



2 February 2018

Mr Andrew Hastie MP
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
Canberra ACT 2600

By email: pjcis@aph.gov.au

Dear Chair

Foreign Influence Transparency Scheme Bill 2017

I would like to thank you and the Committee again for the opportunity to appear and give evidence before the Committee at its hearing on 30 January with regard to the Foreign Influence Transparency Scheme Bill 2017 (FITS Bill).

AFMA took two questions under notice while providing evidence to the Committee concerning:

1. The level funds under management by AFMA member firms;
2. The percentage of AFMA's membership that is foreign owned or would qualify as a foreign principal under the legislation.

1. The level of funds under management by AFMA member firms

Having regard to the nature of the business of financial markets participants, the question about the level of funds under management by AFMA member firms may be best addressed by reference to the value of securities on issue in the Australian capital markets. AFMA's members account for the great majority of business conducted in connection with these markets as traders, investors, issuers, arrangers and operators of financial market infrastructure.

The relevant data are provided in Table 1 on the next page.

Table 1 - Financial Markets and Banking Data

| Australian Debt Securities Market <i>(Issued in Australia, \$bn)</i> | Government | Non-government | Source |
|--|-------------------|-----------------------|-----------------|
| Short term securities | 20 | 269 | RBA table D4 |
| Long term securities | 753 | 539 | RBA table D5 |
| Total | 773 | 809 | RBA table D6 |
| Australian Equity Market <i>(Market capitalisation, \$bn)</i> | | | |
| Domestic listed entities | 1,894 | | RBA table F7 |
| Bank assets (\$bn) | | | |
| Total resident assets | 3,633 | | APRA statistics |
| Business lending (loans > \$2mn) | 747 | | RBA table D7.3 |

Notes:

Data are provided for November 2017

RBA - Reserve Bank of Australia

In relation to wholesale banking, we do not have access to direct data for the wholesale banking assets of member firms. However, data are shown in table 1 for total resident assets (retail and wholesale) of authorised banks and for large business loans, which provides an indication of the relative scale of wholesale banking business. Foreign banks account for 11% of banks' total resident assets.

2. The percentage of AFMA's membership that is foreign owned or would qualify as a foreign principal under the legislation

AFMA's website provides the public with a wealth of information about our various functions and activities and includes a specific Membership section that provides a list of members, with web links to their respective company websites – see www.afma.com.au.

AFMA currently has 103 Financial Market members, who are organisations that participate directly in Australia's financial markets and generally hold an Australian Financial Services Licence. Financial Market members have full voting rights in the governance of the Association.

The FITS Bill at section 10 provides the following definitions:

foreign principal means:

- (a) a foreign government;
- (b) a foreign public enterprise;
- (c) a foreign political organisation;
- (d) a foreign business;
- (e) an individual who is neither an Australian citizen nor a 6 permanent Australian resident.

The category which has most relevance to AFMA's membership is *foreign business* because it identifies companies with substantial Australian businesses as a 'foreign' business since banking and clearing house prudential rules favour a branch structure rather than a local subsidiary for international banks and clearing houses.

foreign business means a person (other than an individual) that:

- (a) either:
- (i) is constituted or organised under a law of a foreign country or of part of a foreign country; or
 - (ii) has its principal place of business in a foreign country; and
- (b) is not a foreign government, foreign public enterprise or foreign political organisation.

On this basis, our assessment is that **24%** of AFMA's Financial Market members (ie 25 firms) would be a *foreign principal*, as defined in the Bill.

We emphasise that member firms who would be categorised as a *foreign principal* under the regime operate as an Australian business and, in our experience, this is how they organise and see themselves. They work with AFMA to further the effectiveness of Australia's financial markets, to enhance competition and to make Australia a more competitive location from which to conduct global business.

While only around 24% of our Financial Members would be categorised as a '*foreign principal*', because we act on the collective behalf of all our Financial Members all of our activities would be subject to onerous record keeping and long term retention requirements. In practice, it would need only apply to one such member for this to be the case. Even simple communications through the media become difficult when it is necessary to state the names of 25 members, in order to satisfy the Bill's disclosure rule, and misleading if only 25 names out of over 100 hundred members are identified.

The number we provide above is subject to the following qualifications to our assessment process that reflect the need to respond within the Committee's timeframe:

- We applied our understanding of the FITS Bill's provisions and, in particular, have not sought external legal advice on the interpretation of the term *foreign principal* or on its constituent elements (which we would likely be required to seek were we to be subject to the proposed regime);
- We applied our informed understanding of members' businesses in Australia and have not had the opportunity to investigate each firm's particular situation.

We note that AFMA also has 19 Partner Members, who are organisations that provide services, such as legal, accounting and risk management services, to Financial Market members. Partner Members do not have voting rights in the governance of the Association. We note it would be a more complex and time consuming exercise to assess the foreign principal status of each of our Partner Member firms.

Yours Sincerely,

David Lynch
Chief Executive Officer