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Our reference
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Langton Crescent
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Dear Sir/Madam

Banking Amendment (Credit Card) Regulation 2014

1. Introduction

- 1.1 We are pleased to provide our comments on the exposure draft of Banking Amendment (Credit Card) Regulation 2014 (**Credit Card Reg**) as released on 14 October 2014. The Credit Card Reg proposes to revoke regulation 4 of the *Banking Regulations 1966* (Cth) (**Banking Regulations**).
- 1.2 We have no specific comments on the Credit Card Reg itself. Our focus is on the potential impact of the Credit Card Reg on related financial services laws. In particular, we focus on following.
- (a) the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (**AML/CTF Act**)
 - (b) the ePayments Code, and
 - (c) other industry codes of practice.

2. AML/CTF Act – Designated services

- 2.1 The AML/CTF Act assumes that credit card related designated services are those set out in items 1, 2, 3, 6, and 7 of Table 1 of section 6(2) of the AML/CTF Act. The AML/CTF Act as currently drafted assumes that those designated services are provided by authorised-deposit taking institution (**ADI**) only. Those services will be provided by the ADI to the credit card account holder or a signatory to the credit card account.
- 2.2 The Credit Card Reg will allow non-ADIs to issue credit cards from 1 January 2015. This would mean that the designated services under Items 1, 2 and 3 under the AML/CTF Act as currently drafted will not apply to the issue of all credit card accounts. Currently, those services are applicable only when the account provider is an ADI, a bank, a

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building society, a credit union or a person specified in the AML/CTF Rules (none currently prescribed).

- 2.3 The non-ADI credit card issuer will satisfy the definition of a "non-financier" under section 5 of the AML/CTF Act as currently drafted. This could lead to the non-ADI credit card issuers inadvertently being considered as giving effect to 'designated remittance arrangements' and being required to be registered on the Remittance Sector Register maintained by the Australian Transactions and Reports Analysis Centre.

3. ePayments Code

- 3.1 The ePayments Code regulates electronic payments including credit card transactions. The subscription to the ePayments Code is currently voluntary but ASIC notes that almost all banks, credit unions and building societies in Australia are subscribers to the ePayments Code.
- 3.2 With the changes introduced by the Credit Card Reg, non-ADIs may become credit card issuers. Whilst some non-ADI credit card issuers may choose to subscribe to the ePayments Code – there is no legal obligation to do so. If some non-ADI credit card issuers choose not to subscribe to the ePayments Code, then this could lead to a consumer protection framework under the ePayments Code not applying to certain credit cards.

4. Industry codes of practice

- 4.1 Industry codes of practice such as the Code of Banking Practice and Customer Owned Banking Code of Practice also impose obligations on subscribers that issue credit cards. For example, the Code of Banking Practice requires issuers of credit cards to include additional information about chargeback rights and claim a chargeback right where such a right exists. The Customer Owned Banking Code of Practice imposes additional obligations on its subscribers in view of credit limit increase offers.
- 4.2 With the changes introduced by the Credit Card Reg, non-ADIs may become credit card issuers. Those credit card issuers may not be able to subscribe to the industry codes of practice as the subscription to those codes may be limited to banks, mutual building societies, credit unions, etc. Inability for certain credit card issuers to subscribe to those code could lead to certain parts of the consumer protection framework not applying to certain cards.

We request that Treasury have regard to the impact of the changes to the Banking Regulations on other financial services laws. Treasury may wish to communicate with other Government departments to draft the necessary changes to other financial services laws to minimise the possibility of the changes to the Banking Regulation having any unintended consequences.

We would like to thank you again for providing us the opportunity to provide comments on the draft legislation. We will be pleased to provide further comments if required to do so.

Yours sincerely

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