Madigan

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The Manager
Banking, Insurance and Capital Markets Unit,
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: lenderrules@treasury.gov.au

Dear Sir/Madam

Non – ADI Lender Rules Submission

Madigan Capital Pty Ltd (Madigan) is an Investment Management firm established in 2017 specialising in the origination and underwriting of non-equity asset backed investments on behalf of institutional investors (Wholesale investors within the meaning of the Corporations Act). The principals of Madigan have several decades experience in the placement of debt capital and management of debt investments on behalf of Australian and international investors, including sovereign wealth funds, insurance companies, superannuation and pension funds.

Madigan's principals have been at the forefront of encouraging some of Australia's largest and most sophisticated institutional superannuation funds to participate in lending capital to local and offshore borrowers secured against real estate and social infrastructure assets.

Australia has arguably one the least developed and homogeneous debt capital markets in the developed world. In comparison to other G20 countries we have an immature debt capital securitisation market. Most lending in Australia is dominated by the big four Australian Banks (WBC, CBA, ANZ and NAB). To support their leveraged lending business models the big four source much of their balance sheet borrowings in foreign jurisdictions. Conversely, for borrowers seeking diversification in lending counterparties they often pursue foreign capital markets such as those available in the United States further increasing our reliance on foreign debt capital.

While not seeking to advocate for a closed economy Australia's reliance on foreign debt capital compounds the risk to our economy during times of credit rationing as witnessed during the Global Financial Crisis (GFC). This stands in contrast to Australia's position as a nation with one of the largest domestic savings pools.

As noted above, Madigan's position has been to encourage local institutional investors to participate as lenders in the domestic market by developing product that is appropriate for inclusion within their diversified investment portfolios. Consequently, we have a vested interest in monitoring any developments within the non-ADI lending sector particularly those, (such as Legislation) that may limit participation in this emerging asset class.

Summarily at Madigan, we are concerned that the potential for overreach by regulation in Australia could have the unintended consequence of stopping in its tracks the development of a diversified pool of AUD denominated locally sourced capital for investment in the local debt capital markets. Moreover, if local participants are dissuaded it is likely that offshore participants will be similarly disinclined to invest directly in the market.

The exposure draft - Treasury Laws Amendment (Non-ADI Lender Rules) Bill 2017 and the accompanying explanatory material are concise to the extent that they articulate a legislative framework to provide the Australian Prudential Regulation Authority (APRA) the power to make rules concerning the conduct of non-ADI's, ostensibly to enhance stability of Australia's finance sector specifically and economy in general.

The exposure draft provides for rules to be made as and between different classes of non – ADI's. While there is no commentary on what characteristics may be used in determining the different classes it would seem appropriate that both the domicile and nature of the underlying capital should be matters of consideration when determining same.

Domicile of the capital is increasingly relevant as international capital flows become much more dynamic. Debt investors pursue investments globally based upon their perception of risk and return and in the context of Australia provide a very important fillip during times of reduced debt capital availability from traditional lenders, (i.e. banks). As we have witnessed on two occasions since banking deregulation in the 1980's just because you are an ADI, does not translate to your being better equipped than local non-ADI's to withstand times of financial stress, (witness foreign Banks who withdrew from Australia in the early 1990's and most recently, following the GFC).

Australian domicile institutional superannuation funds logically demonstrate the characteristics of long term responsible prudent local market participants and accordingly should be encouraged to actively participate as lenders.

As noted above, one of the other key considerations to classifying non-ADI's ought to be the nature of the capital noting that there is a significant distinction between sophisticated investors, including institutional superannuation funds and retail investors.

Importantly, Australian institutional investors have a bias toward local investment and should be encouraged to participate in the emerging non-ADI lending market. Their participation improves the stability of the financial services sector as they represent a class of "real money" lenders which contrasts with Australian ADI's that operate a highly leveraged lending model making their balance sheets more susceptible to market shocks including credit events.

Madigan is supportive of a robust legislative framework that seeks to underpin a stable financial services sector. That said, any legislation or regulation should carefully consider any unintended consequences that may result therefrom.

Yours sincerely

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