

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 365**

#### **Issued by authority of the Minister for Superannuation and Corporate Law**

#### *Payment Systems and Netting Act 1998*

#### *Payment Systems and Netting Amendment Regulations 2007 (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. The *Payment Systems and Netting Regulations 2001* (the Principal Regulations) have been made in accordance with this authority. Section 5 of the Act defines a 'netting market' as an arrangement that may be declared by the regulations.

The purpose of the amendment is to declare payment instructions relating to derivative transactions settled by CLS Bank International (CLS) as a 'netting market' for the purposes of the Act. This amendment will allow eligible Australian currency derivative obligations to be settled in the CLS system, and allow Australian banks to settle eligible derivative obligations in the system in any CLS currency. A separate regulatory amendment, relating to CLS's exemption from Part 7.3 of the *Corporations Act 2001*, is being considered concurrently by the Federal Executive Council.

CLS operates a global settlement system which allows financial institutions to settle foreign currency transactions immediately and with finality. CLS is already declared under subregulation 4 of the Principal Regulations to be a 'netting market' with respect to foreign exchange transactions. CLS has requested that this declaration be extended to include the settlement of derivative transactions.

The objective of this amendment is for CLS's system for settling derivative payment instructions to be declared as a 'netting market' for the purposes of the Act. Subsequently, derivative transactions settled in this netting market will be defined as 'netting market contracts', pursuant to section 5 of the Act. Under section 16 of the Act, this will ensure that these contracts are effective, that is, cannot be unwound regardless of other Australian law. This preserves the validity of contracts settled through this system, and ensures that CLS has a well founded legal basis for operating in the Australian jurisdiction.

CLS and the Reserve Bank of Australia, as the agency responsible for payments systems, have been consulted in the drafting of this instrument and are supportive of the amendment. No further consultation is considered necessary. A preliminary assessment of the regulatory impact has indicated that this amendment has a low or no regulatory impact.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

Authority: Section 18 of the *Payment Systems and Netting Act 1998*