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29 January 2018

STRICTLY CONFIDENTIAL

The Solicitor Assisting
Royal Commission into Misconduct in the Banking,
Superannuation and Financial Services Industry
C/- Australian Government Solicitor
MLC Centre, 19-29 Martin Place
Sydney NSW 2000

Our ref: SMG/DW6

Dear Mr Daley

**Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
Submission by Rabobank Australia Limited**

We act for Rabobank Australia Limited (**Rabobank**) and certain of its associated entities in relation to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Commission**). We refer to the letter dated 15 December 2017 from the Honourable Kenneth Hayne AC QC (**Commissioner**) to Mr Peter Knoblanche, Chief Executive Officer of Rabobank, providing an invitation for Rabobank to provide an early written submission to the Commission in relation to the questions set out in that letter.

By separate letter dated today, Mr Knoblanche has provided to the Commissioner a detailed response to the Commissioner's questions (**Rabobank's Submission**). We refer to Rabobank's Submission below at various points.

1. Purposes of this letter

This letter serves two purposes, as follows:

1. At *Section 2* and *Annexure A* below, Rabobank provides additional information potentially relevant to the Commissioner's questions concerning matters which are strictly confidential and either have been or are currently being considered by various regulators, and makes an application for directions pursuant to section 6D(3) of the *Royal Commissions Act 1902* (Cth) (having regard to paragraphs 18 to 21 of the Commission's Practice Guideline 1) in relation to the information in *Annexure A*.
2. At *Section 3*, Rabobank makes out an application for directions pursuant to section 6D(3) of the *Royal Commissions Act* (having regard to paragraphs 18 to 21 of the Commission's Practice Guideline 1) in relation to certain of the information in Rabobank's Submission.

2. Additional strictly confidential information in response to Commissioner's questions

As briefly mentioned in Rabobank's Submission, we are instructed to provide the Commission with the following information.

Self-reporting obligations and practices

Rabobank has certain obligations under section 912D of the *Corporations Act 2001* (Cth), section 62A of the *Banking Act 1959* (Cth) and Part 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML Act**), which are to the effect (in broad terms) that it is obliged to report certain matters concerning its compliance with that legislation to the Australian Securities and Investments Commission (**ASIC**), the Australian Prudential Regulatory Authority (**APRA**) and the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) respectively. These obligations can be described as mandatory self-reporting.

In addition to those obligations, we are instructed that Rabobank, as a matter of corporate practice and as a responsible corporate citizen in Australia, from time to time also voluntarily reports certain matters to ASIC, APRA and/or AUSTRAC, in connection with Rabobank's compliance with the *Corporations Act*, the *Banking Act* and the *AML Act* respectively. These practices can be described as voluntary self-reporting.

Confidentiality of self-reporting communications

In both circumstances - mandatory self-reporting and voluntary self-reporting - Rabobank's communications with each of ASIC, APRA and AUSTRAC (as applicable) are conducted in strict confidence. The communications are not made available to persons outside of Rabobank (or its immediate advisors), and are directed solely to the relevant officers of ASIC, APRA or AUSTRAC, as the case may be. Once received by either ASIC, APRA and/or AUSTRAC, those communications become subject to the secrecy or confidentiality regimes applicable to those regulatory bodies (see: for ASIC, section 127 of the *Australian Securities and Investments Commission Act 2001* (Cth); for APRA, section 56 of the *Australian Prudential Regulatory Authority Act 1998* (Cth); for AUSTRAC, section 121 of the *AML Act*).

It is also important to note that, in the case of mandatory self-reporting, the communications by Rabobank are made under compulsion of law.

Finally on this issue, as there has not yet been any direction made by the Commission as to the ongoing confidentiality of the confidential information contained in any response provided by Rabobank to the Commission, then as matters currently stand the provision of this information to the Commission will not automatically be subject to the same protection of confidentiality as is the case with each of the regulators.

Matters that have been or are still under consideration by regulators

Rabobank has determined that there are a small number of events that would be responsive to the questions set out in the Commissioner's letter, which each involve either mandatory self-reporting or voluntary self-reporting to ASIC, APRA or AUSTRAC respectively.

We are instructed that some of these events have been considered and dealt with by the relevant regulatory body. In relation to the balance of those events, either communications between Rabobank and the relevant regulatory body are continuing, or Rabobank does not know what steps (if any) the relevant regulatory body is proposing to take to deal with them.

Exclusion of certain events from Rabobank's Submission

In light of these considerations, in Rabobank's Submission it has not included the details of any events that involve mandatory or voluntary self-reporting to ASIC, APRA or AUSTRAC. In short, that is because of the possibility of communications in relation to those events - which are confidential to Rabobank and the regulatory bodies involved - becoming publicly available, which would be materially prejudicial to Rabobank's interests.

Relevance of the events to the Commission

In adopting this approach to mandatory and voluntary self-reported matters, we refer to the Terms of Reference for the Commission, which allow the Commissioner to determine that a particular matter need not be the subject of inquiry by the Commission if the Commissioner is satisfied that the matter has been, is being or will be sufficiently and appropriately dealt with by another inquiry or investigation.

Details of events excluded from Rabobank's Submission

In the interests of transparency with the Commission, and to enable the Commissioner to make a determination on Rabobank's contention above that the events referred to above ought not be the subject of inquiry by the Commission, we are instructed to provide the Commission with the details of those events, which are set out in *Annexure A* to this letter. To be clear, this information is not at this stage provided as part of Mr Knoblanche's response to the Commissioner's invitation.

You will see that those details are, in effect, responsive to the Commission's invitation. The details set out clearly for each event the regulatory body involved, the dates of the relevant event and the status of the inquiry of the event by the regulatory body.

Requests to the Commission - no further inquiry or confidentiality directions

Accordingly, Rabobank respectfully requests that the Commissioner determines to deal with the events and the information contained in *Annexure A* for each event in one of the following two alternative ways:

1. The Commissioner would be justified in determining that, for the purposes of the Terms of Reference, the events in *Annexure A* are matters which have been, are being or will be sufficiently and appropriately dealt with by the relevant regulatory body, such that those events need not be the subject of inquiry by the Commission. If that determination is made, then the Commission ought to make a direction pursuant to section 6D(3) of the *Royal Commissions Act* that *Annexure A* and the information contained in *Annexure A* will be kept confidential by the Commission and shall not be published.

2. Alternatively, should the Commissioner not be willing or not presently in a position to make the determination proposed in 1 above, in any event the Commission ought to make a direction pursuant to section 6D(3) of the *Royal Commissions Act* that *Annexure A* and the information contained in *Annexure A* will be kept confidential by the Commission and shall not be published.

In support of the directions sought in each of 1 and 2 above, Rabobank contends that the Commissioner should consider each of the following factors:

- (a) As set out above, the events and communications with the regulatory bodies about those events as detailed in *Annexure A* are confidential to Rabobank - in making self-reports to those regulatory bodies, Rabobank did so in circumstances of confidence and in many cases voluntarily.
- (b) Further to (a), the communications with the regulatory bodies in relation to the events detailed in *Annexure A* are now subject to confidentiality or secrecy regimes applicable to the regulatory bodies involved, whereby (in broad terms) those communications are confidential and must not be published.
- (c) Publication of the details of the events and communications detailed in *Annexure A* has the potential of prejudicing Rabobank's commercial interests.
- (d) In circumstances where there has been no customer complaint in relation to the events described in *Annexure A*, and where the relevant regulatory body has been actively engaged in working with Rabobank to address those events to the satisfaction of the regulatory body, there is no apparent public interest in publication of the details of those events in the course of the conduct of the Commission.

Rabobank thanks the Commission for giving consideration to these alternative requests, and looks forward to receiving the Commission's response. If the Commission would be assisted by any further information or submissions in relation to the requests, please do not hesitate to contact us.

3. Applications for confidentiality direction in relation to Rabobank's Submissions

We now turn to Rabobank's Submission referred to in *Section 1* above.

This section of the letter sets out applications by Rabobank to the Commission for directions pursuant to section 6D(3) of the *Royal Commissions Act* 1902 (Cth) in relation to certain of the information in Rabobank's Submission, addressing the matters in paragraphs 18 to 21 of the Commission's Practice Guideline 1.

Confidentiality direction for "Schedules 1 and 2" to Rabobank's Submission

Primarily, Rabobank applies for a direction that "Schedules 1 and 2" to Rabobank's Submission and the information contained in "Schedules 1 and 2" to Rabobank's Submission be kept confidential by the Commission and not be published.

Addressing the matters set out in paragraphs 19 and 20 of the Practice Guideline 1:

1. In relation to paragraph 19, Rabobank claims a confidentiality direction in respect of "Schedules 1 and 2" to Rabobank's Submission. All pages of "Schedules 1 and 2" have been marked "Confidential".
2. In relation to paragraph 20:
 - (a) Rabobank contends that the information in "Schedules 1 and 2" is confidential because that information predominantly concerns banker-customer relationships to which Rabobank is (or was) party, as banker. Rabobank has obligations of confidence to those customers with respect to that information. In addition, Rabobank has obligations under the *Privacy Act 1989 (Cth)* in relation to that same information. The confidentiality and privacy of the information would be prejudiced irretrievably were it to be published.
 - (b) The information in "Schedules 1 and 2" is confidential to Rabobank. The information is also confidential to customers of Rabobank, where events set out in "Schedules 1 and 2" relate to matters involving its customers. Further, certain of the information in "Schedules 1 and 2" is confidential to former employees of Rabobank involved in those incidents.

For these reasons, a direction should be made to the effect that "Schedules 1 and 2" and the information contained in "Schedules 1 and 2" shall not be published by the Commission.

Confidentiality direction for Schedule 1 to Rabobank's Submission

In the alternative to the confidentiality direction covering the whole of "Schedules 1 and 2" to Rabobank's Submission sought above, Rabobank applies for a direction that "Schedule 1" to Rabobank's Submission and the information contained in "Schedule 1" to Rabobank's Submission should be kept confidential by the Commission and shall not be published.

Addressing the matters set out in paragraphs 19 and 20 of Practice Guideline 1:

1. In relation to paragraph 19, Rabobank claims a confidentiality direction in respect of the information in "Schedule 1" to Rabobank's Submission. All pages of "Schedule 1" have been marked "Confidential".
2. In relation to paragraph 20:
 - (a) Rabobank contends that the information in "Schedule 1" is confidential to Rabobank because that information concerns events involving Rabobank's internal consideration of compliance matters affecting it - the information is not publicly available, and is known only to Rabobank. The confidentiality and privacy of the information would be prejudiced irretrievably were it to be published.
 - (b) The information in "Schedule 1" is confidential to Rabobank.



For that reason, a direction should be made to the effect that "Schedule 1" and the information contained in "Schedule 1" is not to be published by the Commission.

Thank you for considering these two alternative applications. If the Commission would be assisted by any further information or submissions in relation to the requests, please do not hesitate to contact us.

We look forward to hearing from you.

Yours sincerely

[Redacted signature]

[Redacted]

Steven Glanz
Partner

[Redacted]

David Walter
Partner

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Encl

Other contact:
Edwina Tidmarsh
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[Redacted]

Annexure A - strictly confidential details of events

List of strictly confidential matters involving misconduct and/or conduct that falls below community standards and expectations, as requested in Questions 1 and 2 of the Commissioner's letter to Rabobank Australia Ltd dated 15 December 2017 ("Letter")

Questions

1. Excluding cases of theft from the entity itself, or from an associated entity, has the entity identified any misconduct by the entity (including by its directors, officers or employees, or by anyone otherwise acting on its behalf) which occurred at any time since 1 January 2008? If so, what is the nature, extent and effect of that misconduct?
2. Has the entity identified any conduct, practice, behaviour or business activity it has engaged in (including by its directors, officers or employees, or by anyone otherwise acting on its behalf) since 1 January 2008, which it considers has fallen below community standards and expectations? If so, what is the nature, extent and effect of that conduct, practice, behaviour or activity?
3. If yes to either or both of questions one and two:
 - (a) Is the identified conduct, practice, behaviour or activity the subject of another inquiry or investigation, or a criminal or civil proceeding?
 - (b) Does the entity attribute any of the identified conduct, practice, behaviour or activity to the particular culture or governance practices of the entity? If so, describe that culture or governance practice.
 - (c) Does the entity attribute any of the identified conduct, practice, behaviour or activity to some broader cultural or governance practices in the industry or sector of the industry in which the entity operates? If so, describe those cultural or governance practices.
 - (d) Does the entity consider that the identified conduct, practice, behaviour or activity results from other practices (including risk management, recruitment or remuneration practices)? If so, describe those practices.
 - (e) What steps has the entity taken to:
 - (i) remedy the consequences for consumers or other businesses of the identified conduct, practice, behaviour or activity;
 - (ii) prevent recurrence of conduct, practice, behaviour or activity of the kind identified?

Question Four omitted.

1. Failure to report TTRs and possibly SMRs relating to receipt of cash deposits via Westpac and Australia Post

Nature, extent and effect

Following an internal review, the bank identified that in the period from May 2010 to October 2017 it had failed to lodge Transaction Threshold Reports (TTR) for cash deposits greater than \$10,000 received on its behalf by its external agents and possibly also failed to lodge Suspicious Matter Reports (SMR) relating to those cash deposits.

Information requested in Question 3 of the Letter

- a) No. However, the bank notified AUSTRAC of this matter as soon as it was detected in October 2017. Since that time the bank has conducted meetings with AUSTRAC and has kept it updated at regular intervals on the implementation of its remediation plan.
- b) Yes. The Audit review undertaken on the bank's AML/CTF Program following the identification of these matters included a finding that there was insufficient AML/CTF governance, oversight and risk management.
- c) No
- d) No
- e) The bank has put in place a remediation plan under which (in consultation with AUSTRAC) it is attending to the reporting of the omitted TTRs, the identification of any possibly omitted SMRs and the reporting of ongoing TTRs and possible SMRs. The Audit finding referred to in b) is also being addressed under the remediation plan, again, in consultation with AUSTRAC. No customers are directly affected by this incident.

2. Omitted IFTI reporting to AUSTRAC

Nature, extent and effect

From February 2009 to 14 August 2017, foreign currency transactions made using a facility provided to the Bank by CitiDirect (the CitiDirect portal) were not the subject of International Funds Transfer Instructions (IFTI) reports to AUSTRAC.

Information requested in Question 3 of the Letter

- a) No. However upon discovering the error in not reporting the IFTIs, the bank notified AUSTRAC in August 2017 and has been in frequent contact with the regulator, keeping it up to date regarding the bank's rectification efforts.
- b) Yes. The Audit review undertaken on the bank's AML/CTF Program following the identification of these matters included a finding that there was insufficient AML/CTF governance, oversight and risk management.
- c) No
- d) No

- e) The bank has put in place a remediation plan under which (in consultation with AUSTRAC) it has notified AUSTRAC of the previously unreported IFTIs and established procedures to ensure that all the foreign currency transactions are the subject of IFTI reports. Also, all previously omitted IFTIs have been reported to AUSTRAC. The Audit finding referred to in b) is also being addressed under the remediation plan, again, in consultation with AUSTRAC. No customers are directly affected by this incident.

3. Compliance with APRA Prudential Standard CPS231

Nature, extent and effect

In October 2017, Rabobank identified issues with its outsourcing of material business activities including that:

- policies relating to outsourced activities did not ensure adequate monitoring of such activities and were not aligned with requirements of APRA Prudential Standard CPS 231;
- capacity of vendor management did not enable minimum requirements of CPS 231 to be met;
- processes did not ensure that all material business activities that had been outsourced were identified;
- some outsourcing contracts relating to material business activities did not address all the requirements of CPS 231; and
- in some circumstances, the outsourcing of material business activities was not approved by the Board.

The matter was self reported to APRA on 22 November 2017 and, in response to APRA's request, reported to ASIC on 5 December 2017.

Information requested in Question 3 of the Letter

- a) No
- b) No
- c) No
- d) No
- e) The Bank is undertaking the following actions and has advised and agreed these with APRA:
- the Bank will report to APRA with an updated list of material business activities that have been outsourced;
 - the Vendor Management framework is to be reviewed and strengthened;
 - the committee reviewing the outsourcing of material business activities is to receive further training;
 - a review of roles and responsibilities and governance of the vendor management function to be conducted;
 - strengthening of guidance given on drafting SLAs with material business activity vendors;
 - assess resource requirements of vendor management function;
 - the Bank is in the process of revising outsourcing contracts; and
 - the Board was asked to approve outsourcing of material business activities in retrospect.

4. Provision of financial services from head office

Nature, extent and effect

Coöperatieve Rabobank U.A. ('CRUA') is based in the Netherlands. It is the parent entity of locally established subsidiaries in Australia but also carries on business in Australia directly through its Australian branch. The Australian branch only carries on business with respect to wholesale clients ie it is authorised to accept deposits from wholesale clients and licensed to provide financial services to wholesale clients only. CRUA is also the entity carrying on the business of banking in the Netherlands. It carries on business with respect to wholesale and retail clients in the Netherlands.

CRUA was previously known as Coöperatieve Centrale Raiffeisen Boerenleenbank B.A. ('CCRB'). On 1 January 2016, CCRB changed corporate structure so that the assets and liabilities of the 106 member banks merged into the parent entity. Following the merger, the member banks ceased to exist as separate legal entities and the new entity changed its name to 'Coöperatieve Rabobank U.A.'. From the date of this change in corporate structure, CRUA is the entity with whom all Netherlands retail clients hold accounts (as opposed to the period prior to 1 January 2016, where the accounts were held with the previous member banks).

Some of these retail clients would have taken out an account in the Netherlands but now reside in Australia. As a result, CRUA is in breach of its licensing obligations with respect to such clients because it is technically also in Australia.

There are approximately 2,500 such clients affected in the manner described above. The Bank self-reported the matter to ASIC on 26 August 2016 and, in response to an ASIC request, to APRA on 5 May 2017. APRA reverted on 29 May 2017 stating that it had formed the view that, on this occasion, CRUA Australia Branch had not breached the conditions of its authorisation to carry on banking business.

Information requested in Question 3 of the Letter

- a) No
- b) No
- c) No
- d) No
- e) The Bank is seeking relief from ASIC with respect to the abovementioned conduct as it considers such activities to be within the scope of policy reasons for granting relief.

5. Incorrect interest rate displayed in customer communication.

Nature, extent and effect

Over a period of 8 months from August 2016, 446 RaboDirect customers received term deposit maturity notices showing an incorrect advertised rate for the 90 Day Notice Saver product. These notices were automatically generated, and the error was due to a failure to conduct ongoing checks for accuracy. This breach was reported to ASIC on 31 May 2017.

Information requested in Question 3 of the Letter

- a) No

- b)
- c)
- d) No
- e) No
- f) No
- g) The error was immediately rectified, affected customers were contacted by phone, and the incorrectly advertised rate was honoured. Procedures were changed to require more thorough checking of these types of email communications.

6. Interest rate setting on wholesale facilities

Nature, extent and effect

The interest rate setting for a small sub-set of 'utilisations' under corporate facility agreements was found (in 2016) not to be in accordance with the terms of those facility agreements. This error affected a very small proportion of transactions processed by Rabobank during the relevant time period.

Information requested in Question 3 of the Letter

- a) The matter was reported to ASIC as a potential breach of CRUA's AFSL, the conduct being potentially misleading or deceptive. On 11 July 2017, ASIC advised that it did not propose to make any further inquiries about the reportable event at that time.
- b) No
- c) No
- d) No
- e) extensive investigation was undertaken with the assistance of an external accounting firm to determine the quantum of financial loss & compensation offered accordingly. System and process changes were implemented to prevent a recurrence.

* * *