

Payment Systems and Netting Amendment Regulations 2002 (No. 1) 2002 No. 181

EXPLANATORY STATEMENT

Statutory Rules 2002 No. 181

Issued by the Parliamentary Secretary to the Treasurer

Payment Systems and Netting Act 1998

Payment Systems and Netting Amendment Regulations 2002 (No. 1)

Section 18 of the *Payment Systems and Netting Act 1998* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 5 of the Act defines a 'netting market'. It states that an arrangement may be declared by the regulations to be a 'netting market' for the purposes of the Act.

Part 5 of the Act applies in relation to 'netting market contracts'. These are defined in section 5 of the Act as contracts entered into in accordance with the rules that govern the operation of a 'netting market' and under which obligations between parties to a contract are netted (other than a contract that is part of an 'approved netting arrangement').

Part 5 of the Act is intended to ensure the effectiveness of 'netting market contracts'. It seeks to preserve the validity of 'netting market contracts' that are governed by Australian law and within the constitutional reach of the Commonwealth Government. It also seeks to preserve the validity of 'netting market contracts' on the external administration of a party to the contract where Australian law governs either the external administration or the contract. This prevents transactions on a netting market being unwound because they involve a 'voidable preference'.

CLS Bank International proposes to provide a service for the simultaneous settlement of foreign exchange transactions (which involve exchanging an amount of one currency for an amount of another currency). The main purpose of the proposed service is to eliminate the risk, which can arise when each leg of the transaction is settled separately, that one payment could be made but the corresponding payment not received. The United States Federal Reserve System, in consultation with a number of international central banks, including the Reserve Bank of Australia, will regulate CLS Bank International.

The purpose of the Regulations is to declare the arrangement consisting of the system, for the settlement by CLS Bank International, of payment instructions arising from foreign exchange transactions to be a 'netting market' for the purposes of the Act. This will preserve the validity of 'netting market contracts' entered into in accordance with the rules of CLS Bank International in the event of the external administration of an Australian participant.

A separate regulation has also been made to exempt CLS Bank International's proposed system for the settlement of payment instructions arising from foreign exchange transactions from regulation as a clearing and settlement facility under the *Corporations Act 2001*.

The Regulations also amend the current declaration that applies to SFE Clearing Corporation Pty Limited (SFE Clearing) in relation to futures contracts entered into on the markets operated by SFE Corporation Limited and Sydney Futures Exchange Limited.

The previous reference to an 'approved futures clearing house' has been replaced with a new reference to the clearing and settlement facilities provided by SFE Clearing under the Australian

CS facility licence issued to SFE Clearing on 8 March 2002. This amendment is consistent with the new terminology introduced into the Corporations Act 2001 as a result of the commencement of the *Financial Services Reform Act 2001*. The Regulations commence on gazettal.