



**Australian
Competition &
Consumer
Commission**

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21 April 2005

Dear

**Re: Australian Payments Clearing Association applications for revocation and
revocation and substitution - interested party consultation**

Introduction

The Australian Competition and Consumer Commission (the ACCC) is currently conducting an interested party consultation process in relation to applications for revocation and revocation and substitution made by the Australian Payments Clearing Association (APCA). As a possible interested party you are invited to comment on the issues outlined in this letter.

APCA has sought re-authorisation in relation to certain provisions of its Bulk Electronic Clearing System (BECS) Regulations. APCA has also sought revocation of an existing authorisation relating to the BECS Regulations and Procedures.

Background

The ACCC is the Commonwealth agency responsible for administering the *Trade Practices Act 1974* (the TPA). A key objective of the TPA 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 TPA, 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.

Original authorisations

The BECS arrangements were previously authorised by the Trade Practices Commission (now the ACCC) on 19 October 1994.

BECS manages the conduct of the exchange and settlement of bulk direct entry electronic low value transactions. The direct entry system allows approved organisations to make arrangements with their financial institution to debit and/or credit large numbers of customers' accounts on a regular basis.

Authorisation was granted in perpetuity to the BECS Regulations and Procedures. Authorisation A90561 was granted to provide immunity for the Regulations and Procedures from the exclusionary provision sections of the TPA. Authorisation A90562 was granted to provide immunity for the regulations and Procedures from the provisions of the TPA relating to conduct that may have the purpose or likely effect of substantially lessening competition in a market. Authorisation A90563 was granted to provide immunity for the Regulations and Procedures from the exclusive dealing provisions of the TPA.

Application for re-authorisation by APCA

APCA is of the view that a blanket authorisation covering the Regulations and Procedures, as granted in 1994, is no longer necessary and is seeking re-authorisation only for Regulations 4.24 to 4.30, 4.32, 4.34 and 4.35 of the BECS Regulations. These provisions relate to suspension and termination of BECS membership.

APCA considers that these clauses of the BECS Regulations might be an exclusionary provision within the meaning of s 4D of the TPA and might have the purpose or likely effect of substantially lessening competition in a market within the meaning of s 45 of the TPA. As such, APCA has applied for the revocation and substitution of A90561 and A90562, along the lines outlined above.

APCA submits that the suspension and termination provisions in the BECS Regulations continue to result in such a public benefit that they should be allowed to remain in place. Please see the enclosed submission for details of APCA's claims in relation to the public benefits and detriments resulting from the relevant provisions. A copy of the application is also available on the ACCC's website <www.accc.gov.au>.

Application for revocation by APCA

APCA considers that no provision of the BECS Regulations or Procedures would constitute exclusive dealing in contravention of s 47 of the TPA and consequently, that the immunity afforded by authorisation A90563 is no longer necessary. Therefore, APCA has applied for the revocation of A90563.

Request for submissions

To assist the ACCC in its consideration of the applications 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 APCA's application for the revocation and substitution for A90561 and A90562 and the revocation of A90563.

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@accc.gov.au or by facsimile on 02 6243 1211.

If you intend to provide a submission in relation to APCA's application for revocation and substitution and/or revocation, please do so by **Friday 13 May 2005**.

After its initial round of public consultation, the ACCC will generally only direct further correspondence, including in respect of its draft and final decision, to those parties who have provided submissions or otherwise advised that they wish to be kept informed of the progress of the matter. To this end, please inform us if you do not wish to make a submission at this time, but would like to be informed of the progress of these applications at the draft and final determination stages.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding this application. This letter has been placed on the ACCC's public register.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Michael Green on 03 9290 1960 or by email at michael.green@accc.gov.au.

Yours sincerely



Gavin Jones
A/g Director
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission 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 Commission 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 Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

The Commission 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 Commission 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 Commission:

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

If the Commission 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 Commission pursuant to its powers generally under the *Trade Practices Act*.



AUSTRALIAN PAYMENTS CLEARING ASSOCIATION

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Mr Scott Gregson
Director
Adjudication Branch
Australian Competition & Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

8 April 2005

Dear Mr Gregson

Bulk Electronic Clearing System ("BECS") Regulations and Procedures

I refer to the telephone conversation between you and Roger Featherston, on behalf of APCA, on 11 March 2005 in respect of the Bulk Electronic Clearing System ("BECS") Regulations and Procedures.

As you are aware, the BECS Regulations and Procedures were authorised by the Commission on 19 October 1994, which authorisations (A90561, A90562 and A90563) remain in force.

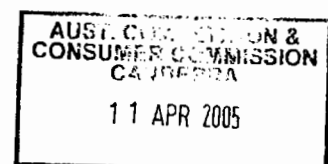
As discussed in the telephone conversation, APCA has undertaken a review of the BECS Regulations and Procedures and certain amendments have been made.

During the course of the review, APCA formed the view that there are only a limited number of provisions within the BECS Regulations that require authorisation and therefore a blanket authorisation of the BECS 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 A90561, A90562 and A90563 in relation to the BECS Regulations and Procedures, and in substitution, APCA seeks authorisations for Regulations 4.24 to 4.30, 4.32, 4.34 and 4.35 of the BECS 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 BECS 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. The amended BECS Regulations and Procedures are provided to the Commission as part of the submissions.

We look forward to receiving your determination.

Yours sincerely

A handwritten signature in black ink that reads "Kimberley Chan". The signature is fluid and cursive, with a long horizontal line extending to the right.

Kimberley Chan
LEGAL COUNSEL

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GROUNDS FOR AUTHORISATION

The applicant Australian Payments Clearing Association Limited (“APCA”) submits that:

- to the extent (if any) that any of the suspension and termination provisions of the Regulations for the Bulk Electronic 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 of the suspension and termination provisions of the Regulations of the Bulk Electronic 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 Bulk Electronic Clearing System.
2. Access to the Bulk Electronic Clearing System is and will continue to be available to potential participants on reasonable and clearly understood terms.
3. The Bulk Electronic 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 conditions.
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. The ability to suspend or terminate a member is critical for ensuring that the clearing system can maintain efficiency and integrity. The provisions for suspension or termination of a member from the Bulk Electronic Clearing System at APCA’s instigation are reasonable and would only be relied upon in circumstances where the member’s continuing membership would impair the efficiency and/or integrity of the System. The provisions, therefore, result in a benefit to the public by contributing to the System’s integrity and efficiency.

**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, Australia Post and American Express are now eligible for membership of the Australian Paper Clearing System. Coles Myer and Cashcard are now members of the Consumer Electronic Clearing System.

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 (Cth) 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 (Australia) Limited and CreditLink Services Limited 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" nominates directors. Adjusted NCV 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 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. Hence if a member would not introduce 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

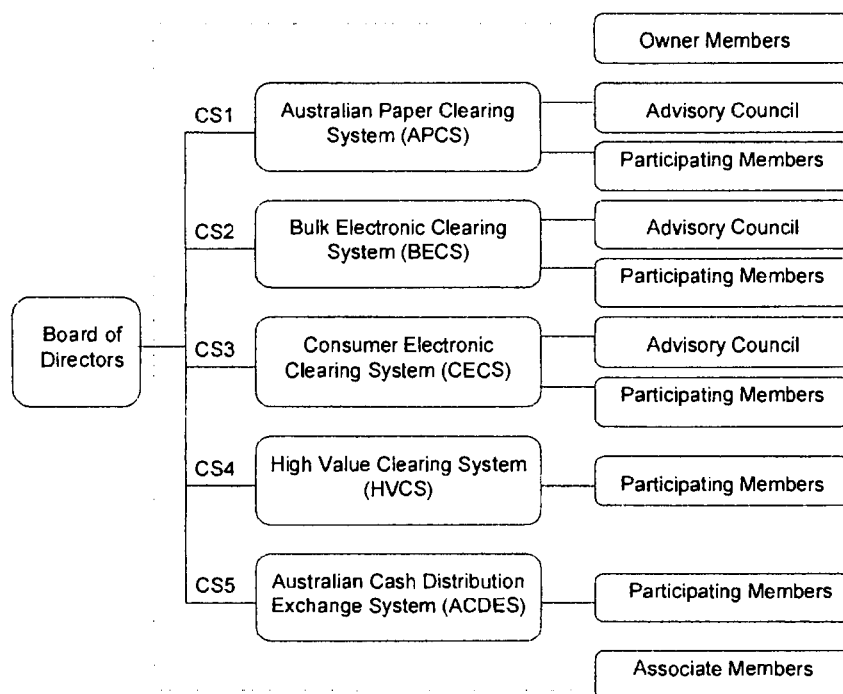
APCA is currently responsible for managing five payments clearing systems. Existing participants in, and new entrants to, each clearing system are provided with a single, clear body of rules and decision making structure governing the conduct of clearing and settling. APCA's five clearing systems are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



List of owner members

| | |
|--|--|
| ABN AMRO Bank NV | HSBC Bank plc |
| Adelaide Bank Limited | ING Bank (Australia) Limited |
| AMP Bank Limited | JP Morgan Chase Bank, NA |
| Arab Bank Australia Limited | Macquarie Bank Limited |
| Australia and New Zealand Banking Group Limited | Mizuho Corporate Bank Limited |
| Australian Settlements Limited (ASL) | N.M. Rothschild & Sons (Australia) Limited |
| Bank of America National Association | National Australia Bank Limited |
| Bank of China | 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 Limited | United Overseas Bank Limited |
| Deutsche Bank AG | Westpac Banking Corporation |
| HSBC Bank Australia Limited | |

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 (eg. 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 the Bulk Electronic Clearing System (and Australian Paper and Consumer Electronic Clearing Systems and the High Value Clearing System 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 (Cth) and for APCS also under the Cheques Act 1986 (Cth).

* *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, ie. primarily cheques, between its participating members.

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

In February 2005, the Australian Competition and Consumer Commission ("the Commission") issued a favourable determination authorising the suspension and termination provisions in the APCS Regulations for a further period of 5 years with respect to the Trade Practices Act prohibitions on exclusionary provisions and contracts, arrangements and understandings that may substantially lessen competition.

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 210,000¹, 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 Commission in August 2000.

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 22,500 ATMS and 503,000 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.

¹ APCA database of direct entry users as at December 2004.

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

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. BECS REGULATIONS AND PROCEDURES

The BECS 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 BECS 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 BECS 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 "senders" or "issuers" (or represent and settle for such bodies) of payment instruments cleared under the BECS rules. This represents a complete opening of membership in line with APCA's revised Constitution.

There are two membership categories. Tier 1 Members must directly exchange items with all other Tier 1 Members and clear and settle directly using an ESA or by such other means as recommended by the management committee and determined by the board. Additionally, a Tier 1 Member will be taken to directly exchange items with other Tier 1 Members where it uses the services of any other person to directly exchange items electronically for that Tier 1 Member. 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 Tier 2 Member must appoint a Tier 1 Member to receive items on its behalf and settle for the obligations incurred as a result of the exchange of items addressed to or initiated by the Tier 2 Member. The commercial relationship between the two parties is a matter for them and is not covered in BECS rules. However, the BECS rules do specify particular requirements for a representation arrangement to protect the efficiency and integrity of the system.

Fees

An entrance fee of \$5,000 is levied on all new Members of BECS to recover the Company's administrative costs. This fee is significantly less than the fee of \$32,500 that applied to incoming Tier 1 Members prior to the recent amendments to the Regulations.

An operational change fee of \$10,000 (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 I 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. Each Member also pays an annual fee to APCA of \$1,000 as a contribution to covering administrative costs.

Management Committee

Under Board delegation, a management committee oversees BECS 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 BECS Advisory Council also attends meetings of the management committee usually with one other member of the Advisory Council. There is provision for two discretionary seats to be allocated by the Board to accommodate Members of BECS 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 BECS 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 BECS Members and by the Board.

Advisory Council

APCA established the BECS Advisory Council in 1999. Advisory Councils have 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 BECS Advisory Council draws its members from processors/switches, technology providers, message standards organisations, payroll bureaux and government and commercial users of BECS.

Members Meetings

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

Settlement

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

Failure to Settle

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 1998 (Cth) and the Cheques Act 1986 (Cth).

Disputes

A dispute between Members or between the Board/management committee and a Member, which has application to the BECS 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. They have not been used or specifically contemplated since APCA's establishment. They are however necessary to safeguard the integrity and efficiency of payments clearing and settlement. The suspension and termination provisions in BECS are currently authorised. They form part of the BECS Regulations authorised by the Commission in 1994 and have not been changed in the current amended BECS Regulations. The circumstances that supported their previous authorisation and the rationale for their authorisation have not changed.

The suspension and termination provisions (Regulations 4.24 to 4.35) if invoked have the effect of excluding the institution concerned from participating in the system. Note this does not per se exclude the institution concerned from the process of clearing items or settlement but the institution would need bilateral arrangements with other participants outside of BECS in order to do so. Potentially an excluded institution might have difficulty engaging other participants. To that extent exclusion from the system would have an adverse impact on the institution concerned. It is for this reason that APCA considers that authorisation is a prudent course to adopt.

Suspension can occur only in a limited range of circumstances (refer to Regulation 4.24(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 (i.e., 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 may vary any provision of the Procedures in relation to the exchange of Items addressed to or drawn on that Member (refer to Regulation 4.27). 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 4.30 to 4.32) 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 BECS and by extension the integrity of bulk electronic 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 bulk electronic clearing system – BECS – can play its part effectively only if its Members operate in accordance with APCA's Constitution and the BECS Regulations and Procedures. Suspension and termination provide 'last resort' sanctions to ensure compliance.

Without these sanctions, the efficiency and integrity of BECS would be diminished and the confidence of members and users of BECS would be reduced.

By comparison, the detriment is not great and is clearly outweighed by the public benefit. Although a member who is suspended or terminated may be adversely affected as indicated above, there are a number of safeguards over the exercise of the suspension and termination powers, including the possibility of a review by the APCA Board of any suspension and the involvement of the APCA Board in any termination, as well as the ability of the Reserve Bank to monitor the performance of the management committee and the Board through its representation on both bodies.

In all the circumstances, therefore, the relevant suspension and termination provisions result, or are likely to result, in such a benefit to the public that they should be authorised.

| Salutation | Name | Company |
|-------------------|--|--|
| Mr Guyer | Mr Damon Guyer IT Manager | ABS Building Society Ltd 97-101 Faulkner St ARMIDALE NSW 2350 |
| Sir/Madam | The Chief Executive Officer | Australian Association of Permanent Building Societies GPO Box 4358 SYDNEY NSW 2001 |
| Mr Lines | Mr Brian Lines Operations Manager – Payments Systems | Adelaide Bank Limited Level 1, 169 Pirie Street Adelaide SA 5000 |
| Mr Mills | Mr Darren Mills Manager Operations Support | Arab Bank Australia Limited Level 10, 200 George Street SYDNEY NSW 2000 |
| Mr Inglis | Mr Paul Inglis Head, Payments Risk and Industry | Australia and New Zealand Banking Group Limited Level 21 100 Queen Street Melbourne VIC 3000 |
| Mr John | Mr Graeme John Managing Director | Australia Post GPO Box 1777 Melbourne VIC 3001 |
| Mr Bell | Mr David Bell Chief Executive | Australian Bankers' Association Level 3, 56 Pitt Street Sydney NSW 2000 |
| Mr Kell | Mr Peter Kell Chief Executive Officer | Australian Consumers Association 57 Carrington Road MARRICKVILLE NSW 2204 |
| Dr Tilley | Dr John Tilley Executive Director | Australian Institute of Petroleum Limited GPO Box 279 Canberra ACT 2600 |
| Mr Chalmers | Mr Ian Chalmers Chief Executive | Australian Local Government Association 8 Geils Court Deakin ACT 2600 |
| Mr Burt | Mr Graham Burt Head of Retail Support | Australian National Credit Union GPO Box 7013 SYDNEY NSW 2001 |
| Sir/Madam | The Chief Executive Officer | American Express International Level 20, 175 Liverpool Street Sydney NSW 2000 |
| Mr Crawford | Mr Jim Crawford Manager Service Delivery | AMP Bank Limited Level 19, 2-12 Macquarie St PARRAMATTA NSW 2123 |
| Mr Moore | Mr Stan Moore Chief Executive Officer | Australian Retailers Association Level 6, 45 Market Street Sydney NSW 2000 |

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| Ms O'Donnell | Ms Jennifer O'Donnell Deputy Executive Director | Australian Securities and Investments Commission GPO Box 9827 SYDNEY NSW 2001 |
| Mr Martin | Mr Tony Martin Manager, Operations and Development | Australian Settlements Limited 284 Galston Road GALSTON NSW 2159 |
| Mrs Russell | Mrs Susan Russell Information Systems & Controls Manager | B&E Limited PO Box 372 DEVONPORT TAS 7310 |
| Mr Moffat | Mr Garry Moffat The General Manager | Bankcard Association of Australia PO Box K55 Haymarket NSW 1240 |
| Mr Iyer | Mr Murali Iyer Assistant Vice President and Manager, Payment and Banking Services | Bank of America National Association Level 63, MLC Centre 19-29 Martin Place Sydney NSW 2000 |
| Mrs Chan | Ms Mabel Chan Senior Officer | Bank of China 39 York Street SYDNEY NSW 2000 |
| Mr Warnecke | Mr Grant Warnecke Operations Support | Bank of Cyprus Australia Pty Limited Level 21, 459 Collins Street MELBOURNE VIC 3000 |
| Ms Carmichael | Ms Dianne Carmichael Manager Banking Operations | Bank of Queensland Limited BOQ Centre 259 Queen Street Brisbane QLD 4000 |
| Ms Addison | Ms Karen Addison Manager, Interbank Settlements | Bank of Western Australian Limited Level 1, 100 James Street Northbridge WA 6003 |
| Mr Giuffrida | Mr Kevin Giuffrida Manager Retail Banking | The Bank of Tokyo - Mitsubishi, Ltd. - Australian Branch Level 26, Gateway 1 Macquarie Place SYDNEY NSW 2000 |
| Mr Lentini | Mr Michael Lentini Manager Payments Systems | Bendigo Bank Limited PO Box 480 Bendigo VIC 3552 |
| Ms Lahey | Ms Katie Lahey Chief Executive | Business Council of Australia 1472N Melbourne VIC 3001 |
| Mr Adams | Mr Brian Adams Manager - Industry Relations and Bureau Management | Citibank Pty Limited Level 6 2 Park Street Sydney NSW 2000 |

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|----------------|---|---|
| Mr Franklin | Mr Paul Franklin Executive Manager Domestic & International Payments | Commonwealth Bank of Australia Level 2, 120 Pitt Street Sydney NSW 1155 |
| Mr Steven | Mr Tony Steven Chief Executive Officer | Council of Small Business Organisations of Australia Ltd PO Box 6336 Kingston ACT 2604 |
| Ms Bond | Ms Carolyn Bond Chair Consumers' Federation of Australia | c/o Consumer Credit Legal Service (Victoria) 1st Floor, 11-19 Bank Place Melbourne 3000 |
| Mr Mansour | Ms Omayya Mansour National Manager Payments and Acquiring | Credit Union Services Corporation (Australia) Limited 1 Margaret Street Sydney NSW 2000 |
| Ms Cox | Ms Karen Cox Manager | Consumer Credit Legal Centre (NSW) Inc Level 1, 72-80 Cooper Street SURRY HILLS NSW 2010 |
| Ms Mahalingham | Ms Su Mahalingham Director | Consumer Credit Legal Service (WA) Level 1, 231 Adelaide Terrace PERTH WA 6000 |
| Mr Field | Mr Chris Field Director | Consumer Law Centre of Victoria Level 7, 20 Queen Street MELBOURNE VIC 3000 |
| Mr Murphy | Mr Trevor Murphy Manager Transactional Business | CreditLink Services Ltd 6 Moorak Street TARINGA QLD 4068 |
| Mr Keuneman | Mr Stewart Keuneman Vice President Fx & Mm Operations | Deutsche Bank AG GPO Box 7033 Sydney NSW 1170 |
| Mr McDonald | Mr Murray McDonald Managing Director | Diners Club Australia 1193 Toorak Road Camberwell VIC 3124 |
| Mr Page | Mr Brad Page Chief Executive Officer | Energy Supply Association of Australia Limited 1823Q Melbourne VIC 3001 |
| Mr Connolly | Mr Chris Connolly Director | Financial Services Consumer Policy Centre Law Faculty, Room 1212 Mathews Building UNIVERSITY OF NSW NSW 2052 |
| Mr Edwards | Mr Murray Edwards Manager Market Access and Pricing Unit | Financial System Division The Treasury Langton Crescent PARKES ACT 2600 |

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| Mr Crawford | Mr Jim Crawford Manager Service Delivery | GIO Building Society Limited Level 19, 2-12 Macquarie St PARRAMATTA NSW 2123 |
| Mr Scully | Mr Matthew Scully Transactions Services Manager | Greater Building Society Limited PO Box 173 HAMILTON NSW 2303 |
| Mr Chadwick | Mr Peter Chadwick Special Projects Manager | Heritage Building Society Limited PO Box 190 Toowoomba QLD 4350 |
| Mr Sullivan | Mr Stephen Sullivan Manager After Sales Service | Home Building Society 184 Adelaide Terrace EAST PERTH WA 6004 |
| Mr Maripa | Mr Bruno Maripa Clearing/Payment Services Manager | HSBC Bank Australia Limited GPO Box 5302 SYDNEY NSW 2001 |
| Mr Farrell | Mr Peter Farrell Manager Treasury Operations | HSBC Bank plc Level 10, 580 George Street SYDNEY NSW 2000 |
| Mr Moses | Mr Alan Moses Manager, Loan and Card Administration | HSBC Building Society (Australia) Limited Level 12 140 William Street MELBOURNE VIC 3000 |
| Mr Fara | Mr David Fara Financial Accountant | Hume Building Society Limited PO Box 343 ALBURY NSW 2640 |
| Mr Anderson | Mr Gordon Anderson Senior Manager Payments | IMB Ltd PO Box 2077 WOLLONGONG NSW 2500 |
| Mr Bill | Mr Elvin Bill Clearing Systems Manager | ING Bank (Australia) Limited GPO Box 4094 Sydney NSW 2001 |
| Ms Wong | Ms Grace Wong Head of Settlements | ING Bank, NV (Sydney Branch) PO Box R1480 ROYAL EXCHANGE NSW 1225 |
| Ms Wong | Ms Sue Wong Manager, Business Division | International Commercial Bank of China Level 6, 275-281 George Street Sydney NSW 2000 |
| Mr Mason | Mr Alan Mason Executive Director | Insurance Council of Australia Limited Level 3, 56 Pitt Street Sydney NSW 2000 |
| Mr Modderno | Mr Sam Modderno Operations Manager | JPMorgan Chase Bank, N.A. Level 34 259 George Street SYDNEY NSW 2000 |

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| Mr Boyle | Mr Phil Boyle Manager, Settlements Treasury | Laiki Bank (Australia) Limited GPO Box 4288 SYDNEY NSW 2001 |
| Mr Stonham | Mr Mark Stonham Senior Manager Client Services | Macquarie Bank Limited Level 21, 20 Bond Street SYDNEY NSW 2000 |
| Mr Macauslane | Mr David Macauslane Chief Financial Officer | Mackay Permanent Building Society Limited 71 Victoria Street Mackay QLD 4740 |
| Mr Hainsworth | Mr Gary Hainsworth Manager Finance and Administration | Maitland Mutual Building Society Limited PO Box 50 Maitland NSW 2320 |
| Mr Clapham | Mr Leigh Clapham General Manager Australasia | MasterCard Australia Limited 146 Arthur St North Sydney NSW 2060 |
| Mr Hassall | Mr Neil Hassall Manager, Industry and Banking Services | Members Equity Pty Limited Level 23 360 Collins Street MELBOURNE VIC 3000 |
| Mr Leow | Mr Neil Leow Chief Manager Corporate Operations Dept | Mizuho Corporate Bank Ltd GPO Box 4090 SYDNEY NSW 2001 |
| Mr Ady | Mr Anton Ady Application and Process Manager Non-Card Acquiring | National Australia Bank Limited Pier 4, Level 4, 800 Bourke Street Docklands Melbourne VIC 3008 |
| Mr Ellenor | Mr Noel Ellenor Manager, Banking & Payments Systems | Newcastle Permanent Building Society Limited PO BOX 5001A NEWCASTLE WEST NSW 2302 |
| Ms Lew | Ms Judy Lew Manager, Operations | Oversea-Chinese Banking Corporation Limited Level 2, 75 Castlereagh Street Sydney NSW 2000 |
| Mr Sluiter | Mr Anthony Sluiter Chief Financial Officer | The Police Department Employees' Credit Union Limited Level 27, 1 Market Street SYDNEY NSW 2000 |
| Mr Bradly | Mr Chris Bradly Systems Co-ordinator | Pioneer Permanent Building Society Limited 174 Victoria Street Mackay QLD 4740 |
| Mr Dixon | Mr Brad Dixon Head of Wholesale Banking Operations | Rabobank Australia Limited Level 7, 115 Pitt Street Sydney NSW 2000 |

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| Mr Stevens | Mr Brian Stevens Chief Executive Officer | Real Estate Institute of Australia PO Box 234 Deakin West ACT 2600 |
| Dr Veale | Dr John Veale Head of Payments Policy | Reserve Bank of Australia GPO Box 3947 Sydney NSW 2001 |
| Mr Lax | Mr Mark Lax Systems Administrator | The Rock Building Society Limited Cnr Bolsover & Archer Street ROCKHAMPTON QLD 4700 |
| Mr Fletcher | Mr Paul Fletcher Director Corporate and Regulatory Affairs | SingTel Optus Pty Limited 101 Miller Street North Sydney NSW 2060 |
| Mr Tubridy | Ms Lisa Tubridy Operations Manager | St. George Bank Limited Level 2, 4 – 16 Montgomery Street Kogarah NSW 2217 |
| Ms Clarke | Ms Louise Clarke Regional Operations Head Asia/Pacific, Global Markets | State Street Bank & Trust Company Level 37 Aurora Place 88 Phillip Street Sydney NSW 2000 |
| Mr Wrice | Mr Brian Wrice Manager, Deposit Customer Relations | Suncorp-Metway Limited Level 8, Suncorp Plaza (RE021) Cnr Alber & Turbot Streets Brisbane QLD 4000 |
| Mr Wu | Mr Richard Wu General Manager | Taiwan Business Bank Suite 3, Level 24, 363 George Street Sydney NSW 2000 |
| Mr Paterson | Mr Paul Paterson Director, Regulatory | Telstra Corporation Limited 11/231 Elizabeth Street SYDNEY NSW 2000 |
| Ms Weston | Ms Sue Weston General Manager | The Office of Small Business Commonwealth Department of Industry, Tourism and Resources GPO Box 9839 Canberra ACT 2600 |
| Mr Rudd | Mr Matthew Rudd Manager of Fixed Income Operations | UBS AG (Australia Branch) Level 25, Governor Phillip Tower 1 Farrar Place SYDNEY NSW 2000 |
| Mr Yeo | Mr Eric Yeo Vice President & Head of Administration | United Overseas Bank Limited Level 9, 32 Martin Place SYDNEY NSW 2000 |
| Mr Mansfield | Mr Bruce Mansfield General Manager, Visa Australia and New Zealand | Visa International 50 Bridge Street SYDNEY NSW 2000 |

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| Mr Livingston-Thomas | Mr Tony Livingstone-Thomas Senior Product Manager - Payables | Westpac Banking Corporation Level 9, 255 Elizabeth Street Sydney NSW 2000 |
| Mr Pokarier | Mr Ian Pokarier Operations Manager | Wide Bay Australia Ltd PO Box 1063 BUNDABERG QLD 4670 |
| Mr Mair | Mr Peter Mair | |