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Phil Khoury
Code of Banking Practice Independent Review
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Dear Mr Khoury

SUBJECT: Code of banking practice independent review

CPA Australia represents the diverse interests of more than 155,000 members in 118 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders. We make this submission on behalf of our members and the broader public interest.

Our organisation is of the view that the current Code of Banking Practice does not adequately cover small business, and that the banking codes of Canada, Ireland and the UK are all superior in addressing small business issues.

This deficiency in the Code can be detrimental to the relationship between banks and their small business clients, particularly in times of stress as was experienced in the global financial crisis (GFC).

We therefore recommend that the Code be expanded to better cover small business issues. Such reforms to the Code should assist improving relationships between banks and their small business customers, particularly in times of difficulty. . Greater small business confidence in the banks benefits banks, small business and the broader economy.

There are a number of ways this could be affected, for example by expansion of the existing code, as an annex to the code or through a separate small business code.

While our own research¹ shows that Australian small businesses seeking finance are typically experiencing easy to very easy lending conditions, reforms to the Code that favour small business remain essential. A repeat of the poor experiences many businesses faced with their banks during the GFC must be avoided where practical.

One regularly cited issue businesses face is their bank imposing changes in their reporting requirements without notice. Again, this was particularly the case during the GFC.

While giving no advance notice of such a request is not a breach of the current code, such requests for additional reporting add both a significant compliance burden and direct cost to small business. Giving businesses a minimum 30 days' notice of a change in terms and conditions or reporting requirements allows business greater time to adjust their systems to more easily meet the requirement or to negotiate with their lender for a suitable alternative approach.

As the GFC demonstrated, Australia requires changes to the Code to better cover small business. Australia would benefit from having a Code of banking practice that is improved to match world's best practice and has higher standards that can better help to facilitate mutually beneficial partnerships between a bank and their small business customer.

Attached are our recommended reforms to the Code. These are largely drawn from paragraph 7.11 of the Senate Economics References Committee report "*Access of Small Business to Finance*" of 30 June 2010 and comparable codes² from Canada, Ireland and the UK and the withdrawn ABA *Banks and small business working together* document. .

¹ See [CPA Australia's Asia Pacific Small Business Survey 2015](#) at page 34

² Being [The Lending Code](#) (issued by the British Bankers' Association and the UK Cards Association), the [A Statement of Principles – Banks and micro enterprises – working together](#) (which was previously an appendix to *The Lending Code*), the Canadian Bankers Association's [Model Code of Conduct for Bank Relations with Small and Medium-sized Businesses](#) and the Central Bank of Ireland's [Code of Conduct for Business Lending to Small and Medium Enterprises](#).

If you have any queries, please do not hesitate to contact Gavan Ord, Manager – Business and Investment Policy of CPA Australia on gavan.ord@cpaaustralia.com.au or 03 9606 9695.

Yours faithfully

A handwritten signature in black ink, appearing to read "Paul Drum". The signature is fluid and cursive, with a long horizontal stroke at the end.

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Recommended improvements to the Code of Banking Practice

The following table sets out in order of priority the principles we believe are not covered or not covered adequately in the Code of Banking Practice and suggested wording to ensure these principles are embedded in the Code.

Principle	Current approach in Code of Banking Practice	Suggested change to the Code
<p>If there are changes made to the terms, conditions, reporting requirements, fees or lending margins of an existing SME credit facility, banks should inform the customer/s as soon as possible.</p> <p>Banks should provide clients with a minimum of 30 days' notice of such changes (unless there are exceptional circumstances).</p>	<ul style="list-style-type: none"> ○ Clause 20.1 - when making changes to a fee or charge or varying the method by which interest is calculated, the bank will provide written notice at least 30 days before the change takes effect ○ clause 20.3 – other variations in terms and conditions will be notified no later than the day on which the variation takes effect 	<p>CPA Australia suggests that clauses 20.1 and 20.3 of the Code could be improved to better meet this principle by using the following wording from UK <i>Lending Code</i>:</p> <ul style="list-style-type: none"> ○ Clause 15 – third dot point – (in part) – clients will be informed about changes to the interest rates, charges or terms and conditions ○ Clause 94 – within 3 working days of a rate change, banks should inform the public of that change through public notices ○ Clause 97 – banks should tell clients personally at least 30 days before increasing an overdraft charge or introducing a new overdraft charge ○ Clause 175 – if a change to terms and conditions is to the customer's detriment, the bank should personally inform the client at least 30 days prior to the change ○ Clause 176 – where the change to the terms and conditions is not to customer's disadvantage, the change can be made immediately and the client notified within 30 days of change <p>CPA Australia also suggests the following be considered for addition to the Code:</p> <ul style="list-style-type: none"> ○ If a change to reporting requirements is to the customer's detriment, the bank should personally inform the client at least 30 days prior to the change

<p>Sometimes customers will experience significant change. In these circumstances, banks should carefully review the existing arrangement before deciding what action (if any) should be taken.</p>	<p><i>No mention</i></p>	<p>CPA Australia suggests that the following from Canada's <i>Model Code of Conduct for Bank Relations with Small and Medium-sized businesses</i> would assist meet this principle:</p> <ul style="list-style-type: none"> ○ <i>Changing circumstances in the credit relationship – first dot point</i> – where a customer experiences a significant change in their business, including financial difficulty, banks will carefully review the existing arrangement before deciding if any action should be taken <p>CPA Australia also suggests the following be considered for addition to the Code:</p> <ul style="list-style-type: none"> ○ Customers should also bring significant changes they have experienced or are about to experience to the attention of their bank
<p>A bank must promptly, at the request of the borrower, return any security held by the bank, to the borrower when all facilities for which security is pledged, has been repaid.</p>	<p><i>No mention</i></p>	<p>CPA Australia suggests that the following from Ireland's <i>Code of conduct for business lending to Small and Medium Enterprises</i> would meet this principle:</p> <ul style="list-style-type: none"> ○ Clause 11 – a bank must promptly at the request of the borrower, return any security held when all facilities for which the security is pledged have been repaid
<p>Banks recognise the need for open communications with their SME customers. This includes banks:</p> <ul style="list-style-type: none"> ○ outlining joint responsibilities ○ ensuring all information provided about a credit facility is clear and comprehensible ○ key items are brought to the attention of the borrower. 	<ul style="list-style-type: none"> ○ clause 3.1(b)(i) - promote better informed decisions on banking services by providing effective disclosure of information ○ clause 3.1(c) – provide general information about the rights and obligations that arise out of the banker and customer relationship ○ clause 12.1 – banks will expeditiously provide to you, or any person on request the terms and conditions, full particulars of standard fees and charges and particulars of applicable 	<p>CPA Australia suggests that the Code could be improved to better meet this principle by using the following wording from other codes:</p> <p><i>The 'A Statement of Principles – Banks and micro-enterprises – working together':</i></p> <ul style="list-style-type: none"> ○ <i>Introduction</i> – the relationship between a bank and a customer is a partnership – it needs careful thought and openness on both sides. <p>Canada's <i>Model Code of Conduct for Bank Relations with</i></p>

	<p>interest rates</p> <ul style="list-style-type: none"> ○ clause 12.2(e)(v) – the advisability of you informing the bank promptly when you are in financial difficulty ○ clause 12.2(e) (vi) - the advisability of you reading the terms and conditions ○ Clause 18.1- disclose the existence of any application fee or charge and whether such fee or charge is refundable if the application is rejected 	<p><i>Small and Medium-sized Businesses:</i></p> <ul style="list-style-type: none"> ○ <i>Openness – second dot point</i> – banks will provide customers with documents, including contracts that are written in clear and understandable language <p><i>Ireland’s Code of conduct for business lending to Small and Medium Enterprises:</i></p> <ul style="list-style-type: none"> ○ Clause 37 – all information provided under the Code is to be clear and comprehensible and that key items are brought to the attention of the borrower
<p>For those SMEs applying for credit, the banks should make the following information available:</p> <ul style="list-style-type: none"> ○ an explanation of the requirements needed to obtain bank credit 	<ul style="list-style-type: none"> ○ Clause 27 - Before we offer, give you or increase an existing, credit facility, we will exercise the care and skill of a diligent and prudent banker in selecting and applying our credit assessment methods and in forming our opinion about your ability to repay the credit facility. 	<p>CPA Australia suggests that clause 27 of the Code could be improved to better meet this principle by using the following wording from Canada’s <i>Model Code of Conduct for Bank Relations with Small and Medium-sized Businesses</i>:</p> <ul style="list-style-type: none"> ○ <i>Applications for credit – 3rd dot point</i> – Banks will make an explanation of their requirements needed to obtain bank credit available to each client <p>CPA Australia also suggests that the following wording be considered:</p> <ul style="list-style-type: none"> ○ Where a decision cannot be made, a bank will undertake a range of activities such as notify you of additional information requirements
<ul style="list-style-type: none"> ○ an estimate on how long it will take before a credit decision will be made. 	<p><i>No mention</i></p>	<p>CPA Australia suggests that the following from Canada’s <i>Model Code of Conduct for Bank Relations with Small and Medium-sized businesses</i> would meet this principle:</p> <ul style="list-style-type: none"> ○ <i>Applications for credit process – 5th dot point</i> – banks will provide an

		<p>estimate of how long it will take before a credit decision is made</p> <p>Alternatively, CPA Australia suggests the following from Ireland's <i>Code of conduct for business lending to Small and Medium Enterprises</i> also be considered:</p> <ul style="list-style-type: none"> ○ Clause 3 – banks must inform borrowers how long the credit application process is considered likely to take
A bank should not impose unreasonable collateral requirements for providing credit facilities.	<i>No mention</i>	<p>CPA Australia suggests that the following from Ireland's <i>Code of conduct for business lending to Small and Medium Enterprises</i> would meet this principle:</p> <ul style="list-style-type: none"> ○ Clause 7 – a bank must not impose unreasonable collateral requirements, having regard to the value of the credit being offered
A bank must not impose unreasonable personal guarantee requirements on borrowers	<ul style="list-style-type: none"> ○ Clause 31 <i>Guarantees</i> (except 31.14, where the principal debtor is a small business) 	<p>CPA Australia suggests that clause 31 of the Code could be improved to better meet this principle by using the following wording from Ireland's <i>Code of conduct for business lending to Small and Medium Enterprises</i>:</p> <ul style="list-style-type: none"> ○ Clause 8 – a bank must not impose unreasonable personal guarantee requirements on borrowers.
Each application for credit by an SME should be judged on its own merits	<ul style="list-style-type: none"> ○ Clause 27 – before offering a credit facility, banks will exercise the care and skill of a diligent and prudent banker in selecting and applying credit assessment methods and in determining the client's ability to repay. 	<p>CPA Australia suggests that clause 27 of the Code could be improved to better meet this principle by using the following wording from Ireland's <i>Code of conduct for business lending to Small and Medium Enterprises</i>:</p> <ul style="list-style-type: none"> ○ Clause 2 – a bank must consider each application for credit on its own merits ○ Clause 13 – a bank must make each decision to withdraw or amend credit on its merits.
If credit is declined, the bank should inform the customer		

about:		
<ul style="list-style-type: none"> ○ the main reason(s) for the decision 	<p><i>No mention</i></p>	<p>CPA Australia suggests that the Code could be improved to meet this principle by using the following wording from other codes:</p> <p>UK's '<i>A Statement of Principles – Banks and micro-enterprises – working together</i>':</p> <ul style="list-style-type: none"> ○ Clause 1(e) – if asked, a bank will explain the key reasons why a facility has not been offered <p>Canada's <i>Model Code of Conduct for Bank Relations with Small and Medium-sized Businesses</i>:</p> <ul style="list-style-type: none"> ○ <i>If credit is declined – second dot point</i> – if an application for credit is declined, the bank will inform the main reason/s for the decision <p>Ireland's <i>Code of conduct for business lending to Small and Medium Enterprises</i>:</p> <ul style="list-style-type: none"> ○ Clause 12 – where an application for credit is declined, the bank must explain clearly to the applicant the reason/s for the decline.
<ul style="list-style-type: none"> ○ the requirements necessary for the bank to reconsider the application (if applicable) 	<p><i>No mention</i></p>	<p>CPA Australia suggests that the following from Canada's <i>Model Code of Conduct for Bank Relations with Small and Medium-sized businesses</i> would meet this principle:</p> <ul style="list-style-type: none"> ○ <i>If credit is declined – third dot point</i> – if an application for credit is declined, the bank will inform the applicant the requirements necessary to reconsider the credit application
<p>Nothing in a code for SME lending should prohibit a bank from acting with all necessary speed to withdraw credit when there is reasonable suspicion</p>	<p><i>No mention</i></p>	<p>CPA Australia suggests that the following from Ireland's <i>Code of conduct for business lending to Small and Medium Enterprises</i> would meet this principle:</p>

<p>of fraud etc</p>	<ul style="list-style-type: none"> ○ Para 15 – Nothing in this Code prohibits a bank from acting with all necessary speed to withdraw credit where there is reasonable suspicion of fraud, etc
<p>Without prejudicing a bank's regulatory and/or legal obligations and legal rights, a bank must:</p>	<p>CPA Australia suggest that the following from Ireland's <i>Code of conduct for business lending to Small and Medium Enterprises</i> would meet this principle:</p> <ul style="list-style-type: none"> ○ <i>Scope – last paragraph</i> – nothing in this Code prohibits a bank from acting with all necessary speed in the case of liquidation, fraud etc
<ul style="list-style-type: none"> ○ give the borrower reasonable time, to resolve the arrears case 	<p><i>No mention</i></p> <p>CPA Australia suggests that the following from Ireland's <i>Code of conduct for business lending to Small and Medium Enterprises</i> would meet this principle:</p> <ul style="list-style-type: none"> ○ clause 17(a) – give the borrower reasonable time, from the time a borrower is classified as in financial difficulties, having regard to the circumstances of the case, to resolve the financial difficulties
<ul style="list-style-type: none"> ○ endeavour to agree an approach that will assist the borrower to resolve the arrears problem 	<p><i>No mention</i></p> <p>CPA Australia suggests that the Code could meet this principle by adopting wording from one of the following codes:</p> <p><i>UK A Statement of Principles – Banks and micro-enterprises:</i></p> <ul style="list-style-type: none"> ○ <i>Introduction</i> – if a micro-enterprise gets into difficulty and the bank becomes aware of it, the bank will discuss with the customer and advise on what action may be necessary to help the business to return to success. When a bank tells a business about its concerns over the viability of the business, the bank will be as relevant and specific as possible ○ 2(a) – a business that is in trouble should speak to their bank at its earliest opportunity so that terms for support can be agreed <p>Ireland's <i>Code of conduct for</i></p>

		<p><i>business lending to Small and Medium Enterprises:</i></p> <ul style="list-style-type: none"> ○ Clause 17(b) - a bank will endeavour to agree an approach that will assist the borrower resolve the financial difficulties
<ul style="list-style-type: none"> ○ advise the borrower of any possible impact of the default on the other accounts held by the borrower 	<i>No mention</i>	<p>CPA Australia suggests that the following from the UK's <i>A Statement of Principles – Banks and micro-enterprises</i> would meet this principle</p> <ul style="list-style-type: none"> ○ <i>Introduction</i> – where the business is not viable as structured, formal insolvency procedures may have to be considered to restructure or wind down the business
<p>When a credit application is approved, the bank should inform the customer about the terms and conditions of financing</p> <p>This includes information on further information needed by the bank both before and after the loan is granted</p>	<i>No mention</i>	<p>CPA Australia suggests that the following from Canada's <i>Model Code of Conduct for Bank Relations with Small and Medium-sized businesses</i> would meet this principle:</p> <ul style="list-style-type: none"> ○ <i>Credit approval – second dot point</i> – on approval of a credit application, the bank will inform the customer about the terms and conditions, including documentation needed before the loan is granted
<p>Other:</p> <p>Preamble</p>	<i>No mention</i>	<p>CPA Australia suggests the Code could be improved by adding a preamble similar to Canada's <i>Model Code of Conduct for Bank Relations with Small and Medium-sized businesses</i> which reads as follows:</p> <ul style="list-style-type: none"> ○ <i>Preamble</i> - Canada's chartered banks recognise the important role that small and medium-sized enterprises (SMEs) play in Canada's economy. The chartered banks also recognise that they have an important and unique role to play in fostering the growth of SMEs in Canada.