



3rd August, 2017

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

via e-mail: bear@treasury.gov.au

Attention: Ms. K. Wall

Dear Ms. Wall

Re: Treasury's Consultation Paper – Banking Executive Accountability Regime (BEAR)

Citi Australia (Citi) welcomes the opportunity to provide this submission to Treasury's Consultation Paper (CP) on the Banking Executive Accountability Regime (BEAR).

Citi supports the intent of the BEAR as an accountability regime and, in particular, the proposal that the BEAR represents an extension of the current CPS 520 *Fit and Proper* principles-based framework successfully administered by APRA.

In addition to this submission, we have contributed to the submissions from the Australian Bankers' Association (ABA) and Australian Financial Markets Association (AFMA).

We highlight herein areas that Citi wishes to emphasise, reflecting our particular business and entity structure, which would arise should the BEAR be implemented in the proposed form.

1. Senior Officer outside Australia

Citi notes that the Senior Officer outside Australia (SOoA) of the branch has been included as a proposed prescribed Accountable Person (AP) function. The SOoA is, by its very nature, an ex-jurisdictional position.

We reiterate the comments by AFMA in its submission and particularly support the exclusion of the role of the SOoA as a prescribed AP since it is largely an oversight role. Additionally, inclusion of the SOoA may result in the unintended consequence of less experienced or junior individuals occupying the SOoA role (as a response to limit the capture of senior regional or global executives of international banks in multiple accountability regimes), undermining the very intent of the introduction of the BEAR. We recommend the better approach would be either to



passport registration from a recognised non-Australian regime or, more simply, to exclude the SOoA altogether from the BEAR, but retention within CPS 520 *Fit and Proper* standard.

2. Interim Accountable Persons

A component of Citi's ability to conduct its global business, including attracting and utilising qualified senior talent, is the flexibility to move such employees across jurisdictions (at times at short notice) based on business demands. This sometimes rests on our ability to appoint interim persons into roles, some of whom would be covered by the BEAR in Australia as currently contemplated. In order to avoid limiting this business flexibility, we would propose that the BEAR should contemplate and acknowledge interim appointments, as currently exists under CPS 520 *Fit and Proper* standard. Citi suggests that persons holding an interim AP position should be excluded from the operation of the BEAR for a period of six months, after which they would be deemed to be permanent in the role and require registration under the BEAR.

Should the BEAR seek to include interim appointments within its scope, Citi considers this would create an untenable administrative burden on an international ADI in relation to that interim AP's remuneration structure, provide a disincentive for persons to accept such interim roles (putting at risk senior executive roles which may be left unfilled in the meantime) and would not be reflective of lead times for the candidate search process, potential relocation to Australia etc.

3. Remuneration

Citi's remuneration structure has been developed to achieve a similar outcome as the policy intent of the BEAR.

Citi has a robust global discretionary incentive framework for senior employees, designed to deliver 'at-risk' remuneration (i.e. deferred shares of Citi stock and deferred cash), encouraging prudent risk taking, responsible financial objectives, appropriate conduct by employees and producing optimal results for customers. The key foundational principles of incentive remuneration at Citi are supported by a Compensation Philosophy and intend to advance Citi's business strategy and commitment to responsible finance. As a result, it creates incentives for senior managers to demonstrate appropriate risk behaviour and culture within the bank over a long period, consistent with protecting the systemic and prudential condition of an ADI.

A key complexity for Citi in the implementation of the BEAR proposed remuneration structure would be the overlap with our existing global compensation framework, which already includes many features that are consistent with the intent of the BEAR, including a substantial deferral of variable remuneration for senior employees. We provide the following background information to illustrate this complexity:

- Our existing framework aligns with the US Federal Reserve Board's *Sound Incentive Compensation Policies* issued in June 2010 which APRA supports through CPS 510 *Governance* and CPS 520 *Fit and Proper*;



- The incentive framework provides a deferral structure (based on a range of 10% up to 60%, vesting over a four year period) appropriately to balance risk and financial reward over the long term; and
- The deferral structure contains adjustments, performance-based vesting and clawback conditions for the reduction or forfeiture of such deferred incentives to reflect actual outcomes of business activities. The potential forfeiture of such deferred compensation would include for actions that would threaten the ADI's prudential soundness as contemplated under the BEAR.

Having regard to our current well established and robust deferral and variable remuneration programme, Citi advocates that APRA should be provided with the power to consider and approve equivalent remuneration frameworks in substitution of that contemplated under the BEAR. If an existing framework for senior employees of an international organisation meets the intent and spirit of the proposed deferral frameworks under BEAR, as determined by APRA, then we would propose that such framework could be grandfathered as satisfying the requirements of the BEAR rather than a requirement of strict adherence to the more limited criteria published in the CP. This would minimise the impact of unwinding an existing remuneration framework that is working effectively.

4. Civil penalties definition

In the spirit of the regime being an extension of APRA's existing prudential framework, it necessarily follows that the definition of *large ADIs* should be based on the total liabilities of Australian ADIs only. More specifically, for the purposes of assessing whether an ADI is a *large ADI* or *small ADI*, we submit that such assessment should not capture operations of any entity outside of Australia.

5. Implementation

We believe that the significant operational challenges involved in implementing the BEAR in its current form create a compelling rationale for the use of a staggered implementation period (we note, as was used in the United Kingdom for the introduction of the Senior Managers' Regime). The challenges that Citi would encounter include the potential re-alignment of global, regional and local responsibilities of senior management in the Citi organisation (which may require offshore regulatory approvals) and the potential significant reworking of existing global human resources systems and established practices currently designed to comply with Citi's international framework. Our conservative estimate for implementation of any such changes is a period of two years from finalisation by APRA of its full standard and guidance on the BEAR, subject to our specific concern noted below on remuneration systems.

We believe special consideration should be given to any proposed changes to remuneration structures envisaged by the BEAR since these would present a significant departure from Citi's existing global principles-based programme. The change proposed under the BEAR would necessitate bespoke system amendments, requiring a significant implementation period. Our



conservative estimate for implementation of any such change is a period of three years (being representative of three remuneration cycles).

In addition to the abovementioned comments, Citi shares the concerns reflected in the AFMA and ABA submissions in relation to the practical and operational implementation and application of the BEAR. As a principles-based regime, the need for clarity is paramount. In particular, clarity should be provided with respect to:

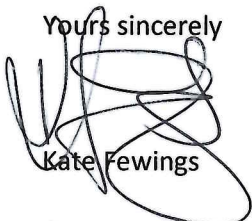
- The considerations and process by which APRA will exercise any powers which amount to disqualification or removal of individuals captured under the BEAR and, specifically, clarity is sought with respect to the concurrent or subsequent availability of APRA's reasoning upon such exercise of power. We should also be grateful for any publicly available Treasury considerations with respect to the notion of the application of natural justice and the existing common law burden of proof as core foundations of common law principles.;
- The proposed limitation on the ability to insure to cover against removal and/or disqualification, or the costs of a defence;
- Potential conflict in the application of the provisions of the Corporations Act 2001 (Cth) in relation to directors and officers and their duties, obligations and liabilities (including the proposed enhanced liability of the chair of a board/committee which may influence the operation of boardroom governance since the chair is subject to an enhanced liability and therefore would presumably carry the ultimate right of veto); and
- The phrases and terminology used in the CP - whilst recognising the principles-based nature of the regime.

An absence of clarity and guidelines with respect to the application of the BEAR will have the detrimental effect of reducing the attractiveness of supervisory roles in Australian ADIs. This may see a departure of qualified and talented individuals from the banking sector in this country, as has been observed elsewhere, which is contrary to the intent of the BEAR.

Citi considers that both a spirit and principles-based approach would best serve the stated desired outcomes of the BEAR and would properly reflect the existing hallmarks of the successful and clear APRA prudential standards.

Citi commits to continue actively to participate in the Treasury's consultation process, including the development of the relevant legislation and APRA's principles-based prudential regulation.

Yours sincerely



Kate Fewings

Company Secretary General Counsel
Citigroup Pty Limited Citibank, N.A., Sydney Branch