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2001B00273

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# Australian Securities and Investments Commission Regulations 2001

Statutory Rules 2001 No. 192

192

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Australian Securities and Investments Commission Act 2001*.

Dated 12 July 2001

Peter Hollingworth,  
Governor-General

By His Excellency's Command

JOE HOCKEY  
Minister for Financial Services and Regulation

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## Regulation 1

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### Note about numbering

These Regulations are made under the *Australian Securities and Investments Commission Act 2001*. To assist users of these Regulations, the structure and numbering of these Regulations follow, as far as possible, the pattern of the *Australian Securities and Investments Commission Regulations 1990* that were made under the *Australian Securities and Investments Commission Act 1989*. Some gaps in the numbering of these Regulations appear because there were gaps in the numbering of the *Australian Securities and Investments Commission Regulations 1990*. In addition, a commencement provision that was not in the *Australian Securities and Investments Commission Regulations 1990* is included in these Regulations.

## Part 1 Preliminary

### 1 Name of Regulations

These Regulations are the *Australian Securities and Investments Commission Regulations 2001*.

### 1A Commencement

These Regulations commence on the same day as the *Australian Securities and Investments Commission Act 2001*.

### 2 Definitions

In these Regulations, unless the contrary intention appears:

*Act* means the *Australian Securities and Investments Commission Act 2001*.

*Form* means a form set out in Schedule 1.

## Part 2                      General

### 3                      **Prescribed agencies (Act s 18 (2) (d))**

For paragraph 18 (2) (d) of the Act, each of the following agencies is prescribed:

- (a) the Australian Competition and Consumer Commission;
- (b) the Australian Prudential Regulation Authority;
- (c) the Australian Taxation Office;
- (d) the Australian Transaction Reports and Analysis Centre;
- (e) an authority of a State or Territory having functions and powers similar to those of the Director of Public Prosecutions;
- (f) the police force or service of each State and the Northern Territory;
- (g) the Department of Fair Trading of New South Wales;
- (h) the Office of Fair Trading and Business Affairs of Victoria;
- (i) the Office of Consumer Affairs of Queensland;
- (j) the Ministry of Fair Trading of Western Australia;
- (k) the Office of Consumer and Business Affairs of South Australia;
- (l) the Office of Consumer Affairs and Fair Trading of Tasmania;
- (m) the Consumer Affairs Bureau of the Australian Capital Territory;
- (n) the Fair Trading Group of the Northern Territory.

### 4                      **Form of notice requiring assistance and appearance for examination**

For subsection 19 (2) of the Act, Form 1 is prescribed.

**Regulation 5**

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**5      Notice to produce books**

A notice under section 30, subsection 31 (1) or 32 (1) or section 32A or 33 of the Act to produce books must be in accordance with Form 2.

**6      Evidence of authority**

If:

- (a) a member or staff member produces a document issued by the Commission; and
- (b) the document states that the person is authorised by the Commission under section 34 of the Act;  
the document is evidence of:
- (c) the authority of the person to require other persons to produce books under subsection 34 (2) of the Act; and
- (d) any limitation on that authority that is specified in the document under that subsection.

**7      Summons to witnesses to appear before Commission**

For subsection 58 (1) of the Act, Form 3 is prescribed.

**8      Allowances and expenses payable to examinees and witnesses**

For subsections 89 (1) and (2) of the Act, a person who appears:

- (a) for examination under section 19 of the Act; or
- (b) in accordance with a summons issued under section 58 of the Act;

is entitled to be paid allowances and expenses in accordance with Schedule 2.

**8A      Commission may disclose confidential information to certain bodies corporate**

The bodies corporate listed in Schedule 3 are specified for subsection 127 (4C) of the Act.

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**Regulation 12**

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**11 Summons to witnesses to appear before Disciplinary Board**

If a person is summoned under subsection 217 (1) of the Act, the summons must be in accordance with Form 3.

**12 Allowances and expenses payable for attendance at hearings of Disciplinary Board**

For subsection 218 (4) of the Act, a person who attends at a hearing in accordance with a summons issued under subsection 217 (1) of the Act is entitled to be paid allowances and expenses in accordance with Schedule 2.

**Regulation 13**

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## **Part 3 Panel Procedures**

### **Division 1 Preliminary**

#### **13 Objects of this Part**

The objects of this Part are to ensure that Panel proceedings are:

- (a) as fair and reasonable; and
- (b) conducted with as little formality; and
- (c) conducted in as timely manner;

as the requirements of this Part and the corporations legislation (other than the excluded provisions), and a proper consideration of the matters before the Panel, permit.

#### **14 Application of this Part**

This Part applies to Panel proceedings in addition to the requirements of the corporations legislation (other than the excluded provisions) that applies to the proceedings.

#### **15 Definitions for Part 3**

In this Part:

**application** means an application under section 656A, 657C or 657EA of the Act.

**brief**, in relation to Panel proceedings, means the brief for the proceedings that is mentioned in paragraph 20 (b).

**business day**, in relation to a place, means any day except:

- (a) a Saturday or a Sunday; or
- (b) a day that is a public holiday or an Australian Public Service holiday in that place.

**party** means a party to Panel proceedings.

**submission** means a submission lodged with the Panel under a provision of this Part.



**16 Powers of Panel**

- (1) In addition to any other provision of this Part, the Panel may:
  - (a) direct that 2 or more related matters are to be considered in Panel proceedings; and
  - (b) identify the issues to be considered by the Panel in its proceedings; and
  - (c) give directions to a person about:
    - (i) the manner in which a matter may be presented, either orally or in writing, to the Panel; and
    - (ii) the duration of the time in which the person may address the Panel or give evidence in Panel proceedings; and
  - (d) give directions to parties to lodge with the Panel specified documents relating to Panel proceedings; and
  - (e) give directions to persons about the time at or before which documents must be lodged with the Panel; and
  - (f) extend the time at or before which documents must be lodged with the Panel; and
  - (g) invite a person who is not a party to make a submission in relation to Panel proceedings; and
  - (h) permit a person to amend or withdraw information or evidence given to, or a document lodged with, the Panel for the purposes of Panel proceedings; and
  - (i) direct that Panel proceedings be suspended for a period determined by the Panel; and
  - (j) direct that Panel proceedings be deferred until a day determined by the Panel.
- (2) In the performance of its functions and the exercise of its powers in relation to Panel proceedings, the Panel:
  - (a) is not bound by the rules of evidence; and
  - (b) must consider all relevant information contained in:
    - (i) a submission that is lodged with the Panel; and
    - (ii) other evidence that is given to the Panel; and
  - (c) must act:
    - (i) as fairly and reasonably; and
    - (ii) with as little formality; and

**Regulation 18**

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- (iii) having regard to the time available before the decision must be made, in as timely a manner;  
as the requirements of this Part, and the corporations legislation (other than the excluded provisions), and a proper consideration of the matters before the Panel permit.

**Division 2 Applications**

**18 Reference of matters to the Commission by the Panel**

- (1) The Panel may refer a matter to the Commission for the Commission to consider with a view to making an application.
- (2) If the Panel refers a matter to the Commission, the reference must be made:
  - (a) in writing; and
  - (b) in sufficient detail to allow the Commission to make a decision about the matter.

**19 Making of applications**

An application to the Panel must be in the form approved by the Panel.

**20 Consideration of applications**

As soon as practicable after receiving an application, the Panel must:

- (a) decide whether to conduct proceedings in relation to the application; and
- (b) if the Panel decides to conduct proceedings — prepare a brief setting out:
  - (i) a general description of the matters to be examined in the Panel proceedings; and
  - (ii) the issues to be addressed in submissions for the proceedings.

## **Division 3 Decisions to conduct proceedings**

### **21 Notice of decision**

- (1) If the Panel decides, under regulation 20, to conduct proceedings, the Panel must, as soon as practicable after making the decision, notify the decision to:
  - (a) the Commission; and
  - (b) each company to which, or person to whom, the relevant application relates.
- (2) If the Panel decides, under regulation 20, not to conduct proceedings, the Panel must, as soon as practicable after making the decision:
  - (a) notify the decision to the Commission; and
  - (b) notify the decision to each company and person to whom the relevant application relates; and
  - (c) include in each notice the reasons for the decision.

### **22 Decision to hold inquiry**

- (1) If the Panel decides to conduct proceedings, it must, after receiving the application:
  - (a) give a copy of the brief for the proceedings to:
    - (i) the Commission; and
    - (ii) to each company to which, or person to whom, the application relates; and
  - (b) invite each body or person mentioned in paragraph (a) to lodge with the Panel a written submission addressing the issues identified in the brief.
- (2) If the Panel decides to conduct proceedings it may give written notice of the decision to any other body or person.
- (3) The Panel must:
  - (a) give a copy of the brief to the body or person; and
  - (b) invite the body or person to lodge with the Panel a written submission addressing the issues identified in the brief that are specified in the invitation.

**Regulation 23**

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**Division 4 Submissions**

**23 Expressions of interest by non-parties**

- (1) The Panel may give notice to a person, or to the public at large, of a decision by the Panel to conduct proceedings.
- (2) A notice must include a description of the nature of the proceedings.
- (3) A notice may invite a person who is not a party to the proceedings to give, within a time allowed by the Panel, a written expression of interest in the proceedings:
  - (a) stating the nature of the interest of the person in the proceedings; and
  - (b) setting out the reasons why the Panel should consider a written submission of the person in relation to the proceedings.
- (4) The Panel may, by written notice to the person, vary the period mentioned in subregulation (3).

**24 Panel may accept submissions from persons expressing interest**

- (1) As soon as practicable after the Panel receives the expression of interest of a person, the Panel must acknowledge the receipt in writing.
- (2) If the Panel decides to consider the written submission of a person in the proceedings, the Panel must give to the person a copy of the brief for the proceedings.
- (3) The Panel must invite the person to lodge with the Panel a written submission addressing the issues identified in the brief.
- (4) If the Panel decides not to consider any written submission of the person in the proceedings, the Panel must inform the person of the decision and of the reasons for the decision.

**25 Submissions**

A submission made by a person to proceedings of the Panel must:

- (a) be in the form approved by the Panel; and
- (b) if the Panel has given to the person a copy of the brief and invited the person to comment on an issue identified in the brief, address that issue.

**26 Disregard of certain submissions**

- (1) The Panel may disregard any matter in a submission that:
  - (a) is not in accordance with regulation 25; or
  - (b) is frivolous or vexatious.
- (2) The Panel must disregard any matter in a submission that is not relevant to the proceedings.

**27 Abuse of Panel procedures to be noted**

If a matter in a written submission made to the Panel is frivolous or vexatious, the Panel must place on the submission a note stating:

- (a) that the Panel has disregarded the matter in accordance with paragraph 26 (1) (b); and
- (b) the reasons why the Panel believes the matter to be frivolous or vexatious.

**28 Lodgment and distribution of submissions**

- (1) A submission for Panel proceedings must be lodged with the Panel within the time allowed by the Panel.
- (2) As soon as practicable after the Panel receives a submission, the Panel must give a copy of the submission to each party.

**Regulation 30**

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- (3) A party who receives a copy of a submission relating to an application (the *first submission*) may lodge with the Panel no more than 1 submission that:
  - (a) rebuts a matter, or matters, in the first submission; and
  - (b) does not include material that is not necessary to support the rebuttal.
- (5) A submission lodged with the Panel is taken not to include any additional material that is not lodged at the same time as the submission.

**30 Panel may invite further submissions**

- (1) At any time during Panel proceedings, the Panel may request a party to lodge with the Panel a submission that addresses a matter specified in the request.
- (2) The Panel may give a copy of the submission to each party.
- (3) The Panel may direct a party who receives a copy of a submission (the *first submission*) to lodge, at or before a time specified in writing by the Panel, with the Panel not more than 1 submission that:
  - (a) rebuts a matter, or matters, in the first submission; and
  - (b) does not include material that is not necessary to support the rebuttal.

**34 Submissions that are not lodged in time**

If a person does not lodge a document with the Panel by the time of lodgment specified in this Part for the document, the Panel may continue with the proceedings without regard to the document.

## **Division 5 Conferences**

### **35 Purpose of conferences**

- (1) The Panel may conduct a conference during Panel proceedings to:
  - (a) clarify matters arising from documents in the possession of the Panel relating to the proceedings; or
  - (b) resolve inconsistent statements:
    - (i) in documents in the possession of the Panel relating to the proceedings; or
    - (ii) made orally to the Panel; or
  - (c) otherwise inform itself on matters relating to the proceedings.
- (2) For the purposes of these Regulations, a conference is taken to be part of Panel proceedings.

### **37 Conduct of conferences**

- (1) The President may convene a conference.
- (2) The President:
  - (a) must determine the place where, and the time when, a conference is to convene; and
  - (b) must give written notice of that time and place to each party.

### **38 Procedures at conferences**

- (1) As soon as practicable before a conference, the Panel must give to a person who may attend the conference a statement setting out:
  - (a) the matters which the Panel proposes to raise at the conference; and
  - (b) any other matter of which the Panel wishes the person to be aware for the purposes of the conference.





**41 Misbehaviour at conferences**

The Panel may exclude from a conference a person whose behaviour has a disruptive effect on the conference.

**Division 6 Other matters****42 Summons to witnesses by the Panel**

For subsection 192 (1) of the Act (which provides for the summons of a person by the Panel), Form 3 is prescribed.

**43 Allowances and expenses payable for attendances**

For subsection 192 (6) of the Act (which provides for allowances and expenses to be paid in relation to Panel proceedings), a person who appears at Panel proceedings in response to a summons issued under section 192 of the Act is entitled to be paid allowances and expenses in accordance with Schedule 2.

**Regulation 44**

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**Part 4 Repeal of old ASIC Regulations**

**44 Repeal of the *Australian Securities and Investments Commissions Regulations 1990***

The following Statutory Rules are repealed:

- 1990 No. 454
- 1993 No. 208
- 1994 Nos. 301 and 443
- 1998 No. 294
- 1999 No. 190
- 2000 No. 10.

*Note* The *Australian Securities and Investments Commission Regulations 1990* were made under *Australian Securities and Investments Commission Act 1989* but are continued in effect by section 264 of the Act.

**Schedule 1      Forms**  
(regulation 2)

**Form 1      Notice requiring appearance at an  
examination or reasonable assistance in  
connection with an investigation**  
(regulation 4)

*Australian Securities and Investment Commission  
Regulations 2001*

**Australian Securities and Investments Commission**

NOTICE REQUIRING APPEARANCE AT AN EXAMINATION OR  
REASONABLE ASSISTANCE IN CONNECTION WITH AN INVESTIGATION

To: 1

In relation to an investigation of 2

you are notified that under subsection 19 (2) of the *Australian Securities and  
Investments Commission Act 2001* ('the Act') you are required:

- (a) to appear at 3 on 4 at 5 before 6

for examination on oath or affirmation and to answer questions put to  
you in relation to the investigation; and

- (b) to give the Australian Securities and Investments Commission all  
reasonable assistance in connection with the investigation.

Please note the provisions of subsection 23 (1) of the Act (relating to legal  
representation) and section 68 of the Act (relating to self-incrimination). The  
effect of those provisions is set out at the end of this form.

Dated 4.

Signature of person authorised  
by the Commission to conduct the  
examination:

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#### NOTICE OF RELEVANT STATUTORY PROVISIONS

1. Subsection 23 (1) of the Act provides that a person who is required to submit to an examination is entitled to have his or her lawyer attend the examination. It also provides that the person's lawyer may address the inspector or ask the person questions about matters raised with the person by the inspector.
  2. (1) You must not fail to comply with this notice without reasonable excuse (see subsection 63 (1) of the Act).  
  
(2) It is not a reasonable excuse for failure to comply with this notice that giving information or signing a record or producing a book might tend to incriminate you or expose you to a penalty (see subsection 68 (1) of the Act).  
  
(3) However, if:
    - (a) before making an oral statement or signing a record in answer to this notice you claim that making the statement or signing the record might tend to incriminate you or expose you to a penalty; and
    - (b) making the statement or signing the record might in fact tend to incriminate you or expose you to a penalty;the statement, or the fact that you have signed the record, is not admissible in evidence in any criminal proceedings, or proceedings for the imposition of a penalty, against you other than proceedings in respect of the falsity of the statement or the record.
  - (4) The right to make a claim of this kind is not available to a body corporate (see subsections 68 (2) and (3) of the Act).
- 

- 1 *insert full name and address of the person to whom the notice is to be given*
- 2 *insert the nature of the matter to which the investigation relates*
- 3 *insert time of day*
- 4 *insert date*
- 5 *insert full particulars of the address of the place at which the requirement is to be satisfied*
- 6 *insert full name of the person conducting the examination*

**Form 2 Notice requiring the production of books**  
(regulation 5)

*Australian Securities and Investment Commission  
Regulations 2001*

**Australian Securities and Investments Commission**

NOTICE REQUIRING THE PRODUCTION OF BOOKS

To: 1

In relation to 2

you are notified that, under section 30<sup>3</sup>/subsection 31 (1)<sup>3</sup>/ subsection  
32 (1)<sup>3</sup>/section 32A<sup>3</sup>/section 33<sup>3</sup> of the *Australian Securities and Investments  
Commission Act 2001* you are required to produce to

4 at 5

on 6 at 7

the following books:

8

Dated 6 .

Signature of the person requiring  
the production of books:

1 *insert full name and address of the person to whom the notice is to be given*

2 *insert the nature of the matter to which the request for production of books relates*

3 *strike out or delete if inapplicable*

4 *insert the full name of the person to whom the books are to be produced*

5 *insert time of day*

6 *insert date*

7 *insert full particulars of the address of the place at which the books are to be  
produced*

8 *insert description(s) of the books that are to be produced*

## Form 3 Summons to witness

(regulations 7, 11 and 42)

*Australian Securities and Investment Commission  
Regulations 2001*

### **Australian Securities and Investments Commission**

#### SUMMONS TO WITNESS

In the matter of <sup>1</sup>

To: <sup>2</sup>

at <sup>4</sup>you are summoned to appear before the Australian Securities and Investments Commission<sup>3</sup>/Corporations and Securities Panel<sup>3</sup>/Companies Auditors and Liquidators Disciplinary Board<sup>3</sup>

on <sup>5</sup>

at <sup>6</sup> and thereafter to attend from day to day until the hearing in this matter is completed or you are excused or released from further attendance by a member of the Commission<sup>3</sup>/Panel<sup>3</sup>/Board<sup>3</sup>.

<sup>3</sup>You are required to produce the following document(s) at the hearing:

<sup>7</sup>  
Dated <sup>4</sup>.

Signature of person authorised by  
the Commission<sup>3</sup>/Panel<sup>3</sup>/Board<sup>3</sup> to issue summons:

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- 1 *insert description of matter*
- 2 *insert full name and address of the person to be summoned to appear*
- 3 *strike out or delete if inapplicable*
- 4 *insert time of day*
- 5 *insert date*
- 6 *insert full particulars of the address of the place where the hearing is to be held*
- 7 *insert description(s) of the documents that are to be produced at the hearing*

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## **Schedule 2      Witnesses fees and allowances for expenses**

(regulations 8, 12 and 43)

1. A person summoned to appear as a witness, because of his or her professional, scientific or other special skill or knowledge, before the Commission, the Panel or the Board must be paid:
  - (a) if the person is remunerated in his or her occupation by wages, salary or fees — an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for that purpose; and
  - (b) in any other case — an amount of not less than \$81, or more than \$407, for each day on which he or she so attends.
2. A person summoned to appear as a witness, other than a witness referred to in item 1, before the Commission, the Panel or the Board must be paid:
  - (a) if the person is remunerated in his or her occupation by wages, salary or fees — an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for that purpose; and
  - (b) in any other case — an amount of not less than \$46, or more than \$76, for each day on which he or she so attends.
3. A person summoned to appear as a witness before the Commission, the Panel or the Board must be paid a reasonable amount for allowances for:
  - (a) transport between the usual place of residence of the person and the place that he or she attends for that purpose; and
  - (b) if he or she is required to be absent overnight from his or her usual place of residence — meals and accommodation during the absence.

## **Schedule 3 Bodies corporate to which information may be disclosed**

(regulation 8A)

ASX Futures Exchange Pty Ltd  
ASX Settlement and Transfer Corporation Pty Ltd  
Australian Stock Exchange Limited  
Options Clearing House Pty Limited  
Sydney Futures Exchange Clearing House Pty Limited  
Sydney Futures Exchange Limited

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### **Note**

1. Notified in the *Commonwealth of Australia Gazette* on / 2001.

13 July