14 August 2017

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

By Email: lenderrules@treasury.gov.au

New APRA Powers to Address Financial Stability Risks – Non ADI Lender Rules

Toyota Finance Australia Limited (**TFA**) welcomes the opportunity to make a submission to Government on the *Treasury Laws Amendment (Non-ADI Lender Rules) Bill 2017* (the **Draft Bill**).

About Toyota Financial Services

TFA is a wholly owned subsidiary of Toyota Financial Services, Japan, which is itself a wholly owned subsidiary of Toyota Motor Corporation, Japan (**TMC**). TFA was the first overseas finance company established by TMC in 1982 to support the sale of Toyota vehicles in Australia. Today the Toyota Financial Services businesses operate in 34 countries worldwide.

TFA is an integral part of the Toyota family in Australia, partnering with the local manufacturer and distributor of Toyota and Lexus vehicles in Australia, Toyota Motor Corporation Australia (**TMCA**), in the sale and financing of Toyota and Lexus dealers throughout Australia. TFA is the first choice financier for 99% of the Toyota dealer network and 100% of the Lexus dealer network. TFA is also the first choice financier for an additional 136 non-Toyota franchised dealerships where their principal franchise is Toyota or Lexus (through its' PowerTorque Finance brand).

TFA's principal activities include:
- financing the acquisition of motor vehicles by customers in the form of leasing, consumer and commercial loans;
- providing bailment facilities and commercial loans to motor dealers;
- providing operating lease and fleet management services to customers; and
- distributing retail insurance policies underwritten by third party insurers.

Our Position

TFA has grave concerns about the broad and vague rule making powers granted to the Australian Prudential Regulation Authority (**APRA**) under the Draft Bill. As a non-ADI lender whose principle activities is the provision of retail and wholesale finance, the Draft Bill will have direct implications to TFA's business. What those exact implications will be, however, are currently unknown given the broadness of the powers.

Broad powers

TFA strongly recommends Treasury consider including some specific areas to which the rule making powers will apply to give more certainty to industry participants. Without any limitations or directions as to the scope of the powers envisaged by the Government, TFA fears the potential for regulatory overlap and the increased compliance burden that will be imposed on non-ADI lenders in the auto finance sector who are already appropriately licensed under the *National Consumer Credit Protection Act* (**NCCP Act**) and subject to immense regulatory scrutiny by the Australian Securities & Investments Commission (**ASIC**).

The Treasurer, The Hon Scot Morrison MP, has been quoted in the Australian Financial Review on 26 July 2017 as stating that these new rule making powers "will be a reserve power". If this is the actual intention of the Government in enacting this piece of legislation, it does not currently translate in the Draft Bill, nor is it expressed in the Explanatory Memorandum to the Draft Bill. TFA urges the Government to provide more clarity around the purpose and intended use of these powers to reduce the uncertainty to the non-ADI financing industry.

Regulatory overlap

While the Draft Bill currently requires APRA to consult with ASIC prior to making any rules under the new powers, TFA notes that subsection 38C(10) does not make a rule invalid if APRA fails to consult with ASIC. In any case, depending on the purpose for which APRA seeks to make a particular rule, there is still a high chance of 'double-up' of the regulatory requirements on non-ADI lenders and the true extent of the regulatory burden on the non-ADI financing sector will not be realised until after the rule has been made and much regulatory cost has already been borne by the sector.

Unless a clear distinction is made between the responsibilities of APRA in relation to these rule making powers and those of ASIC under the NCCP Act, the potential for a blurring of those responsibilities will always exist between the two regulators.

Mortgage Lending vs Auto Financing

TFA notes that the Explanatory Memorandum to the Draft Bill specifically refers to the current concerns about residential mortgage lending sector. TFA can understand the Governments' concerns around this sector given the rate of growth in house prices, the sizeable amounts involved and how inextricably linked financing activities of the sector has influenced this price growth and can therefore influence the financial stability of the economy.

The auto financing industry does not operate in the same way. While of course there are variances in the price of different models and brands of vehicles, the average price of an average family car is nowhere within the vicinity of the price of an average house in Sydney. There is also much more competition in the auto financing industry, which is a further driving factor in the pricing of vehicles, such that it is unlikely for the sector to become significant in any meaningful way to influence the financial stability of the economy.

Wholesale funding implications

The broadness of the Draft Bill as it stands is likely to be a cause of great concern for investors in the wholesale funding market, which the auto financing industry is beholden to.

This has the potential to drive up funding costs, or limit access to liquidity, which will in turn drive up costs to consumers and affect the competitiveness of non-ADI financiers compared to ADI financiers in the sector.

Conclusion

TFA therefore submits that the Draft Bill could be improved by limiting its scope to provide APRA (and industry) more guidance on the how these powers are to be used and for what specific purposes. In particular, TFA considers the auto financing sector, which is already the subject of intense regulatory scrutiny from ASIC (and rightly so, given its mandate as the conduct regulator of the retail finance sector), should be excluded from the scope of these new rule making powers under the Draft Bill. This will give the sector certainty as to the potential reach of the new powers and will allay the fears of investors of the non-ADI auto financing sector.

We thank you for the opportunity to provide TFA's views on the Draft Bill. Please feel free to contact me if you require any further information.

Yours faithfully,
TOYOTA FINANCE AUSTRALIA LIMITED

A Hopkins

Adam Hopkins
General Counsel and Company Secretary