25 June 2026

Scams Policy Unit
The Treasury
Langton Crescent
PARKES ACT 2600

By email: scamspolicy@treasury.gov.au

Dear Sir/Madam

Scams Prevention Framework Codes and Rules Exposure Draft

The Australian Financial Markets Association (AFMA) represents the interests of over 140 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. AFMA's members largely operate in wholesale and institutional markets.

AFMA is pleased to provide a submission in response to the Scams Prevention Framework (**SPF**) Codes and Rules Exposure Draft (**the Exposure Draft**). This follows AFMA's submission of 5 January 2026 in response to the consultation titled "Scams Prevention Framework – Draft Law Package and Position Paper."

Executive Summary

AFMA notes the following by way of executive summary:

- The SPF should not have application to wholesale banks that do not provide banking services to retail clients. This includes banks that are authorised to provide services to both retail and wholesale clients, but whose wholesale activities are operationally segregated from their retail activities;
- A person who is a "wholesale client" should be excluded from the definition of "SPF consumer." AFMA suggests an addition to proposed Rule 3-3 to give effect to this position;
- Wholesale banking services should be excluded from the definition of "covered banking service." AFMA suggests an addition to proposed Rule 3-2 to give effect to this position;

- In the absence of such an amendment, wholesale banks will need to incur significant and disproportionate regulatory costs to comply with a consumer-protection code which should have no application to such banks. This is in direct contrast with the Government's current regulatory reform agenda;
- There are existing regulatory requirements that apply to wholesale banks that otherwise serve to mitigate the instances of scams and losses arising from scams.

Two-pronged approach

AFMA reiterates that there are two steps needed to appropriately exclude wholesale banking:

(i) To align the definition of "SPF consumer" to licensing concepts. This will ensure that ADIs that are prevented from providing services to retail customers will then also be prevented from providing services to SPF consumers; and

(ii) Excluding wholesale banking services from being "covered banking services" in Division 2 of Part 3 of the Exposure Draft SPF Rules with the definition of 'wholesale banking services' to refer to those bank branches that have an ADI authorisation to provide services to wholesale clients only.

A failure to implement either or, preferably, both of these mechanisms in the Rules will give rise to significant unintended consequences by imposing a consumer-protection framework on ADIs that, from a licensing perspective, are unable to provide services to consumers.

Proposed Rule 3-3 – Requested Amendment

AFMA notes that the Exposure Draft SPF Rules include proposed Rule 3-3, which operates to exclude a person from the definition of an SPF consumer in respect of covered banking services. The Explanatory Statement to the Exposure Draft provides that a person is not an SPF consumer of a covered banking service where they do not have a direct relationship with a regulated entity providing the service or they are not making a payment to or receiving a payment from the bank. Importantly, the draft Explanatory Statement states (in relation to the proposed Rule):

> "This has the effect of excluding business to business banking services from the SPF where ***they are not directly servicing a retail customer*** [emphasis added]."

The use of the term "retail" in the draft Explanatory Statement is crucial in this context. If the Government's intention is that the SPF does not apply to business-to-business banking services that do not involve a retail customer (as that term is understood from a licensing perspective) then it is AFMA's request that the exclusion in proposed Rule 3-3 for covered banking services includes an exclusion for wholesale customers as defined in the *Corporations Act* – refer proposed Rule 3-3(4) below.

> "**3-3 SPF consumers of covered banking services**
>
> (1) This section applies to a regulated service provided by a regulated entity that is a covered banking service.
>
> (2) For the purposes of subsection 58AH(4) of the Act, a person is *not* an SPF consumer of the service if a condition in subsection (3) of this section applies to the person.
>
> (3) The condition is that the person is *not* any of the following:
>
> (a) provided the service directly by a regulated entity; or

(b) if the person (the *payer*) transfers funds to another bank account or facility held by that person, or to a bank account or facility held by another person (the *payee*) – provided the service indirectly by a regulated entity with which the payee holds the account or facility; or

(c) if the person (the *payee*) receives funds from another bank account or facility held by that person, or from a bank account or facility held by another person (the *payer*) – provided the service indirectly by a regulated entity with which the payer holds the account or facility.

(4) For the avoidance of doubt, a person who is a wholesale client for the purposes of the *Corporations Act 2001 (C'th)* is not an SPF consumer."

Designation of Banking Services

The other step requested to give effect to the exclusion of wholesale banking from the SPF is to exclude wholesale banking services from being "covered banking services". This could be achieved by simply amending section 3-2 of the draft SPF Rules as follows:

"3-2 Banking designation—complete exception

(1) For the purposes of paragraph 58AD(4)(a) of the Act, a person is *not* a regulated entity for the regulated sector that is covered banking services if the person is a provider of purchased payment facilities.

(2) For the purposes of paragraph 58AD(4)(a) of the Act, a person is *not* a regulated entity for the regulated sector that is covered banking services if:

(a) the person is a foreign ADI within the meaning of the *Banking Act 1959*; and

(b) such person is authorised to provide banking services to wholesale clients only in Australia."

AFMA Policy Position

AFMA's engagement in relation to both Government and industry led initiatives to prevent scams has been to articulate its policy position that the only ADIs that should be subject to the Mandatory Code are those that are authorised to provide services to retail customers. AFMA's policy position remains that foreign banks operating via Australian branches should be excluded because their authorisations only permit them to provide banking business to "wholesale clients". This policy position is predicated on the fact that the SPF is essentially consumer-protection, with the obligations of in-scope entities largely designed to assist consumers to not be caught by a scam and to mitigate the harm arising from a scam.

This policy position appeared to be confirmed by Treasury, who has stated publicly that the current policy position is to specifically exclude "wholesale banking" from the application of the SPF. However, AFMA's position is that this policy intention is not appropriately reflected in the Exposure Draft. AFMA understands from Treasury's December 2025 presentation that Treasury considers that wholesale banking is excluded due to the definition of 'SPF consumer', however this is not the case as follows:

- A wholesale client can be a natural person (i.e. the individual could have the required net assets / wealth to meet one of the wholesale client tests, or could contribute $500,000 to the financial service/product so as to meet another one of the wholesale client tests);

- A wholesale client can be a small business (i.e. where the small business meets one of the wholesale client tests – noting that the wholesale client tests also include a small business test which is different to the small business operator test under the Consumer and Competition Act 2010). The small business test for wholesale client purposes focusses only on the number of employees whereas the small business operator test for the SPF consumer test not only has an employee test but also an annual turnover test and a place of business test. Therefore, there is no alignment between the wholesale client test of small business and the small business test as part of the SPF consumer definition.
- Further, the wholesale client test is measured at the point at which a financial service is provided to a client and then refreshed to the extent necessary. Whereas the SPF consumer test is measured at the point at which the small business becomes subject to a scam. These two points in time are not the same.

Wholesale Banking Commitment to Scam Mitigation

It should not be inferred that the AFMA position is that wholesale banks have no role in the mitigation of the instances of or losses arising to consumers from scams. Rather, AFMA's position is that, given the consumer-protection focus of the SPF, it should have application to retail banking only. AFMA's members acknowledge/commit to the following scam mitigants in relation to wholesale banking:

- As AFSL holders, wholesale banks are subject to a number of compliance obligations under Section 912(A)(1) of the *Corporations Act 2001 (C'th)* to do all things necessary to ensure that the services provided under the licence are provided efficiently, honestly and fairly, which will inform the manner in which wholesale clients are treated. As noted below, ASIC has already successfully used this provision in relation to scam-related conduct by a bank notwithstanding the current lack of an SPF;
- They can be a receiving bank (i.e. the bank that receives a payment from the payer's bank where the payer could be a SPF consumer). In this scenario, although AFMA's wholesale bank members are not AFCA members, they commit to take reasonable steps to co-operate with AFCA in any scam-related dispute involving them as receiving bank;
- Wholesale banks will generally support sharing of information, including actionable scam intelligence, with law enforcement, regulators and other government organisations such as the National Anti-Scam Centre where privacy and confidentiality safeguards allow them to do so;
- Wholesale banks are already subject to ASIC and AUSTRAC administered suspicious reporting obligations under other laws; and
- Wholesale banks, as AFSL holders, are willingly registering websites with ASIC to assist with the mitigation of impersonation scams.

Definition of SPF Consumer

The definition of "SPF consumer" is:

- A natural person, or a small business operator, who is or may be provided or purportedly provided the service in Australia; or
- A natural person who is ordinarily resident in Australia and is or may be provided or purportedly provided the service outside of Australia by a regulated entity that is either an

Australian resident or is providing or purportedly providing the service through a permanent establishment in Australia.

The definition of small business operator is a person who carries on a business if:

(a) in the case of the person being a body corporate:

(i) the sum of the person's employees, and the employees of any body corporate related to the person, is less than 100 employees; and

(ii) the person's annual turnover during the last financial year is less than $10 million; and

(b) in the case of the person not being a body corporate:

(i) the person has less than 100 employees; and

(ii) the person's annual turnover (worked out as if the person were a body corporate) during the last financial year is less than $10 million; and

(c) in every case—the business has a principal place of business in Australia.

Importantly, this definition makes no reference to the distinction between "retail" and "wholesale" for the purpose of the *Corporations Act.* Our view is, therefore, that a wholesale client that is either a natural person or a small business may be characterised as an "SPF consumer" for the purpose of the SPF regime under the *Competition and Consumer Act 2010*.

On this basis, AFMA recommends that, at least in relation to covered services that are banking services, that the SPF Rules contain an exclusion for 'wholesale clients' from the definition of SPF consumer. Given that ADIs that are prevented from providing services to retail clients will have established practices and protocols in place to ensure that the licensing restrictions are adhered to, this will add further confidence that such ADIs have no obligations under the SPF.

AFMA also notes that the inclusion of "small business operator" in the SPF consumer definition gives rise to many operational difficulties:

- in the structured finance context, it is not uncommon to find customers that are nominee and special purpose vehicles operating with minimal capital with annual turnover below $10 million;
- some wholesale bank customers are not traditional body corporates and so trying to assess 'annual turnover' is impossible – i.e. a family office; and
- how any of the elements of the 'small business operator' test are assessed at the point at which a customer becomes subject to a scam is impossible to measure. Banks conduct a wholesale client assessment at the point of onboarding, not at the point that a scam occurs.

Excluding wholesale clients from the definition of SPF consumer in this way will also future-proof any refinements to the definition of retail in the *Corporations Act.*

Unintended Consequences of SPF Applying

AFMA's understanding is that, to the extent that a wholesale bank was to provide services to a wholesale client that is an individual or a small business, then the following unintended consequences would arise.

Build Entire SPF Response

Retail banks, such as those represented by the Australian Banking Association (**ABA**) and the Customer-Owned Banking Association (**COBA**) have been part of an industry-wide initiative to mitigate the instances and losses arising from scams under the Scam-Safe-Accord.

Wholesale banks are not, and should not be, part of the Scam Safe Accord given its retail focus, and AFMA, as the representative body for wholesale banks, was not part of the engagement to develop the Accord. If wholesale banks were covered by the SPF, this would necessitate implementation of the entirety of the obligations under the SPF Code, which, given the consumer-protection focus of the Code, would not be fit-for-purpose for wholesale banks. By this we mean that a wholesale bank would need to establish an entire retail-like regulatory infrastructure for when their clients might fall within the definition of an SPF consumer. This infrastructure would require a wholesale bank to establish an internal dispute arrangement which, to date, they would not have had to establish as ASIC only requires a bank to establish such an arrangement where they deal with retail clients. AFMA respectively submits, in an environment where regulatory simplification is the Government's focus, that requiring a wholesale bank to set up an entire retail client regulatory infrastructure for the small number of clients who may be SPF consumers is disproportionate to the risk that it is seeking to protect.

Wholesale bank clients are very sophisticated individuals – they need to be in order to meet the various wholesale client definitions. If they were the subject of a scam, these clients have sufficient resources and means to be able to commence judicial proceedings against the wholesale bank and take them to court for any failings to that client. There are existing heads of claim that a wholesale client could bring an action under including that the bank has not acted efficiently, honestly or fairly with the customer. For example, ASIC's recent case was brought in relation to this head of claim despite there being no SPF framework operational yet.

Further, a wholesale client might not be a SPF consumer in one year (e.g. because their annual turnover was over $10 million in the previous year) but then the client might have a less profitable year and because of that they, then meet the test of being a SPF consumer and have these protections. AFMA submits that it is perverse that just because a small business wholesale client has volatility in its revenue, that this should not result in the wholesale bank needing to spend the time and cost to implement an entire retail-like regulatory infrastructure.

Requirement to join AFCA

Noting that the Australian Financial Complaints Authority (AFCA) is authorised as the external dispute resolution scheme for the SPF, wholesale-only banks would be compelled to become AFCA members from 1 September 2026. Such banks currently have no obligation to be AFCA members and AFCA's current mandate has no application to ADIs providing services to wholesale clients. It strikes AFMA as perverse that such ADIs are required to become AFCA members purely for the purposes of the SPF.

AFMA's understanding is that AFCA's current resources are constrained and requiring wholesale-only banks to become members purely for external dispute resolution purposes will place further pressure on such resources. This is a perverse outcome, particularly where AFCA has little to no jurisdiction in the wholesale client space.

Treasury already thought of this exact point when developing its policy settings for the payment system licensing reforms and AFMA wishes to identify that, in the context of those reforms, Treasury settled on a position where entities dealing with wholesale clients (called 'payment system licensees' in the payment system licensing reforms) would be:

(a) required to "co-operate" with the IDR processes of their wholesale clients where those wholesale clients were dealing with their retail client complaints; and
(b) required to 'take reasonable steps to co-operate' with AFCA in relation to any complaint that relates to the provision of services by the wholesale client to their retail client which is escalated to AFCA.

AFMA respectfully submits that this is the appropriate way to address the involvement of wholesale banks in SPF consumer complaints.

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AFMA appreciates the policy position that wholesale banking should not be within scope of the SPF and is committed to continue to work with Treasury and Government as to the optimal approach to achieve this exclusion. Please contact me on (02) 9776 7996 or rcolquhoun@afma.com.au if you have any queries about this submission.

Yours sincerely,

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