

**Australian Securities and Investments Commission  
Corporations Act 2001 - Paragraph 911A(2)(l) - Exemption**

Under paragraph 911A(2)(l) of the *Corporations Act 2001* (the *Act*) the Australian Securities and Investments Commission (*ASIC*) exempts the persons referred to in Schedule A from the requirement to hold an Australian financial services licence in the case referred to in Schedule B.

**Schedule A**

A body corporate (the *body*) to which all of the following apply:

- (a) the body is:
  - (i) a bank holding company within the meaning given by section 2(a) of the Bank Holding Company Act of 1956 of the US or a subsidiary (that is not a bank within the meaning of section 2(c) of that Act) of such a bank holding company, in either case, where all of its activities are subject to a determination under either section 4(c)(8) or section 4(k) of that Act;
  - (ii) the subject of a certificate of the OCC under section 27 of Title 12 of the United States Code or a subsidiary (that carries on a banking business) of a body that is subject to such a certificate and; or
  - (iii) a corporation established and approved as an Edge corporation under section 211(5) of Title 12 of the Code of Federal Regulations of the US or a subsidiary of such a corporation;
- (b) the body is a foreign company incorporated in the US or a State of the US that either:
  - (i) is registered under Division 2 of Part 5B.2 of the Act; or
  - (ii) has not failed for more than the last 10 business days to have an Agent;
- (c) the body's primary business is the provision of financial services;
- (d) neither the body nor its Agent has been notified by ASIC that the body is excluded from relying on this instrument;
- (e) 10 business days have not elapsed since the body became or should reasonably have become aware of matters that give it reason to believe that it has failed, other than in an immaterial respect, to comply with a requirement set out in Schedule C without full particulars of the failure having been provided to ASIC (to the extent that the body knows those particulars or would have known them if it had undertaken reasonable enquiries) and ASIC having notified the body or its Agent that the body may continue to rely on this instrument; and
- (f) the body has not notified ASIC that it will not rely on this instrument.

### Schedule B

Where:

1. the body provides any of the following financial services (the **financial services**) in this jurisdiction to wholesale clients:
  - (a) providing financial product advice;
  - (b) dealing in a financial product;
  - (c) making a market for a financial product; or
  - (d) providing a custodial or depository service;in respect of any of the following financial products:
  - (e) eligible deposit products;
  - (f) derivatives;
  - (g) foreign exchange contracts;
  - (h) securities;
  - (i) facilities for making non-cash payments;
  - (j) debentures, stocks or bonds issued by a government;
  - (k) managed investment products; or
  - (l) interests in a managed investment scheme that is not required to be registered under Chapter 5C of the Act; and
2. the body has provided ASIC with:
  - (a) evidence that paragraph (a) of Schedule A is satisfied that ASIC has stated in writing is adequate;
  - (b) a notice that it will provide financial services in this jurisdiction in reliance on this instrument;
  - (c) a deed of the body for the benefit of and enforceable by ASIC and the other persons referred to in subsection 659B(1) of the Act that applies notwithstanding that the body may have ceased to rely, or never have relied, on this instrument, which deed provides that:
    - (i) the deed is irrevocable except with the prior written consent of ASIC;
    - (ii) the body submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Act and whether brought in the name of ASIC or the Crown or otherwise;
    - (iii) the body covenants to comply with any order of an Australian court in respect of any matter relating to the provision of the financial services;

- (iv) if the body is not registered under Division 2 of Part 5B.2 of the Act, service of process on the body in relation to legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Act and whether brought in the name of ASIC or the Crown or otherwise can be effected by service on the Agent; and
- (v) the body covenants that, on written request of the Federal Reserve (if the body is covered by subparagraph (a)(i) or (iii) of Schedule A) or the OCC (if the body is covered by subparagraph (a)(ii) of Schedule A) or ASIC, it will give or vary written consent and take all other practicable steps to enable and assist the Federal Reserve or the OCC (as the case requires) to disclose to ASIC and ASIC to disclose to the Federal Reserve or the OCC (as the case requires) any information or document that the Federal Reserve or the OCC (as the case requires) or ASIC has that relates to the body; and
- (d) written consents to the disclosure by the Federal Reserve (if the body is covered by subparagraph (a)(i) or (iii) of Schedule A) or the OCC (if the body is covered by subparagraph (a)(ii) of Schedule A) to ASIC and by ASIC to the Federal Reserve or the OCC (as the case requires) of any information or document that the Federal Reserve or the OCC (as the case requires) or ASIC has that relates to the body. The consents must be in such form (if any) as ASIC specifies in writing.

### **Schedule C**

1. The body must provide each of the financial services in this jurisdiction in a manner which would comply, so far as is possible, with the US regulatory requirements if the financial service were provided in the US in like circumstances.
2. The body must:
  - (a) notify ASIC, as soon as practicable and in such form if any as ASIC may from time to time specify in writing, of the details of:
    - (i) each significant change to the US regulatory requirements (including in the power or authority of the Federal Reserve (if the body is covered by subparagraph (a)(i) or (iii) of Schedule A) or the OCC (if the body is covered by subparagraph (a)(ii) of Schedule A) to supervise, monitor or procure compliance by the body with the US regulatory requirements with respect to the provision of the financial services) that is relevant to the financial services the body provides or intends to provide in this jurisdiction unless ASIC has stated in writing that notice of that change is not required for the purpose of this instrument;
    - (ii) each significant particular exemption or other relief which the body obtains from the US regulatory requirements; and
    - (iii) each enforcement or disciplinary action taken by the Federal Reserve, the OCC or any other overseas regulatory authority against the body; and

- (b) provide written disclosure to all persons to whom the financial services are provided in this jurisdiction (before the financial services are provided) containing prominent statements to the following effect:
- (i) the body is exempt from the requirement to hold an Australian financial services licence under the Act in respect of the financial services;
  - (ii) the financial services are regulated by the Federal Reserve (if the body is covered by subparagraph (a)(i) or (iii) of Schedule A) or the OCC (if the body is covered by subparagraph (a)(ii) of Schedule A) under US laws, which differ from Australian laws; and
  - (iii) any offer or other documentation provided in the course of providing the financial services will be prepared in accordance with US regulatory requirements (and not Australian laws).

### **Interpretation**

In this instrument:

*address*, in relation to a company, means the address of the registered office of the company;

*Agent* means a natural person resident in this jurisdiction or a company, whose name and address were last notified to ASIC by the body for the purposes of this instrument, and who is authorised to accept on the body's behalf, service of process from ASIC and, in relation to proceedings relating to a financial services law, from any person referred to in subsection 659B(1) of the Act;

*custodial or depository service* has the meaning given by section 766E of the Act;

*derivative* has the meaning given by section 761D of the Act;

*eligible deposit product* means any deposit-taking facility including a deposit product as defined in section 761A of the Act;

*Federal Reserve means:*

- (a) the Board of Governors of the Federal Reserve System of the US; and
- (b) the Federal Reserve Bank within the Federal Reserve System that has responsibility for supervising the body;

*financial product advice* has the meaning given by section 766B of the Act;

*financial services law* has the meaning given by section 761A of the Act;

*foreign exchange contract* has the meaning given by section 761A of the Act;

*making a market* has the meaning given by section 766D of the Act;

*non-cash payments* has the meaning given by section 763D of the Act;

*notice and notified* mean, respectively, written notice and notified in writing;

*OCC* means the Comptroller of the Currency of the US;

*overseas regulatory authority* means a foreign regulatory authority (other than the Federal Reserve or the OCC) which regulates financial services and which is established by or for the purposes of a foreign government or legislative body;

*securities* has the meaning given by section 761A of the Act;

*subsidiary*:

- (a) in relation to a bank holding company, has the same meaning as in section 2(d) of the Bank Holding Company Act of 1956 of the US; and
- (b) otherwise, has the meaning given by section 9 of the Act.

*US* means the United States of America;

*US regulatory requirements* means the rules that apply in relation to the financial services including any applicable legislation, instruments made under that legislation and any relevant policies or other documents (however described) issued by the Federal Reserve or the OCC; and

*wholesale client* has the meaning given in section 761G of the Act.

## **Commencement**

This instrument takes effect on gazettal.

Dated this 23rd day of December 2003.

Signed by Brendan Byrne  
as a delegate of the Australian Securities and Investments Commission