

Australian Securities and Investments Commission Amendment Regulations 2001 (No. 1) 2001 No. 317

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 317

Issued by the authority of the Minister for Financial Services and Regulation

Australian Securities and Investments Commission Act 2001

Australian Securities and Investments Commission Amendment Regulations 2001 (No. 1)

Section 251 of the Australian *Securities and Investments Commission Act 2001* (the ASIC Act) empowers the Governor-General to make regulations prescribing matters required or permitted by the ASIC Act to be prescribed by regulations or necessary or convenient to be prescribed by such regulations for carrying out or giving effect to that Act.

The purpose of the regulations is to support the reforms to the regulation of the financial services industry which are included in the *Financial Services Reform Act 2001* and associated legislation, and to make certain miscellaneous amendments.

The Corporations Agreement, reached by State, Northern Territory and Commonwealth Ministers who had responsibilities in relation to corporate regulation, formed the political compact on which the national companies and securities scheme, which operated from 1 January 1991 to 14 July 2001, was based. That scheme was superseded by a new legislative scheme which commenced on 15 July 2001. The new scheme is based on Commonwealth legislation enacted with the assistance of relevant power referred by the States. It is envisaged that a new Agreement, reflecting the changed constitutional basis of the relevant law, will be signed but meanwhile the Commonwealth, States and the Northern Territory consider themselves bound by the proposed new agreement.

The responsible Ministers of the States and the Northern Territory on the Ministerial Council for Corporations have been consulted about the draft regulations and the Council has approved them, to the extent required by the proposed new agreement.

The *Financial Services Reform Act 2001* amends the ASIC Act and other relevant legislation, and will provide:

- a single licensing regime for financial sales, advice and dealings in relation to financial products;
- consistent and comparable financial product disclosure; and
- a single authorisation procedure for financial exchanges and clearing and settlement facilities.

The regulations will:

- provide detailed requirements - for example, to determine what is a 'clearing and settlement facility' for the purposes of the consumer protection provisions included in part 2 of Division 2 of the ASIC Act;

- assist in the transition to the new regime; and
- make consequential and miscellaneous amendments.

Details of the regulations are set out in the Attachment.

The regulations will commence at the same time as Item 1 of Schedule 1 of the *Financial Services Reform Act 2001* commences. The Government is recommending that this be proclaimed to commence on 11 March 2002.

ATTACHMENT

Application to the external territories - regulation 2A

Regulation 2A deals with the application of the ASIC Act to the external Territories. It also provides that the ASIC Act (including Division 2 of Part 2) applies in relation to a financial product that is, or a financial service that relates to, a superannuation product or an RSA product as if the definition of a Territory includes all of the external Territories. It will also ensure that the definition of a Territory for the purposes of Division 2 of Part 2 of the ASIC Act continues to include the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands (in relation to financial products other than superannuation and RSA products and financial services other than those which relate to superannuation products or RSA products).

Definition of 'credit facility' - regulation 2A

This regulation defines 'credit facility' and the meaning of 'credit', for the purpose of paragraph 12BAA(7)(k) of the ASIC Act.

This has the effect that the provisions in Part 2, Division 2 of the ASIC Act which provide protection for consumers of financial services will apply where the financial services provided relate to a 'credit facility' or 'credit', as broadly defined in the regulations.

Prescribed agencies - amendment of Regulation 3

This amendment will correct the name of the relevant WA agency which was changed following the change of Government in that State. It will read 'Department of Consumer and Employment Protection of Western Australia'.

Notice to produce books - amendment of Regulation 5 and Form 2

This will be amended to reflect the omission of section 32 of the *Australian Securities and Investments Commission Act 2001* by the Financial Services Reform Bill.

Definition of 'application' - amendment of Regulation 15

This is to be amended to clarify that 'Act' in this regulation means the *Corporations Act 2001*.

Meaning of 'clearing and settlement facility' - regulation 44

This regulation fills out the definition of 'clearing and settlement facility' in paragraph 12BAB(17)(b) of the Act so that it will be consistent with the definition in the *Corporations Act 2001*, following commencement of the *Financial Services Reform Act 2001*.

Conduct that does not constitute operating a clearing and settlement facility - regulation 45

The definition of 'clearing and settlement facility' in section 12BAB is relevant to Part 2, Division 2 of the *Australian Securities and Investments Commission Act* and needs to be consistent with the definition of the same term for the purpose of Chapter 7 of the *Corporations Act 2001*.

The purpose of regulation 45 is to omit from this concept (in the same terms as they are omitted from the definition of the same term in the *Corporations Act 2001*):

- the novating entity for the Australian Stock Exchange's clearing and settlement system, TNS Clearing Pty Limited, because the operator of the clearing and settlement facility, ASX Transfer and Clearing Pty Limited, will be regulated as the operator of that facility; and
- the Stock Exchange of Newcastle Limited, the Bendigo Stock Exchange Limited, participants on those markets and their agents to the extent that the clearing and settlement function is regulated by the business rules of the market and enforced by the market operator (which is already regulated under Part 7.2 of the Corporations Act 2001).

Financial transactions reports - regulation 46

Regulation 46 has been made for the purpose of section 243D to accommodate the fact that, although that provision has been amended to refer to market licensees, there will be some exempt markets which remain under the old Chapter 7 provisions during a transitional period (and are therefore not 'market licensees' during this period).

Summons to Witness - amendment of Schedule 1 - Form 3

This form will be amended to reflect the change in title of the Corporations and Securities Panel to the Takeovers Panel.

Bodies corporate to which information may be disclosed - amendment of Schedule 3

Subsection 127(4B) and (4C) provide an exemption from the usual ASIC confidentiality provisions where the Chairperson is satisfied that the information will enable a prescribed body corporate to, for example, perform functions under the business or listing rules.

The list of prescribed bodies corporate for this purpose is to be found in Schedule 3 of the ASIC Regulations.

The amendments will:

- update the title of the Sydney Futures Exchange Limited;
- insert the Bendigo Stock Exchange Ltd and the Stock Exchange of Newcastle Limited; and
- insert the names of a number of major international stock and derivatives exchanges.