

Australian Securities and Investments Commission Amendment Regulations 2002 (No. 2) 2002 No. 124

EXPLANATORY STATEMENT

Statutory Rules 2002 No. 124

Issued by the Parliamentary Secretary to the Treasurer

Australian Securities and Investments Commission Act 2001

Australian Securities and Investments Commission Amendment Regulations 2002 (No. 2)

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

The purpose of the amendments is to make minor, technical changes to the concept of operating a clearing and settlement facility. (A typical clearing and settlement facility assists in the processing of securities transactions by calculating the amounts and the securities owed to or by brokers for settlement of transactions entered into on a stock exchange, and facilitates delivery of the securities and payment for them.)

Regulation 46 currently excludes certain conduct from the concept of operating a clearing and settlement facility. Subregulations 46(1) and (4) exclude the conduct of TNS Clearing Pty Limited (TNS), a subsidiary of the Australian Stock Exchange, in novating transactions entered into on that exchange. (In its role as the novating entity, TNS is interposed, by virtue of the rules of the facility, between the buying broker and the selling broker so that all obligations are owed to it.) Although TNS' conduct in this regard would usually bring it within the concept of operating a clearing and settlement facility, it was initially excluded from the concept by regulation because it is simply the novating entity and performs no other role. However, in the light of developments in the industry, it is considered appropriate that subregulations 46(1) and (4) be deleted. The same change had previously been made to this concept in the Corporations Regulations.

The Regulations commence on gazettal.