

## **Council of Financial Regulators Review of Retail Payments Regulation : Stored Value Facilities**

### **Submission by**

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### **Publication of submissions**

All information (including name and contact details) contained in this submission, is able to be made available to the public on the CFR website.

### **Further consultation process**

iSignthis expresses interest in participating in further consultation process.

## Introduction

Australian Securities and Frankfurt Stock Exchange listed iSignthis Ltd (ASX : ISX and FRA\_DE : TA8) (“iSignthis”), is pleased to respond to the Council of Financial Regulators (CFR) with regards to the Review of Retail Payments Regulation : Stored Value Facilities.

## Europe

iSignthis 100% owned subsidiary, iSignthis eMoney Ltd (“ISEMEEA”), is a European Economic Area (EEA) authorised electronic money institution, licensed by the Central Bank of Cyprus under the Electronic Money Law of 2012 and the European Commission Directive 2009/110/EC (prudential supervision of the business of electronic money institutions).

The prudential regulation regime allows for the Company to inter-operate payment schemes such as SEPA and SWIFT, card schemes, issue and redeem electronic money, and may provide credit in connection with payment services.

ISEMEEA is a principal member of the following card schemes, including Visa Inc, Mastercard, JCB International, and also is a member of the Single Europe Payment Area (SEPA) scheme, for SEPA credit transfers, debit and instant payments. The Company has EURO (€) denominated central banking facilities, from which it receives and sends Euro based payments via the Step2 /Target2 under its Bank Institution Code (BIC) ISEMCY22.

## Australia

iSignthis 100% owned subsidiary, iSignthis eMoney (AU) Pty Ltd (“ISEMAU”), is a present applicant for a Purchase Payment Facility license. It is our understanding that ISEMAU may be the first such applicant since PayPal Australia Pty Ltd in 2006.

ISEMAU is a principal member of Mastercard, ChinaUnionPay, Diners & Discover, and an aggregation partner of American Express. It is presently finalising its access arrangements to the Visa card scheme.

ISEMAU is presently offering Visa and Mastercard card processing and settlement services, as a scheme registered payment facilitator of the National Australia Bank.

ISEMAU has applied to the Reserve Bank of Australia for Exchange Settlement Accounts, in order to allow it to receive settlements from the various card schemes.

ISEMAU has applied to the Australian Securities and Investment Commission (ASIC) for a non-cash payment facility Australian Financial Services License (AFSL).

## Global

iSignthis Ltd has patented a process whereby it can verify ownership of payment instruments remotely, whilst acting as a technical payment processor (also known as a ‘gateway’), either in cooperation with other principal payment scheme participants, or directly as the scheme participant via ISEMEEA or ISEMAU.

The process allows the Company to determine, on the balance of probabilities with an extremely low failed acceptance rate, if regulated payment instruments such as credit card, debit card or bank accounts are under the control of a person authorised to use such instrument, during the course of execution of a particular payment.

The payment instrument verification is thus both an anti-fraud measure, and a reliable and independent source of data with regards to satisfying the requirements for customer due diligence under Australia’s Anti-Money Laundering and Counter Terrorism Financing Regulations.

The process is also consistent with the United Kingdom’s 2017 Joint Money Laundering Steering Group (JMLSG), Volume I, section 5.3.89 and 5.3.90 guidance to mitigate impersonation risk and perform remote customer due diligence, together with the remote customer due diligence requirements of the European Union’s Fourth Anti Money Laundering Directive (EU) 2015/84.

The iSignthis process, which is offered under the Paydentity™ trademark, has been demonstrated to staff at the Australian Transaction Reports and Analysis Centre, the Reserve Bank of Australia and the Australian Securities

and Investment Commission, in addition to international regulators located in the European Union, Europe, and Hong Kong.

Paydentity is offered as a service to clients of iSignthis in order to remotely identify their end users and allow them to be onboarded to anti-money laundering regulated sector services (e.g. AFSL or gambling related services), and it uses a number of independent government and AML regulated data sources globally, underpinned by our payment instrument verification process.

According to the World Bank, more than sixty nine percent (69%) of the world's population have an active bank account, credit or debit card, which in turn provide not only a remote payment means to foster ecommerce, but may also be used as a source of independent and reliable data for know your customer processes.

Paydentity® underpins the ISEMEEA and ISEMAU's process for remote customer due diligence, and onboarding of retail customers to our stored value facilities, for the issuance of eMoney.

### **Regulation of Stored-value Facilities - Australian Regulatory Arrangements**

The Wallis Inquiry established the main elements of Australia's financial regulatory framework, based on the principle of 'functional' – as opposed to 'entity-specific' – regulation. In broad terms, the Australian Prudential Regulation Authority (APRA) is responsible for prudential regulation; the Australian Securities and Investments Commission (ASIC) is responsible for market conduct and elements of consumer protection; and the Reserve Bank of Australia (RBA) regulates the payments system and oversees the stability of the financial system as a whole. Each of these agencies has particular responsibilities in relation to participants in the payments system. Within this framework, the regulation of PPFs, in particular, has been identified as an area of complexity and potential regulatory overlap (see 'Recommendations of Recent Inquiries' section).

iSignthis disagrees that the area of PPF's is complex, and, noting Australia's regulatory framework, the PPF licensing regime is not subject to any onerous regulatory overlap that we have identified. Given the clear segregation of responsibilities between ASIC and APRA with regards to consumer facing obligations and prudential regulations, the requirements of the framework are clear.

iSignthis would posit that the Australian regulatory framework across the financial services and monetary services is fragmented at large, and that either APRA or the RBA should be the lead regulator for all monetary services, and ASIC for all financial services, even if it requires APRA to regulate parts of the Corporation Act where it applies to monetary services.

iSignthis understands that the Council of Financial Regulators seeks to simplify the PPF application process in order to encourage further applicants.

iSignthis posits that the licensing framework is not the barrier or impediment to interest from parties seeking to implement PPF type facilities. The requirements of the legislation and APS 610 are clear.

In reading and responding to this consultation paper, iSignthis believes that the real issues and barriers to fostering innovation and competition have been misconceived.

The core issue is that of market dominance and power by the "Big 4" banking institutions, creating direct and indirect barriers for any entrant seeking to provide new or innovative services in competition to the incumbents. Whilst the 4 pillars policy has undoubtedly been successful in fostering stable and strong banks, aka "the big 4", it has in our view seriously impeded innovation and competition during that timeframe.

Ironically, it is the combination of the Haynes Royal Commission and global card scheme rules regarding risk and anti-money laundering, that has created the business case for the iSignthis PPF application. The licensing requirements are almost incidental to the business case, with iSignthis taking a view that if a license is required, then such license must be granted prior to commencement of operations. We did not factor the purported complexity of license or overlap of regulators into our strategy, and it is doubtful that any commercial entity would do so, other than beyond an initial qualification check, allow a time and cost factor for the grant of said license.

## Issues for Consultation

### iSignthis Ltd Response

#### 1.0 What is the outlook for stored-value facilities in Australia?

*We believe the outlook for stored value facilities in Australia is an emerging opportunity. The Company has applied for authorisation on the basis that it believes it has a business case and customer proposition that differs significantly from the only other APRA authorised entity, PayPal Australia Pty Ltd.*

*With fraud and money laundering being a real and growing concern for the government, regulators, banks, AML regulated sector merchants and the general public, we anticipate that the Paydentity™ platform can provide enhanced data and confidence to merchants with regards to their customers (being the retail end user), which in turn is a unique proposition upon which a Purchase Payment Facility may be leveraged commercially.*

*The company's model is still emerging in the EEA, with an encouraging rise in revenues corresponding to a number of AML regulated sector merchants having been successfully contracted over the last six (6) months, for payment and eMoney services.*

#### 1.1 What are the perceived benefits of stored - value facilities for consumers in the context of payment services that are already available (e.g. credit and debit cards, and bank deposits)

*The Company operates a pass-through wallet and a stored value wallet. In the EEA, the stored value wallet is based upon the Company issuing an International Bank Account Number (IBAN) to each of its merchants and retail customers.*

*This allow customers to deposit funds into a 'real' bank account that is reachable via SWIFT and SEPA independent of our platform (i.e. via the payment scheme), and to fund the IBAN via cards and alternative payment methods via our own platform. The funds held in the IBANs are issued as eMoney by the Company, and may be redeemed at any of our merchants, or, transmitted as funds via the payment network.*

*The advantage to this is that each IBAN is then connected to external SWIFT and SEPA outbound facilities, as well as internally to IBAN's opened and managed via our platform.*

*This provide a seamless service between payments, stored value and current account banking, whereby the end user may utilise their preferred method of funding the IBAN and subsequently their preferred method of transferring stored value, by way of the payments system, banking system or redemption of eMoney.*

*As a principal acquirer of the major card schemes, the company intends to offer a choice of prepaid, credit and debit cards linked directly to the IBAN, and, it is deploying 'Original Credit Transfer' (OCT) facilities in coming months, where it may 'top up' existing credit cards, issued by Visa, Mastercard and other schemes, to a customer located anywhere in the world.*

*From an operational perspective, ISEMEEA deposits funds under the Eurosystem of Central Banking, with a number of EU central banks offering facilities, and, in return for making payment of the overnight Euro Libor rate, has the benefit of central banking and associated zero credit risk on deposits.*

*ISEMAU intends to offer similar services in Australia under its PPF authorisation when granted, noting that the Australian payments ecosystem has restrictions on PPF's which include;*

- *no ability to deposit funds with the Reserve Bank of Australia, in order to facilitate liquidity pools for BECS and prospectively RTSG transfers.*
- *reliance upon a third-party Authorised Deposit-taking Institution (ADI) to access BECS, as the AusPayNet **REGULATIONS for BULK ELECTRONIC CLEARING SYSTEM FRAMEWORK**, do not allow a PPF to participate as a Tier 1 participant per section 4.3(a) (ii). However, section 4.3 (a) (iv) of the foregoing regulations will allow the company Tier 1 access once it has Exchange Settlement Accounts with the Reserve Bank of Australia.*

#### 1.2 In functional terms, in what ways does 'stored value' differ from a bank deposit?

*In the EEA, there is no functional difference between stored value and a bank deposit, particularly as customers are issued IBAN's rather than email-based accounts as per PayPal.*

*In Australia, in order to mirror the Company's services in the EEA, it will rely upon the issuance of a Bank Sub Branch (BSB) by AusPayNet. Until such time, a PPF facility will not be perceived by retail customers as having the features, functions or safeguards (subject to prudential regulation) of a 'bank deposit'.*

**1.3 To what extent are providers of stored-value facilities seeking, or are likely-in the future, to expand and differentiate the range of services they offer (e.g. by offering 'buy now, pay later' facilities or multi-currency accounts for online cross-border payments)?**

*In the EEA, ISEMEEA offers services denominated in the G10 currencies, plus others, up to a total of sixteen currencies.*

*In Australia, ISEMAU intends to offer services denominated in the G10 currencies, plus six (6) other currencies, up to a total of sixteen currencies. We note that the regulatory environment is unclear in Australia as to ISEMAU's regulatory obligations, as a PPF may only issue stored value as Australian denominated currency.*

*By way of contrast, the regulatory environment in the EEA Furthermore under the Payment Services Directive 2 (EC Directive 2015/2366) ("PSD2") has increased consumer rights when sending transfers and money remittances outside the EU or paying in non-EU currencies. The now superseded Payment Service Directive (PSD1) only addresses transfers inside the EU and was limited to the currencies of the Member States. PSD2 has extended the application of PSD1 rules on transparency to now include "one-leg transactions", hence covering payment transactions to or from persons outside the EU as regards the "EU part" of the transaction, in all currencies.*

*The Company believes that it would be beneficial by 'upgrading' to a conditional ADI license, for the regulatory framework to allow PPF's once they reach scale, to carry out 'banking business' (other than as allowed for under the legislative regime as a PPF);*

- *hold deposits without the involvement of a third-party ADI, and/or to hold deposits with the Reserve Bank of Australia*
- *offer credit/personal loans and other miscellaneous services such as (non) operating leases, based upon a conditional ADI license, that does not include property (commercial (CRE), development facilities, or Mortgages)*
- *bring influence to bear on AusPayNet to allow for Tier 1 BECS membership to authorised PPF operators*
- *bring influence to bear in AusPayNet to allow for NPP access to authorized PPF operators*
- *bring influence to bear on AusPayNet to clarify issue of BSB's to authorised PPF operators*
- *accommodate non-Australian denominated currencies within the PPF framework*

*Under such conditions to license, the Tier 1 capital requirements could be suitably scaled.*

**2.0 How do you view the environment in relation to innovation and competition?**

**Many observers have suggested that the payments industry globally is in the midst of a period of significant innovation, associated with developments in technology and the influence of non- traditional payment service providers.**

**This review will consider the regulatory approach to stored-value facilities in the context of market developments and emerging business models that incorporate stored value. In this regard, the CFR welcomes insights on emerging and innovative payment services and business models, particularly how stored-value facilities feature in the outlook for competition in the retail payments market.**

**iSignthis Response**

*Noted. iSignthis has provided information regarding its proposed business model as part of its licensing application. That information has been submitted to APRA and ASIC as part of our licensing applications.*

**3.0 How can regulation appropriately balance consumer protection aims while supporting an innovative and competitive industry?**

**The CFR recognises the importance of limiting barriers to innovation and competition while supporting access to safe and efficient payment services. In this regard, recent inquiries have suggested that the current regulatory framework for stored-value facilities is having a detrimental effect on innovation and competition in the Australian payments market.**

### **iSignthis Response**

*We do not believe that regulation is the barrier to entry, and in particular for the provision of PPF services. By way of contrast, the European Union has, in our view, far more onerous requirements than Australia in some areas in the Electronic Money Directive, but the EU has a competitive environment, as it seeks to promote competition, not protect certain 'favoured' banks.*

*The challenge has been the Australian competitive landscape, and in particular the market dominance of the Big 4 banks, which in turn has prospectively precluded the entrance of challengers into the market. The combination of risk-based approaches predicated upon legacy infrastructure and systems restrictions, has meant that the Big 4 banks are not capable of meeting the demands of a modern payments system, upon which a PPF operator must rely.*

*Our view is that there needs to be a clear 'pathway' from a PPF service, to that of a conditional ADI. Regulation that 'tethers' one ADI to another, such as is presently the case with PPF framework, creates competition issues by its very nature. The only means for a PPF to achieve operational independence, which is a pre-requisite for innovation, is to achieve full ADI status. However, the minimum Tier 1 capital difference of \$45m between a PPF to a full ADI (without conditions) is far too large, given that most challengers will seek to innovate in areas where the incumbents are not or are perceived to be weak.*

*APRA could consider licensing ADI's with conditions, with a lower Tier 1 capital requirement, as a means to service specific market verticals.*

### **Specific Issues for Consultation**

**The CFR is interested in the views of stakeholders on the following specific issues.**

#### **4.0 Is there potential to clarify the definition of stored-value facilities and the intended coverage of stored-value regulation?**

**It has been observed that the current legislative definition of a PPF – a facility under which a holder of stored value makes payments to another person on behalf of the user of the facility<sup>19</sup> – is a potential source of uncertainty (e.g. containing terms that may be wide or somewhat ambiguous). Moreover, the term 'purchased payment facility' does not appear to be widely used internationally in relation to stored-value facilities.**

**The review welcomes feedback on issues regarding the scope and clarity of stored-value regulation, for example:**

#### **4.1 Is the current definition of a PPF a source of confusion for potential new entrants, including foreign entities?**

##### **iSignthis Response :**

*The present definition of PPF is clear and adequate. iSignthis had no real difficulty in interpreting the requirements. In order to provide some clarity to consumers, and to harmonise with other jurisdictions, the use of the term "electronic money" may be considered.*

#### **4.2 Are there existing or emerging services that provide similar functionality to a PPF (as currently defined) but may not be adequately captured under current regulatory arrangements?**

##### **iSignthis Response :**

*As described above, the PPF services could be extended to provide closer alignment with banking services, in order to provide seamless payments and deposits functions for consumers.*

#### **4.3 Should regulators give consideration to developing a set of principles to identify the kinds of services that ought to be regulated in relation to stored-value facilities, based on operational features (e.g. whether the service provider holds funds for a period of time or only initiates payments)? If so, do you have views on the nature of these principles?**

##### **iSignthis Response :**

*In the European Union, Payment Service Providers are only authorised to 'hold' funds for 24 hours, whereas Electronic Money Institutions (EMI's) are not (reasonably) constrained by time limits.*

*EMI's may, provided that they set out in their terms, expire eMoney when accounts are dormant. Dormancy, and the requirement to return funds, is defined under Member State laws, not EU directive, and varies from between five to ten years.*

*It is important that PPF's retain this unconstrained capability, and may store value on behalf of clients up to an expiry based upon account dormancy.*

*In all other respects, the present definition of PPF is clear and adequate. iSignthis had no real difficulty in interpreting the requirements.*

## **5.0 What regulatory boundaries or thresholds for stored-value facilities are appropriate?**

**Recent inquiries have suggested that numerical thresholds could be used to distinguish various tiers of, or approaches to, regulation. The CFR welcomes further feedback on these proposals or alternative approaches that could be considered (e.g. those based on approaches in other jurisdictions). As noted in the section on 'Recommendations of Recent Inquiries', suggestions of recent government inquiries have included:**

- **Facilities with total stored value less than \$10 million (and/or a limited number of people) could be largely exempted from prudential and licensing regulation.**

### **iSignthis Response :**

*The present threshold for PPF is clear, and proportional to the European Union's €5m (AUD\$8m) threshold. We do not believe that this threshold requires review, and provides for adequately capitalised entities to enter the market.*

## **5.1 Facilities with stored value between \$10 million and \$50 million, and with more than 50 people, could be subject to some degree of regulation.**

**The PC Report suggested that these types of facilities could be regulated (or exempted) by the RBA's Payments System Board. While the RBA currently shares regulatory responsibility for PPFs, it is worth considering alternative arrangements. One alternative could be for these 'medium-sized' facilities to be regulated by ASIC under the AFS licensing regime. The RBA's role could instead focus on its existing powers to designate and regulate payment systems on the basis of system-wide competition, efficiency or systemic risk concerns, rather than on the regulation of individual PPFs. This would be consistent with a simpler regulatory framework. In practice, the RBA has not been required to authorise or supervise a PPF provider because the non-ADI facilities that have been established have been small and/or limited purpose (as discussed in the section on 'Regulation of Stored-value Facilities'). In this context, ASIC's consumer protections could be bolstered by:**

**Ensuring the appropriate operation of provisions to safeguard value. In particular, the CFR notes the importance of Corporations Act (Part 7.8) safeguards on client money that require AFS licensees that hold funds on behalf of clients to hold these funds on trust in an Australian ADI or approved foreign bank.**

**There appears to be a prevailing industry view that these rules do not apply to money loaded into stored-value facilities because that money is used to purchase an increased interest in the product. The CFR queries whether this interpretation is consistent with the legislative intent of the client money rules in the Corporations Act. The effect is that customers who load money to a stored-value facility would be treated as unsecured creditors if the issuer of the facility became insolvent.**

### **iSignthis Response :**

*This is beyond our scope of expertise. We note however, that client funds held in a segregated fund account with a third-party ADI, or high-quality liquid assets in another form, would protect consumers from insolvency. We would be supportive of further regulatory clarity in this regard. Alternatively, a consideration could be that if the PPF maintains sufficient Tier 1 capital, that it may be 'upgraded' to a conditional ADI, and be deposit taking in its own right.*

*iSignthis would posit a minimum threshold of \$15m for deposit taking, credit services and payment of interest as a part way between full ADI and conditional ADI with Tier 1 membership access to BECS and NPP as long as there were no property related exposures in the form of commercial (CRE) or property development as a part of the RWA of the applicant.*

**5.2 Ensuring that additional consumer protections are applied consistently, such as by making the ePayments Code – which contains disclosure requirements as well as rules about unauthorised transactions and mistaken payments – mandatory.**

**iSignthis Response :**

*iSignthis conforms and is a subscriber to the ePayments Code, and would support mandatory application across all ADI's.*

However, reliance solely on the licensing, conduct and disclosure regime in the Corporations Act to underpin consumer protection for these 'medium-sized' facilities could result in additional risks to consumers. This situation could arise because ASIC's AFS licensing regime would be the sole framework for these types of facilities.

**iSignthis Response :**

*iSignthis agrees that the Corporations Act by itself contains insufficient protections for consumers, as prudential safeguards must also be present.*

**5.3 In considering potential updates to the regulatory framework, the review will have regard to the scope of any additional protections and the extent to which those protections may, or may not, be able to address any consumer risks associated with any change in the level of prudential regulation of stored-value facilities. Widely available facilities with stored value above \$50 million and allowing individual customers to hold more than \$1,000 (FSI recommendation) or \$500 (PC Report) could be subject to the highest degree of regulation. It has been suggested that these facilities be prudentially regulated and supervised by APRA (in addition to the consumer protections of the ASIC regime).**

**iSignthis Response :**

*iSignthis disagrees with the \$50m value, and posits that the existing \$10m value is proportionate. The European Union, with a population some 20 times larger, and a proportionally larger addressable market, has a regulatory threshold set at €5m (\$8m)*

**5.4 Consideration could also be given to a higher threshold for APRA supervision – for example, facilities holding over \$100 million in stored funds and, potentially 1,000 users or allowing individual holdings over \$1,000. This could help ensure that only those entities of sufficient scale are supervised by APRA, with prudential regulation applying only to those businesses whose failure could have a broader impact; a higher threshold may also be more robust to potential growth in the market. However, an implication of a higher threshold for APRA supervision is that ASIC's AFS licensing regime would be the sole framework for a potentially broader class of stored- value facilities. This would reinforce the importance of ensuring that Corporations Act safeguards on holding client money are operating effectively and considering the extent to which these (and other consumer protections) are sufficient to address any increase in consumer risk arising from a higher threshold for prudential supervision (see above).**

**iSignthis Response :**

*It is iSignthis' position that if the intent of the consultation is to simplify regulation, then these cascading thresholds will only add to any regulatory confusion*

**5.5 A related consideration with regard to regulatory thresholds is that, in practice, non-ADI operators of stored-value facilities have tended to partner with ADIs, with the ADI typically being the product issuer and the holder of the stored funds. If the threshold for prudential regulation was to increase, this could reduce the regulatory incentives to partner with ADIs and result in an expansion of non-prudentially regulated operations and therefore a larger amount of stored funds that would be 'at risk' in the event of future corporate insolvencies. The CFR welcomes views on whether changes to thresholds would affect partnering arrangements and create additional risks for consumers.**

**iSignthis Response :**

*We disagree that the threshold for prudential regulation should increase. The threshold is already consistent with international norms.*



5.6 The CFR welcomes feedback on how to determine which entities could be subject to APRA's prudential supervision. As discussed below, numerical thresholds could potentially be combined with broader criteria. The CFR also welcomes views on whether caps should be imposed in relation to maximum individual account sizes and/or annual payment flows, before payment products should be regulated as ADI deposits (as has been proposed in Singapore, for example).

**iSignthis Response :**

*It is iSignthis' position that if the intent of the consultation is to simplify regulation, then these cascading thresholds will likely add to any regulatory confusion. The existing structure has advantages in that the threshold requirements are easily measurable.*

**6.0 Are there other criteria that could be used to define regulatory boundaries for stored-value facilities?**

Recent inquiries have suggested that numerical thresholds may help provide clarity for regulated entities. However, strict thresholds may also create incentives for business models to be structured so as to avoid regulation and may not necessarily take account of the nature (and risks) of the services offered by individual facilities.

The CFR is seeking views on whether there are other factors that should be considered in determining whether a facility has 'deposit-like' features. Examples of facilities which raise potential issues could include:

**6.1 multi-currency facilities that are redeemable for Australian currency**

**iSignthis Response :**

*iSignthis does not believe that currency should be the determining factor for whether a service provided to Australian residents is regulated or not.*

*Multicurrency services are becoming more prevalent, with customers having a not unreasonable expectation that currency options will be available for international transactions.*

*The EU has regulated on a currency agnostic basis, for currencies issued from within and out of the European Union and European Economic Area.*

**6.3 facilities that are redeemable for foreign currency**

**iSignthis Response :**

*as above.*

**6.4 'open-ended' facilities, where money is held in a facility with no expiry date for use**

**iSignthis Response :**

*Subject to dormancy provisions, we do not see that expiry date should be a factor.*

**6.5 'closed-loop' systems involving funds that are not 'redeemable' for currency but can be used for certain purchases within the same system, or are referable to the provision of property/services/giving of security (for example, facilities that allow in-app purchases similar to WeChat Pay, or allow purchases to be made within a network, such as gift cards).**

Where Closed loop systems offer access between a wide consumer base and merchant base, as in the case of Alipay, then there is little practically to distinguish these from 'open loop' services. Such services should be subject to at least AML/CFT regulation, and in particular customer due diligence, and, where customer funds are held in excess of the \$10m threshold, be subject to prudential regulation. Minimum Tier 1 capital equity should be applicable, however, as there is likely to be no stored value at risk, the capital equity could perhaps be a function of aggregate stored value (e.g. \$5m initially and then 5% for each \$100m of stored funds).

A further question related to regulatory boundaries is whether providers of stored-value facilities should be restricted from offering certain other services that may take them into the realm of other regulated activities (as has been the approach to regulation in some other jurisdictions)? Examples may include the paying of interest on stored funds; the extension of credit or credit-like facilities; and ATM access.

**iSignthis Response :**

*iSignthis would welcome a means whereby it could offer incremental services such as unsecured loans, credit cards and interest on deposits, with caps subject to Tier 1 capital held and capital adequacy formula's. For example, iSignthis does not desire to enter the mortgage market, but, does see it as desirable to offer credit cards and*

services, with an ability to leverage client funds held as stored value, against a Tier 1 capital requirement and subject to the APRA (CPS 110) and Basel III requirements for capital adequacy. A conditional ADI license would be a means to achieve this.

We would anticipate that the Tier 1 requirement for a conditional ADI would be much less than the \$50m minimum Tier 1 capital for an unconditional ADI license, as issuance of mortgages and commercial or development property as RWA would not be allowed under a PPF facility and would be excluded from a conditional ADI license). The minimum Tier 1 capital requirements would in such case be more than the \$5m minimum for a PPF, but less than the \$50m of an unconditional ADI.

The card schemes require a \$15m minimum capital equity for issuance of credit cards in the Asia Pacific region, and this could be used as a guide.

## **7. What are your views on a 'tiered' approach to prudential supervision for stored-value facilities?**

Recent inquiries have proposed a two-tier approach for APRA regulation of PPFs (see the section on 'Recommendations of Recent Inquiries'). There is currently only one APRA-regulated PPF and, while there has been some recent interest in PPF licences, it is possible that the APRA-regulated PPF population could remain small for some time. There may therefore be a trade-off between introducing more tiering and achieving a simpler regulatory framework for stored-value facilities. As discussed above, a potential approach could be to increase the threshold for APRA regulation of stored-value facilities, with the APRA framework then being reviewed to ensure that it is suitable for the narrower range of (potentially larger and more sophisticated) facilities that would meet the threshold.

The CFR welcomes views on the appropriateness of a two-tier approach to stored-value facilities within the APRA regime, including how this could be balanced with the objective of a clearer and streamlined regulatory framework. The CFR also welcomes views on the alternative of a single APRA framework for larger/more sophisticated stored-value facilities, and what threshold(s) and/or other criteria might be appropriate for such an approach (see above).

### **iSignthis Response :**

*iSignthis does not believe that the PPF licensing regime is the influencing factor, and does not support a two tier approach. Australia's banking and payments sector has been dominated by the Four pillars policy of the Australian Government, which, since the late 1980's has provided banking stability, but, has in our opinion reduced competitiveness and innovation.*

*iSignthis has identified opportunities that are available to it not through access to licensing, but, by the retreat or withdrawal of some or all of the Big Four banks from particular market sectors. This corresponding retreat has created the market opportunity and thus the drive to seek a PPF license.*

*The actual licensing regime was incidental to the opportunity in terms of evaluating whether the Company would invest time and resource into providing an Australian service.*

*If an applicant lacks the resources to understand the PPF licensing regime, then conversely that applicant may not be well suited or resourced to operate under a prudential regime.*

*The European licensing regimes are similarly onerous, and the EU has had a reasonable number of electronic money institutions (in excess of 100) licensed since inception of the EU directive for eMoney in 2005. However, the EU has had a deregulated banking sector, with its corresponding stability issues, but also with corresponding competition and innovation.*

## **8.0 What is the appropriate regulatory approach to emerging products and services?**

The CFR recognises the importance of ensuring that regulation is able to adapt to changes in the market. In this regard, it is important to consider the impact of regulation on particular segments of the market and how regulation might apply to newer or emerging services. Although not limited to these issues, two areas on which the CFR is seeking views are:

The appropriate regulatory approach to payment accounts facilitated by a mobile device (e.g. mobile wallets) or other online wallet services. For example, do these services offer features of stored value, or do they largely facilitate consumer access to, and initiation of payments from, other payment products? To what extent do these services offer 'deposit-like' functionality?

**iSignthis Response :**

*Licensing should be technology agnostic. Prudential regulation is to safeguard client funds, irrespective of medium utilised to make deposit or payment.*

**8.1 The appropriate regulatory approach to 'closed-loop' systems. Services such as AliPay are examples of 'closed-loop' systems in which stored funds can be transferred to other users of the same system (as well as often by using a linked bank account or card). Although closed-loop systems have not taken off in Australia in the same way as they have in some other countries at this time, it is possible that they could become a more prominent part of the payments system in the future. An implication might be that substantial amounts of value are held in closed systems, potentially not redeemable in Australian currency (and therefore outside the current scope of APRA's prudential supervision).**

**iSignthis Response :**

*Prudential regulation should be based upon value held and access, per the present licensing regime, and not necessarily if it is open or closed loop. Paypal, in its early days, was a closed loop system, almost exactly like Alipay. Currency should also not be an influencing factor. The European Union regulates services offered within the union offered in any currency. Correspondingly, a major exploitation of the regulation would therefore be to offer a PPF service to Australian consumers in say US Dollars, in order to avoid regulation by APRA.*

*APRA should, in our view, focus on the domicile of the users, being residents of Australia, and seek to protect its residents by prudential regulation, irrespective of currency.*

**9.0 How could the transparency and communication of regulation be improved?**

Recent inquiries have noted that there is scope to improve the clarity and transparency of regulatory arrangements for payments service providers. As part of this review, the CFR agencies will consider measures to improve transparency, which is likely to include joint publication of a guide to the regulatory framework once any measures necessary to improve the framework have been implemented.

The review welcomes feedback on aspects of regulation that may be viewed as unclear or a potential source of confusion for industry and/or consumers; and on how the transparency and communication of regulation could be improved.

**iSignthis Response**

*The Regulation is clear and reasonably transparent. There are some interpretative issues which present some difficulty, particularly with regards to stored value at risk, noting that APS610 was drafted before 'on-net' services became wide spread.*

**10. Are there other issues relating to the regulation of retail payment service providers which could potentially be improved or clarified?**

**iSignthis Response**

We have addressed the core issues above. The key area is with regards to clarity as to how conditional ADI licensing can be achieved, whereby certain banking business is excluded from the scope of the ADI license.

