



**Australian
Competition &
Consumer
Commission**

Our Ref: A90932, A90933
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28 September 2004

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Dear

Application for revocation and substitution of authorisation lodged by the Australian Payments Clearing Association Limited

1. Introduction

The Australian Competition and Consumer Commission (the ACCC) is currently conducting an interested party consultation process in relation to the above application. As a possible interested party you are invited to comment on the issues outlined in this letter.

The consultation process is in response to an application for authorisation lodged by the Australian Payments Clearing Association Limited (APCA) seeking re-authorisation of certain provisions of its Australian Paper Clearing System (APCS) Regulations. For an explanation of the authorisation process and the conduct the subject of the application see sections 2, 3 and 4 of this letter. A copy of APCA's submission and the relevant regulations are also enclosed for your information and/or comment. You can find a full copy of the Regulations and non-confidential Procedures on the ACCC's website <www.accc.gov.au>.

In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process seeking comments on the application from interested parties. Following an initial consultation process, the ACCC will issue a draft decision for comment.

2. Background

The ACCC is the Commonwealth agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business resulting in a greater choice for consumers in price, quality and service.

The Act, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way businesses may obtain immunity is to apply for



what is known as an 'authorisation' from the ACCC. Broadly, the ACCC may 'authorise' businesses to engage in anti-competitive arrangements or conduct where it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment.

In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process seeking comments on the application from interested parties. Following an initial consultation process, the ACCC will issue a draft decision for comment.

3. Application for revocation and substitution by APCA

On 17 September 2004 the ACCC received an application from APCA for the revocation of an existing authorisation and substitution with a new one. The application relates to the APCS which governs the clearing of cheques and payment orders.

The APCS arrangements were previously authorised by the Trade Practices Commission (now the ACCC) on 22 September 1993. Authorisation was granted to the APCS Regulations and Procedures as well as APCA's Constitution (A90550, A90551 and A90552).

APCA is of the view that a blanket authorisation covering the Regulations and Procedures and Constitution, as granted in 1993, is no longer necessary and is seeking re-authorisation only for Regulations 4.27 to 4.33, 4.35, 4.37 and 4.38 of the APCS Regulations. These provisions relate to suspension and termination of APCS membership.

APCA considers that these clauses of the APCS Regulations might be an exclusionary provision within the meaning of s 4D of the Act and might have the purpose or likely effect of substantially lessening competition in a market within the meaning of s 45 of the Act. As such, APCA has applied for the revocation and substitution of A90550 and A90551 relating to exclusionary provisions and agreements affecting competition respectively.

APCA submits that the suspension and termination provisions in the APCS Regulations continue to result in such a public benefit that they should be allowed to remain in place. APCA submits that the benefit to the public outweighs the detriment to the public from any lessening of competition that results from the provisions. Please see the enclosed submission for details of APCA's claims in relation to the public benefits and detriments resulting from the relevant provisions.

4. Application for revocation by APCA

APCA considers that no provision of the Regulations, Procedures or Constitution would constitute exclusive dealing in contravention of s 47 of the Act. Therefore, APCA has applied for the revocation of A90552 which relates to exclusive dealing conduct.

Section 91B of the Act provides that a person to whom authorisation was granted may apply to the ACCC for the revocation of the authorisation. On receipt of such an application, the ACCC is required to write to interested parties advising them of the application for revocation, its basis and inviting submissions in respect of the application for revocation. After considering any submissions received from interested parties in relation to the application for revocation, the ACCC is required to issue a written determination either revoking or allowing the immunity conferred by the authorisation to continue.

5. Request for submissions

To assist the ACCC in its consideration of the application it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed revocation and substitution of A90550 and A90551 and the revocation of A90552.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though it is not publicly available. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission, please address your submission to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions can also be lodged by email to: adjudication@acc.gov.au

If you intend to provide a submission in relation to APCA's application for authorisation, please do so by **Friday 29 October 2004**.

If you have any questions about the issues raised in this letter please contact Michael Green on 02 6243 1088.

A copy of this letter will be placed on the ACCC's public register.

Yours sincerely

Tim Grimwade
General Manager
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the ACCC assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the ACCC to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The ACCC is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the ACCC may still grant confidentiality where, in the ACCC's view, it is desirable to do so.

The ACCC also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The ACCC expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the ACCC:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the ACCC deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the ACCC denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the ACCC will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the ACCC will return the original material and destroy all associated copies. The ACCC will not consider this material when reaching its decision.

If the ACCC does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the ACCC pursuant to its powers generally under the *Trade Practices Act*.



AUSTRALIAN PAYMENTS CLEARING ASSOCIATION

FILE No:
DOC:
MARS/PRISM:

Mr Tim Grimwade
General Manager -
Adjudication Branch
Australian Competition &
Consumer Commission
470 Northbourne Avenue
Dickson ACT 2602

Fax: 6243 1199

15 September 2004

Dear Mr Grimwade

Australian Paper Clearing System ("APCS") Regulations and Procedures

We refer to letters to the Commission dated 21 November 2003 and 8 June 2004 from Mr Roger Featherston on behalf of the Australian Payments Clearing Association Limited ("APCA") and the meeting with the Commission on 21 June 2004 in respect of the Australian Paper Clearing System ("APCS") Regulations and Procedures.

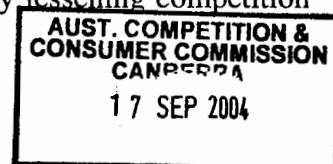
As you are aware, the APCS Regulations and Procedures, together with APCA's Constitution, were authorised by the Commission on 22 September 1993, which authorisations (A90550, A90551 and A90552) remain in force.

As discussed in the meeting with the Commission, APCA has undertaken a review of the APCS Regulations and Procedures and certain amendments have been made. The amended Regulations and Procedures have been provided to the Commission.

As advised in the letter dated 8 June 2004, during the course of the review, APCA formed the view that there are only a limited number of provisions within the APCS Regulations that require authorisation and therefore a blanket authorisation of the APCS Regulations and Procedures and Constitution was not necessary.

Accordingly APCA hereby applies under s 91C of the *Trade Practices Act 1974* ("Act") for revocation of authorisations A90550, A90551 and A90552 in relation to the APCS Regulations and Procedures and the Constitution, and in substitution, APCA seeks authorisations for Regulations 4.27 to 4.33, 4.35, 4.37 and 4.38 of the APCS Regulations which:

- (a) might be an exclusionary provision within the meaning of s 4D of the Act; and
- (b) might have the purpose or likely effect of substantially lessening competition in a market within the meaning of s 45 of the Act.



At this stage, APCA does not wish to seek authorisation for any provisions of the APCA Regulations and Procedures which may constitute exclusive dealing within the meaning of s 47 of the Act as it considers no provision would constitute a contravention of that section.

A submission in support of these applications is attached. Please note the latest version of the APCS Regulations enclosed incorporates failure to settle rules for the APCS. On 19 August 2004 the Payments System Board determined the APCS to be an approved multilateral netting arrangement under the Payments System and Netting Act 1998 (Cth). The Payments System Board also determined the APCS to be a "recognised settlement system" for the purposes of section 70A of Cheques Act 1986 such that cheques drawn on a defaulter are taken to be dishonoured by virtue of section 70A (1) if the prerequisites for such "deemed dishonour" set out in that section are satisfied. The failure to settle rules became effective on 20 August 2004.

We look forward to receiving your determination.

Yours sincerely



Kimberley Chan

ACTING GENERAL COUNSEL

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GROUNDS FOR AUTHORISATION

The applicant Australian Payments Clearing Association Limited submits that:

- to the extent (if any) that the suspension and termination provisions of the Regulations for the Australian Paper Clearing System is or may be an exclusionary provision within the meaning of Section 4D of the Trade Practices Act 1974 (“the Act”), such provision in all the circumstances has resulted and will continue to result in such a public benefit that the contract, arrangement or understanding constituted by such Regulations should be allowed to remain in place.
- to the extent (if any) that any provision of the Regulations for the Australian Paper Clearing System has the purpose or likely effect or effect of substantially lessening competition in a market within the meaning of Section 45 of the Act, such provision in all the circumstances has resulted and will continue to result in a benefit to the public and that benefit outweighs the detriment to the public constituted by any lessening of competition that results from any such provision.

The benefit to the public that results from the relevant provisions is as follows:

1. To function well, the economy requires the secure and efficient processing of transactions between financial institutions through a clearing framework of the kind constituted by APCA’s Regulations and Procedures for the Australian Paper Clearing System.
2. Access to the Australian Paper Clearing System is and will continue to be to be available to potential participants on reasonable and clear terms.
3. The Australian Paper Clearing System does not discriminate between different institutional types. Banks, non-bank financial institutions and other bodies corporate can participate provided they meet the required terms and condition.
4. APCA’s payments clearing framework contributes towards protecting and enhancing the integrity of payments clearance and settlement, and reducing risk within the payments system. It also contributes towards the efficiency with which payment instructions are cleared, and the timeliness and certainty with which value is provided to customers.
5. Suspension or termination of a member from the System at APCA’s instigation is important to provide a mechanism to ensure compliance with the Regulations and Procedures and to allow participants to have confidence in the System, even though suspension or termination is only contemplated in circumstances where the member’s continuing membership would impair the efficiency and/or integrity of the System.

**FACTS AND CONTENTIONS RELIED UPON
IN SUPPORT OF GROUNDS OF AUTHORISATION**

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I. APCA

Company Form

APCA was incorporated as a public company on 18 February 1992. APCA is a public company limited by guarantee. This form of public company allows multiple categories of membership with different rights and obligations without the restrictions of share ownership.

The previous shareholding arrangements were removed because the criteria for membership was based on institutional types (eg, the Reserve Bank, each major bank, state and regional banks, building societies and credit unions) which no longer wholly reflected the current kinds of institutions participating in clearing activities. The change to APCA's Constitution and the consequential changes to APCA's clearing system regulations have opened membership to all organisations engaged in the clearing activities APCA manages. For example, Coles Myer and Cashcard are now members of the Consumer Electronic Clearing System (CECS), and Australia Post, Travelex and American Express are now eligible for and have been invited to take up APCS membership.

Membership

APCA has "owner members", "participating members", and "associate members". APCA has also established three advisory councils.

Each member incurs a guarantee liability on a winding-up of APCA of:

- (a) for owner members \$1,000;
- (b) for participating members \$10,000 per clearing system; and
- (c) for associate members \$10.

Owner members

Membership of a clearing system gives entitlement to owner membership. Owner members must be "constitutional corporations" within the meaning of the Payment Systems and Netting Act 1998 and must be either a participant in at least one of APCA's clearing systems or an "industry association" as defined in APCA's Constitution. An industry association is a body nominated by participating members to represent them (the existing owner member industry associations are Credit Union Services Corporation Limited and Creditlink Services Ltd which together represent most credit unions, and Australian Settlements Limited which represents building societies).

Owner members are responsible (through the board of directors) for the governance of APCA and the oversight/control of APCA's five clearing systems. Any single owner member or group of owner members with at least 5% of "Adjusted NCV" can nominate directors. Adjusted NTV is the aggregate of a member's or a group of members' "National Clearing Volume", calculated within a specified period across the three systems in which the member or group has its highest proportions of clearing activity. Provision is also made for representation by the Reserve Bank of Australia, building societies and credit unions

Participating Members

Participating members are institutions that participate on a day-to-day operational basis in one or more of APCA's clearing systems. Participating members need not be owner members, but are encouraged to join in that capacity.

Separate participating membership exists for each clearing system, so that membership is divided into five classes based on APCA's five clearing systems. Within each of these five classes there may be different categories of participating membership depending on whether a member clears and settles directly or indirectly.

A participating member's rights and obligations on clearing and settling payment instructions are dependent on its particular category of membership. All categories of participants have the same rights to vote at meetings of the relevant clearing system, and to appoint a committee of management for that clearing system. Each clearing system has rules in place setting out these rights and obligations, and detailing operating procedures required in the system.

The requirements for participating membership vary from system to system but the eligibility rules common to each system are that a participant must:

- (a) be a body corporate which carries on business at or through a permanent establishment in Australia;
- (b) be able to comply with the applicable Regulations and the Procedures and related technical and operational standards;
- (c) agree to pay all applicable fees, costs, charges and expenses;
- (d) not adversely affect the integrity of exchanges or otherwise introduce a significant new risk into the system; and
- (e) not impair overall efficiency of the system.

Clearing system participants that directly settle must meet additional criteria related to their settlement obligation. They must be able to provide finality of payment for the obligations they incur as a result of exchanging payment instructions by the debiting or crediting of an Exchange Settlement Account (ESA) at the Reserve Bank. There are exceptions effectively at the discretion of the relevant management committee. So if a member would not introduce a material settlement risk, a different settlement method may be sanctioned. For example, the merchant principal member of CECS has been permitted to use its corporate bank account for settlement of its CECS settlements because in the normal course it is a net receiver of settlement payments.

Associate Members

Associate members are persons or organisations, not being owner members or participating members, who are otherwise interested in the functional integrity and efficiency of clearing systems. Associate members have no voting or participation rights but are entitled to attend Annual General Meetings and receive information about the Company and its clearing systems.

Advisory Councils

Advisory councils are comprised of bodies corporate which are not clearers but which are closely interested in clearing because of their commercial involvement in the payments business. Councils were established for the Australian Paper, Bulk Electronic and Consumer Electronic Clearing Systems to assist effective and efficient liaison between clearing system management committees and interested non-clearers on technical and operational matters related to the operation of each of those clearing systems.

The input of the different perspective and expertise that advisory councils bring strengthens the deliberative and decision-making processes in APCA. Decision-making is better informed, more attuned to the interests of all clearing system stakeholders, and more attuned to the changing payments environment. This ensures that parties with a commercial involvement in payments can contribute to the development of an efficient, secure and open set of payments clearing arrangements.

Advisory councils were not established for the High Value and Australian Cash Distribution and Exchange Clearing Systems as it was adjudged that there was an insufficient level of interest.

Role and Decision-Making Structure

APCA is an industry self-regulatory body. It has specific accountability for key parts of payments clearing and settlement arrangements in Australia. APCA's charter, as set out in its Constitution, is to co-ordinate, manage and ensure the implementation and operation of effective payments clearing and settlement systems, policies and procedures.

APCA does not process payments. It co-ordinates and manages payments clearing arrangements for each of the clearing systems it establishes. Individual institutions are responsible for their own clearing operations, and must conduct their operations according to APCA's rules as set out in the Regulations and Procedures for each of APCA's clearing systems in which they participate

APCA is currently responsible for managing five payments clearing systems. Existing participants in, and new entrants to, each clearing system are provided with a single, clear body of rules and decision making structure governing the conduct of clearing and settling. APCA's five clearing systems are described in Section III.

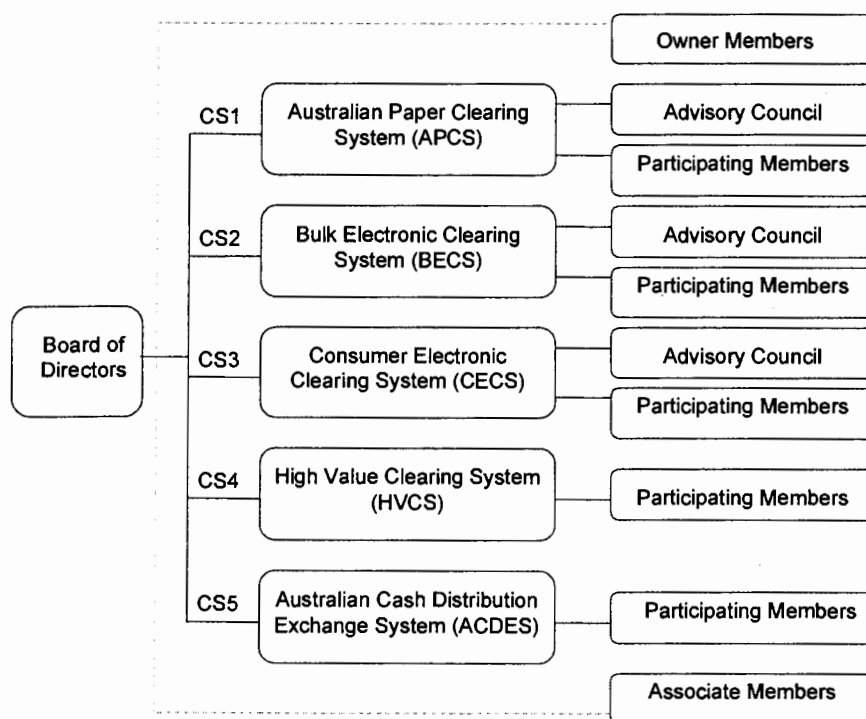
APCA's charter does not restrict it to its current clearing systems; APCA may establish additional clearing systems if the need arises.

The Regulations and Procedures for each of APCA's clearing systems have the effect of a contract under seal between APCA and each participating member in that system, and between the participating members in that system.

Participating members of each system appoint a committee of management with delegated responsibility for overseeing the operations of the system. Broadly, they are responsible for technical and efficiency standards, operating procedures and policies, supervision of observance of the clearing system rules, assessment of clearing volumes, dispute resolution, and approval of membership applications according to the rules. Participating members are entitled to participate

in annual meetings of the relevant systems. These meetings provide a forum for discussion on all matters relating to the operations and management of the system.

APCA CLEARING SYSTEMS MANAGEMENT & CORPORATE STRUCTURE



List of owner members

- | | |
|--|--|
| ABN AMRO Bank, NV | HSBC Bank Australia Limited |
| Adelaide Bank Limited | HSBC Bank plc |
| AMP Bank Limited | ING Bank (Australia) Limited |
| Arab Bank Australia Limited | JP Morgan Chase Bank |
| Australia and New Zealand Banking Group Limited | Macquarie Bank Limited |
| Australian Settlements Limited (ASL) | Mizuho Corporate Bank Limited |
| Bank of America National Association | N.M. Rothschild & Sons (Australia) Limited |
| Bank of China | National Australia Bank Limited |
| Bank One National Association | Oversea-Chinese Banking Corporation Limited |
| Bank of Queensland Limited | Reserve Bank of Australia |
| Bank of Western Australia Limited | Royal Bank of Canada |
| Barclays Bank PLC | St. George Bank Limited |
| Bendigo Bank Limited | Standard Chartered Bank |
| Citibank Pty Limited | State Street Bank & Trust Company |
| Commonwealth Bank of Australia | Suncorp-Metway Limited |
| Credit Union Services Corporation (Australia) Limited (CUSCAL) | The Bank of Tokyo-Mitsubishi Limited Australian Branch |
| CreditLink Services Ltd | United Overseas Bank Limited |
| Deutsche Bank AG | Westpac Banking Corporation |

Board of Directors

Voting directors of APCA are nominated by owner members as previously noted.

Directors hold office for 2 years. Provision is made for the appointment of alternate directors.

The chairman is a non-voting director and holds office for two years from the date of appointment, and may be re-appointed.

A nominee director may not simultaneously hold the office of chairman of the company. The company's policy since October 1999 has been to appoint an independent chairman from outside APCA's membership.

The Chief Executive Officer of APCA is also a non-voting director.

Voting

Voting at management committee level is proportionate to clearing with a simple majority of over 50% of eligible votes required to pass a resolution. Voting at the Board and General meeting level is more complex. Voting is partially related to clearing volume, while however, preserving important checks and balances that prevent particular groupings having a predominant voting position. Clearing volume for this purpose is the simple average of a member's percentage share of the transaction volume in each of APCA's clearing systems (for ACDES it is an average volume and value). Fifty votes are given to those members or groups of members, with 5% and up to 20% of clearing volumes. Those with less than 5% have a corresponding reduction in votes below 50. Those with more than 20% gain extra votes up to a maximum of 100 votes at 30% of clearing volume. Two thirds of eligible votes is required to pass a normal resolution.

II. PAYMENTS SYSTEMS

Payment Services

A payment is the transfer of a financial asset, of the kind generally used as a medium of exchange, from one person to another. Such assets are generally cash or obligations drawn on organisations which, in the normal course of their business, provide the means for their customers to transfer value to third parties.

In Australia, banks, building societies, credit unions, issuers of charge-cards, travellers cheques and money orders provide the means for individuals and businesses to transfer value, one to another. In that sense they all provide payment services.

Cash payments are still important in volume terms. But non-cash means of making payments predominate in value terms.

The payments system is the institutional infrastructure which carries payment messages and transfers funds from one party's account to another's. It underpins commerce and is at the core of the financial system.

A payments system comprises payment instruments and delivery mechanisms. A payment instrument is the form that a payment message takes (e.g. cheque, debit card) and is the means by which one party transfers value to a third party. Such a message is typically a request by one party (such as the drawer of a cheque) to another party (the drawee of the cheque) to pay a certain sum to a third party (the payee).

A delivery mechanism is the means by which payment messages are carried from one point within the payments system to another.

Where both parties to a payment transaction maintain accounts with the same organisation payment arrangements are relatively simple. The organisation debits the paying customer and credits the receiving customer. Where the parties to the payment instruction are customers of different organisations, a process is needed for both organisations to reflect the change in their customers' accounts and for value to pass between those organisations. This process, which is central to a well-functioning payments system, is called clearing and settling.

The need to clear and settle payment transactions between organisations is generated by the use of payment instruments which enable value to be transferred to third parties generally rather than only to third parties who are also customers of the organisation issuing the instrument. Cheques and debit cards issued by banks, building societies and credit unions are examples of such payment instruments.

The provision by an organisation to its customers of a payment instrument which restricts the transfer of value to third parties who are also customers of the same organisation (within what can be called "closed systems") will not, as a general rule, generate the need to clear and settle, no matter how extensive is the use of that payment instrument. Charge cards issued by organisations such as American Express and Diners come into this category.

Clearing

Clearing is the cross-institutional exchange of individual payment messages for the purposes of obtaining settlement. It entails sorting, routing and exchanging payment instructions; verifying the integrity of the instructions and the accuracy of the sums involved; correcting the sums for errors and other adjustments and finally, determining net amounts which, once paid, will settle any resultant debt between the institutions involved.

Clearing in Australia primarily falls under APCA's rules.

Settlement

Settlement is the exchange of value between organisations providing payment services for the purpose of providing finality of payment for the obligations arising out of payments clearing. As a general rule, settlement between financial institutions for their obligations arising from domestic clearing of payment messages is effected through transfers of balances held by those institutions with the central bank of the country concerned.

Central bank money is generally regarded as the only medium that provides finality of payment; in other words payment which is free of default risk.

“One of the major roles of central banks is to provide a monetary asset free of default risk that can be used for making inter-bank transfers and settling inter-bank obligations.”*

Settlement between financial institutions in Australia is achieved through transfers of their ESA balances held with the Reserve Bank of Australia.

For transactions encompassed by APCS (and BECS and CECS, and HVCS when in fallback mode) settlement is deferred, taking place on the morning of the next business day. Deferred settlement systems carry the inherent risk of an institution paying away and then not receiving due settlement.

Procedures in place to deal with a situation where an institution fails to settle are contained within APCA's applicable clearing system Regulations. These Regulations have been approved by the Reserve Bank under the Payment Systems and Netting Act 1998 and for APCS also under the Cheques Act 1959.

* *Central Bank Payment & Settlement Services with Respect to Cross Border and Multicurrency Transactions.* Bank for International Settlements, 1993.

III. APCA'S CLEARING SYSTEMS

Australian Paper Clearing System

The Australian Paper Clearing System (APCS) was established in December 1993. This system has the role of co-ordinating, managing and ensuring the implementation and operation of policies and procedures for the conduct and settlement of exchanges of paper-based payment instructions, i.e. primarily cheques, between its participating members.

While cheques remain important, their use continues to gradually fall. Nonetheless, there are still more around 2.2 million cheque transactions each day.

Bulk Electronic Clearing System

The Bulk Electronic Clearing System (BECS) was established in December 1994. This system has the role of managing the conduct of the exchange and settlement of bulk electronic low value transactions in similar fashion to that applying to paper-based payment instructions in the APCS.

BECS currently covers direct entry payments. The direct entry system allows approved organisations, now numbering over 200,000¹, to make arrangements with their financial institution to debit and/or credit large numbers of customer accounts on a regular basis. Organisations can be credit users in the system, making payments (direct credits), or debit users receiving payments (direct debits).

The direct entry system has had consistently strong growth for some years.

Consumer Electronic Clearing System

The Consumer Electronic Clearing System (CECS) was established in December 2000 following a favourable determination issued by the Australian Competition and Consumer Commission (ACCC) in August 2000. On 22 July 2004, the ACCC issued a draft determination in respect of 2 applications for revocation and substituted lodged by APCA on 30 April 2003 stating that the ACCC proposes to grant authorisation for 5 years.

In CECS the management of clearing primarily involves setting minimum standards to protect and enhance the security, integrity and efficiency of ATM and EFTPOS interchanges. Currently, Australia has more than 21,000 ATMS and 465,00 EFTPOS terminals.

High Value Clearing System

The High Value Clearing System (HVCS) was established by APCA in 1997 as part of the more general development of Real Time Gross Settlement (RTGS) in Australia.

The mechanism for HVCS participating members exchanging payments with each other is the SWIFT Payment Delivery System (PDS). The SWIFT PDS uses SWIFT's FIN-Copy product (configured in Y mode) to exchange payment messages between its participating members.

Australian Cash Distribution and Exchange System

¹ APCA database of direct entry users as at June 2004

The Australian Cash Distribution and Exchange System (ACDES) governs the exchange and distribution of wholesale cash. ACDES was established in December 2001.

Until August 2001, notes and coins not in circulation were owned and managed by the Reserve Bank and held in more than 80 armoured carrier depots around Australia. The establishment of ACDES followed the decision of the Reserve Bank to transfer the ownership and management responsibility for this cash to a number of banks.

IV. APCS REGULATIONS AND PROCEDURES

APCS Regulations encompass membership criteria, suspension and termination provisions, representation arrangements, fees, the management committee for the system, the advisory council, member meetings, settlement and dispute resolution. The Procedures encompass the rules for conducting exchanges, file specifications and standard forms. No further comment will be made on the Procedures. They are technical in their nature and are directed to ensuring that exchanges are conducted efficiently and securely. Some essential and important features of the Regulations are drawn out below. Consideration of the termination and suspension provisions of the Regulations and their public benefit is covered in a separate section (Section V) because these are the only provisions for which authorisation is sought. APCA's assessment is that no other provisions of the Regulations are at material risk of breaching the Trade Practices Act. Membership of APCS is voluntary. To the extent membership is regarded as being necessary for business reasons the membership criteria are inclusive and conditions of membership are solely directed to protecting the efficiency and integrity of the system.

Regulations

Membership Criteria

Entitlement to membership is now functionally based. Prior to recent amendments members had to be "providers of payment services" which essentially meant being a deposit taking institution. Now members have to be "issuers" or "collectors" (or represent and settle for such bodies) of payment instruments cleared under the APCS rules. This represents a complete opening of membership in line with APCA's revised Constitution. Because they issue payment instruments cleared under the APCS rules, Australia Post, American Express and Travelex are now entitled to take up membership if they wish.

There are three membership categories. Tier 1A Members clear and settle directly using an ESA. A Tier 1A Member must meet volume criteria (0.5% of "National Transaction Volume" or 2% of "Regional Transaction Volume") to protect the efficiency of exchanges. A Tier 1B Member clears through a representative but settles directly through an ESA. A Tier 2 Member clears and settles through a representative. Tier 1 Members must be prudentially supervised or otherwise be of undoubted standing to protect the integrity of the system.

Representation Arrangements

A member that does not directly clear in any region must appoint a Tier 1 A Member to receive items on its behalf. The commercial relationship between the two parties is a matter for them and is not covered in APCS rules. However, the rules do specify particular requirements for a representation arrangement to protect the efficiency and integrity of the system.

Fees

An entrance fee of \$5000 is levied on all new Members of APSC to recover the Company's administrative costs. This fee is significantly less than the fees that applied to Tier1 Members prior to the recent amendments to the Regulations.

An operational change fee of \$20,000 (indexed from the commencement date of the system) is levied on Members that require other Members to deliver items to a new BSB address. This fee is set to partly recover the cost incurred by Members in changing their systems to recognise a new BSB. It is used to lower the operating fees charged by APCA

APCA levies a monthly operating fee on each Tier 1A Member to cover its costs of administering the system. A proportion of these costs is levied equally among Members and the balance in proportion to transaction volume. Tier 1B and Tier 2 Members pay an annual fee to the Company of \$1000 as a contribution to covering administrative costs.

Management Committee

Under Board delegation a management committee oversees APCS as noted in Section I above.

The Committee is chaired by a director nominated by the Board under Article 8.3(a) of the Constitution. Committee members represent a number of banks that each have more than 5% of transaction volume and are therefore entitled to individual representation. Two members represent constituencies of banks that collectively have more than 5% of transaction volume. Credit unions and building societies are represented by industry bodies as of right and the Reserve Bank is represented as of right. The chairman of the APCS Advisory Council also attends meetings of the management committee usually with one other member of the Advisory Council. All current Members of APCS have representation on the management committee. However there is provision for two discretionary seats to be allocated by the Board to accommodate Members of APCS that do not have 5% of transaction volume and which cannot find representation through a constituency.

Each member of the management committee has a vote in proportion to the transaction volume of the APCS Member or Members that he/she represents. More than 50% of eligible votes is required to pass a resolution. Any matter can be referred to the Board. All changes to the Regulations as distinct from Procedures must be approved by a meeting of APCS Members and by the Board.

Advisory Council

APCA established an APCS Advisory Council in 1999. Advisory Councils have made available to them the same information as do management committees except for rare occasions when a particular piece of information is declared to be confidential by the chairman of the management committee.

Advisory Councils meet regularly and determine their workplans and agendas in consultation with the applicable management committee. Normally two members of the management committee attend Advisory Council meetings at the invitation of the Councils. Currently the APCS Advisory Council draws its members from processors/switches, technology providers, fraud protection providers, cheque guarantee companies, cheque paper manufacturers, printers and large users of cheques.

Members Meetings

At least one meeting of all Participating Members must be held each year.

Settlement

Tier 1 Members are required to provide finality of settlement through the an ESA at the Reserve Bank or through another means recommended by the management committee and approved by the Board.

Failure to Settle

New failure to settle rules were put in place in August 2004 following approvals by the Reserve Bank pursuant to the Payment Systems and Netting Act and the Cheques Act.

Disputes

A dispute between Members or between the Board/management committee and a Member, which has application to the APCS Regulations or Procedures, can be referred to the management committee or the Board for determination and allocation of costs.

V. SUSPENSION AND TERMINATION

Suspension and termination provisions in similar terms are included in all of APCA's clearing system regulations. They are effectively last resort steps to be contemplated only if a member's continuing membership would impair the efficiency and/or integrity of the System. They have not been used or specifically contemplated being used since APCA's establishment. They are however necessary to safeguard the integrity and efficiency of payments clearing and settlement. They provide a mechanism to ensure compliance with the Regulations and Procedures and to allow participants to have confidence in the system.

The suspension and termination provisions in APCS are currently authorised. They form part of the APCS Regulations authorised by the Commission in 1993 and have not been changed in the current amended APCS Regulations. The circumstances that supported their previous authorisation and the rationale for their authorisation have not changed.

The suspension and termination provisions (Regulations 4.28 to 4.38) if invoked have the effect of excluding the institution concerned from participating in, and receiving services through, the system. Note this does not per se exclude the institution concerned from the process of clearing paper payment instruments or settlement but this would need to be done by bilateral arrangement with other participants outside of APCS. Potentially an excluded institution might have difficulty engaging other participants and accordingly, exclusion from the system may have an adverse impact on the institution concerned. APCA considers that authorisation is a prudent course to adopt.

Suspension can occur only in a limited range of circumstances (refer to Regulation 4.27(a) to (f)). Two of these are if a Member's prudential supervisor requests suspension or if the Member agrees to suspension. The circumstances where APCA can unilaterally suspend a Member are as follows:

- (a) if a Member no longer satisfies the membership criteria;
- (b) during a period when a Member has operational difficulties preventing it from discharging its obligation under the rules (ie when a Member is suffering a "Disabling Event");
- (c) if a Member becomes insolvent or fails to settle its clearing obligations; and
- (d) if a Member breaches relevant provisions of the Constitution, the Regulations or the Procedures and does not rectify the breach or provide a satisfactory explanation within a prescribed time period.

In lieu of suspending a Member, the management committee may impose conditions on the membership of that Member including changing the capacity in which that Member may participate in the System or vary any provision of the Procedures in relation to the exchange of Items addressed to or drawn on that Member (refer to Regulation 4.30). The rights and obligations of that Member will then be subject to any such conditions or variations. The management committee may at any subsequent time vary or revoke any such conditions or variations.

Termination of membership (refer to Regulations 4.33 to 4.35) can follow suspension provided any breach of the rules has not been remedied, the Board has consulted with the Member's prudential supervisor, if such a supervisor exists, and the Member has been provided with the opportunity to make submissions to the Board regarding termination. Otherwise, termination occurs only as a result of a Member resigning, becoming insolvent, or ceasing to exist.

Public Benefit

The scope of the application of the suspension and termination provisions is limited to protecting the efficiency and integrity of the APCS and by extension the integrity of paper clearing and settlement. Clearing and settlement as explained in Section II is central to a well-functioning payments system. It is therefore in the public interest to maintain the efficiency and integrity of all aspects of clearing and settlement. APCA's paper clearing system – APCS – can play its part effectively only if its Members operate in accordance with APCA's Constitution and the APCS Regulations and Procedures. Suspension and termination provide 'last resort' sanctions to safeguard that important requirement.

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Date specified in the notices from the Secretary referred to in Regulation 4.18.

Rights, Restrictions and Obligations of Participating Members

- 4.22 A Participating Member (in its capacity as a Participating Member) may not share in any distribution of capital or profits of the Company or in a distribution on a winding-up, dissolution or a reduction of the capital of the Company.
- 4.23 A Participating Member (in its capacity as a Participating Member) has no right to vote at general meetings of the Company.
- 4.24 A Participating Member has the same rights as Owner Members of the Company to receive notices, annual reports and audited profit and loss accounts and audited balance sheets and to attend and speak at general meetings of the Company. Last amended effective 17/8/02
- 4.25 A Participating Member has the right to be a participant in the Australian Paper Clearing System (CS1), to clear and settle Items in accordance with these Regulations and the Procedures and to vote at any APCS meeting convened in accordance with Part 8 or any other meeting of the Participating Members of the Australian Paper Clearing System (CS1) convened in accordance with the Constitution or the Corporations Act. Last amended effective 17/8/02

In exercising any such right, each Participating Member must act in good faith.

- 4.26 A Participating Member may not transfer or share its participating membership.

Suspension

- 4.27 The Management Committee may suspend the membership of a Participating Member for a specified or indefinite period of time in the following circumstances (each a "**Suspension Event**"):
 - (a) the Participating Member is subject to prudential supervision and the relevant supervisor requests such suspension;
 - (b) by agreement with the Participating Member concerned;
 - (c) the Participating Member no longer satisfies any applicable requirement for membership set out in Regulations 4.6 to 4.8 inclusive;
 - (d) a Disabling Event occurs in respect of the Participating Member, but only during the continuance of that Disabling Event;
 - (e) an Insolvency Event (not being an event which results in automatic cessation of membership pursuant to Regulation 4.33(b) or (c)) occurs in respect of the Participating Member; or
 - (f) the Participating Member breaches its obligations under the Constitution, these Regulations or the Procedures and fails to rectify the breach or provide an explanation satisfactory to the Management Committee within 30 days of receipt of a request from the Secretary to rectify the breach or provide such an explanation. Last amended effective 17/8/02

A Participating Member may also be automatically suspended in accordance with Part 12.

Effect of Suspension

4.28 Subject to Regulation 4.31, a Participating Member whose membership is suspended under Regulation 4.27 is not entitled (including, without limitation, in any capacity as a Representative) to:

Last amended effective 2008.04

- (a) participate in the Australian Paper Clearing System (CS1);
- (b) clear and settle Items in accordance with these Regulations and the Procedures; nor
- (c) vote at any APCS meeting convened in accordance with Part 8,

except to the extent set out in the Procedures or approved by the Management Committee (or the Chief Executive Officer if authorised to grant such approvals by the Management Committee). If that Participating Member is an Appointor, the relevant provisions of the relevant Representation Agreement are also suspended during the period of suspension under Regulation 4.27.

4.29 In addition, if a Participating Member whose membership is suspended under Regulation 4.27 has nominated a member of the Management Committee pursuant to Regulation 7.1(b) or (c), that member is not entitled to vote at meetings of the Management Committee, but may continue to attend and participate in such meetings, during the period of suspension under Regulation 4.27.

4.30 If a Suspension Event occurs in respect of a Participating Member, the Management Committee may (in lieu of suspending the membership of that Participating Member) impose conditions on the membership of that Participating Member (including changing the capacity in which that Participating Member may participate in the Australian Paper Clearing System (CS1)) or vary any provision of the Procedures in relation to the exchange of Items addressed to, or drawn on, that Participating Member. The rights and obligations of that Participating Member under these Regulations shall be subject to any such conditions or variation. The Management Committee may at any subsequent time vary or revoke any such conditions or variation.

4.31 A Participating Member whose membership is suspended under Regulation 4.27 or which is subject to any condition or variation under Regulation 4.30 is not excused from discharging, in accordance with these Regulations and the Procedures, obligations incurred by it under the Constitution, these Regulations and the Procedures including, without limitation, obligations incurred in connection with Items exchanged prior to the suspension of that Participating Member, except as expressly provided in or pursuant to these Regulations or the Procedures.

Last amended effective 2008.04

4.32 The Secretary must immediately notify all Participating Members (by the most expeditious means available) of any suspension under Regulation 4.27 and must promptly notify all Participating Members of all other action taken under Regulations 4.27 to 4.31 inclusive.

Termination

4.33 A Participating Member ceases to be a Participating Member on:

- (a) resignation;
 - (b) becoming insolvent or making an arrangement or composition with creditors generally;
-

- (c) being wound-up, dissolved or otherwise ceasing to exist; or
- (d) the Board terminating that Participating Member's membership in accordance with the Constitution and these Regulations.

Last amended effective 17/6/02

4.34 A Participating Member may, by notice in writing to the Company, resign as a Participating Member with effect from a Membership Change Date occurring not less than 3 months and not more than 6 months after the service of the notice. The notice is irrevocable.

A Participating Member may not resign except by giving notice in accordance with this Regulation 4.34.

4.35 The Board (after consultation with the Management Committee) may by notice in writing to a Participating Member, terminate the membership of that Participating Member with immediate effect or with effect from a Membership Change Date occurring not less than 3 months and not more than 6 months after the service of the notice, provided that the Board may not terminate the membership of a Participating Member unless the following pre-conditions have been fulfilled:

- (a) a Suspension Event has occurred in respect of that Participating Member and has not been remedied;
- (b) (if that Participating Member is subject to prudential supervision) the Board has consulted with the relevant supervisor regarding such termination; and
- (c) the Board has provided an opportunity for that Participating Member to make submissions to the Board regarding such termination.

The Board is not obliged to give any reasons for such decision and may revoke any such notice at any time before it becomes effective.

4.36 Any resignation or termination of the membership of a Participating Member shall not affect any right or liability arising under the Constitution, these Regulations or the Procedures prior to the time such resignation or termination takes effect or arising in respect of any act, matter or thing occurring prior to that time. A Participating Member who resigns pursuant to Regulation 4.34 or whose membership is terminated pursuant to Regulation 4.35 shall continue to be bound by the Constitution and these Regulations in respect of:

Last amended effective 17/6/02

- (a) any act, matter or thing occurring prior to the time such resignation or termination takes effect or as a result of such resignation or termination; and
- (b) any fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, Participating Members in accordance with these Regulations in respect of periods which commence prior to the time such resignation or termination takes effect or which relate to any such act, matter or thing.

Effect of Termination

4.37 Subject to any rights of set-off, counterclaim or combination which are available at law, upon any resignation or termination of the membership of a Participating Member:

- (a) the resigning or terminating Participating Member must immediately pay all sums of money (if any) owed by it to any other Participating Member in respect of exchanges in each Region; and

- (b) all sums of money (if any) owed to it by any other Participating Member in respect of all such exchanges must be paid by that other Participating Member to the resigning or terminating Participating Member.

The records maintained by the Company shall be prima facie evidence of the sums owing by, or to, such Participating Member.

- 4.38 Any Participating Member which resigns or whose membership is terminated immediately ceases to be entitled to effect exchanges in accordance with these Regulations and the Procedures.
- 4.39 A Participating Member which resigns or whose membership is terminated is not entitled to be repaid all or part of any entrance, operating or other fee which has been paid by it.

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Approved for Public Registration of

YES NO

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