

Commonwealth Banks Regulations (Amendment) 1991 No. 93

EXPLANATORY STATEMENT

STATUTORY RULES 1991 No. 93

ISSUED BY THE AUTHORITY OF THE TREASURER

COMMONWEALTH BANKS ACT 1959

COMMONWEALTH BANKS REGULATIONS (AMENDMENT)

Section 129 of the Commonwealth Banks Act 1959 (the Act) provides that regulations may be made for the purposes of the Act.

Subsection 27K(1) of the Act prohibits foreign persons, as defined in the Foreign Acquisitions and Takeovers Act 1975, from subscribing to shares in the Commonwealth Bank of Australia (CBA) under its first registered prospectus. This means that foreign employees of the CBA are not permitted to subscribe to shares issued under the CBA's first registered prospectus. It also means that foreign owned institutions are not permitted to act as underwriters or subunderwriters in the issue of shares under the CBA's first registered prospectus because they are contracted to take up shares if the issue is under-subscribed. Subsection 27K(4) of the Act specifies that a regulation can be made to provide an exception or modification to subsection 27K(1) of the Act.

The new regulation 38 allows foreign employees of the CBA and its subsidiaries as specified in the regulation to participate in the issue of shares under the CBA's first registered prospectus made in accordance with the CBA's Employee Share Ownership Scheme (ESOS). (However, the CBA's foreign employees will not be permitted to subscribe to CBA shares issued under the first registered prospectus beyond their entitlements under the CBA's ESOS.) The rationale for the regulation is that it would be inequitable to allow all domestic CBA staff to participate in the ESOS, while not allowing foreign employees of the CBA and its subsidiaries to participate.

The new regulation 39 allows foreign brokers and insurers to act as underwriters and sub-underwriters in relation to the issue of shares under the CBA's first registered prospectus. A broker is defined as a person who is a member of the Australian Stock Exchange, while an insurer is defined as a body corporate authorised under the Insurance Act 1973 to carry on insurance business or registered under the Life Insurance Act 1945. This means that the exemption from subsection 27K(1) of the Act is confined to foreign-owned brokers and insurers operating in Australia.

The purpose of the new regulation 39 is to expand the pool of eligible brokers and insurers to act as underwriters and sub-underwriters to the issue of shares under the CBA's first registered prospectus. It is intended that the group of underwriters and sub-underwriters will be chosen from Australian-owned institutions to the greatest extent possible, but it may be necessary to draw on the institutions made eligible by the regulation in order for the issue of CBA shares under its first registered prospectus to be fully underwritten.

The regulations are made at this time with a view to the issue of CBA shares occurring in the middle of this year.