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THE COUNCIL OF FINANCIAL REGULATORS

SVF Submissions
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To Whom It May Concern

Review of Retail Payments Regulation: Stored-value Facilities

Thank you for the opportunity to provide a submission on this topic with specific reference to the Council of Financial Regulators' Issues Paper September 2018 (**Issues Paper**).

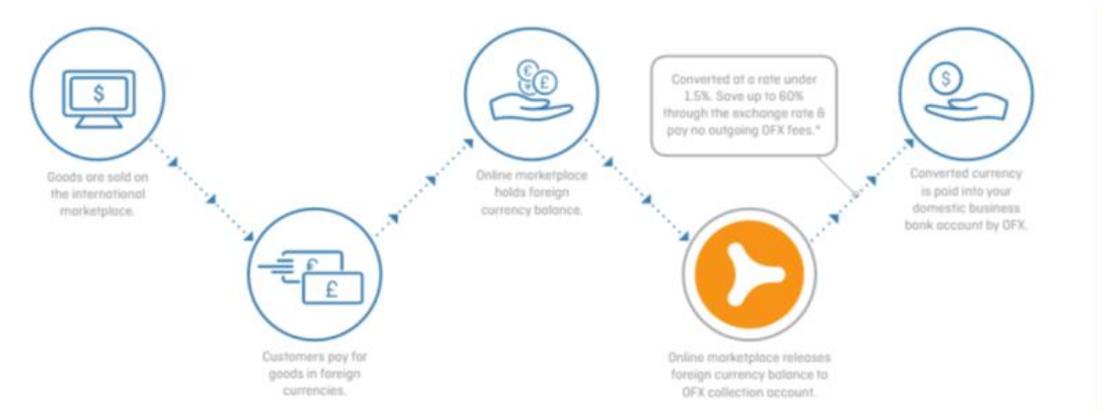
Our feedback and comments are set out below. For convenience, we will adopt the headings and address each consultation question as set out in the Issues Paper.

1. What is the outlook for stored-value facilities in Australia?

At OFX we have seen an increase in accessibility of global markets due to widespread internet access and the growth in online retail which has meant that Australian domiciled businesses are able to generate global revenue and attract international clients without the need to incorporate in foreign jurisdictions. Proliferation of trade and commerce across borders is creating new challenges for Australian businesses. Online marketplaces such as Amazon and eBay provide businesses with the facility to manage inventory through fulfilment services, however managing finances internationally is complex and is currently not serviced by the traditional banking sector or established purchased payment facilities (**PPFs**) such as PayPal.

Stored-value facilities such as multi-currency accounts for online cross-border payments (such as the OFX Global Currency Account) solves for this in a number of key ways, including:

- Non-cash requirements – electronic money (e-money).
- Treasury management (FX and liquidity management).
- Aggregate balance holding and cash management.
- Payment of foreign settlement (local to their place of doing business).
- Ability to establish foreign account capability without a foreign presence or banking partnership.



The current regulatory framework in Australia is somewhat restrictive meaning that providers are bound by certain rules which prevent customers from realising the benefits of multi-currency account type products. For example, the duration of which funds can be available to the customer greatly impacts the customer's ability to manage costs associated with foreign exchange fluctuations.

Should the regulation be updated, we are very likely to expand our current offering of a multi-currency account for online cross-border payments in Australia.

2. How do you view the environment in relation to innovation and competition?

The payments landscape in Australia and globally has been dominated by bricks and mortar banks for many years. The last decade introduced new ways for customers to pay for goods through non-banking offerings and PPF providers such as PayPal. The intention was heavily focused on improving customers' transactional experience, however OFX believes that the outcome has not resulted in significant improvements to the ability of customers to manage their funds, especially when needing to manage finances globally.

Recent and continuing digital trends and the growth in the Fintech sector has seen significant change in the way customers choose to manage their finances. Digitisation is driving rapid developments in innovation which has seen new entrants into the payments space. The introduction of neo-banks across Europe, such as Monzo, and digital wallet providers such as Revolut, has proven that there is a gap between the incumbent offerings and customers' wants and needs. This is leveraged by technology and driven by market demand. OFX expects this trend to continue, however the current regulatory framework in Australia is limiting the opportunity for growth when compared to other jurisdictions such as Europe.

Global digital wallet providers and similar services base their business models on improving the way customers make payments globally, but more importantly, how they receive, store and manage money globally in a digital world.

It is OFX's view that the current regulatory structure in Australia poses an undue restriction on innovation for existing Australian Financial Services Licensees who have the capability, resources and desire to provide Australian customers with a truly global stored-value facility (SVF) product and to innovate and develop new ways of delivering seamless payment services to customers seeking a one-stop seamless experience.

3. How can regulation appropriately balance consumer protection aims whilst supporting an innovation and competitive industry?

OFX is an Australian incorporated global financial services business and its parent entity is listed on the Australian Securities Exchange. Different licensing regimes and regulatory approaches which vary per jurisdiction can create uncertainty, and arguably undue risk, for customers. This is especially the case when an Australian customer contracts with a registered foreign company, such foreign company being able to rely on an ASIC class



order relief to provide its products and services in Australia¹. This can raise jurisdictional issues regarding the product or service and the Australian customer's ability to enforce its rights and protections.

OFX believes there is a need to improve and simplify the regulatory framework for SVFs in Australia and create competitive neutrality of licensees globally, aligning foreign financial services providers with local providers.

A simplification of the current framework would support businesses like OFX and other money service businesses to continue to meet customer demand across current pain points including treasury management (i.e. FX and liquidity) and aggregate balance holding for cash management of global businesses and customers. In OFX's opinion, an alignment of similar licencing frameworks which are currently in place across Europe (and other jurisdictions) would drive innovation in the Australian Fintech market and provide a level playing field for competitive incumbents and new businesses alike.

OFX proposes that the additional risks brought by offering a SVF, as opposed to a more standard financial product, and more specifically by holding aggregate customer balances, does not warrant prudential regulation. However, OFX suggests that in addition to the current consumer protection framework and general protections applicable to customers of AFS Licensees under both the *Australian Securities and Investments Commission Act 2001* (Cth) and the *Corporations Act 2001* (Cth) (**Corporations Act**); further regulatory obligations and licensing requirements are required. However, it is OFX's view that such licensing requirements could be regulated under the current AFS Licensing regime. These requirements are further explored in answer to questions 5 and 6 set out below.

4. Is there potential to clarify the definition of stored-value facilities and the intended coverage of stored-value regulation?

OFX suggests that there is scope to update and further clarify the current definition of SVFs. Currently the holder of a SVF must be an authorised deposit-taking institution (within the meaning of the *Banking Act 1959*) or receive authority or an exemption². The requirement to become APRA regulated is not proportionate to the scope and or added risk of offering a SVF as an existing AFS licensee and as further discussed in answers 5 and 6 below, there should be alternative regulatory levels and licensing categories.

5. What regulatory boundaries or thresholds for stored-value facilities are appropriate?

OFX agrees that there is the requirement for a 'medium-sized' facility to be regulated by ASIC under the existing AFS Licensing regime. However, OFX proposes that having strict monetary thresholds does not always take into consideration or address the true nature of the applicable customer risks.

OFX does not conduct banking activities. It is not a deposit taking institution and does not accept cheques or cash. While a proposed SVF product is intended to 'hold' funds and aggregate customer balances, OFX proposes that such funds are capable of being adequately safeguarded either as per the current requirements under the *Corporations Act*; as per the *Electronic Money Regulations 2011* in the UK; or as proposed under the new Singaporean requirements³.

OFX submits that the length of time a SVF provider may hold a customer balance and/or imposing an overall limit on the total amount of funds a customer may hold are not the right product features to be specifically regulated. Based on customer feedback received from OFX's existing customers, having such limitations in place will most likely stifle competition and innovation as well as decrease product adoption. In OFX's experience,

¹ Australian Securities and Investment Commission, Regulatory Guide 176 Foreign financial services providers, June 2012.

² *Payment Systems (Regulation) Act 1998* (Cth), s.22.

³ See MAS Consultation Paper PO21-2017 November 2017.



customers are looking to ensure their funds are secure while maintaining flexibility and closer control of their funds.

It is not the intention of a SVF product and applicable stored value to be used as a term deposit, nor will the stored value gain interest for the customer. The aggregate balance held is funds linked to the purchase of a financial product, which for OFX currently is a foreign exchange transaction regulated by ASIC under its existing AFS License.

Additional customer risk mitigation already includes, as a holder of an AFS License, minimum anti-money laundering and counter-terrorism financing due diligence on each transaction that is entered into by the customer in relation to the balance held (for example gaining clarity of funds, transaction monitoring etc.).

OFX's wholly owned subsidiary, UKForex Limited, currently holds an eMoney License under the 2009 Electronic Money Directive. As a global business, servicing a global community of customers, it makes sense to improve transparency and clarity of regulation applicable to customers and users of a SVF product globally. OFX, through UKForex is eMoney compliant and has been so since July 2018.

OFX also submits that greater emphasis on the voluntary epayments code would enhance customer trust and mitigate customer risk, without the need for increased prudential regulatory requirements.

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

As per the requirements under the eMoney license in the European Union, OFX proposes that, to differentiate between the APRA and ASIC regulated providers of SFVs in Australia, there could be restrictions on the offering of the service and or limitations on other services. For example, as part of its eMoney compliance, UKForex Limited is required to ensure it does not give interest or any other benefit related to the length of time the e-money is held; it does not let an account get overdrawn; and must provide clarity on fees. These restrictions provide clarity to both licensees and customers. They also address the real customer risks involved rather than simply setting strict monetary thresholds.

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

OFX agrees that there should be additional tiering and a simpler regulatory framework. OFX sees benefits to both the payments industry and customers from the introduction of an additional license category, similar to the eMoney regime in the UK.

In addition to the points already discussed above, OFX believes that the following should be minimum requirements for any such category of licensing:

- The safeguarding of customer funds – However there needs to be clarity on when the requirement to safeguard arises and when it expires. OFX suggests that the obligation should begin on the day the funds are received by the SVF provider, or on the next business day, and expire when the funds become attached to a financial product; and
- A physical presence in Australia – This provides clarity for the regulator as well as the customer in relation to applicable jurisdiction and the relevant governing regulator. It also aligns with the safeguarding of Australian customer funds within the Australian jurisdiction.

While other jurisdictions also require a capital requirement from a SVF provider, OFX suggests however that for existing AFS licensees this requirement would be satisfied by the applicable financial requirements under the Corporations Act.

8. What is the appropriate regulatory approach to emerging products and services?



OFX believes that increased global information sharing between regulators, underpinned by regulatory Cooperation Agreements will increase clarity of regulatory approach and assist to better understand emerging products and services globally comparative to Australia.

While OFX understands ASIC has already established a regulatory sandbox and a Fintech licensing exemption option, OFX proposes that to support emerging products and services an additional pilot product licensing regime should be introduced. This could see the applicable regulator partnering with existing AFS licensees who are global providers to test emerging products and ensure that regulations and legislation are appropriate and act in the best interests of the customer.

9. How could the transparency and communication of regulation be improved?

OFX would benefit from additional insight and detail in relation the cross jurisdictional regulatory discussions being conducted and relationships that are being formed.

As a global business OFX has acute awareness and understanding of the various jurisdictions in which we operate and would encourage the CFR and or other regulatory bodies to contact us for further input.

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

OFX welcomes the opportunity to partner with and or comment on any upcoming and or proposed changes or consultations in relation to the retail payments industry in Australia and globally.

OFX welcomes a review of the retail payments regulation in relation to stored-value facilities in Australia. We would appreciate the CFR considering the above points when conducting its analysis and welcome any further points for clarification.

We look forward to consulting further with the CFR and or the relevant agencies in due course.

Yours sincerely

A handwritten signature in blue ink that reads 'Freya Smith'.

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About OFX:

OFX is an international money transfer specialist empowering individuals and businesses to move their global moving with confidence 24/7. On a mission to lead the age of borderless money OFX combines a streamlined digital experience, excellent personal service and competitive exchange rates. With OFX's secure bank to bank transfers, customers can enjoy the flexibility of managing their funds and can send money to 190+ countries in over 55 countries worldwide.