

# **Banking (Foreign Exchange) Amendment Regulations 2002 (No. 1)**

## **2002 No. 40**

### **EXPLANATORY STATEMENT**

#### **Statutory Rules 2002 No. 40**

Issued by the Parliamentary Secretary to the Treasurer

*Banking Act 1959*

Banking (Foreign Exchange) Amendment Regulations 2002 (No. 1)

Section 39 of the *Banking Act 1959* provides that the Governor-General may make regulations in accordance with this section, where he considers it expedient to do so, for purposes related to, *inter alia*, foreign exchange or the foreign exchange resources of Australia.

The purpose of the Regulations is to amend Regulation 5 of the Banking (Foreign Exchange) Regulations to remove the power of the Reserve Bank of Australia (the Reserve Bank) to authorise certain activities relating to foreign currency (including buying and selling). Upon the commencement of the *Financial Services Reform Act 2001*, persons who buy and sell foreign currency, and whose activities constitute a financial services business, will come under the licensing regime of the *Corporations Act 2001*.

The amendments to Regulation 5 reflect the transfer of responsibility for authorising/licensing the buying and selling of foreign currency from the Reserve Bank to the Australian Securities and Investments Commission.

However, the Reserve Bank retains a power in substituted subregulations 5(1) to (4A) to direct a person not to engage in the activities mentioned in Regulation 5, so that it may retain control over dealings in foreign currency in order, for example, to enforce financial sanctions against particular countries or persons.

Under the transitional arrangements under Part 10.2 of the *Corporations Act 2001*, authorities to buy and sell foreign currency granted by the Reserve Bank to persons who will be subject to the new licensing regime will continue in force after the proposed Regulations take effect, until such time as the holder of the authority either obtains an Australian financial services licence, is exempted from the requirement to obtain a licence, ceases buying and selling foreign currency, or the two-year transitional period ends, whichever occurs first.

The Regulations are consequential on the reforms to the regulation of the financial services industry which are included in the *Financial Services Reform Act 2001* and associated legislation. The *Financial Services Reform Act 2001* amends the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*, and will provide, among other things, a single licensing regime for financial sales, advice and dealings in relation to financial products,

The Regulations commence at the same time as Item 1 of Schedule 1 to the *Financial Services Reform Act 2001* commences - that is, the provisions which provide the new financial services regulatory regime. This Item has been proclaimed to commence on 11 March 2002.