

## EXPLANATORY STATEMENT

Statutory Rules 2004 No. 402

Issued by the Parliamentary Secretary to the Treasurer

*Payment Systems and Netting Act 1998*

Payment Systems and Netting Amendment Regulations 2004 (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 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 Act makes provision in relation to aspects of payment and settlement systems and netting contracts. Systems exist for the settlement of payment obligations, including between banks and between participants in clearing and settlement (CS) facilities. With legal protection, netting is an effective strategy for reducing risk in the payment system – by allowing institutions to pay only their net daily obligations to one another (rather than meeting each obligation) the liquidity required to enable the financial system to operate is significantly minimised. This also enhances the stability of the system.

Subsection 16(2) of the Act affords protection to licensed CS facilities in the event that a party to a transaction goes into external administration. In short, a CS facility which is a central counterparty could only be called on by an administrator to settle any net obligation to the party, rather than settling each outstanding transaction in full. In order to attract this protection, it is necessary for the CS facility concerned to be declared a netting market for the purposes of the Act. The *Payment Systems and Netting Regulations 2001* (the Principal Regulations) declared SFE Clearing Pty Limited (SFE Clearing) and CLS Bank International as netting markets.

The purpose of the Regulations is to omit the declaration of SFE Clearing from the Principal Regulations as a consequence of the variation of the Australian CS Facility licence held by SFE Clearing. The Regulations also omit all definitions other than ‘the Act’, since those definitions relate only to the declaration of SFE Clearing.

The definition of ‘netting market’ in section 5 of the Act provides for two ways for an arrangement to be made a netting market, and thus attract the protection afforded by section 16 of the Act:

- an arrangement that is a licensed market or CS facility and is approved by the Minister (paragraph (a) of the definition); or
- an arrangement that is declared by the Principal Regulations to be a netting market (paragraph (b) of the definition).

Paragraph 4(a) of the Regulations declared two aspects of the conduct of SFE Clearing to be a netting market, pursuant to paragraph (b) of the definition of ‘netting market’ in the Act. The Australian CS Facility licence held by SFE Clearing has now been varied to include all aspects of its conduct, and that licensed conduct has now been declared by the Minister to be a netting market, under paragraph (a) of the definition of ‘netting market’ in section 5 of the Act. Paragraph 4(a), and the definitions relating to it, are therefore redundant and are now omitted from the Principal Regulations.

The declaration of CLS Bank International is retained in a new regulation 4.

The Regulations commenced on the date of their notification in the *Gazette*.