ColumbusCapital

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The Manager
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Proposed Non-ADI Lender Rules

We appreciate the opportunity to make a submission to Treasury with respect to the Exposure Drafts of the *Treasury Laws Amendment (Non-ADI Lender Rules) Bill 2017* and *Explanatory Materials* (**proposed rules**).

Columbus Capital is a diversified non-bank financial institution that has been operating for over 10 years. We specialise in originating and servicing white-labelled mortgage loans with third party distributors as well as direct retail customers. Our core business is prime mortgage loans providing competitive tension with the major banks and our loan book is currently approximately $2 billion. Our business is primarily funded through securitisation through the issuance of residential mortgage-backed securities (**RMBS**). We have a public issuance programme as well as privately funded warehouse lines with both domestic and overseas banks. Our business also provides third-party asset management and loan servicing and we are introducing personal loans and leasing to our suite of products. We would be a non-ADI lender under the proposed rules.

As a member of the Australian Securitisation Forum (**ASF**), the industry association representing the Australian Securitisation market, we have been involved in the meetings arranged by the ASF with Treasury and the Australian Prudential Regulation Authority (**APRA**). We are also a participant in the ASF's working group responsible for preparing a submission with respect to the proposed rules on behalf of the ASF's members. We have read the ASF's submission and strongly agree with all of the positions advocated by the ASF.

The purpose of this letter is to emphasise some of the positions advocated by the ASF with respect to the proposed rules from the perspective of a business which will be directly impacted by them. In particular, we comment on:

- the breadth of APRA's rule making powers and the uncertainty this creates for our funding model; and
- the reporting requirements that would apply under the *Financial Sector (Collection of Data) Act 2001* (**FSCODA**).

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APRA's rule making powers

The powers proposed to be given to APRA in the proposed rules are broadly crafted and not clearly defined. Our business model relies on lending markets and products where we can establish a niche that does not see us competing directly against the major banks. We are deeply concerned by references in the Explanatory Materials to the backdrop for the proposed rules being APRA's current lack of power to "curtail" or "prohibit" certain lending activities or practices of non-ADI lenders. Statements such as these and the broad terms on which APRA's powers are currently drafted are a cause for concern and uncertainty amongst our investor base and puts our funding model at risk. There should be no suggestion that APRA will be "regulating" non-ADI lenders. These statements should be removed from the explanatory materials and we submit should be replaced by statements that make it clear that non-ADI lenders provide competition in the lending markets and that APRA will have express regard to the impact on competition in connection with any proposed rule-making. Further, any proposed rule-making needs to be confined to the express purpose of APRA's powers being to safeguard financial stability rather than regulation of non-ADI lenders as such.

We concur with the positions expressed by the ASF on these issues, particularly their submissions that:

- the APRA powers should be expressly referred to as reserve/emergency powers;
- clarification is critical, in either the proposed rules or any accompanying explanatory materials or standards, as to the definitions of "material" and "financial stability" and the circumstances in which APRA's powers would be employed;
- the powers should be limited to "lending activities" and not be used to regulate how non-ADI lenders fund themselves; and
- there should be express requirements within the new powers that rules:
  - are to be made by APRA only:
    - following a period of review by APRA of the information provided under the proposed FSCODA reporting by non-ADI lenders; and
    - consultation with non-ADI lenders in relation to the adoption of any proposed rules;
  - do not have any impact on assets that have already been originated by affected non-ADI lenders and the funding arrangements with respect to those assets; and
  - consider the proportional impact on affected non-ADI lenders' in light of their size and market share. For instance, imposition of a "one size fits all" blanket limit on a product type across both ADI and non-ADI lenders would not be an appropriate measure. While our core business is currently prime mortgage loans, as described above, non-ADI lenders are often focussed on niche markets and a particular product type may be a material part of their business (or a higher percentage of their business than that of ADI lenders) in circumstances where the lending activities of non-ADI lenders are not "material" in the market as a whole. Any limit that applies across the market without regard for the market share of non-ADI lenders would not have a proportional impact on non-ADI lenders and would significantly challenger their business model and impact their ability to compete with ADI lenders.

Capital markets concerns

We also wish to express our concern with respect to the speed at which implementation is proposed. In our view these proposed rules could have a significant impact on the viability of our business model and we should be afforded the opportunity and time to properly consider the potential impacts and consult in relation to them.

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We would particularly emphasise the point made in the ASF Submission that a significant unintended consequence of the legislative changes could be to reduce the attractiveness to debt investors, particularly overseas investors, of securitisation securities sponsored by non-ADI lender's. Either a reduction in investor appetite to purchase non-ADI lender sponsored RMBS and ABS or investors seeking an additional premium to compensate for the regulatory uncertainty would increase non-ADI lender funding costs which is likely to be ultimately passed to the consumer both directly and indirectly through pass-through of funding costs or reduction of competition and funding options for consumers which, in the mortgage space, non-ADI lender's like Columbus Capital provide.

We understand from our discussions during ASF meetings with APRA and Treasury in relation to the proposed rules and our discussions with other non-ADI lenders that the proposed rules are already of concern for foreign investors in RMBS sponsored by non-ADI lenders. We are concerned that the rules, if implemented in their current form and without affording the industry an ability to consult properly and fully, will continue to be viewed as a risk for RMBS investment in transactions sponsored by non-ADI lenders and significantly undermine our business model.

There is also a risk the speed of implementation may tarnish Australia's reputation as a "regulatory safe" jurisdiction in which to invest generally; if such potentially significant laws can be implemented at such speed and without proper consultation and appreciation of real economic impacts. Once such reputational risks are realised it would be difficult to determine the economic cost, resource and time it would take to reverse.

FSCODA reporting

As our funding model relies heavily on securitisation we already provide detailed data to our investors in relation to our loan portfolios. We have completed a project to comply with the Reserve Bank of Australia's (**RBA**) reporting standards for repo-eligibility of our RMBS transactions. This provides a line-by-line comprehensive set of data points with respect to our loan portfolio. In our view our current reporting requirements are already onerous and provide a high level of transparency with respect to our lending activity.

It is critical to our business model, given the time and cost involved in our current reporting regime, that any reporting requirements under FSCODA that are proposed to apply to non-ADI lenders are consistent with:

- the reporting regimes we already comply with - our business model cannot support the time and cost that would be involved in a further layer of reporting requirements; and
- the intended purpose of the introduction of the proposed rules - by this we mean that the data that is required of non-ADI lenders should be data relevant to our "lending activities" (which in our view means our loan portfolio) and data that is relevant to the risk of instability in the Australian financial system (being the expressed purpose of APRA's rule making powers).

In our view the current FSCODA reporting requirements require information in excess of the above including extensive data in relation to the assets, liquidity and financial position of non-ADI lenders themselves and are not relevant to our securitisation focussed funding model. Implementation of these requirements should be carefully considered in light of the above principles given the cost and complexity that will be involved in compliance by non-ADI lenders like us.

We welcome the opportunity to continue to consult with Treasury and APRA with respect to implementation of the proposed rules and for any opportunity to meet with you to discuss our views in relation to them.

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We reiterate our concern with respect to the speed at which implementation is proposed. We understand from our attendance at meetings with Treasury and APRA that it is not proposed that APRA's rule making powers would be exercised in the current market. If there are no current concerns with respect to the impact non-ADI lenders are having on financial stability then we submit that proper time and consideration be permitted before implementation of the proposed rules which could not only have a material impact to business continuity and growth of non-ADIs but may have broader unintended consequences such as reducing foreign investment into the sector or increasing funding costs which in turn impact consumers and potentially contributing to financial instability which these laws are trying to prevent or mitigate.

We would also like to make it clear that this submission highlights only our most material thoughts on the proposed rules given the time frame which we have been given to respond in. In one of the meetings we attended with Treasury, it was indicated that the industry may continue to provide information and consult with Treasury and APRA with respect to the proposed rules following any formal response in accordance with the response timetable. We take this opportunity to confirm that we will continue to provide further information in connection with the proposed rules and are happy to continue to consult with Treasury and APRA.

Yours sincerely

Andrew Chepul
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