



1 February 2024

Scams Taskforce
Market Conduct and Digital Division
The Treasury
Langton Cres
Parkes ACT 2600

Via email: scampolicy@treasury.gov.au

Dear Treasury,

Scams – Mandatory Industry Codes

The Australian Financial Markets Association (**AFMA**) is the leading industry association promoting efficiency, integrity and professionalism in Australia's financial markets, including the capital, credit, derivatives, foreign exchange, energy, carbon, and other specialist markets. Our membership base is comprised of over 125 of Australia's leading financial market participants, including Australian and foreign banks, securities companies, state government treasury corporations, fund managers, energy firms, as well as other specialised markets and industry service providers.

AFMA welcomes the opportunity to make a submission to the Treasury Consultation Paper on Mandatory Industry Codes (**Mandatory Code**) for Scams (**the Consultation Paper**).

AFMA Position

The ADIs that should be subject to the Mandatory Code are only those that are authorised by APRA to provide services to retail customers.

Definition of a "Bank" for the Purpose of the Mandatory Code

12. Will the proposed definitions for designated sectors result in any unintended consequences for businesses that could not, or should not, be required to meet the obligations set out within the Framework and sector-specific codes?

It is important at the outset to highlight the composition of AFMA's membership and the business undertaken by AFMA's members that are Authorised Deposit-Taking Institutions (**ADIs**). AFMA has forty-seven members that are ADIs, with these entities choosing to have AFMA represent them in relation to business conducted in the institutional and wholesale markets. As such, our perspective in responding to the Consultation Paper is that of those banks that participate in transactions and markets with institutional/wholesale customers and counterparties.

It is noteworthy that, notwithstanding the significant number of ADIs within the AFMA membership, AFMA has not been actively involved in the Scam-Safe Accord, with the development of the Accord being driven by the Australian Banking Association (**ABA**) and the Customer Owned Banking Association (**COBA**), both of which being associations that represent ADIs that provide services to retail customers. This reflects AFMA's position that scams, and the regulatory response to scams, should have a retail focus and that there be an appropriate differentiation between ADIs that provide retail services and those that do not.

The proposed approach in the Consultation Paper is for the obligations with respect to scams to apply to all bodies corporate that are ADIs under Section 9 of the *Banking Act*. This would appear to include foreign bank branches.

A foreign bank operating in Australia through a branch is precluded by APRA from providing services to retail customers. Should a foreign bank choose to provide services to a retail customer, the bank will need to approach APRA and secure its approval to establish a locally-incorporated subsidiary (i.e. a separate legal entity) that will need to meet local capital and regulatory requirements, including having a local board. The higher bar set by APRA for banks offering retail banking services enhances the protection for retail customers through ensuring that all banks with retail customers are subject to the same strict regulatory architecture.

AFMA therefore recommends that a foreign bank branch that does not and is prohibited from providing services to retail customers is not bound by the Mandatory Code, with only those banks that are incorporated in Australia and authorised to provide services to retail customers being bound by the Code.

We note that under the Mandatory Code, institutions offering retail banking services are likely to need to:

- Implement processes to verify a transaction is legitimate where a customer undertakes activity that is identified as having a higher risk than normal activity or is likely to be a scam;
- Implementing processes to identify customers at a higher risk of being targeted by scammers;
- Having user-friendly and accessible methods for customers to immediately take action where they suspect their accounts have been compromised;
- Assisting customers to trace and recover transferred funds to the extent that they are recoverable.

AFMA's view is that each of these requirements are incompatible with those ADIs whose business relates solely to the provision of services to wholesale or institutional clients. We note that foreign bank branches are not required to be members of either AFCA or the AFCX, owing to such branches not conducting retail banking activities.

AFMA acknowledges that all licensed ADIs that operate in Australia should be aware of the risks of scams and have appropriate mechanisms in place to mitigate the risk of loss for customers and counterparties. However, applying a Mandatory Code that has been drafted through the lens of consumer (retail) protection is sub-optimal for those ADIs that are precluded from a regulatory perspective to provide services to consumers. AFMA notes that all ADIs will need to adhere to APRA's Prudential Standard CPS 234 in relation to Information Security, which requires APRA-regulated entities to implement preventative, detective and response controls commensurate to the risk associated with the provision of services via digital channels. Accordingly, all ADIs are already subject to regulatory requirements with respect to information security, which APRA will continue to refine to ensure that such requirements remain fit-for-purpose.

Thank you for the opportunity to provide a submission to the Consultation Paper and AFMA would welcome the opportunity to engage further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rob Colquhoun', written in a cursive style.

Rob Colquhoun
Director, Policy