

Australian Securities and Investments Commission
Corporations Act 2001 — Paragraphs 911A(2)(l), 926A(2)(a), 951B(1)(a),
992B(1)(a) and 1020F(1)(a) — Exemptions

Enabling legislation

1. The Australian Securities and Investments Commission grants the exemptions set out in:
 - (a) paragraph 4(a) under paragraphs 911A(2)(l), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001* (the *Act*);
 - (b) paragraph 4(b) under paragraphs 926A(2)(a), 951B(1)(a) and 992B(1)(a) of the Act; and
 - (c) paragraph 4(c) under paragraph 951B(1)(a) of the Act.

Title

2. This instrument is ASIC Class Order [CO 05/736].

Commencement

3. This instrument commences on the later of:
 - (a) the date it is registered under the Legislative Instruments Act 2003; and
 - (b) the date of its gazettal.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Exemptions for providers of low value non-cash payment facilities

4. A person who provides financial services in relation to a low value non-cash payment facility does not have to comply with:
 - (a) subsection 911A(1), section 992A and Part 7.9 of the Act in relation to those financial services; and
 - (b) where the person is a financial services licensee—Part 7.6 (other than subsection 911A(1) and Divisions 4 and 8), Divisions 2, 3 and 4 of Part 7.7 and Divisions 2, 3, 5 and 6 of Part 7.8 of the Act in relation to those financial services; and
 - (c) where the person is an authorised representative of a financial services licensee—Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to those financial services.

Conditions

5. An issuer of a low value non-cash payment facility who takes advantage of any of the exemptions in paragraph 4 must take reasonable steps to ensure all of the following are satisfied:
 - (a) before or at the time the low value non-cash payment facility is offered to a person as a retail client, the person is given a written document (the disclosure document) which sets out the terms and conditions of the facility and separately sets out in a prominent manner:
 - (i) information about whether any of the terms and conditions of the facility may be unilaterally varied by the issuer and a statement of how a person (the *client*) who holds the facility may get information about the new terms and conditions;
 - (ii) information about whether there is a date (the *expiry date*) after which the facility cannot be used for the making of non-cash payments (regardless of whether there is an amount standing to the credit of the facility at the end of the relevant day) and information about where the expiry date may be found out;
 - (iii) information about the procedures for dealing with any unauthorised or mistaken transactions relating to the facility or the loss or theft of the device (if any) referred to in subparagraph (c)(i);
 - (iv) fees or charges for acquiring and using the facility and where any such fees or charges are subject to change during the life of the facility, a statement of how the client may get information about the new fees or charges;
 - (b) the disclosure document is worded and presented in a clear, concise and effective manner;
 - (c) where the facility is issued on or after 1 June 2006 and is subject to an expiry date:
 - (i) if the client is provided with a physical device to use the facility—the expiry date is prominently set out on the device in a manner that makes it clear that it is an expiry date;
 - (ii) otherwise—the expiry date is set out in the disclosure document or in a written statement that is attached to the disclosure document;
 - (d) a convenient means is available, that involves no charge by the issuer or its associates, for the client to do all of the following:
 - (i) check the amount standing to the credit of the facility;

- (ii) if subparagraph (c)(ii) applies—check any relevant expiry date that applies to the facility;
 - (iii) obtain at reasonable intervals a record of the past 10 transactions (or such transactions that have occurred) under the facility;
- (e) if the terms and conditions of the low value non-cash payment facility are unilaterally varied, or the fees or charges for using the facility are changed during the life of the facility:
- (i) a statement setting out the effect of the variation or change is displayed in a clear and prominent notice at each place of business where the facility may be acquired in an area that is accessible to the public;
 - (ii) information about the variation or change is made available to the client in accordance with the statement in subparagraph 5(a)(i) or 5(a)(iv);
 - (iii) the new terms and conditions or fees and charges are made available to the client on request at each place of business where the facility may be acquired; and
 - (iv) if the issuer makes available information about the facility on an Internet website—the statement in subparagraph 5(e)(i), information about the variation or change, and the new terms and conditions or fees and charges are made available on the website in a manner reasonably likely to come to the attention of persons seeking information about the facility;
- (f) if a facility is issued to a person as a retail client, the issuer maintains adequate internal dispute resolution processes in accordance with the Australian Standard on Complaints Handling (AS 4269–1995) as at 5 February 1995.
6. A person who takes advantage of any of the exemptions in paragraph 4 and is not the issuer of the low value non-cash payment facility must take reasonable steps to ensure that both of the following are satisfied:
- (a) before or at the time the low value non-cash payment facility is offered to a person, the person is provided with the disclosure document;
 - (b) where the facility is issued on or after 1 June 2006 and is subject to an expiry date:
 - (i) if the client is provided with a physical device to use the facility—the expiry date is prominently set out on the device in a manner that makes it clear that it is an expiry date; or

- (ii) otherwise—the expiry date is set out in the disclosure document or in a written statement that is attached to the disclosure document.

Case where exemptions apply

7. A person may only rely on an exemption in paragraph 4:
 - (a) in the course of providing a financial service on their own behalf—if they have given ASIC a notice in writing that they intend to rely on this instrument; and
 - (b) in the course of providing a financial service on behalf of another person (the principal)—if they do not have reason to believe that the principal has not given ASIC a notice under paragraph (a).
8. The exemptions in paragraph 4 are not available to a person if a condition in paragraph 5 or 6 applies to them and they do not comply with the condition.

Interpretation

9. In this instrument:

authorised representative has the meaning given by section 761A of the Act.

device includes a certificate, voucher, token, card, coin or other object by which a person may use a low value non-cash payment facility.

facility has a meaning affected by section 762C of the Act.

issuer has the meaning given by subsection 761E(4) of the Act.

low value non-cash payment facility means a facility through which, or through the acquisition of which, a person makes non-cash payments and in relation to which the following are satisfied:

- (a) the total amount available for the making of non-cash payments under all facilities of the same class held by any person at any one time does not exceed \$1,000;
- (b) the total amount available for making non-cash payments under all facilities of the same class does not exceed \$10,000,000 at any time; and
- (c) the facility is not a component of another financial product.

makes non-cash payments has the meaning given by section 763D of the Act.

offer has a meaning affected by subsection 1010C(2) of the Act.

retail client has the meaning given by section 761G of the Act.

Dated this 14th day of November 2005

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments Commission