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The Secretary
Select Committee on Lending to Primary
Production Customers
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Date 4 September 2017

Subject **Answers to questions taken on notice**

Dear Mr Palethorpe

Thank you for your letter dated 22 August 2017 relating to questions taken on notice during the Sydney hearing for the Select Committee on Lending to Primary Production Customers. We have set out the answers provided by Rabobank Australia Limited (also referred to as "the Bank") below, along with the relevant extracts from the hearing transcript for ease of reference:

QoN 1:

Senator SMITH: Previous submitters have been able to provide us with a bit more detailed evidence of their use of the Farm Debt Mediation Scheme. Can you give us a sense of how often that's been utilised over the last 12 months or the last three years?

Mr Knoblanche: Over the last two years, I would say we've used it about 15 times. Would that be right, Andrew?

Mr Graham: Yes.

Mr Knoblanche: And in more than 50 per cent of those, I'd say the majority of them, the outcome has been a positive one where clients are still trading and operating.

Senator SMITH: So more than 50 per cent or more than 75 per cent?

Mr Knoblanche: I'm not sure. It's more than 50 per cent.

Mr Graham: More than 50 per cent.

Senator SMITH: That's one in two.

Mr Knoblanche: We can take that on notice and come back.

In response to Senator Smith's question regarding the utilisation of farm debt mediation, Rabobank confirms in the past 5 years it has participated in 34 regulated farm debt mediations in Australia. As a result of those 34 mediations, 11 customers remain trading, 6 refinanced to another lender, 5 voluntarily sold down assets to repay their debts and receivers were appointed in respect of 12 of those customers.

QoN 2:

Senator SMITH: I think that Senator Georgiou and I know about the Dutch disease in other Australian industry classes, absolutely. Just finally, though—and you might want to take this on notice—you talk about how the industry could benefit from the enhancement of existing schemes. On notice, could you just provide us with a little bit more detail in terms of what that might look like. But I notice that you also have come out and supported the implementation of a consistent, nationwide approach to farm debt mitigation schemes. I am assuming that you would like the New South Wales model?

In relation to Senator Smith's question (which Mr Knoblanche initially took on notice then proceeded to answer in the hearing – Hansard p45: 11/08/17) as to “how the industry could benefit from the enhancement of existing schemes” the Bank confirms that it considers that the farm debt mediation process set out in the Farm Debt Mediation Act 1994 (NSW) is a highly effective tool for the management of loans to primary producers that are in difficulty. The Bank supports the establishment of a uniform national farm debt mediation scheme which follows the NSW model (or any other acceptable model based on the NSW precedent). The Bank looks forward to continuing to work with the ABA and its members in relation to exploring options for an appropriate, nationally consistent farm debt mediation scheme.

As suggested by Mr Knoblanche during the hearing, the Bank also considers that other enhancements to the existing schemes might include increasing the number of rural financial counsellors available to farmers needing advice and the creation of an early intervention model which provides education, identification of different options and general assistance to farmers at an early stage when their difficulties first begin (rather than at the tail end of the process when the farmers have been in default for some time and their options have become very limited).

QoN 3:

CHAIR: Is it true that Rabobank has been fined and been required to make restitution in several jurisdictions around the world following its identification as part of the LIBOR interest rate collusion scandal?

Mr Knoblanche: Yes it is.

CHAIR: Is it true that in Australia there has been no prosecution or investigation to date?

Mr Knoblanche: I can't answer that. I'll have to take that on notice. There has been no prosecution or investigation that I'm aware of, but we can take that on notice and answer your question.

CHAIR: Okay. Would Rabobank be prepared, without admission, to correct any accounts of its Australian customers?

Mr Knoblanche: I don't understand what you mean—

CHAIR: Under the LIBOR—if there are mistakes that have come to Australia, would it be prepared, without admission, to correct those accounts?

Mr Knoblanche: Again, I'll have to take that on notice—I'm sorry, Chair.

CHAIR: Thank you.



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We refer to the Chair's question "Is it true that Rabobank has been fined and been required to make restitution in several jurisdictions around the world following its identification as part of the LIBOR interest rate collusion scandal?" to which Mr Knoblanche replied "Yes it is". (Hansard page 45: 11/08/2017). That response was technically incorrect in one respect in that Coöperatieve Rabobank U.A. (formerly known as Centrale Raiffeisen-Boerenleenbank B.A.) ("Rabobank") has not been required to make restitution in connection with the resolution of worldwide investigations regarding Rabobank's Interest Rate Benchmark ("IRB") submission processes. Whilst it is a fact that Rabobank entered into agreements with certain regulators (but none in Australia) that required monetary payments to resolve worldwide investigations regarding Rabobank's IRB submission processes, it is also a fact that Rabobank was not required by any such regulator to make restitution. Further, in relation to this Select Senate Inquiry, it is important to note that neither Rabobank Australia Limited nor the Australia Branch of Rabobank was involved in Rabobank's IRB submission processes at issue, including LIBOR, and that neither Rabobank Australia Limited nor the Australia Branch of Rabobank was penalised in any jurisdiction in connection with Rabobank's resolution of the worldwide IRB investigations.

In response to the Chair's question (taken on notice by Mr Knoblanche – Hansard pages 45/46: 11/08/2017) as to whether there has been any prosecution or investigation to date by Australian authorities regarding the IRB submission process, the answer is 'no' in that there has not been any such prosecution or formal investigation of Rabobank by Australian authorities in connection with Rabobank's IRB submission processes. Further, no Australian authority has prosecuted or formally investigated Rabobank Australia Limited or the Australia Branch of Rabobank. We confirm that neither Rabobank Australia Limited nor the Australia Branch of Rabobank had any involvement whatsoever in the LIBOR submission process.

In response to the Chair's question (taken on notice by Mr Knoblanche – Hansard page 46: 11/08/2017) as to whether Rabobank is prepared, without admission, to "correct any accounts of its Australian customers", the first point to make is that Rabobank has not identified any evidence that the conduct by any Rabobank employees had any financial impact on its customers, including the clients of Rabobank Australia Limited and the Australia Branch of Rabobank. In the unlikely event that any evidence to the contrary subsequently arises, Rabobank Australia Limited and / or the Australia Branch of Rabobank would typically assess the situation at that time on a case by case basis to determine an appropriate course of action regarding each case.

QoN 4:

CHAIR: There has been another bank in the news quite a lot in the last week! We are aware that Rabobank was one of the banks involved in the taxation scandal in New Zealand, where funds were transferred to the US as capital gains and then to England as tax being paid thereon when in fact they should have, and eventually did, paid tax in New Zealand. Is that correct?

Mr Knoblanche: I don't believe it is, but I'll take that on notice too.

In response to the Chair's question (taken on notice by Mr Knoblanche - Hansard page 46: 11/08/2017) as to whether Rabobank New Zealand had been involved in a "taxation scandal"

in New Zealand, we do not know what “taxation scandal” the Chair was referring to. We are not aware of Rabobank New Zealand having been involved in any prosecution by the New Zealand Inland Revenue Department. Rabobank works closely and openly with tax authorities in Australia and New Zealand and any differences of views (if any) are tabled, discussed and resolved. Rabobank is extremely committed to being fully compliant in fulfilling all its tax obligations and contributing fairly and correctly to the Australian and New Zealand tax bases, as is both legally required and as part of its corporate and community responsibilities. It does not, as a matter of policy, engage in transactions that artificially reduce its effective tax burden.

QoN 5:

CHAIR: Okay, thank you. Has Rabobank audited every account, or any accounts that have been used, to identify correct debt for recovery actions, such as court, mediation or when accounts are closed?

Mr Knoblanche: Again, I'll have to take that on notice.

In response to the Chair's question (taken on notice by Mr Knoblanche – Hansard page 46: 11/08/2017) whether Rabobank has “audited every account, or any accounts that have been used, to identify correct debt for recovery actions, such as court, mediation or when accounts are closed?” we confirm that there are several mechanisms in place to ensure that the correct debt is identified in relation to recovery actions. The actual software and systems themselves used by the Bank to record and calculate recovery debts are subject to audits to ensure the integrity of their data and processes.

QoN 6:

CHAIR: Could we have your figures, on notice, for the last five years of the number of people who have been in receivership and the number of farming businesses that have defaulted—defaults and receiverships?

Mr Knoblanche: Yes.

In response to the Chair's question regarding receiverships and defaults over the past five years, we confirm that during the course of a year clients may enter into monetary default (through non-payment of principal or interest) but subsequently cure that default by paying the outstanding amount.

The table below shows the number of the Bank's clients that were in default as at 30 June in each year:

| | Clients in default |
|---------|--------------------|
| June-13 | 119 |
| June-14 | 102 |
| June-15 | 89 |
| June-16 | 70 |
| June-17 | 65 |



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The table below shows the number of times the Bank appointed a receiver in each year (noting that the appointment date of a receiver is not the date a receiver may have physically acquired possession of property assets i.e. there can be a delay of some months between appointment and actually entering into possession).

| | New receivership appointments |
|---------|-------------------------------|
| June-13 | 12 |
| June-14 | 14 |
| June-15 | 7 |
| June-16 | 4 |
| June-17 | 0 |

QoN 7:

Senator SMITH: In selecting receivers, do you give due consideration to whether or not they've been in breach of their professional standards or have found themselves having broken the law or been prosecuted?

Mr Graham: Definitely. Yes.

Senator SMITH: How do you do that? Are they required to disclose or do you audit them?

Mr Graham: I think we should take that on notice and come back to you with a more detailed answer to fill in some of the blanks on the specifics of what we might do before we engage a receivership firm.

Senator SMITH: And what you might do if any sort of inappropriate practice or malpractice on the part of a receiver that you might have engaged is disclosed to you or you become aware of it.

Mr Graham: Yes.

In response to Senator Smith's question (taken on notice by Mr Graham - Hansard page 49: 11/08/2017), regarding the selection and appointment of receivers we confirm that the Bank maintains a list of preferred insolvency companies and undertakes a risk assessment and screening process (including sanctions and conflicts checks) before engaging them in line with the Bank's policy requirements when engaging all service providers. The Bank uses insolvency companies which have a proven track record which are typically larger, reputable organisations such as Ferrier Hodgson, PPB, Deloitte, PWC, Korda Mentha and McGrath Nicol. Some of these companies have a stronger rural expertise in certain jurisdictions and they are selected upon this basis. Continued inclusion on the Bank's preferred list of insolvency practitioners is contingent upon providing an ongoing satisfactory level of service to the Bank. This means that the Bank will not only be concerned with whether receivers are properly observing their legal and statutory obligations but also whether they understand and observe the core values which embody Rabobank's interactions with clients, employees and other stake holders. Clearly if the Bank became aware of any proven inappropriate practice or malpractice on the part of a receiver then the Bank would take appropriate action in connection with that conduct which would most likely include an immediate review of any current receiverships involving that particular firm and the removal of that firm from the Bank's preferred list of insolvency practitioners.

QoN 8:

CHAIR: How do you ensure that the properties in receivership are not being wasted without ensuring incomes are maintained so they can maintain future incomes? One of the receiver's primary responsibilities, as I understand it, is to make sure the assets are not wasted. We've seen examples of wasted assets —and I'm not saying which bank, and I'm not inferring its your bank.

Mr Graham: The receiver is appointed by the bank to secure and realise the security to repay the bank's debt. That is the job of the receiver, and they go about that business—

CHAIR: Is that the only responsibility?

Mr Graham: That's their primary responsibility.

CHAIR: What about the farmer? Maximising the—

Mr Graham: As I said, that's their primary responsibility. They have other responsibilities, and, of course, one of those is to make sure that the value obtained for those assets is the best value they can get.

CHAIR: And if their management or mismanagement of an asset caused wastage and you've got crop fields full of weeds?

Mr Graham: The receiver wouldn't be doing a very good job.

CHAIR: And cattle dying?

Mr Graham: Again, the receiver wouldn't be doing a very good job.

CHAIR: But the farmer has to pay.

Mr Graham: Ultimately, if the receiver doesn't do a good job and the assets aren't maximised, then the farmer will suffer and the bank will suffer. But I would say that the farmer would have a right of action against the receiver for not doing what they're supposed to do.

CHAIR: With the bank having the power in the courts, the bank having the power financially, the bank having the power over contract term changes, how would that farmer go about getting that right of action?

Mr Knoblanche: I'm sorry, Chair, but this is a matter between the receivers and, I think, the clients in—

CHAIR: I disagree. It's about—

Mr Knoblanche: The bank's power is not part of that. But we'll take on notice any questions you have in that regard.

CHAIR: You appoint the receiver, and Mr Graham says his, the receiver's, primary responsibility is to the bank. Yet it's the farmer's asset, it's the farmer's future, it's the farmer's livelihood. That raises questions about Mr Graham's approach to the farmers.

Mr Knoblanche: We can answer that on notice, if you like, as to the law of it.

CHAIR: Yes, please. If there are no more questions, thank you very much. We'll take a short suspension now.

In response to the Chair's question (taken on notice by Mr Knoblanche - Hansard page 50 : 11/08/2017), regarding the law governing the relationships between receivers and banks and receivers and farmers we confirm that the receiver's primary duty is to the mortgagee or chargee under the mortgage or charge in respect of which they are appointed. They are required to manage and realise the assets charged with a view to repaying the secured creditor's debt.

Receivers' fees are paid out of the proceeds of the sale of the assets during the course of the receivership. As stated by Mr Graham during the hearing (see Hansard page 47: 11/08/2017) if there are insufficient funds to pay the receivers' fees out of the sale of assets then the Bank will pay the receivers' fees. Those fees paid by the Bank can then be recovered from the customer under their loan contract with the Bank. Receivers are not obliged to provide the mortgagor with information about the progress of the receivership. They are entitled to refuse to disclose any information that might be contrary to the interests of their appointor. In relation



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to receivers' obligations to mortgagors, they have a general law duty to mortgagors to act in good faith and to use their powers for a proper purpose. The duty to act in good faith includes the duty not to sacrifice the interests of the mortgagor recklessly. In exercising their power of sale, receivers have a statutory duty to take all reasonable care to obtain the market value of the property.

We trust these answers are of assistance to the Committee. Please contact Ben Taylor, General Manager, Corporate Affairs should you require any additional information.

Yours sincerely

Lara Gray
Head Counsel
Rabobank Australia Limited

