

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 193

Subject - *Corporations Act 2001*

Corporations Legislation Amendment Regulations 2011 (No. 1)

Subsection 1364(1) of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 251(1) of the *Australian Securities and Investments Commission Act 2001*, Section 253 of the *Life Insurance Act 1995*, and Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* serve similar functions to Subsection 1364(1) of the Act in providing power to make regulations.

The primary purpose of the *Corporations Legislation Amendment Regulations 2011 (No. 1)* (the Amending Regulations) is to amend the *Corporations Regulations 2001* (the Principal Regulations) to support the introduction of competition in trade execution in Australia's financial markets. It is expected that competition in trade execution services, in the form of multiple market operators, will commence by the end of 2011.

The Amending Regulations alter provisions in the Principal Regulations that would no longer function as intended, or read in a clear manner, in a situation where there are multiple market operators in Australia quoting prices in the same financial products. The Amending Regulations do not substantively alter the Principal Regulations beyond updating them to fit the new multi-operator environment.

Additionally, the Amending Regulations make minor amendments to update certain lists of entities in the *Australian Securities and Investments Commission Regulations 2001*, the *Life Insurance Regulations 1995*, and the *Superannuation Industry (Supervision) Regulations 1994*. These amendments take into account entities which have changed names or have ceased to exist.

Details of the Amending Regulations are included in the Attachment.

Given the Amending Regulations make technical amendments to the Principal Regulations that are minor in nature, it was not necessary to undertake public consultation.

Under the *Corporations Agreement 2002* (the Agreement), the state and territory governments (the states) referred their constitutional powers with respect to corporations regulation to the Commonwealth. The Agreement requires the Commonwealth to be consulted with before making amendments to the Corporations Regulations. The responsible state Ministers have been consulted through the Legislative and Governance Forum for Corporations meeting as the Ministerial Council for Corporations (MINCO) about the proposed Regulations.

The Act does not specify any conditions that need to be satisfied before the power to make the Amending Regulations may be exercised.

The Amending Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Amending Regulations will commence on 31 October 2011.

Authority:

Section 1364(1) of the
Corporations Act 2001

Section 251(1) of the
Australian Securities and Investments Commission Act 2001

Section 253 of the
Life Insurance Act 1995

Section 353(1) of the
Superannuation Industry (Supervision) Act 1993

Details of the proposed *Corporations Legislation Amendment Regulations 2011 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Corporations Legislation Amendment Regulations 2011 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 31 October 2011.

Regulation 3 – Amendment of *Corporations Regulations 2001*

This regulation provides that the *Corporations Regulations 2001* (the Principal Regulations) are amended as set out in Schedule 1.

Regulation 4 – Amendment of *Australian Securities and Investments Commission Regulations 2001*

This regulation provides that the *Australian Securities and Investments Commission Regulations 2001* are amended as set out in Schedule 2.

Regulation 5 – Amendment of *Life Insurance Regulations 1995*

This regulation provides that the *Life Insurance Regulations 1995* are amended as set out in Schedule 3.

Regulation 6 – Amendment of *Superannuation Industry (Supervision) Regulations 1994*

This regulation provides that the *Superannuation Industry (Supervision) Regulations 1994* are amended as set out in Schedule 4.

Schedule 1 – Amendments of *Corporations Regulations 2001*

Item [1] – Regulation 1.0.02A

A financial market must be prescribed under the *Corporations Act 2001* (the Act) in order for the market to process certain types of transactions. Regulation 1.0.02A of the Principal Regulations provides a list of prescribed financial markets for this purpose. This item updates the list by adding Australia Pacific Exchange Limited, which is prescribed in another list of ‘prescribed financial markets’ in Regulation 7.1.01, and by adding Chi-X Australia Pty Ltd (Chi-X), which is expected to begin operations as a financial market by the end of 2011. Item 3 removes Regulation 7.1.01.

Item [2] – Regulation 5C.11.03

Regulation 5C.11.03A sets out a mechanism for valuing an interest in a registered scheme. The regulation is phrased in such a way that it assumes that the price of a scheme is only quoted on a single market. This item updates the regulation to refer to a listed price rather than quoted price. Because there will be multiple financial markets operating in Australia quoting prices on the same item, it is no longer appropriate to refer to the ‘quoted price’ of a scheme, as this may vary between markets.

Item [3] – Regulation 7.1.01

Regulation 7.1.01 contains a list of markets that are ‘prescribed financial markets’ for the purposes of the Act. This list duplicates the function of the list in Regulation 1.0.02A. Item 3 removes this duplicated regulation.

Items [4, 5, 6, and 7] – Subregulation 7.5.01(1)

Subregulation 7.5.01(1) provides a definition for a ‘reportable transaction’ as a transaction which, amongst other things, is required to be reported to the market operator under the operating rules of the market. With the introduction of competing market operators (such as Chi-X), the Australian Securities Exchange (ASX) operating rules are to be amended to permit these transactions to be reported to other market operators, meaning that technically the transactions are no longer ‘required’ to be reported. These items therefore amend the subregulation to refer to transactions that are ‘required or permitted’ to be reported to the market operator, in order to preserve the intention of the definition.

Items [8 and 9] – Subregulations 7.9.100 (7) and 7.9.101(3)

Subregulations 7.9.100(7) and 7.9.101(3) designate entities to which short selling transactions may be reported in order for traders to fulfil their reporting obligations under sections 1020AB and 1020AC of the Act. These items allow market operators to appoint other market operators as their agents for the purposes of collecting reports of short selling transactions. Arguably, this can already be done under the current regulations, but these items confirm this position.

Items [10, 11, and 12] – Part 10.14

Part 10.14 provides regulations concerning transitional provision relating to the *Corporations Amendment (Financial Market Supervision) Act 2010*. These regulations are incorrectly numbered; the corresponding Part of the Act is Part 10.15. These items renumber the regulations to correspond to the correct sections of the Act.

Schedule 2 – Amendments of Australian Securities and Investments Commission Regulations 2001

Item [1] – Schedule 3, Part 1

Part 1 of Schedule 3 of the *Australian Securities and Investments Commission Regulations 2001* provides a list of entities to which ASIC may disclose information

for the purposes of sharing information to assist in the supervision of financial markets. This item updates the list of entities to reflect recent name changes, as well as adding Chi-X to the list to reflect ASIC's responsibilities upon Chi-X commencing trading operations in Australia.

Schedule 3 – Amendments of *Life Insurance Regulations 1995*

Item [1] – Schedule 7, items 1 to 6

Schedule 7 of the *Life Insurance Regulations 1995* provides a list of entities that are approved bodies for the purposes of the *Life Insurance Regulations 1995*. This item updates the list of entities to reflect recent name changes.

Schedule 4 – Amendments of *Superannuation Industry (Supervision) Regulations 1994*

Item [1] – Schedule 4, items 1 to 6

Schedule 4 of the *Superannuation Industry (Supervision) Regulations 1994* provides a list of entities that are approved bodies for the purposes of the *Superannuation Industry (Supervision) Regulations 1994*. This item updates the list of entities to reflect recent name changes.