



Draft Determination

Application for revocation of authorisations A91281, A91282, and A91283 and the substitution of authorisation AA1000590

lodged by

Australian Payments Network Limited

in respect of

provisions of the High Value Clearing System Regulations and Procedures regarding suspension, termination and the requirement for framework participants to join SWIFT

Authorisation number: AA1000590

Date: 9 March 2022

Commissioners: Keogh
Rickard
Brakey

Summary

The ACCC proposes to re-authorise the Australian Payments Network Limited's (AusPayNet) High Value Clearing System (HVCS) Regulations and Procedures that apply to the suspension and termination of HVCS members and the requirement that HVCS members join the Society for Worldwide Interbank Financial Transactions (SWIFT). The ACCC has authorised a form of this conduct since 1998, most recently in 2012 for 10 years. The conduct is substantially unchanged in the current application.

The ACCC considers that the conduct is likely to result in public benefits in the form of the protection of the security, efficiency and integrity of the HVCS and cost savings for HVCS members. The ACCC also considers that the conduct is likely to result in minimal public detriments.

The ACCC proposes to grant re-authorisation for 10 years.

The ACCC invites submissions in relation to this draft determination, by 25 March 2022, before the ACCC makes its final decision.

1. The application for revocation and substitution

- 1.1. On 29 November 2021, Australian Payments Network Limited (**AusPayNet**) lodged an application to revoke authorisations A91281, A91282, and A91283 and substitute authorisation AA1000590 for the ones revoked (referred to as re-authorisation) with the Australian Competition and Consumer Commission (the **ACCC**). AusPayNet is seeking re-authorisation for the High Value Clearing System (**HVCS**) Regulations and Procedures in respect of (a) suspension and termination of HVCS members and (b) the requirement that HVCS members join the Society for Worldwide Interbank Financial Transactions (**SWIFT**).¹ The application has been lodged because the existing authorisation, granted in 2012, is due to expire on 24 May 2022. Re-authorisation is sought for a further 10 years.
- 1.2. This application for re-authorisation AA1000590 was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.3. The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits.

The Conduct

- 1.4. The HVCS is a payments clearing and settlement system created by AusPayNet which is used to clear and settle large value payments in real time. With no upper value transaction limit, this system accounts for roughly 90% of the value of all transactions in Australia. High-value payments are usually made between financial institutions or large corporates, and are irrevocable. The objective of the HVCS is to provide a best practice, efficient and highly secure electronic payments system for the Australian finance industry.
- 1.5. The conduct that AusPayNet is seeking to have re-authorised relates to two obligations in the HVCS Regulations and Procedures namely:

¹ SWIFT is a global member-owned cooperative that provides financial messaging services.

- Regulations clauses 5.10 – 5.18 (inclusive) covering suspension and termination; and
 - Regulations clause 5.2(g) and Procedures clauses 5.1 and 5.2 requiring direct participants in the HVCS (**Framework Participants**) join the SWIFT network and use the SWIFT Payment Delivery System (**PDS**)
- 1.6. AusPayNet is also seeking that the authorisation cover proposed amendments to the SWIFT Provisions (Procedure clauses 5.1 and 5.2) that it anticipates making during 2022 for the purpose implementing a change to the SWIFT messaging system used in the HVCS. This change relates to a global shift to adopt the ISO 20022 messaging standard in payment systems.²
- 1.7. AusPayNet submits that in February 2020, the Reserve Bank of Australia (**RBA**) endorsed the adoption of ISO 20022 messaging and appointed AusPayNet to coordinate the migration. The use of the new HVCS messaging system is expected to commence in November 2022. In order to implement the shift to the ISO 20022 messaging standard, the SWIFT Provisions will be amended insofar as they refer to the SWIFT messaging system required to be used.
- 1.8. Therefore, AusPayNet seeks also re-authorisation to cover amendments to Procedure clauses 5.1 and 5.2 that are necessary to reflect the transition to the new messaging system, on the following basis:
- a. Authorisation extends only to include amendments to the SWIFT Provisions necessary to implement the ISO 20022 messaging standard. This may include updates to the terminology used to describe the relevant messaging systems and refer to any transitional arrangements during the shift to the new messaging system.
 - b. Any such amendments must not vary the underlying principle the subject of authorisation in the SWIFT Provisions, which is the requirement to be a member of SWIFT.
 - c. Authorisation would not extend to any provision of the HVCS Procedures or Regulations which are not the subject of the current application, or to any amendments to the SWIFT provisions that are not necessary to reflect the transition to a new messaging system.
- 1.9. Accordingly, **the Conduct** for which re-authorisation is sought is described in paragraphs 1.5 and 1.8 above.
- 1.10. A copy of the Regulations and Procedures for which re-authorisation is sought is at Annexure A. A list of Framework Participants is at Annexure B. A full copy of the HVCS Regulations and Procedures was provided with the application for re-authorisation and is available [here](#).
- 1.11. AusPayNet is seeking re-authorisation for 10 years.

² Over the past decade there has been a global shift to adopt the ISO 20022 messaging standard in payment systems. The New Payments Platform (NPP) was built with the ISO 20022 messaging standard. ISO 20022 is designed to enable data-rich payments, more efficient and lower cost payment processing, enhanced customer services such as improved remittance services, and offers a number of technical advantages to older messaging systems. See [Modernising Payments Messaging: The ISO 20022 Standard | RBA](#).

The suspension, termination and SWIFT provisions

- 1.12. AusPayNet views the suspension and termination provisions as a last resort mechanism to be contemplated only in circumstances where a Framework Participant's continuing membership would impair the efficiency and/or integrity of the system. AusPayNet has advised that these provisions have not been used, or specifically contemplated since AusPayNet's establishment.
- 1.13. If invoked, the suspension and termination provisions have the effect of excluding the institution concerned from participating in, and receiving services through, the system. While it is still possible for the institution to participate in the process of clearing payment instruments or settlement, this would need to be done through bilateral arrangements outside of HVCS.
- 1.14. Suspension of a Framework Participant can only occur in a limited range of circumstances including where:
 - the Framework Participant's prudential supervisor requests suspension, or
 - the Framework Participant
 - agrees to the suspension
 - has operational difficulties, during a period, which prevents the Framework Participant from discharging its obligation under the rules, or
 - becomes insolvent or fails to settle its clearing obligations or breaches its obligations under the Constitution, the Regulations or the Procedures and does not rectify the breach or provide a satisfactory explanation within 30 days of receiving a request to do so.
- 1.15. Suspension can only occur after consultation with the Reserve Bank of Australia (RBA).
- 1.16. In lieu of suspending a Framework Participant, the HVCS Management Committee may impose conditions on the membership of that Framework Participant (including changing the capacity in which that Framework Participant may participate in HVCS, or vary any provision of the Procedures relating to the exchange of payments by or to that Framework Participant).
- 1.17. Termination of membership can follow suspension, provided that any breach of the rules has not been remedied, the HVCS Board has consulted with the Framework Participant's prudential supervisor (if applicable) and the Framework Participant has been provided with the opportunity to make submissions to the HVCS Board regarding termination. Otherwise, termination only occurs as a result of a Framework Participant resigning, becoming insolvent or ceasing to exist.
- 1.18. Compliance with SWIFT's requirements effectively means that each Framework Participant must be a SWIFT User, that is, a body corporate which is a member of SWIFT, or has otherwise been granted the right, in accordance with SWIFT's constitution and rules, to use the SWIFT network.

2. Background

AusPayNet

- 2.1. AusPayNet, formerly the Australian Payments Clearing Association (**APCA**), is the industry association and self-regulatory body for the Australian payments industry. AusPayNet manages and develops regulations, procedures, policies, and standards governing payments clearing and settlement in Australia. Individual institutions are responsible for their own clearing and settlement operations and are required to conduct their operations according to AusPayNet's rules as set out in the regulations and procedures for each of AusPayNet's frameworks.
- 2.2. AusPayNet's board of directors is comprised of three independent directors (including the Chair), one director appointed by the RBA, the CEO of AusPayNet (non-voting) and a number of directors appointed and an equal number of directors elected by AusPayNet members.
- 2.3. AusPayNet is currently responsible for five payment frameworks:
 - the HVCS, established as part of the development of real time gross settlement in Australia to provide an efficient and secure electronic payments mechanism for the finance industry
 - the Issuers and Acquirers Community (**IAC**) framework, which provides minimum standards to protect and enhance the security, integrity and efficiency of ATM and EFTPOS transactions
 - the Australian Paper Clearing System (**APCS**) relating to exchanges of paper-based payment instructions, primarily cheques
 - the Bulk Electronic Clearing System (**BECS**) relating to bulk direct entry low value transactions, allowing businesses (for example, utility companies) to make arrangements to direct debit and/or credit large numbers of accounts on a regular basis, and
 - the Australian Cash Distribution and Exchange System (**ACDES**) which governs the exchange and distribution of wholesale cash.
- 2.4. With the exception of the ACDES, relevant provisions of the regulations governing the operation of each of these clearing systems – predominantly relating to membership criteria, suspension and termination of membership – have been authorised by the ACCC.

High Value Clearing System

- 2.5. The HVCS is used to clear and settle large value payments in real-time. Individual payments are exchanged by Framework Participants using a secure electronic system. There is no minimum dollar amount for these payments; instead they are usually characterised by their large size relative generally to payment instructions exchanged in other clearing systems, the need for robust security, and/or the time critical nature of the payments
- 2.6. The AusPayNet Board delegates operational oversight of the HVCS to a HVCS Management Committee. The HVCS Management Committee comprises one person

nominated by the Board, other persons nominated by Framework Participants, and one person nominated by the RBA.

- 2.7. Framework Participants directly participate in the HVCS and are required to comply with the HVCS Procedures and Regulations. This includes the RBA, authorised deposit-taking institutions (**ADIs**) and other prudentially supervised non-ADI providers of payment services that hold exchange settlement accounts with the RBA. Framework Participants can exchange and settle payments on their own behalf or on behalf of their corporate customers.
- 2.8. Entities that are not Framework Participants can also indirectly participate in the HVCS by entering a commercial agency agreement with a Framework Participant to process high-value transactions on its behalf. This means that non-participants are not precluded from processing high value payments.
- 2.9. HVCS Framework Participants exchange payments with each other using the SWIFT Payment Delivery System (**PDS**), with each payment being settled individually using the Reserve Bank Information and Transfer System (**RITS**). SWIFT provides standardised, secure financial messaging to support the RITS, being the high value payments market infrastructure to settle payments. Payment messages are exchanged through the following process:
 - a) The SWIFT PDS uses SWIFT messaging to exchange payment messages between its participating members in a closed user group.
 - b) When a participating member sends a payment, it is queued while a settlement request message is sent via the swift network to the settlement platform of RITS.
 - c) RITS settles the payment and forwards a settlement response through the SWIFT messaging system.
 - d) The SWIFT messaging system matches the settlement response it receives to the queued payment. It then forwards the completed payment to the participating member which is to receive the payment.
- 2.10. AusPayNet submits that the selection of SWIFT as the basis of the HVCS was the result of an extensive evaluation process which examined, amongst other things, functionality, technical criteria, operating costs and investment risk.

3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Conduct.
- 3.2. The ACCC invited submissions from potentially interested parties including Framework Participants, industry stakeholders and relevant regulatory bodies.³
- 3.3. The ACCC received one submission in relation to the application. The Commonwealth Bank, who is a participant in the HVCS, supports the application for authorisation.
- 3.4. Public submissions by AusPayNet and interested parties are on the Public Register for this matter.

³ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

4. ACCC assessment

- 4.1. The ACCC's assessment of the Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. AusPayNet has sought authorisation for Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act, may substantially lessen competition within the meaning of section 45 of the Act, or may constitute exclusive dealing within the meaning of section 47 of the Act. Consistent with subsections 90(7) and 90(8) of the Act,⁴ the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).

Relevant areas of Competition

- 4.3. To assess the likely effect of the Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.4. AusPayNet seeks re-authorisation for provisions of the HVCS Regulations and Procedures concerning suspension and termination and the requirement for Framework Participants to join SWIFT. On this basis, the ACCC has confined its assessment of the application to the clearing and settlement of high value payments.

Future with and without the Conduct

- 4.5. In applying the authorisation test, the ACCC compares the likely future with the Conduct that is the subject of the authorisation to the likely future in which the Conduct does not occur.
- 4.6. The ACCC considers that without the Conduct, AusPayNet and HVCS Framework Participants could continue to set minimum standards to protect and facilitate the clearing and settlement of HVCS transactions, but without suspension and termination provisions that provide for the exclusion of organisations that do not meet the technical, operational and security requirements.
- 4.7. The ACCC also notes that absent the ability to enforce minimum standards through the HVCS framework, members could choose to conduct settlement through bilateral arrangements to ensure the security of these settlements.
- 4.8. Similarly, in relation to the Payment Delivery System used to exchange payments, Framework Participants would likely make bilateral decisions about which Payment Delivery System to use.

Public benefits

- 4.9. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

... we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as

⁴ See subsection 91C(7)

*one of its principal elements ... the achievement of the economic goals of efficiency and progress.*⁵

- 4.10. The ACCC has considered the following public benefits:
- protection of the security, efficiency and integrity of the HVCS, and
 - transaction and other cost savings.
- 4.11. AusPayNet submits that its ability to suspend or terminate a Framework Participant from the HVCS is important to provide a mechanism to ensure compliance with the Regulations and Procedures and to allow Framework Participants to have confidence in the HVCS, even though suspension or termination is only contemplated in circumstances where the Framework participant's continuing membership would impair the efficiency and/or integrity of the HVCS.
- 4.12. AusPayNet submits that without these sanctions, the efficacy and integrity of the HVCS would be diminished and the confidence of the Framework Participants and users of the HVCS would be reduced. AusPayNet submits that these provisions, therefore result in a benefit to the public by contributing to the integrity and efficacy of the HVCS.
- 4.13. AusPayNet submits that through a centralised PDS like the SWIFT PDS, the HVCS provides considerable efficiency gains for individual Framework Participants of the HVCS and the payments industry generally by enabling all Framework participants to send and receive payment of the same nature through the same system. AusPayNet also submits that the real time payment transfers under the HVCS reduces the amount of settlement risk in Australia's payment system.
- 4.14. The ACCC considers that the suspension and termination provisions are likely to result in public benefits through the promotion of the security, efficiency and integrity of the HVCS. In particular, the ACCC considers that without the ability of AusPayNet to enforce compliance with the HVCS Regulations and Procedures, the operational efficiency of the HVCS could be reduced, which would compromise the industry's ability to coordinate the clearing and settlement of high value payments in an efficient and centralised manner. At the extreme, this could result in a return to less efficient arrangements of clearing and settlement being subject to bilateral negotiation between individual organisations.
- 4.15. The ACCC also considers that, to the extent that the collective setting of clearing and settlement requirements for high-value payments, including through the requirement for Framework Participants to use SWIFT to exchange payments, results in lower transaction costs than bilateral negotiation of these requirements and reduced costs associated with maintaining multiple PDS, such cost savings are likely to constitute a public benefit.

Public detriments

- 4.16. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*⁶

5 Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

Suspension and Termination Provisions

- 4.17. AusPayNet submits that although the Conduct imposes requirements on Framework Participants, this does not prevent an entity from participating in the exchange of high value payments should they not wish to comply with these requirements. AusPayNet submits that it remains an option for entities to elect to not participate directly in the HVCS as a member, but instead participate indirectly by engaging a Framework Participant to exchange and settle payments on their behalf. In this scenario, the non-participant would not need to comply with the HVCS Procedures and Regulations, including the Conduct, but instead with agree bilateral terms directly with the Framework Participant they have engaged.
- 4.18. AusPayNet Submits that if the suspension and termination provisions are invoked they have the potential to exclude the institution concerned from participating in and receiving services through the HVCS. Those parties can still enter in bilateral agreements with agreements outside the HVCS, although this will be more difficult than participation as a Framework Participant of the HVCS. AusPayNet submits that any detriments arising from these provisions are mitigated by the fact that the provisions are applied sparingly and are only employed as a 'last resort' for the purpose of maintaining integrity in the HVCS, and promoting wider public confidence. These provisions have not been used in the history of the HVCS.
- 4.19. The ACCC notes that suspension or termination of HVCS membership, or the decision to not join in the HVCS, would not preclude an entity from participating in the HVCS, as they have the capacity to enter into arrangements with other HVCS Framework Participants to exchange and settle their payments on their behalf.
- 4.20. Further, the ACCC notes that suspension, termination, or an entity's decision to not join the HVCS, would not preclude an entity from establishing other direct exchange and settlement arrangements outside the HVCS through bilateral negotiations with other participants. These bilateral negotiations between financial institutions on the procedures and standards for high value transaction exchange were the status quo prior to the introduction of the HVCS. However, given that members now operate under the HVCS Framework, it would likely be significantly more difficult for institutions to enter these bilateral arrangements in the present and future, and these arrangements would be more costly to negotiate and difficult to manage than participating in the HVCS.
- 4.21. Therefore, the ACCC considers that exclusion from the HVCS would have an adverse effect on the financial institution concerned and potentially could make it difficult for the institution to directly clear and settle high value transactions. However, the ACCC considers that the suspension and termination provisions do not place unreasonable requirements on members and that there are adequate checks and balances on the manner in which they are employed. The ACCC also notes AusPayNet's submission that the suspension and termination provisions are 'last resort' provisions that have not been used in the history of the HVCS.
- 4.22. Therefore, the ACCC considers the detriment generated by the suspension and termination provisions to be low.
- 4.23. The ACCC also considers that even if used, to the extent that suspension or termination may adversely affect the organisation, given the number of competing service providers this may not significantly affect competition for the clearing and settlement of high value payments more generally.

SWIFT Membership

- 4.24. AusPayNet submits that requirement to join SWIFT does not create an unreasonable burden or detriment for potential Framework Participants of the HVCS as it is functionally necessary for Framework Participants to use a messaging system to participate in the exchange and settlement for high value payments. AusPayNet submits that there is no indication there is an impediment to prospective HVCS Framework Participants joining SWIFT, and that since the inception of the HVCS each prospective Framework Participant that has applied to join SWIFT in connection with the HVCS has been admitted.
- 4.25. The ACCC considers that the requirement for Framework Participants to join SWIFT may, if an institution could not or did not join SWIFT, have the effect of preventing institution from exchanging high value payments, or at least make it more difficult for them to do so.
- 4.26. However, the ACCC does not consider that the requirement to join SWIFT places unreasonable obligations on Framework Participants. The ACCC notes AusPayNet's submission in respect of each prospective Framework Participant that has applied to join SWIFT has being admitted.
- 4.27. Further, as noted above, exclusion of an individual organisation from HVCS may not significantly affect competition for the clearing and settlement of high value payments more generally.
- 4.28. Accordingly, the ACCC considers the anti-competitive detriment likely to be generated by the requirement that HVCS members join SWIFT is minimal.

Balance of public benefit and detriment

- 4.29. For the reasons outlined in this draft determination, the ACCC is satisfied that the Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Conduct.

5. Draft determination

The application

- 5.1. On 29 November 2021, AusPayNet lodged an application to revoke authorisations A91281, A91282, and A91283 and substitute authorisation AA1000590 for the ones revoked (referred to as re-authorisation). This application for re-authorisation AA1000590 was made under subsection 91C(1) of the Act.
- 5.2. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Conduct.
- 5.4. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Conduct would be likely to result in a benefit to the public and

the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.

5.5. Accordingly, the ACCC proposes to grant re-authorisation.

Conduct which the ACCC proposes to authorise

5.6. The ACCC proposes to revoke authorisations A91281, A91282, and A91283 and grant authorisation AA1000590 in substitution for the HVCS Regulations and Procedures in respect of its suspension and termination of HVCS members and the requirement that HVCS members join SWIFT as described in paragraphs 1.5 and 1.8 and defined as the Conduct.

5.7. The Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act, may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act, or constitute exclusive dealing within the meaning of section 47 of the Act.

5.8. The ACCC proposes to grant authorisation AA1000590 for 10 years.

5.9. Any changes to the Conduct during the term of the proposed authorisation outside of those described at paragraph 1.8 would not be covered by the proposed authorisation. This draft determination is made on 9 March 2022.

6. Next steps

6.1. The ACCC now invites submissions in response to this draft determination, by 25 March 2022. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.

Annexure A – HVCS Regulations and Procedures for which re- authorisation is sought

Definitions

"**AusPayNet PDS**" means:

- (a) the SWIFT PDS, and
- (b) any other payment delivery system implemented by the Company from time to time,

for sending and receiving domestic high value payment instructions in the HVCS between Framework Participants.

"**CBT**" means computer based terminal (including hardware and software) and, in relation to an AusPayNet PDS, means a computer based terminal used to access that AusPayNet PDS.

"**Framework Participant**" means a body corporate which in accordance with these Regulations is a participant in HVCS in the capacity of a Framework Participant as determined in accordance with PART 5.

"**SWIFT FIN Copy Service**" means the service provided by SWIFT to Framework Participants pursuant to the SWIFT Service Agreement.

"**SWIFT PDS**" means the SWIFT FIN Copy Service, operating, under normal circumstances, in Y-Mode, configured with Framework Participants' CBTs to meet the processing requirements of the HVCS, together with any ancillary SWIFT services provided in connection with the SWIFT FIN Copy Service.

"**SWIFT PDS CUG**" is the group of Framework Participants admitted to use the SWIFT PDS to send and receive payments.

Suspension and Termination Provisions

HVCS Regulations:

5.10 Suspension

- (a) The Management Committee, after consultation with the Reserve Bank and subject to Regulation 5.10(c) below, may suspend the membership of a Framework Participant for a specified or indefinite period of time in the following circumstances (each a "**Suspension Event**"):
 - (i) the Framework Participant is subject to prudential supervision and the relevant supervisor requests such suspension;
 - (ii) by agreement with the Framework Participant concerned;
 - (iii) the Framework Participant no longer satisfies any applicable requirement for membership set out in Regulation 5.2;
 - (iv) a Disabling Event occurs in respect of the Framework Participant, but only during the continuance of that Disabling Event and any subsequent period which might be necessary because of the applicable requirements pertaining to any particular AusPayNet PDS;

- (v) an Insolvency Event (not being an event which results in automatic cessation of membership pursuant to Regulation 5.17(a)(ii) or (iii)) occurs in respect of the Framework Participant; or
 - (vi) the Framework Participant 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.
- (b) A Framework Participant may also be automatically suspended in accordance with PART 12.
- (c) If a Framework Participant is subject to prudential supervision by APRA then the Management Committee must give APRA reasonable notice of, and an opportunity to be heard at, any meeting at which it will consider suspending the Framework Participant pursuant to Regulation 5.10(a)(v).

5.11 Effect of Suspension on Framework Participant

Subject to Regulation 5.14, a Framework Participant whose membership is suspended under Regulation 5.10 is not entitled to:

- (a) participate in the HVCS;
- (b) clear and settle payments using an AusPayNet PDS; nor
- (c) vote at any HVCS meeting convened in accordance with PART 8, or any other meeting of the Framework Participants of the High Value Clearing System (CS4) convened in accordance with the Constitution or the *Corporations Act 2001 (Cth)*,

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).

5.12 Effect of Suspension on Management Committee Nominee

If a Framework Participant whose membership is suspended under Regulation 5.10 has nominated a member of the Management Committee pursuant to Regulation 7.1(a), that member is not entitled to vote at meetings of the Committee, but may continue to attend and participate in such meetings, during the period of suspension under Regulation 5.10.

5.13 Conditions in lieu of Suspension

If a Suspension Event occurs in respect of a Framework Participant, the Management Committee may (in lieu of suspending the membership of that Framework Participant) impose conditions on the membership of that Framework Participant or vary any provision of the Procedures in relation to the exchange of payments addressed to or initiated by that Framework Participant. The rights and obligations of that Framework Participant 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.

5.14 Obligations of a Suspended Framework Participant

A Framework Participant whose membership is suspended under Regulation 5.10 or which is subject to any condition or variation under Regulation 5.13 is not excused from discharging, in accordance with these Regulations and Procedures, obligations under the Constitution, these Regulations and the Procedures including, without limitation, obligations incurred in connection with payments exchanged prior to the suspension of that Framework Participant, except as expressly provided in or pursuant to these Regulations or the Procedures.

5.15 Notification of Suspension

The Secretary must immediately notify the System Administrator and all Framework Participants (by the most expeditious means available) of any suspension under Regulation 5.10 and must promptly notify all Framework Participants of all other action taken under Regulations 5.10 to 5.14 inclusive.

5.16 Reinstatement of a Suspended Framework Participant

- (a) The Management Committee after consultation with the Reserve Bank, and subject to Regulation 5.16(b), may at its discretion reinstate a suspended Framework Participant effective on a given date specified by the Management Committee having regard to any applicable requirements pertaining to the relevant AusPayNet PDS, including those imposed by the Service Provider.
- (b) If a Framework Participant is subject to prudential supervision by APRA and has been suspended pursuant to Regulation 5.10(a)(v) then the Management Committee must give APRA reasonable notice of, and an opportunity to be heard at, any meeting at which it will consider reinstating the Framework Participant.
- (c) The Secretary must as soon as reasonably possible notify the System Administrator and all Framework Participants of any decision under this Regulation 5.16 to reinstate a suspended Framework Participant and the re-commencement date for that member.

5.17 Termination

- (a) A Framework Participant ceases to be a Framework Participant on:
 - (i) resignation;
 - (ii) becoming insolvent or making an arrangement or composition with creditors generally;
 - (iii) being wound-up, dissolved or otherwise ceasing to exist; or
 - (iv) the Board terminating that Framework Participant's membership in accordance with the Constitution and these Regulations.
- (b) A Framework Participant may, by notice in writing to the Company, resign as a Framework Participant with effect from a date which is not less than 21 days after the date of the service of the notice. The notice is irrevocable.
- (c) A Framework Participant may not resign except by giving notice in accordance with this Regulation 5.17.

- (d) The Board (after consultation with the Management Committee) may, by notice in writing to a Framework Participant, terminate the membership of that Framework Participant with immediate effect, provided that the Board may not terminate the membership of a Framework Participant unless the following pre-conditions have been fulfilled:
 - (i) a Suspension Event has occurred in respect of that Framework Participant and has not been remedied;
 - (ii) (if that Framework Participant is subject to Prudential Supervision) the Board has consulted with the relevant supervisor regarding such termination; and
 - (iii) the Board has provided an opportunity for that Framework Participant to make submissions to the Board regarding such termination.
- (e) 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.
- (f) Any resignation or termination of the membership of a Framework Participant 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.
- (g) A Framework Participant who resigns pursuant to Regulation 5.17(b) or whose membership is terminated pursuant to Regulation 5.17(d) shall continue to be bound by the Constitution and these Regulations in respect of:
 - (i) 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
 - (ii) any fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, Framework Participants 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.

5.18 Effect of Termination

- (a) The Secretary must immediately notify the System Administrator and all Framework Participants (by the most expeditious means available) of any termination or resignation of membership under Regulation 5.17.
- (b) 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 Framework Participant:
 - (i) the resigning or terminating Framework Participant must immediately pay all sums of money (if any) owed by it to any other Framework Participant in respect of obligations arising from the exchange of payments; and
 - (ii) all sums of money (if any) owed to it by any other Framework Participant in respect of all such payments exchanged must be paid by

that other Framework Participant to the resigning or terminating Framework Participant.

- (c) Any Framework Participant which resigns or whose membership is terminated immediately ceases to be entitled to effect exchanges in the HVCS in accordance with these Regulations and the Procedures.
- (d) A Framework Participant 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.

Requirement for Framework Participants to join SWIFT

HVCS Regulations

5.2 Qualifications - All Framework Participants

In order to be a Framework Participant in HVCS, a person must:

- (g) be able and agree to comply with all applicable requirements of any relevant Service Provider as specified in the Procedures;

HVCS Procedures

PART 5 SWIFT PDS CLOSED USER GROUP

Overview

- 5.1 The SWIFT PDS CUG uses the facilities of the SWIFT FIN-Copy Service, designed to meet the needs of high value clearing systems internationally. The SWIFT FIN-Copy Service allows each country to configure its closed user group to meet its own specific requirements. AusPayNet has worked with SWIFT to configure the SWIFT PDS to meet the Australian domestic high value clearing needs of its members. For the SWIFT PDS CUG AusPayNet's SWIFT PDS configuration allows some variation from normal SWIFT messaging, to cater for RITS requirements. Details of SWIFT PDS CUG requirements are set out in this Part 5 and in Appendix D.

To use the SWIFT PDS to send and receive payments a Framework Participant must be a SWIFT User and must meet the mandatory security control objectives in the SWIFT Customer Security Controls Framework.

SWIFT Membership

- 5.2 Each Applicant proposing to use the SWIFT PDS which is not a SWIFT User, should approach the SWIFT Regional Account Manager regarding SWIFT requirements to becoming a SWIFT User. The size and international nature of the SWIFT network requires that the connection of new SWIFT Users be carried out on set dates (March, June, September and December) each year. Because of this requirement and internal systems development by the Applicant, SWIFT advises that Applicants proposing to use the SWIFT PDS should allow at least 6 months to complete the SWIFT membership process.

Annexure B – List of Framework Participants

Ayden Australia Pty Limited

Agricultural Bank of China Limited

AMP Bank Limited

Arab Bank Australia Limited

Australia and New Zealand Banking Group Limited

Australian Settlements Limited

Bank of America, National Association

Bank of China

Bank of China (Australia) Limited

Bank of Communications Co., Ltd Sydney Branch

Bank of Queensland Limited

Bank of Sydney Ltd

Bendigo and Adelaide Bank Limited

BNP Paribas

BNP Paribas Securities Services

China Construction Bank Corporation, Sydney Branch

China Merchants Bank Co., Ltd.

Citi bank N.A

Citigroup Pty Limited

CLS Bank International

Commonwealth Bank of Australia

Cooperative Rabobank U.A.

Cuscal Limited

DBS Bank Ltd., Australia Branch

Deutsche Bank AG

Heritage Bank Limited

Hong Kong and Shanghai Banking Corporation Limited – Australian Branch (The)

HSBC Bank Australia Limited

Industrial and Commercial Bank of China Limited

ING Bank (Australia) Limited (trading as ING)
ING Bank NV (Sydney Branch)
JP Morgan Chase Bank, National Association
LCH.Clearnet Limited
Macquarie Bank Limited
Mega International Commercial Bank Co, Ltd
Mizuho Bank, Ltd
MUFG Bank, Ltd.
National Australia Bank Limited
Northern Trust Company (The)
Oversea-Chinese Banking Corporation Limited
Rabobank Australia Limited
Reserve Bank of Australia
Royal Bank of Canada
Standard Chartered Bank
State Bank of India
State Street Bank and Trust Company
Sumitomo Mitsui Banking Corporation
Suncorp-Metway Limited
UBS AG Australia Branch
United Overseas Bank Limited
Westpac Banking Corporation