



Financial Services Legislation Amendment (Wholesale Margining) Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 27 October 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

Kelly O'Dwyer
Minister for Revenue and Financial Services

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1 Name

This is the *Financial Services Legislation Amendment (Wholesale Margining) Regulation 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	29 October 2016

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Corporations Act 2001*;
- (b) the *Life Insurance Act 1995*;
- (c) the *Superannuation Industry (Supervision) Act 1993*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Corporations Regulations 2001

Corporations Regulations 2001

1 Before regulation 7.8.01

Insert:

7.8.01A Wholesale client money

For the purposes of paragraph 981A(4)(a) of the Act, money paid as mentioned in subsection 981A(1) of the Act is exempt from Subdivision A of Division 2 of Part 7.8 of the Act at a time if:

- (a) at that time the licensee has the client's written agreement to the money being dealt with other than in accordance with that Subdivision; and

Note 1: It is not necessary for the agreement to mention that Subdivision explicitly.

Note 2: If the licensee obtains the agreement after the money is paid, that Subdivision ceases to apply to the money when the licensee obtains the agreement.

- (b) either:
 - (i) the financial service referred to in subparagraph 981A(1)(a)(i) of the Act is or relates to a dealing in a derivative; or
 - (ii) the financial product referred to in subparagraph 981A(1)(a)(ii) of the Act is a derivative; and
- (c) the entry into of the derivative was not or will not be cleared through a clearing and settlement facility; and
- (d) the financial service or product would have been provided to the client as a wholesale client if:
 - (i) the service or product were provided to the client when the money was paid; and
 - (ii) section 761GA of the Act (about sophisticated investors) did not apply.

2 After regulation 7.8.06A

Insert:

7.8.06B Wholesale client property

For the purposes of paragraph 984A(2)(a) of the Act, property given as mentioned in subsection 984A(1) of the Act is exempt from Division 3 of Part 7.8 of the Act at a time if:

- (a) at that time the licensee has the client's written agreement to the property being dealt with other than in accordance with that Division; and

Note 1: It is not necessary for the agreement to mention that Division explicitly.

Note 2: If the licensee obtains the agreement after the property is given, that Division ceases to apply to the property when the licensee obtains the agreement.

- (b) either:
 - (i) the financial service referred to in subparagraph 984A(1)(a)(i) of the Act is or relates to a dealing in a derivative; or
 - (ii) the financial product referred to in subparagraph 984A(1)(a)(ii) of the Act is a derivative; and

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- (c) the entry into of the derivative was not or will not be cleared through a clearing and settlement facility; and
 - (d) the financial service or product would have been provided to the client as a wholesale client if:
 - (i) the service or product were provided to the client when the property was given; and
 - (ii) section 761GA of the Act (about sophisticated investors) did not apply.

3 In the appropriate position in Chapter 10

Insert:

Part 10.24—Application provisions relating to the Financial Services Legislation Amendment (Wholesale Margining) Regulation 2016

10.24.01 Application of regulations 7.8.01A and 7.8.06B

- (1) Regulation 7.8.01A, as inserted by the *Financial Services Legislation Amendment (Wholesale Margining) Regulation 2016*, applies in relation to a client's written agreement obtained on or after the commencement of this regulation, whether the money was paid to the licensee as mentioned in subsection 981A(1) of the Act before, on or after that commencement.
- (2) Regulation 7.8.06B, as inserted by the *Financial Services Legislation Amendment (Wholesale Margining) Regulation 2016*, applies in relation to a client's written agreement obtained on or after the commencement of this regulation, whether the property was given to the licensee as mentioned in subsection 984A(1) of the Act before, on or after that commencement.

Schedule 2—Life Insurance Regulations 1995

Life Insurance Regulations 1995

1 Clause 1 of Schedule 7 (before table item 1)

Insert:

1A AB NASDAQ Vilnius (XLIT)

2 Clause 1 of Schedule 7 (table items 5 and 6)

Repeal the items, substitute:

5 Athens Exchange (ATHEX)

6 Athens Exchange Clearing House (ATHEX Clear)

3 Clause 1 of Schedule 7 (after table item 11)

Insert:

11A Borsa Istanbul Futures & Options Market

4 Clause 1 of Schedule 7 (table items 13 and 14)

Repeal the items, substitute:

13 Bourse de Montréal

14 Budapesti Értéktőzsde

5 Clause 1 of Schedule 7 (table item 16)

Repeal the item, substitute:

16 Cantor Clearinghouse, L.P.

6 Clause 1 of Schedule 7 (table item 20)

Repeal the item, substitute:

20 CDS Clear operated by LCH.Clearnet SA

7 Clause 1 of Schedule 7 (after table item 28)

Insert:

28A CommodityClear operated by LCH.Clearnet Limited

8 Clause 1 of Schedule 7 (table item 34)

Repeal the item.

9 Clause 1 of Schedule 7 (after table item 37)

Insert:

37A EuroGCplus operated by LCH.Clearnet SA

10 Clause 1 of Schedule 7 (table items 48 and 49)

Repeal the items, substitute:

48 Euronext Paris MONEP (Marché des Options Négociables de Paris) (XMON)

49 European Central Counterparty N.V. (EuroCCP)

11 Clause 1 of Schedule 7 (table items 53 to 56)

Repeal the items, substitute:

53 ForexClear operated by LCH.Clearnet Limited

54 HKFE Clearing Corporation Limited (HKCC)

55 Hong Kong Exchange and Clearing Ltd (HKEX)

56 Hong Kong Futures Exchange Limited (HKFE)

12 Clause 1 of Schedule 7 (table item 63)

Repeal the item, substitute:

63 ICE Clear Singapore

13 Clause 1 of Schedule 7 (table item 67)

Repeal the item, substitute:

67 ICE Futures Europe

14 Clause 1 of Schedule 7 (table item 72)

Repeal the item, substitute:

72 Jakarta Futures Exchange (JFX)

15 Clause 1 of Schedule 7 (after table item 74)

Insert:

74A JSE Commodity Derivatives Market

16 Clause 1 of Schedule 7 (table item 82)

Repeal the item, substitute:

82 Montréal Climate Exchange (MCex)

17 Clause 1 of Schedule 7 (table items 83 to 96)

Repeal the items, substitute:

83 NASDAQ BX, Inc.

84 NASDAQ Commodities operated by NASDAQ Oslo ASA

85 NASDAQ Copenhagen A/S

86 NASDAQ Derivatives Markets operated by NASDAQ Stockholm AB

87 NASDAQ Futures (NFX) operated by NASDAQ Futures, Inc.

88 NASDAQ Helsinki Ltd

89 NASDAQ Iceland hf.

90 NASDAQ NLX Ltd

91 NASDAQ OMX Armenia

92 NASDAQ PHLX LLC

93 NASDAQ PSX operated by NASDAQ PHLX LLC

94 NASDAQ Riga, AS (XRIS)

95 NASDAQ Stockholm AB (XSTO)

96 NASDAQ Tallinn AS (XTAL)

18 Clause 1 of Schedule 7 (after table item 106)

Insert:

106A NZX Main Board operated by NZX Limited

19 Clause 1 of Schedule 7 (table items 114 and 115)

Repeal the items, substitute:

114 RepoClear operated by LCH.Clearnet Limited

115 RepoClear operated by LCH.Clearnet SA

20 Clause 1 of Schedule 7 (table items 117 and 118)

Repeal the items, substitute:

117 Singapore Exchange Derivatives Clearing Limited (SGX-DC)

117A Singapore Exchange Derivatives Trading Limited (SGX-DT)

118 Singapore Exchange Securities Trading Limited (SGX-ST)

21 Clause 1 of Schedule 7 (table item 120)

Repeal the item, substitute:

120 SwapClear operated by LCH.Clearnet Limited

22 Clause 1 of Schedule 7 (table items 125, 131, 137 and 142)

Repeal the items.

Schedule 3—Superannuation Industry (Supervision) Regulations 1994

Superannuation Industry (Supervision) Regulations 1994

1 Clause 1 of Schedule 4 (before table item 1)

Insert:

1A AB NASDAQ Vilnius (XLIT)

2 Clause 1 of Schedule 4 (table items 5 and 6)

Repeal the items, substitute:

5 Athens Exchange (ATHEX)

6 Athens Exchange Clearing House (ATHEX Clear)

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Repeal the item, substitute:

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15 Clause 1 of Schedule 4 (after table item 74)

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93 NASDAQ PSX operated by NASDAQ PHLX LLC

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114 RepoClear operated by LCH.Clearnet Limited

115 RepoClear operated by LCH.Clearnet SA

20 Clause 1 of Schedule 4 (table items 117 and 118)

Repeal the items, substitute:

117 Singapore Exchange Derivatives Clearing Limited (SGX-DC)

117A Singapore Exchange Derivatives Trading Limited (SGX-DT)

118 Singapore Exchange Securities Trading Limited (SGX-ST)

21 Clause 1 of Schedule 4 (table item 120)

Repeal the item, substitute:

120 SwapClear operated by LCH.Clearnet Limited

22 Clause 1 of Schedule 4 (table items 125, 131, 137 and 142)

Repeal the items.