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# Australian Securities and Investments Commission Amendment Regulations 2001 (No. 1)<sup>1</sup>

Statutory Rules 2001 No. <sup>2</sup>

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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 ' 8 OCT 2001 2001

**PETER HOLLINGWORTH**  
Governor-General

By His Excellency's Command

**JOE HOCKEY**  
Minister for Financial Services and Regulation

**1 Name of Regulations**

These Regulations are the *Australian Securities and Investments Commission Amendment Regulations 2001* (No. 2).

**2 Commencement**

These Regulations commence on the day on which item 1 of Schedule 1 to the *Financial Services Reform Act 2001* commences.

**3 Amendment of Australian Securities and Investments Commission Regulations 2001**

Schedule 1 amends the *Australian Securities and Investments Commission Regulations 2001*.

**Schedule 1 Amendments**

(regulation 3)

**[1] After regulation 2**

*insert*

**2A Territorial application of Act**

- (1) For subsection 4 (2) of the Act, the Act applies in each external Territory in accordance with this regulation.
- (2) For the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands:
  - (a) Division 2 of Part 2 of the Act applies in relation to:
    - (i) a financial product; and
    - (ii) a financial service; and

- (b) the remainder of the Act applies in relation to:
- (i) a superannuation product within the meaning of section 761A of the Corporations Act; and
  - (ii) an RSA product within the meaning of section 761A of the Corporations Act; and
  - (iii) a financial service that relates to a superannuation product within the meaning of section 761A of the Corporations Act; and
  - (iv) a financial service that relates to an RSA product within the meaning of section 761A of the Corporations Act.
- (3) For an external Territory other than the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, the Act applies in relation to:
- (a) a superannuation product within the meaning of section 761A of the Corporations Act; and
  - (b) an RSA product within the meaning of section 761A of the Corporations Act; and
  - (c) a financial service that relates to a superannuation product within the meaning of section 761A of the Corporations Act; and
  - (d) a financial service that relates to an RSA product within the meaning of section 761A of the Corporations Act.

## **2B Financial products: credit facility**

- (1) For paragraph 12BAA (7) (k) of the Act, each of the following is a *credit facility*:
- (a) the provision of credit:
    - (i) for any period; and
    - (ii) with or without prior agreement between the credit provider and the debtor; and
    - (iii) whether or not both credit and debit facilities are available;

- (b) a facility:
    - (i) known as a bill facility; and
    - (ii) under which a credit provider provides credit by accepting, drawing, discounting or indorsing a bill of exchange or promissory note;
  - (c) the provision of credit by a pawnbroker in the ordinary course of a pawnbroker's business (being a business which is being lawfully conducted by the pawnbroker);
  - (d) the provision of credit by the trustee of the estate of a deceased person by way of an advance to a beneficiary or prospective beneficiary of the estate;
  - (e) the provision of credit by an employer, or a related body corporate of an employer, to an employee or former employee (whether or not it is provided to the employee or former employee with another person);
  - (f) the provision of a mortgage that secures obligations under a credit contract (other than a lien or charge arising by operation of any law or by custom);
  - (g) a guarantee related to a mortgage mentioned in paragraph (f);
  - (h) a guarantee of obligations under a credit contract;
  - (i) a facility for making non-cash payments (within the meaning of section 763D of the Corporations Act) if payments made using the facility will all be debited to a facility mentioned in paragraphs (a) to (h).
- (2) The provision of consumer credit insurance that includes a contract of general insurance for the *Insurance Contracts Act 1984* is not a credit facility.

(3) In this regulation:

**credit** means a contract, arrangement or understanding:

- (a) under which:
- (i) payment of a debt owed by one person (a **debtor**) to another person (a **credit provider**) is deferred; or
  - (ii) one person (a **debtor**) incurs a deferred debt to another person (a **credit provider**); and
- (b) including any of the following:
- (i) any form of financial accommodation;
  - (ii) a hire purchase agreement;
  - (iii) credit provided for the purchase of goods or services;
  - (iv) a contract, arrangement or understanding for the hire, lease or rental of goods or services, other than a contract, arrangement or understanding under which:
    - (A) full payment is made before or when the goods or services are provided; and
    - (B) for the hire, lease or rental of goods — an amount at least equal to the value of the goods is paid as a deposit in relation to the return of the goods;
  - (v) an article known as a credit card or charge card;
  - (vi) an article, other than a credit card or a charge card, intended to be used to obtain cash, goods or services;
  - (vii) an article, other than a credit card or a charge card, commonly issued to customers or prospective customers by persons who carry on business for the purpose of obtaining goods or services from those persons by way of a loan;
  - (viii) a liability in respect of redeemable preference shares;

- (ix) a financial benefit arising from or as a result of a loan;
- (x) assistance in obtaining a financial benefit arising from or as a result of a loan;
- (xi) issuing, indorsing or otherwise dealing in a promissory note;
- (xii) drawing, accepting, indorsing or otherwise dealing in a negotiable instrument (including a bill of exchange);
- (xiii) granting or taking a lease over real or personal property;
- (xiv) a letter of credit.

**[2] Paragraph 3 (j)**

*substitute*

- (j) the Department of Consumer and Employment Protection of Western Australia;

**[3] Regulation 5**

*omit*

or 32 (1)

**[4] Regulation 15, definition of *application***

*omit*

the Act.

*insert*

the *Corporations Act 2001*.

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[5] **After Part 4**

*insert*

**Part 5                      Clearing and settlement  
   facilities**

**45                      Meaning of *clearing and settlement facility***

For paragraph 12BAB (17) (b) of the Act, the following obligations are prescribed:

- (a) each obligation arising from a contract to transfer a financial product mentioned in paragraph 764A (1) (a) of the Corporations Act;
- (b) each obligation arising from a contract to transfer a financial product mentioned in paragraph 764A (1) (b) of the Corporations Act;
- (c) each obligation arising from acquiring or providing a financial product mentioned in paragraph 764A (1) (c) of the Corporations Act;
- (d) each obligation arising from a contract to transfer a financial product mentioned in paragraph 764A (1) (j) of the Corporations Act;
- (e) each obligation arising from a contract to transfer a financial product mentioned in paragraph 764A (1) (ba) of the Corporations Act.

**46                      Conduct that does not constitute operating a  
   clearing and settlement facility**

- (1) For paragraph 12BAB (18) (i) of the Act, the conduct of TNS Clearing Pty Limited in becoming the legal counterparty to a broker-to-broker trade in quoted securities that is executed on the financial market known as the Australian Stock Exchange in the course of novation does not constitute operating a *clearing and settlement facility*.

- (2) For paragraph 12BAB (18) (i) of the Act, the conduct of:
- (a) the Stock Exchange of Newcastle Limited, or an agent of that body; or
  - (b) a participant of the Stock Exchange of Newcastle Limited, or an agent of the participant; or
  - (c) Bendigo Stock Exchange Limited, or an agent of that body; or
  - (d) a participant of the Bendigo Stock Exchange Limited, or an agent of the participant;
- in operating a facility in accordance with the operating rules of a licensed market does not constitute operating a *clearing and settlement facility* if the requirements of subregulation (3) are met.
- (3) For subregulation (2), the requirements are:
- (a) the market licensee must have, and must be responsible for enforcing, operating rules that apply to a participant of the licensed market in relation to the participant's obligations arising from transactions carried out on the licensed market; and
  - (b) a participant mentioned in paragraph (a), or an agent of the participant, must be responsible for fulfilling the obligations owed to another participant or agent arising from transactions carried out on the licensed market; and
  - (c) the market licensee is not the operator of any other clearing and settlement facility; and
  - (d) each participant of the licensed market is not the operator of any other clearing and settlement facility; and
  - (e) each agent of a participant of the licensed market is not the operator of any other clearing and settlement facility.



(4) In this regulation:

**novation** means the replacement of a contract (the **original contract**) between the buyer and seller of financial products with:

- (a) a contract between the buyer and TNS Clearing Pty Limited in the same terms as the original contract; and
- (b) a second contract between the seller and TNS Clearing Pty Limited in the same terms as the original contract.

#### 47 Financial transaction reports

For paragraph 243D (j) of the Act, neither subsection 16 (5A) nor (5AA) of the *Financial Transaction Reports Act 1988* prohibits a cash dealer from communicating or disclosing a fact or information referred to in either of those subsections:

- (a) to a body corporate approved under section 770 of the Corporations Act as an approved securities organisation; or
- (b) in accordance with conditions imposed by the Minister when approving under section 770A of the Corporations Act a stock market for electronic trading of interests in a registered scheme; or
- (c) in accordance with conditions imposed by the Minister when declaring a specified stock market to be an exempt stock market under section 771 of the Corporations Act; or
- (d) in accordance with conditions imposed by the Minister when declaring a specified futures market to be an exempt futures market under section 1127 of the Corporations Act.

*Note* Although sections 770, 770A, 771 and 1127 of the Corporations Act were repealed by the *Financial Services Reform Act 2001*, the sections are still relevant for specific purposes in the period of 2 years after the commencement of the Financial Services Reform Act.

**[6] Schedule 1, Form 2**

*omit*

/subsection 32 (1)<sup>3</sup>

**[7] Schedule 1, Form 3**

*omit*

/Corporations and Securities Panel<sup>3</sup>

*insert*

/Takeovers Panel<sup>3</sup>

**[8] Schedule 3**

*before*

ASX Futures Exchange Pty Ltd

*insert*

**Part 1 Australian bodies corporate**

**[9] Schedule 3**

*after*

Australian Stock Exchange Limited

*insert*

Bendigo Stock Exchange Ltd

**[10] Schedule 3**

*after*

Options Clearing House Pty Limited

*insert*

SFE Corporation Limited

Stock Exchange of Newcastle Limited

**[11] Schedule 3***omit*

Sydney Futures Exchange Limited

**[12] Schedule 3***insert***Part 2 Foreign bodies corporate**

<b>Item</b>	<b>Body</b>	<b>Location</b>
1	American Stock Exchange Inc (also known as 'AMEX')	United States of America
2	Amsterdam Exchanges NV (also known as 'AEX')	The Netherlands
3	Athens Stock Exchange	Greece
4	Austrian Futures and Options Exchange (also known as 'OTOB')	Austria
5	Belgium Futures and Options Exchange (also known as 'BELFOX')	Belgium
6	Bolsa de Barcelona	Spain
7	Bolsa de Comercio de Buenos Aires	Argentina
8	Bolsa de Comercio de Santiago	Chile
9	Bolsa de Derivados do Porto	Portugal
10	Bolsa de Madrid	Spain
11	Bolsa de Mercadorias & Futuros	Brazil
12	Bolsa de Valores de Lima	Peru
13	Bolsa de Valores de Lima e Porto	Portugal
14	Bolsa de Valores de Rio de Janeiro	Brazil
15	Bolsa de Valores do São Paulo (also known as 'BOVESPA')	Brazil
16	Bolsa Mexicana de Valores	Mexico
17	Bourse de Montréal	Canada

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Item	Body	Location
18	Brussels Exchange (also known as 'BXS')	Belgium
19	Canadian Venture Exchange (also known as 'CDNX')	Canada
20	Chicago Board of Trade (also known as 'CBOT')	United States of America
21	Chicago Board Options Exchange	United States of America
22	Chicago Mercantile Exchange (also known as 'CME')	United States of America
23	Chicago Stock Exchange	United States of America
24	Coffee, Sugar and Cocoa Exchange Inc (also known as 'CSCE')	United States of America
25	Commodity Exchange Inc (also known as 'COMEX')	United States of America
26	Copenhagen Stock Exchange	Denmark
27	Deutsche Börse AG	Germany
28	Eurex Zurich AG	Germany and Switzerland
29	Financieele Termijnmarkt Amsterdam NV	The Netherlands
30	Helsinki Exchanges (also known as 'HEX')	Finland
31	Hong Kong Futures Exchange Ltd (also known as 'HKFE')	Hong Kong
32	Irish Stock Exchange	Republic of Ireland
33	Istanbul Stock Exchange	Turkey
34	Italian Futures Exchange (also known as 'MIF')	Italy
35	Italian Stock Exchange	Italy
36	Jakarta Stock Exchange	Indonesia
37	Johannesburg Stock Exchange	South Africa

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<b>Item</b>	<b>Body</b>	<b>Location</b>
38	Kansas City Board of Trade	United States of America
39	Korea Stock Exchange	South Korea
40	Kuala Lumpur Commodity Exchange (also known as 'KLCE')	Malaysia
41	Kuala Lumpur Options and Financial Futures Exchange	Malaysia
42	Kuala Lumpur Stock Exchange	Malaysia
43	London International Financial Futures Exchange Ltd	United Kingdom
44	London Securities and Derivatives Exchange	United Kingdom
45	London Stock Exchange	United Kingdom
46	Marche a Terme International de France (also known as 'MATIF')	France
47	Marche des Options Negotiable de Paris (also known as 'MOTEP')	France
48	Mid American Commodity Exchange	United States of America
49	NASDAQ Stock Market (also known as 'NASDAQ')	United States of America
50	New York Futures Exchange	United States of America
51	New York Stock Exchange Inc (also known as 'NYSE')	United States of America
52	New Zealand Futures & Options Exchange Ltd (also known as 'NZFOE')	New Zealand
53	New Zealand Stock Exchange	New Zealand
54	OM Stockholm Exchange AB (also known as 'OMS')	Sweden
55	Osaka Securities Exchange (also known as 'OSE')	Japan

<b>Item</b>	<b>Body</b>	<b>Location</b>
56	Oslo Stock Exchange (also known as 'OLSO')	Norway
57	Paris Bourse SBF SA	France
58	Philippines Stock Exchange	The Philippines
59	Port Moresby Stock Exchange	Papua New Guinea
60	Shanghai Stock Exchange	Peoples' Republic of China
61	Shenzen Stock Exchange	Peoples' Republic of China
62	Singapore Exchange Ltd (also known as 'SGX')	Singapore
63	Société de la Bourse de Luxembourg SA	Luxembourg
64	South African Futures Exchange (also known as 'SAFEX')	South Africa
65	Spanish Financial Derivatives Exchange (also known as 'MEFF')	Spain
66	Suva Stock Exchange	Fiji
67	Swiss Exchange (also known as 'SWX')	Switzerland
68	Taiwan Stock Exchange	Taiwan
69	Tel Aviv Stock Exchange	Israel
70	The Stock Exchange of Thailand	Thailand
71	Tokyo International Futures Exchange (also known as 'TIFFE')	Japan
72	Tokyo Stock Exchange (also known as 'TSE')	Japan
73	Toronto Futures Exchange (also known as 'TFE')	Canada
74	Toronto Stock Exchange (also known as 'TSE')	Canada

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Item	Body	Location
75	Warsaw Stock Exchange	Poland
76	Wiener Börse AG	Austria

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**Notes**

1. These Regulations amend Statutory Rules 2001 No. 192.
2. Notified in the *Commonwealth of Australia Gazette* on / 2001. 15 October