and acquirers in Australia is robust (as can be demonstrated by declining merchant fees) and, as noted in APCA's recent release of payment fraud statistics, year-on-year payment card fraud is down for the first time in six years - good news for merchants, consumers and regulators as well as for issuers, acquirers and schemes.

**Question 9 - Are there alternative approaches that would allow a wider range of prospective entrants into the card schemes?**

As noted in the Consultation Document, the current regime provides for eligibility criteria that are clear, objective and non-discriminatory. A sensible and measured approach might be to closely review the current SCCI requirements and see whether there are avenues to alter the requirements and improve accommodation of new entrants within the current regime.

As noted above, Option 1 raises issues of regulatory arbitrage, regulatory inconsistency and 'forum shopping', with different pathways provided by APRA and ASIC. This represents a least preferred option.

A 'structured' Option 2, which would revoke the access regimes but have undertakings between the schemes and RBA in place to accommodate access, might be worth exploring but it too has particular shortcomings. Firstly, as noted in the Consultation Document, particular remedies currently available for unsuccessful entrants would no longer exist. Another issue is that the arrangements between the respective scheme and the RBA would be resolved bilaterally between the scheme and regulator, without any meaningful input from current issuers and acquirers that would be impacted by any changes.

APCA has highlighted in previous submissions to the RBA, for example APCA's April 2012 submission on EFTPOS designation, the need for a longer term approach to regulation. Importantly, a better approach to achieving efficiency and competition between payments systems may be to regulate the marketplace rather than each system individually and that issuers and acquirers, in particular, should have an adequate voice on matters of concern to them.

Further, and as noted above, there remains the risk of piecemeal reform if the access regimes are adjusted without progressing legislative reform within a wider policy and regulatory framework. A 'payments council', a concept supported by the RBA in its

Innovation Review Conclusions, could be a useful and inclusive forum in which to examine the policy framework for the regulation of schemes.

### **Recommendations**

**APCA supports the prudential oversight of issuing and acquiring activities and would, at this point, support the Option 3 “status quo” approach, recognising that further evidence on the case and urgency for reform will be collected through the current consultation process.**

**If, based on the evidence provided through the current consultation process, the RBA is convinced of the long-term need for reform of the access regimes, APCA would recommend that the RBA consider the use of a future 'payments council' to examine the policy framework for the regulation of schemes and to pursue reform in a considered and coordinated fashion.**

**If, based on the evidence provided through the current process the RBA is convinced of the short- to medium-term need for reform of the access regimes, APCA would recommend that the RBA discuss an open and transparent review of the SCCI requirements with APRA and Treasury.**

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

Yours faithfully



Chris Hamilton  
**CHIEF EXECUTIVE OFFICER**