



# **Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2017 (No. 2)**

## ***Anti-Money Laundering and Counter-Terrorism Financing Act 2006***

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I, Gavin McCairns, acting Chief Executive Officer, Australian Transaction Reports and Analysis Centre, make this Instrument under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Dated 21 June 2017

[signed]

Gavin McCairns

Acting Chief Executive Officer

Australian Transaction Reports and Analysis Centre

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**1 Name of Instrument**

This Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2017 (No. 2)*.

**2 Commencement**

This Instrument commences on the day after it is registered.

**3 Amendment**

Schedule 1 amends the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

**Schedule 1                      Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.**

**1. Chapter 22**

**Item 1 For Chapter 22**

*Repeal the Chapter, substitute:*

**Chapter 22 - Exemption of certain types of transactions relating to the over-the-counter derivatives market**

22.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 247(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

22.2 Subject to paragraph 22.3, the AML/CTF Act does not apply to a designated service that:

- (1) is of a kind described in item 35 of table 1 in section 6 of the AML/CTF Act; and
- (2) relates to the over-the-counter derivatives market in Australia in respect of one or more of the following commodities or products:
  - (a) electricity; or
  - (b) gas; or
  - (c) environmental products; or

- (d) coal, oil, diesel or other form of fuel used in the generation of electricity by either:
  - (i) the provider of the designated service; or
  - (ii) the customer; or
- (e) interest rate derivative products; or
- (f) weather index or scale products relating to precipitation, temperature, wind, humidity or solar exposure; or
- (g) foreign exchange derivative products; or
- (h) oil derivative products linked to gas supply contracts.

22.3 The exemption in paragraph 22.2 only applies if:

- (1) the person who provides the designated service:
  - (a) is registered as a Registered Participant under the *National Electricity Rules*; or
  - (b) is a Generator who under Rule 2.9.3 of the *National Electricity Rules* is exempt from registration; or
  - (c) is registered as a Rule Participant under the *Wholesale Electricity Market Rules*; or
  - (d) in a registrable capacity set out in Rule 135A, is registered as a Registered Participant under Rule 135AE of the *National Gas Rules*; or
  - (e) in a registrable capacity set out in Rule 135ABA, is registered as a Registered Participant under Rule 135AE of the *National Gas Rules*; and
  - (f) one of the following applies:
    - (i) the person holds an AFS licence that authorises that person to provide the designated service; or
    - (ii) the person acts through an agent that holds an AFS licence which authorises that agent to provide the designated service on behalf of the person, or is appointed as an authorised representative under section 916A of the *Corporations Act 2001* to provide the designated service on behalf of the person; or
    - (iii) the person is, by regulation made under section 134 of the *Electricity Industry Act 2004* (WA), exempt from the

requirement to hold an AFS licence which authorises that person to provide the designated service; and

- (2) the person who is the customer of the designated service:
  - (a) is registered as a Registered Participant under the *National Electricity Rules*; or
  - (b) is a Generator who under Rule 2.9.3 of the *National Electricity Rules* is exempt from registration; or
  - (c) is registered as a Rule Participant under the *Wholesale Electricity Market Rules*; or
  - (d) in a registrable capacity set out in Rule 135A, is registered as a Registered Participant under Rule 135AE of the *National Gas Rules*; or
  - (e) in a registrable capacity set out in Rule 135ABA, is registered as a Registered Participant under Rule 135AE of the *National Gas Rules*; or
  - (f) is acting on behalf of a person specified in subparagraphs 22.3(2)(a)-(e).

22.4 Subject to paragraph 22.5, the AML/CTF Act does not apply to a designated service that:

- (1) is of a kind described in item 33 of table 1 in section 6 of the AML/CTF Act; and
- (2) relates to the over-the-counter derivatives market in Australia in respect of one or more of the following commodities or products:
  - (a) electricity; or
  - (b) gas; or
  - (c) environmental products; or
  - (d) coal, oil, diesel or other form of fuel used in the generation of electricity by either:
    - (i) the provider of the designated service; or
    - (ii) the customer; or
  - (e) interest rate derivative products; or
  - (f) weather index or scale products relating to precipitation, temperature, wind, humidity or solar exposure; or
  - (g) foreign exchange derivative products; or

- (h) oil derivative products linked to gas supply contracts.

22.5 The exemption in paragraph 22.4 only applies if:

- (1) the person who provides the designated service:
  - (a) is acting in the capacity of an agent of a person who is registered as a Registered Participant under the *National Electricity Rules*; or
  - (b) is acting in the capacity of an agent of a person who is a Generator who under Rule 2.9.3 of the *National Electricity Rules* is exempt from registration; or
  - (c) is acting in the capacity of an agent of a person who is registered as a Rule Participant under the *Wholesale Electricity Market Rules*; or
  - (d) is acting in the capacity of an agent of a person who in a registrable capacity set out in Rule 135A, and is registered as a Registered Participant under Rule 135AE of the *National Gas Rules*; or
  - (e) is acting in the capacity of an agent of a person in a registrable capacity set out in Rule 135ABA, and is registered as a Registered Participant under Rule 135AE of the *National Gas Rules*; and
  - (f) one of the following applies:
    - (i) the person holds an AFS licence that authorises that person to provide the designated service; or
    - (ii) the person is appointed as an authorised representative under section 916A of the *Corporations Act 2001* to provide the designated service; or
    - (iii) the person is, by regulation made under section 134 of the *Electricity Industry Act 2004* (WA), exempt from the requirement to hold an AFS licence that authorises that person to provide the designated service; and
- (2) the person who is the customer of the designated service:
  - (a) is registered as a Registered Participant under the *National Electricity Rules*; or
  - (b) is a Generator who under Rule 2.9.3 of the *National Electricity Rules* is exempt from registration; or
  - (c) is registered as a Rule Participant under the *Wholesale Electricity Market Rules*; or

- (d) in a registrable capacity set out in Rule 135A, is registered as a Registered Participant under Rule 135AE of the *National Gas Rules*; or
- (e) in a registrable capacity set out in Rule 135ABA, is registered as a Registered Participant under Rule 135AE of the *National Gas Rules*; or
- (f) is acting in the capacity of an agent of a person specified in subparagraphs 22.5(2)(a)-(e).

22.6 In this Chapter:

- (1) ‘AFS licence’ refers to an Australian financial services licence granted under section 913B of the *Corporations Act 2001*;
- (2) ‘environmental products’ are transferable instruments created or recognised under Commonwealth, State or Territory laws which are intended to enhance environmental sustainability, reduce greenhouse gas emissions, increase the generation of electricity from renewable sources or encourage the efficient use of energy and including any emissions trading or other scheme;
- (3) ‘National Electricity Rules’ refers to the Rules made pursuant to the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA);
- (4) ‘National Gas Rules’ refers to the Rules made pursuant to the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008*;
- (5) ‘Wholesale Electricity Market Rules’ refers to the market rules made under the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WA).

*Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the Australian Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to OAIC or call 1300 363 992.*