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Office of the President

7 August 2018

Committee Secretary
Transport and Public Works Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: tollroads@parliament.qld.gov.au.

Dear Committee Secretary

Inquiry into the operations of Toll Roads in Queensland

Thank you for the opportunity to provide comments on the inquiry into operations of Toll Roads in Queensland (the Inquiry).

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This submission has been compiled with the assistance of the QLS Competition and Consumer Law Committee, whose members have substantial expertise in this area.

We note that the Inquiry has a number of terms of reference. QLS does not propose to make extensive comments on each of these, however, our members have identified a number of issues with the current operations of toll roads in South-East Queensland.

First, a period of three days to pay a toll may not always be adequate in circumstances. For example, our members report a toll road user may not always be aware of their account balance within the three days. We understand that accounts are not always sent to users nor are these users alerted when their account is in debit. Conversely, there are also reports that emails are sent to a user stating that the account needs to be "topped-up" when there is still a positive balance.

This uncertainty about a user's account balance can lead to missed payments and additional late and administration fees. QLS submits that toll road users should be provided with clear, accurate information about their account balance and be able to gain instant access to this information through web-based and phone services.

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We also consider that the description of the "Overdue Interest Charge" on the Linkt website needs further clarification so that consumers can understand how much interest will be charged in a specified period of time.

The accrual of interest and other administration fees often leads to a debt that the toll road user is not aware of and not in a position to pay. This issue becomes more complex if the debt is referred to SPER. We would like to see further consideration given to how debts are recovered and managed.

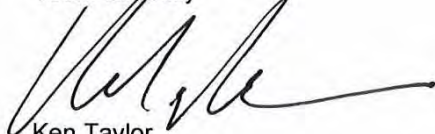
QLS is concerned that these difficulties may have a greater impact on people who do not reside in South-East Queensland who may be unfamiliar with the toll road process and payment options available. Increased and more accessible information should be disseminated to these people.

Finally, the Committee may be assisted in its inquiry by the Australian Securities and Investment Commission (ASIC) Regulatory Guide (RG185) on non-cash payment (NCP) facilities. This document can be found at <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rq-185-non-cash-payment-facilities/>. Whilst there is some discussion in the Regulatory Guide about electronic road toll devices being a NCP facility, ASIC has issued a legislative instrument (2016/211 available at: <https://www.legislation.gov.au/Details/F2016L00367>) to specifically exclude these from being financial products for purposes of the *Corporations Act 2001*. Nevertheless, whilst there are no licensing and related obligations, the consumer protections under the *Australian Securities and Investment Commission Act 2001* could still apply.

The Regulatory Guide outlines the disclosure necessary for consumers which supports our above calls for better information on toll fees and other charges. We would be pleased to see the Committee make this recommendation.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Kate Brodnik by phone on [REDACTED] or by email to [REDACTED]

Yours faithfully



Ken Taylor
President



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 185

Non-cash payment facilities

Related instrument ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211

Chapter 7—Financial services and markets

Issued 15/11/2005

From 5 July 2007, this document may be referred to as Regulatory Guide 185 (RG 185) or Policy Statement 185 (PS 185). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 185.1) or their policy statement number (e.g. PS 185.1).

Editor's note: *This guide was updated in March 2016 following the repeal of certain class orders (some of which were due to sunset under the Legislation Act 2003), which have been remade as ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211. The following references were also updated: Australian Standard on Complaints Handling (AS 4269–1995) was updated to Australian Standard AS ISO 10002–2006 Customer satisfaction—Guidelines for complaints handling in organizations; Uniform Consumer Credit Code was updated to National Credit Code; Trade Practices Act 1974 was updated to Competition and Consumer Act 2010; Electronic Funds Transfer Code of Conduct (EFT Code) was updated to ePayments Code; and references to certain ASIC regulatory guides were updated to reflect changes to their titles.*

What this guide is about

RG 185.1 This guide sets out our approach to regulating non-cash payment (NCP) facilities under the *Corporations Act 2001* (Corporations Act).

Note: For a definition of 'NCP facility', see 'Key terms' and the Schedule.

RG 185.2 It discusses:

A our general approach to regulating NCP facilities, including our policy on granting relief from provisions of the Corporations Act

see RG 185.5–RG 185.21

B our approach to low value NCP facilities

see RG 185.22–RG 185.31

C our approach to the following specific products that constitute NCP facilities:

- (a) gift vouchers or cards;
- (b) prepaid mobile phone accounts;
- (c) loyalty schemes; and
- (d) electronic road toll devices

see RG 185.32–RG 185.55

RG 185.3 The guidance in this guide should be read in the context of the overall framework of provisions governing the regulation of NCP facilities: see the Schedule.

RG 185.4 We note that regulation of NCP facilities as financial products under the Corporations Act is recent and products constituting NCP facilities continue to develop and evolve. Therefore, we may need to review our policy at some point in the future to take into account our experience in regulating NCP facilities and the nature and extent of industry developments.

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Important note: The content of this guide is based on the law as at 15 November 2005. Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements. This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act applies to you. It is your responsibility to determine your obligations under the Corporations Act.

A Our general approach

Our policy

How will we regulate NCP facilities?

RG 185.5 We will adopt a flexible approach to administering the financial services licensing, conduct and disclosure obligations for NCP facilities under the Corporations Act. We will take into account the fact that the provision of NCP facilities is a developing area and that the concept of an ‘NCP facility’ covers a broad spectrum of facilities.

RG 185.6 As a starting point, our policies on licensing, conduct and disclosure will generally apply to the provision of NCP facilities.

What relief is available?

RG 185.7 We will consider applications for individual or class order relief for products or arrangements that constitute NCP facilities on a case-by-case basis under:

- (a) our general exemption and modification powers in Ch 7 of the Corporations Act; and
- (b) our general policy on granting relief:
 - (i) from the licensing provisions (see Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167)); and
 - (ii) from the product disclosure requirements (see Regulatory Guide 169 *Disclosure: Discretionary powers* (RG 169)).

RG 185.8 When considering applications for relief, we will take into account:

- (a) whether we think Parliament intended the NCP facility to be regulated as a financial product under the Corporations Act;
- (b) whether most non-cash payments can only be made to the issuer of the NCP facility or related bodies corporate of the issuer;
- (c) whether financial services provided by means of the NCP facility are a significant part of the applicant’s business;
- (d) the nature, scale and complexity of the NCP facility (especially whether it is simple, easy-to-use and well understood by retail consumers);
- (e) the potential for consumer problems to arise from the use of the NCP facility;
- (f) whether the NCP facility and related financial services are subject to adequate alternative regulation, such as regulation by an industry-specific regulator; and

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- (g) the likelihood of significant developments in the nature and/or use of the NCP facility.

RG 185.9 We will have regard to the factors in RG 185.8 in tailoring any relief that we grant. For example, we might:

- (a) grant conditional relief when we think a facility is intended to be regulated as an NCP facility under the Corporations Act, but we consider an adapted form of the licensing, conduct and disclosure requirements is needed to take into account the particular circumstances of the NCP facility;
- (b) grant unconditional relief when we think an NCP facility as currently operated is highly unlikely to create problems for consumers, but we think that potential developments in the operation of the NCP facility may require us to change our approach in the future; or
- (c) declare that an NCP facility is not a financial product where we think it is unintentionally caught by the broad definition of ‘NCP facility’ in the Corporations Act.

RG 185.10 Taking into account the considerations in RG 185.7–RG 185.9, we have granted class order relief from the Corporations Act for the following NCP facilities.

Table 1: Summary of class order relief

NCP facility	Description	Summary of relief
Low value NCP facilities: see ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 and Section B	NCP facility conducted on a small scale	Conditional licensing, conduct and disclosure relief (including from the ongoing disclosure obligations and advertising provisions) and hawking prohibition relief
Gift vouchers or cards: see ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 and Section C	NCP facility that stores value in a device (such as a voucher or card) that is marketed solely as a ‘gift’, is not redeemable for cash and is not reloadable	Unconditional licensing, conduct and disclosure relief (including from the ongoing disclosure obligations and advertising provisions) and hawking prohibition relief
Prepaid mobile phone accounts: see ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 and Section C	NCP facility enabling use of public mobile telecommunication services, which has been paid for in advance	Unconditional licensing, conduct and disclosure relief (including from the ongoing disclosure obligations and advertising provisions) and hawking prohibition relief
Loyalty schemes: see ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 and Section C	A scheme operated by or on behalf of its issuer to encourage the purchase of goods or use of services that the issuer or third parties participating in the scheme provide	Declared not to be a financial product under the Corporations Act

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NCP facility	Description	Summary of relief
Electronic road toll devices: see ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 and Section C	NCP facility used solely for the payment of road tolls	Declared not to be a financial product under the Corporations Act

RG 185.11 If we grant relief from the licensing, conduct or disclosure provisions, both the consumer protection provisions in Div 2 of Part 2 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and the misconduct provisions in Part 7.10 of the Corporations Act continue to apply. Even if we declare an NCP facility not to be a financial product, the ASIC Act consumer protection provisions continue to apply.

Note: Where we use our powers to grant unconditional relief or declare that certain NCP facilities are not financial products, we think that persons providing financial services in relation to those NCP facilities should have regard to some key good consumer protection practices. For details of what we think are good consumer protection practices, see RG 185.19–RG 185.21.

Underlying principles

RG 185.12 We will regulate NCP facilities in a way that is consistent with the Parliamentary intention to include NCP facilities as financial products under the Corporations Act. This means:

- (a) we generally expect persons providing any financial services in relation to NCP facilities to hold an Australian financial services (AFS) licence and comply with the conduct and disclosure obligations of the Corporations Act; and
- (b) we will consider any applications for relief under our general policy in RG 167 and RG 169, but also take into account the specific factors in RG 185.8.

Explanations

How will we regulate NCP facilities?

RG 185.13 NCP facilities were expressly included as financial products in the *Financial Services Reform Act 2001* (FSR Act) because they were clearly intended to be regulated as part of the financial services regulatory regime. For example, we consider that the financial services regulatory regime was clearly intended to regulate most debit cards and online payment arrangements. Such facilities generally allow for transfer of a client’s money to a third party and raise both consumer protection and market integrity issues: see RG 185.14–RG 185.15.

Note 1: See the Schedule for a detailed definition of NCP facility and further discussion of the regulatory framework for NCP facilities, including the licensing, conduct and disclosure requirements under the Corporations Act.

Note 2: For more information about our general policies on financial services licensing, conduct and disclosure, see:

- (a) Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146);
- (b) Regulatory Guide 164 *Licensing: Organisational capacities* (RG 164);
- (c) Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165);
- (d) Regulatory Guide 166 *Licensing: Financial requirements* (RG 166);
- (e) Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168);
- (f) Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175); and
- (g) Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181).

Consumer protection

RG 185.14 NCP facilities raise a number of consumer protection issues. The licensing, conduct and disclosure requirements in the Corporations Act address some of the key risks to consumers, including the risk that:

- (a) persons providing financial services in relation to NCP facilities will not be able to carry out their obligations in delivering financial services;

Note: The licensing assessment process, in particular, helps address this risk by requiring applicants to demonstrate adequate competence and resource levels (e.g. by meeting minimum standards for education and training).

- (b) the consumer will lose value because of fraudulent or negligent conduct by persons providing financial services in relation to NCP facilities; and
- (c) consumers will choose inappropriate financial products because they are inadequately informed about key features of an NCP facility, such as:
 - (i) an issuer's right to unilaterally change the terms and conditions of the product without notice;
 - (ii) their lack of or restricted access to refunds for unused value; and
 - (iii) their limited ability to promptly replace a card or other item required for the NCP facility without detriment if it is lost or stolen.

Market integrity

RG 185.15 NCP facilities also raise market integrity issues similar to those raised by other financial products regulated by ASIC. NCP facilities normally involve a mechanism allowing for the transfer of value. Those who provide financial products of this kind must do so competently and

with integrity to minimise the risk of substantial loss of value and damage to the reputation of the market for NCP facilities.

What relief is available?

RG 185.16 We accept that the definition of NCP facility in the Corporations Act is broad and may inadvertently catch arrangements not intended to be regulated as NCP facilities.

RG 185.17 We recognise that, for some types of NCP facilities, relief is appropriate because:

- (a) compliance with the financial services regulatory regime may be disproportionately burdensome; and
- (b) the likelihood and extent of potential consumer detriment may be minimal.

RG 185.18 Further, depending on the circumstances:

- (a) a reasonable person may think that the predominant purpose in providing the NCP facility is not a financial product purpose; or
- (b) the fact that the overwhelming volume of payments made using an NCP facility fall within the exemptions in s763D(2)(a) and reg 7.6.01(1)(lb) may indicate that Parliament did not intend such facilities be regulated as NCP facilities under the Corporations Act: see the Schedule at RG 185.64–RG 185.65.

Good consumer protection practices

RG 185.19 Even where we use our powers to declare that certain NCP facilities are not financial products or grant unconditional relief, we think that, as a matter of good practice, persons providing services in relation to these facilities should have regard to some good consumer protection practices. These practices will:

- (a) help consumers make informed decisions before they acquire the NCP facility; and
- (b) provide ongoing protection of consumer interests.

RG 185.20 A key component of good practice in this context is good disclosure. Good disclosure means ensuring that consumers receive adequate information about the product before they make a decision to buy it. We think consumers should receive information about the key terms and conditions of the product in a document worded and presented in a clear, concise and effective manner. We also think that issuers of these arrangements should consider disclosure about the following key features of the facilities:

- (a) whether any of the terms and conditions may be unilaterally varied by the issuer and how the client can find information about any new terms and conditions;

- (b) whether the whole or any part of the benefits from the facility is subject to an expiry date and if so, how the client can find out details of the expiry date;

Note: In the case of a facility subject to an expiry date, it may be appropriate to make arrangements ensuring prominent disclosure of the expiry date.

- (c) fees or charges for acquiring or using the facility and, where they are subject to change during the life of the facility, how the client can find information about new fees or charges;
- (d) how unauthorised or mistaken transactions, or the loss or theft of the physical device (if there is one) for or means of using the facility, are dealt with; and
- (e) how any disputes will be dealt with.

Note: We think issuers should consider maintaining an internal dispute resolution process that takes into account guidance in the Australian Standard AS ISO 10002–2006 *Customer satisfaction—Guidelines for complaints handling in organizations*.

RG 185.21 To protect consumers' ongoing interests, we think they should be notified of unilateral variations to the terms and conditions of the facility or changes to fees or charges for using the facility. Issuers should think about giving this ongoing disclosure in a way that is easy for consumers to find (e.g. signage at point-of-sale counters or notice on an internet website).

B Low value NCP facilities

Our policy

What relief is available?

RG 185.22 We have granted conditional class order relief to persons providing financial services in relation to low value NCP facilities from:

- (a) certain provisions in Part 7.6, including the licensing requirements;
- (b) conduct requirements in Parts 7.7 and 7.8;
- (c) the product disclosure requirements in Part 7.9; and
- (d) the hawking prohibition in s992A.

See ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211.

RG 185.23 Our relief applies to low value NCP facilities that satisfy the following test:

- (a) the total amount available for the making of non-cash payments under all facilities of the same class held by any one client does not exceed \$1000 at any one time;
- (b) the total amount available for making non-cash payments under all facilities of the same class does not exceed \$10 million at any time; and
- (c) the facility is not part of another financial product.

What are the conditions of relief?

RG 185.24 Under our relief, the low value NCP facility issuer must take reasonable steps to ensure that:

- (a) before or at the time the facility is offered to a retail client, the terms and conditions of the facility are disclosed to the client in a document (disclosure document) worded and presented in a clear, concise and effective manner. The disclosure document must separately set out in a prominent manner:
 - (i) whether any of the terms and conditions may be unilaterally varied by the issuer and how the client can find information about any new terms and conditions;
 - (ii) whether the whole or any part of the benefits from the facility is subject to an expiry date and if so, how the client can find out details of the expiry date;
 - (iii) how unauthorised or mistaken transactions, or the loss or theft of the physical device (if there is one) for or means of using the facility, are dealt with; and

- (iv) fees or charges for acquiring and using the facility and, where they are subject to change during the life of the facility, how the client can find information about new fees or charges;
 - (b) where the facility is subject to an expiry date:
 - (i) if the client is provided with a physical device (such as a stored value card or document) to make non-cash payments, the expiry date is prominently set out on the device; and
 - (ii) otherwise, the expiry date is set out in the disclosure document;
- Note: Handwriting the expiry date on the physical device or disclosure document will meet the requirements of this condition.
- (c) the client is provided with a convenient means by which, at no charge, they can:
 - (i) check their balance under the facility;
 - (ii) if they are not provided with a physical device, check any relevant expiry date applying to the facility; and
 - (iii) obtain at reasonable intervals a transaction history of the past ten transactions, or such transactions that have occurred;
 - (d) if the terms and conditions of the facility are unilaterally varied or the fees or charges for using the facility are changed during its life:
 - (i) information about the variation or change is made available to the client in the manner described in the disclosure document;
 - (ii) at each place where the facility may be acquired:
 - (A) a statement setting out the effect of the variation or change is displayed in a public area; and
 - (B) the new terms and conditions or fees or charges are made available to the client on request; and
 - (iii) if the issuer makes information about the facility available on an internet website, a statement setting out the effect of the variation or change, information about the variation or change and the new terms and conditions or fees and charges are made available on the website; and
 - (e) if the facility is issued to a retail client, adequate internal dispute resolution processes are maintained.

Note: We consider it good practice for the issuer to document internal dispute resolution processes. For more detail, see Regulatory Guide 165 *Licensing: Internal and external dispute resolution* at RG 165.17.

RG 185.25 Persons, other than issuers, who provide financial services in relation to low value NCP facilities must take reasonable steps to ensure that:

- (a) before or at the time the facility is offered to a retail client, the client is given a disclosure document; and

- (b) where the facility is subject to an expiry date:
- (i) if the client is provided with a physical device to make non-cash payments, the expiry date is prominently set out on the device; and
 - (ii) otherwise, the expiry date is set out in the disclosure document.

Note: Handwriting the expiry date on the physical device or disclosure document will meet the requirements of this condition.

Underlying principles

RG 185.26 We have acted to avoid unnecessary or disproportionately burdensome regulation. We consider that it is not appropriate for the Corporations Act obligations to apply in full given the nature, scale and complexity of low value NCP facilities. However, we consider that consumers need some protections from the potential risks created by low value NCP facilities.

Explanations

What relief is available?

RG 185.27 We think low value NCP facilities are generally simple, easy-to-use and well understood by retail consumers. In addition, the costs associated with obtaining and complying with an AFS licence are likely to be disproportionate to:

- (a) the amount of income likely to be derived by the person providing financial services in relation to the low value NCP facility; and
- (b) the extent of risk to any individual client through their use of the low value NCP facility.

RG 185.28 We have adopted the thresholds in RG 185.23 to limit potential consumer detriment and to ensure that the relief is confined to facilities that are conducted on a small scale.

RG 185.29 Our approach is consistent with approaches to the regulation of similar facilities in other jurisdictions. For example, the framework for regulating electronic money in the European Union is set out in the European Commission's E-Money Directive, which grants Member States discretion to waive the application of requirements for small e-money issuers.

Note 1: For further information, see Directive 2004/46/EC. The European Commission has launched a review of this Directive to reassess whether the legal framework reflects modern market developments.

Note 2: This approach has been implemented in the United Kingdom: see 'FSA Handbook—Electronic Money Specialist Sourcebook' (March 2005) and 'Guidance on the scope of the regulated activity of issuing e-money (AUTH App 3)' (March 2005).

What are the conditions of relief?

RG 185.30 Low value NCP facilities can carry amounts of monetary value up to \$1000 for the holder's benefit. For some people, this is quite a substantial amount of money. Therefore, we have imposed some initial and ongoing conduct and disclosure obligations that will:

- (a) help consumers make informed decisions before they acquire low value NCP facilities; and
- (b) provide ongoing protection of their interests.

RG 185.31 [Deleted]

C Other relief

Our policy

RG 185.32 This section sets out our approach to the following specific products where they constitute NCP facilities and are not part of other financial products:

- (a) gift vouchers or cards (see RG 185.33–RG 185.35);
- (b) prepaid mobile phone accounts (see RG 185.36–RG 185.37);
- (c) loyalty schemes (see RG 185.38–RG 185.40); and
- (d) electronic road toll devices (see RG 185.41–RG 185.42).

Gift vouchers or cards

RG 185.33 We have granted unconditional class order relief to persons providing financial services in relation to gift vouchers or cards constituting NCP facilities from:

- (a) certain provisions in Part 7.6, including the licensing requirements;
- (b) conduct requirements in Parts 7.7 and 7.8;
- (c) the product disclosure requirements in Part 7.9; and
- (d) the hawking prohibition in s992A.

See ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211.

RG 185.34 This relief applies where the gift voucher or card constituting the NCP facility has the following characteristics:

- (a) it has the ability to store monetary value, which is not redeemable for cash, except where amounts unlikely to be conveniently used under the facility are withdrawn;

Note: For example, a nominal amount standing to the credit of the facility as a result of one or more non-cash payments through the facility (i.e. as ‘change’ from a transaction or transactions) can be redeemed as cash.

- (b) it is not reloadable (i.e. a client can only make one payment for the gift voucher or card and no person can make additional payments that increase the value of the gift voucher or card, after it is initially acquired);

Note: A gift voucher or card is not reloadable where the stored value on the gift voucher or card is increased to reverse payments in the case of refunds or corrections.

- (c) it can be used on multiple occasions;
- (d) it is marketed solely as a *gift* voucher or *gift* card; and
- (e) where it is subject to an expiry date, appropriate arrangements are in place to prominently disclose that expiry date.

Note: For example, where use of the facility requires a physical device, the expiry date must be prominently set out on the device. This includes handwriting it on the device.

RG 185.35 Our relief means that the financial services licensing, conduct and disclosure obligations of the Corporations Act (together with the hawking prohibition) will not apply to gift vouchers and cards.

Prepaid mobile phone accounts

RG 185.36 We have granted unconditional class order relief to persons providing financial services in relation to prepaid mobile phone accounts constituting NCP facilities from:

- (a) certain provisions in Part 7.6, including the licensing requirements;
- (b) conduct requirements in Parts 7.7 and 7.8;
- (c) the product disclosure requirements in Part 7.9; and
- (d) the hawking prohibition in s992A.

See ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211.

RG 185.37 Our relief means that the financial services licensing, conduct and disclosure obligations of the Corporations Act (together with the hawking prohibition) will not apply to these accounts.

Loyalty schemes

RG 185.38 We have declared that loyalty schemes are not financial products for the purposes of Ch 7 of the Corporations Act where those schemes have the following characteristics:

- (a) their sole or main purpose is to promote spending on the goods and/or services of the issuer or third parties participating in the scheme;
- (b) clients are allocated a measure of value (credits) as a result of acquiring or using goods and/or services of the issuer or third parties participating in the scheme, whether or not a monetary value is expressly attributed to the credits; and
- (c) the credits can be used to make a payment or part payment for goods or services or to obtain some other benefit.

See ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211.

Note: Examples of loyalty schemes that would fall within this relief may include schemes that encourage the use of credit card payments or airline services, as well as schemes that promote spending at shopping centres or department stores.

RG 185.39 This means that the financial services licensing, conduct and disclosure requirements (including the hawking prohibitions) and Part 7.10 of the Corporations Act will not apply to these loyalty schemes.

RG 185.40 We have also granted unconditional relief from the requirement to be registered under Ch 5C of the Corporations Act where a loyalty scheme constitutes a managed investment scheme.

Electronic road toll devices

RG 185.41 We have declared that electronic road toll devices constituting NCP facilities are not financial products for the purposes of Ch 7 of the Corporations Act: see ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211.

RG 185.42 Our relief means that the financial services licensing, conduct and disclosure obligations (together with the hawking prohibition) and Part 7.10 of the Corporations Act will not apply to these devices.

Underlying principles

RG 185.43 In adopting a flexible approach to NCP facilities, we have taken into account the consumer protection and market integrity goals of the Corporations Act, the risks posed by NCP facilities and the need to avoid unnecessary or disproportionately burdensome regulation. In doing so, we have been guided by the factors in RG 185.8 in tailoring our relief.

Explanations

Gift vouchers or cards

RG 185.44 We think:

- (a) gift vouchers and cards are simple, easy-to-use and well understood by retail consumers;
- (b) providing gift vouchers or cards that are NCP facilities does not generally constitute a significant part of the business of the person providing financial services in relation to the gift voucher or card; and
- (c) the costs associated with obtaining and complying with an AFS licence are likely to be disproportionate to any risks to consumers created by the use of gift vouchers or cards.

RG 185.45 ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 does not apply to gift vouchers or cards constituting NCP facilities that are:

- (a) redeemable for cash;
- (b) reloadable; or
- (c) not marketed as gifts (for example, the relief will not apply if the gift voucher or card is marketed as being a debit-style device or a tool that helps consumers with their domestic budgeting).

This is because we think that relief for facilities with these characteristics would create unacceptable consumer outcomes. Such facilities have the features of ‘smart cards’ or bank-issued debit cards, both of which are intended to be regulated NCP facilities in the Corporations Act.

RG 185.46 We have granted unconditional relief for gift vouchers or cards, rather than declare them not to be financial products, because we think that potential developments in the use or features of these products may mean that they will create consumer or market integrity risks in the future. We may need to impose conditions on our relief or apply all or part of Ch 7 of the Corporations Act to address these risks. We will follow any developments (including any complaints from consumers) in deciding whether to review our policy at some point in the future.

Prepaid mobile phone accounts

RG 185.47 Our assessment of prepaid mobile phone accounts is that they are currently not intended to be used primarily for making non-cash payments to persons other than the issuer of the prepaid mobile phone account. This means that their provision as an NCP facility, at present, is not a significant part of the business of the person providing them.

RG 185.48 There is also an alternative regulatory regime, primarily under the *Telecommunications Act 1997*, that governs the operations of mobile telecommunications suppliers. While this regime is not directed to the exact objectives of the Corporations Act, it provides for:

- (a) certain disclosures to be made to consumers about contracts, prices and terms and conditions;
- (b) adequate complaints handling procedures; and
- (c) the ability to approach the Telecommunications Industry Ombudsman (i.e. an external dispute resolution forum) in the case of some unresolved consumer complaints.

We expect that mobile telecommunications suppliers will continue to comply fully with this regime when relying on our relief under ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211.

RG 185.49 We have granted unconditional relief to prepaid mobile phone accounts, rather than declare that they are not financial products, because we think future developments in the mobile telecommunications industry may lead to prepaid mobile phone accounts being used to make significant purchases from third parties. Such developments may create greater consumer and market integrity risks and warrant the imposition of conditions on our relief or partial or full application of the financial services regulatory regime under Ch 7 of the Corporations Act. We will follow this industry's developments and may review our policy at some point in the future depending on the scope and extent of the developments.

RG 185.50 Our approach is consistent with approaches to the regulation of prepaid mobile phone accounts in other jurisdictions. For example, the European Commission has indicated that when regulating prepaid mobile phone accounts:

- (a) a flexible approach should be adopted because market practice may change over time given technological advances in the mobile phone industry; and
- (b) it may be difficult to justify imposing all elements of the E-Money Directive from a 'proportionality' viewpoint considering the risks taken by both mobile operators and consumers. The European Commission does not preclude imposing the requirements for consumer protection or financial stability reasons in the future.

Note: See 'Guidance Note: Application of the E-Money Directive to Mobile Operators' and 'Consultation Paper of DG Internal Market: Application of the E-Money Directive to Mobile Operators'. For further information about the E-Money Directive, see RG 185.29.

Loyalty schemes

RG 185.51 We regard loyalty schemes as generally simple, easy-to-use and well understood by retail consumers. They are usually issued at limited cost (if any) to the client and as marketing tools ancillary to other services (such as credit) provided by the issuer or its business partners. Therefore, the provision of loyalty schemes is not a significant part of the business of the scheme's issuer or business partners.

Note: There is also adequate alternative regulation for unsolicited contact with clients (i.e. hawking) for loyalty schemes associated with credit products regulated under the National Credit Code: see s155 and 156 of that Code.

RG 185.52 For the reasons outlined in RG 185.51, we think it was not intended that loyalty schemes be regulated as an NCP facility under the Corporations Act. Therefore, we have declared that loyalty schemes are not financial products for the purposes of Ch 7 of the Corporations Act.

RG 185.53 ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 does not preclude the need to comply with the consumer protection provisions of the ASIC Act: see RG 185.11. We expect persons providing financial services in relation to loyalty schemes to maintain full compliance with these provisions.

Note 1: The consumer protection provisions of the ASIC Act will apply if the loyalty scheme is a financial product. This will be the case where the loyalty scheme has the characteristics set out in RG 185.38 and no exemption from being a financial product under the ASIC Act applies. The consumer protection provisions also apply to conduct in relation to financial services. For example, providing loyalty schemes as an adjunct to credit facilities may involve conduct in relation to financial services.

Note 2: Where the consumer protection provisions under Div 2 of Part 2 of the ASIC Act do not apply to a loyalty scheme, such loyalty schemes will be subject to the relevant provisions in the *Competition and Consumer Act 2010*.

Electronic road toll devices

RG 185.54 We think electronic road toll devices are simple, easy-to-use and well understood by retail consumers. In addition, these products are not provided to facilitate multi-purpose payments. They

are directed to the limited purpose of paying road tolls. Given this background, we think Parliament did not intend electronic road toll devices to be caught by the financial services regulatory regime. Accordingly, we have declared that they are not financial products for the purposes of Ch 7 of the Corporations Act.

RG 185.55 ASIC Corporations (Non-cash Payment Facilities)

Instrument 2016/211 does not preclude the need for compliance with the consumer protection requirements in the ASIC Act: see RG 185.11.

Persons providing financial services in relation to electronic road toll devices must fully comply with these requirements.

Schedule: The regulatory framework

Important note: The information in this Schedule does not constitute legal advice. It provides general guidance about the regulatory framework for NCP facilities under the Corporations Act. If you intend to provide financial services in relation to NCP facilities, you need to seek your own professional advice to find out how the Corporations Act applies to you. It is your responsibility to determine your obligations under the Corporations Act.

RG 185.56 This Schedule provides an overview of how NCP facilities are regulated. It outlines:

- (a) what an NCP facility is;
- (b) the requirements applying to NCP facilities in Australia, including:
 - (i) the licensing provisions that apply to persons who provide financial services in relation to NCP facilities (e.g. by providing financial product advice or dealing); and
 - (ii) the conduct and disclosure provisions imposing obligations on persons who provide financial services in relation to NCP facilities; and
- (c) how NCP facilities are regulated by other Australian regulators.

What is a non-cash payment facility?

RG 185.57 A person makes a non-cash payment if they make a payment or cause a payment to be made otherwise than through the physical delivery of Australian or foreign currency: s763D.

RG 185.58 The facility through which, or through the acquisition of which, a person makes such a payment is the financial product regulated under the Corporations Act: s763A(1)(c). A 'facility' includes intangible property, an arrangement (or one of its terms) or a combination of these things: s762C. An arrangement includes a contract, agreement, understanding or scheme and can be in writing or oral. An arrangement does not have to be enforceable or contained in a formal document: s761A.

RG 185.59 An arrangement (or term of an arrangement) may be an NCP facility if:

- (a) it enables a non-cash payment to be made and the facility is intended to be used to make such a payment; or
- (b) facilities of that kind are commonly used to make a non-cash payment: s763A(2).

RG 185.60 The act of making a non-cash payment to the recipient is a 'use' of the NCP facility by the holder. For example:

- (a) an instruction by a client to make a non-cash payment to a particular payee is a 'use' of the NCP facility by the client;
- (b) for a cheque facility, the writing of a cheque to a particular payee is a 'use' of the facility by the client, while the arrangement giving the ability to write that cheque is the NCP facility;
- (c) for a stored value facility, the NCP facility is the arrangement (which may include a physical device) that gives a person the ability to make non-cash payments to various payees from time to time, while presentation of the device to make a purchase is a 'use' of that facility; and
- (d) for direct debits, the NCP facility is the arrangement between the client and a financial institution that gives the client the ability to make direct debit payments to various persons (payees) from time to time, while an order by the client to make a direct debit payment to a payee is a 'use' of the facility.

Note: Telephone or computer equipment may be the means of giving instructions to make a payment using a particular NCP facility. However, while the underlying NCP facility may be the financial product (e.g. direct debit), the physical communication system is not: see s765A(1)(x).

RG 185.61 Specific examples of NCP facilities include cheque accounts, traveller's cheques, stored value cards, electronic cash, direct debit services, payroll cards, funds transfer services and electronic bill payment services.

Links to another financial product

RG 185.62 Some NCP facilities will be linked to another facility. Depending on the circumstances, the NCP facility and the other facility may together form a single financial product because they are part of the one arrangement. If the holder of the facility or facilities can choose to receive one component without taking another, while not affecting the terms of the component they take, then the facilities are not likely to be part of the one arrangement and there may be two or more separate financial products (even if more than one component is in fact acquired).

RG 185.63 An arrangement may also incorporate within it two or more facilities. Those facilities may be financial products regardless of whether the wider arrangement is or is not a financial product.

Note: For example, if one of the facilities that is a component of the wider arrangement or the wider arrangement itself, is excluded from being a financial product by the credit facility exclusion (reg 7.1.06), another component of the wider arrangement that is itself a financial product need not necessarily be excluded.

What exemptions are available?

RG 185.64 The Corporations Act excludes certain NCP facilities from being financial products. These exemptions include:

- (a) a facility that only allows payments to be made to one person (s763D(2)(a)(i));
Note: See RG 185.65 for further discussion of this exemption.
- (b) a facility that allows payments by means of a letter of credit from a financial institution (s763D(2)(b)(i));
- (c) a facility that allows payments by means of a cheque drawn by a financial institution on itself (s763D(2)(b)(ii));
- (d) a facility that allows payments to be made by means of a guarantee given by a financial institution (s763D(2)(b)(iii));
- (e) an NCP facility that is an incidental component of another facility or incidental to another facility in certain circumstances (s763E);
- (f) a credit facility (s765A(1)(h)(i));
- (g) a facility by which non-cash payments will all be debited to a credit facility (s765A(1)(h)(ii))—this would include a credit card where all transactions are paid for on a revolving basis;
- (h) a money order issued as a money order by, or for, Australia Post (reg 7.1.07F); and
- (i) certain electronic funds transfers (reg 7.1.07G).

Note: See RG 185.66 for further discussion of this exemption.

RG 185.65 The single payee exemption under s763D(2)(a)(i) covers products where there is only one person to whom a payment can be made (e.g. transport cards which have one payee and prepaid photocopying cards redeemable at a single institution).

Note 1: For further explanation, see the Revised Explanatory Memorandum to the *Financial Services Reform Bill 2001* at paragraph 6.66.

Note 2: Licensing relief is also provided for an NCP facility that only allows payment to be made to the issuer of the facility or a related body corporate of the issuer: reg 7.6.01(1)(lb).

RG 185.66 The exemption for certain electronic funds transfer products (reg 7.1.07G) is limited to products that meet the following criteria:

- (a) the issuer is an authorised deposit-taking institution (ADI) or an operator of a payment system (e.g. well-established and substantial remittance dealers);
- (b) payment is made (i.e. money is available to the recipient) within two business days (or such longer period as is reasonable);
- (c) the funds are transferred electronically; and
- (d) there is no standing arrangement with the client to transfer funds in that manner.

RG 185.67 ASIC has also exercised its powers to:

- (a) grant relief to persons providing financial services in relation to low value NCP facilities, gift vouchers or cards and prepaid mobile phone accounts; and
- (b) declare that loyalty schemes and electronic road toll devices are not financial products for the purposes of Ch 7 of the Corporations Act.

Note 1: See Sections B and C of this guide.

Note 2: ASIC will also consider applications for individual or class order relief for other products or arrangements that constitute NCP facilities on a case-by-case basis: see Section A of this guide.

How are NCP facilities regulated in Australia?

RG 185.68 The FSR Act introduced the regulation of NCP facilities under the Corporations Act. Their express inclusion as financial products shows a clear intention that they should be regulated as part of the financial services regulatory regime.

RG 185.69 One aim of the FSR Act was to implement a single licensing, conduct and disclosure framework for financial products and services. NCP facilities may raise a number of market integrity and consumer protection risks that the Australian financial services licensing, conduct and disclosure requirements of the Corporations Act help to address.

Licensing requirements

RG 185.70 A person who carries on a financial services business in Australia must hold an AFS licence, unless an exemption applies: s911A.

RG 185.71 A financial services business means a business of providing financial services: s761A. A person provides a financial service if (among other things) they:

- (a) provide financial product advice: s766A and 766B; or
- (b) deal in a financial product: s766A and 766C.

Note: See 'Key terms' for definitions of 'deal' and 'financial product advice'. See also Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36) for a discussion of these financial services.

RG 185.72 The Corporations Act covers three types of financial product:

- (a) investment products;
- (b) financial risk management products; and
- (c) NCP facilities.

A facility through which, or through the acquisition of which, a person makes a non-cash payment (or causes one to be made) is generally a financial product: see s763A and 763D.

Note: For further information about NCP facilities generally, see RG 185.57–RG 185.67.

RG 185.73 If you intend to carry on or are carrying on a financial services business involving providing financial product advice on, or dealing in, an NCP facility in Australia, you must hold an AFS licence authorising you to do so, unless an exemption applies (see RG 185.64–RG 185.67): s911A(1) and reg 7.6.01 and 7.6.01B. You should obtain your own legal advice to determine whether an exemption applies to you.

Note 1: For further information about the scope of the licensing regime, see RG 36. For further information about how to apply for an AFS licence, see RG 1–RG 3 *AFS Licensing Kit*.

Note 2: For information about how ASIC will exercise its licensing exemption power in s911A(2)(1), see Section A of RG 167.

RG 185.74 To obtain an AFS licence, you will need to demonstrate that you meet certain requirements relating to matters such as your organisational capacity, education and training levels, and—except for bodies regulated by the Australian Prudential Regulation Authority (APRA)—your risk management systems and financial position. You must continue to meet these requirements at all times while you hold your AFS licence.

Note: For guidance about how to satisfy AFS licensing requirements, see RG 146, RG 164, RG 165, RG 166 and RG 181.

RG 185.75 Certain financial requirements are imposed on all non-APRA regulated AFS licensees as conditions on their AFS licence. RG 166 sets out the financial requirements we expect you to meet as an AFS licensee. We are not a prudential regulator. We impose financial requirements to help ensure that you have sufficient financial resources to conduct your financial services business in compliance with the Corporations Act.

Conduct and disclosure obligations

RG 185.76 The Corporations Act also imposes conduct and disclosure obligations on persons who provide financial product advice on or deal in a financial product: see Parts 7.7, 7.8 and 7.9. These include the obligations imposed on:

- (a) AFS licensees or their authorised representatives to give a retail client a Financial Services Guide (FSG)—an FSG is required to contain information so that consumers can make an informed decision about whether to acquire a financial service;
- (b) AFS licensees or their authorised representatives to give a retail client a Statement of Advice (SOA)—an SOA must contain information about personal advice given to a retail client so that they can make an informed decision about whether to act upon that advice;

- (c) AFS licensees and NCP facility issuers in relation to handling client money and property;
- (d) NCP facility issuers and persons offering or recommending an NCP facility to give a retail client a Product Disclosure Statement (PDS)—a PDS is required to contain sufficient information so that a retail client may make an informed decision about whether to purchase a financial product;
- (e) NCP facility issuers to give a retail client a statement confirming a transaction; and
- (f) NCP facility issuers to give a retail client specific ongoing disclosures about a financial product (e.g. informing NCP facility holders of material changes or significant events in relation to the NCP facility).

Note 1: Exemptions from some of these obligations might apply in certain circumstances.

Note 2: For further information about some of these obligations, see RG 168 and RG 175.

RG 185.77 The Corporations Act also prohibits the hawking of financial products to retail clients: see s992A and 992AA.

Note: For further information about this prohibition, see Regulatory Guide 38 *The hawking prohibitions* (RG 38).

Other requirements administered by ASIC

RG 185.78 Other regulatory requirements may be applicable regardless of whether you are required to hold an AFS licence.

RG 185.79 The market misconduct provisions of Part 7.10 will apply regardless of whether you hold an AFS licence (except where ASIC has declared that a certain NCP facility is not a financial product for the purposes of Ch 7 of the Corporations Act). They prohibit (among other things) misleading or deceptive conduct in relation to financial products such as NCP facilities.

RG 185.80 The consumer protection provisions in Div 2 of Part 2 of the ASIC Act also apply regardless of whether you hold an AFS licence. These provisions relate to (among other things) prohibitions against unconscionable conduct, as well as misleading or deceptive conduct.

RG 185.81 In addition, ASIC administers the ePayments Code. This is a self-regulatory code of conduct that sets out minimum standards on a number of matters including disclosure, privacy, refund rights, dispute resolution and lost or stolen cards. The ePayments Code is relevant to many NCP facilities such as stored value cards. Almost all Australian retail banks, building societies and credit unions subscribe to the ePayments Code. We believe that compliance with the ePayments Code constitutes good practice and we generally expect that your conduct will comply with the ePayments Code.

Other Australian regulators' requirements

RG 185.82 NCP facilities may also be subject to the jurisdiction of other regulators such as APRA and the Reserve Bank of Australia (RBA).

RG 185.83 APRA is responsible for the prudential regulation of ADIs (such as banks, credit unions and building societies), insurance companies, superannuation funds and friendly societies. In general, a person must not carry on 'banking business' in Australia without authority from APRA.

Note: Under the *Banking Act 1959*, APRA has discretion to determine whether the provision of a 'purchased payment facility' constitutes 'banking business'. A 'purchased payment facility' is defined in the *Payment Systems (Regulation) Act 1998* and is similar in concept to an 'NCP facility' in the Corporations Act.

RG 185.84 The RBA is responsible for regulating purchased payment facilities under the *Payment Systems (Regulation) Act 1998*. In general, a purchased payment facility is a facility that stores value that can be used to make payments by the holder of the facility. It includes new forms of payment instruments such as stored value cards and internet-based payment systems.

Note: A purchased payment facility will not be subject to regulation by the RBA where:

- (a) the total outstanding amount of the facility is limited to less than \$1 million, or the facility can be used to make payments to 50 or fewer persons only; or
- (b) its obligations are guaranteed by an ADI, or by a Commonwealth, State or local government authority.

See RBA Media Release 2004–04 'Regulation of purchased payment facilities under the *Payment Systems (Regulation) Act 1998*'.

RG 185.85 NCP facilities may also be subject to regulation by relevant State or Territory bodies.

Key terms

RG 185.86 In this guide, the following terms have the following meanings:

adviser A person who provides financial product advice

ADI Authorised deposit-taking institution

AFS licence An Australian financial services licence issued under s913B

APRA The Australian Prudential Regulation Authority

ASIC The Australian Securities and Investments Commission

ASIC Act The *Australian Securities and Investments Commission Act 2001*

body regulated by APRA The meaning given in s3(2) of the *Australian Prudential Regulation Authority Act 1998*

Ch 7 (for example) A chapter of the Corporations Act (in this example numbered 7)

client A person who is provided with a financial service

Corporations Act The *Corporations Act 2001* and includes regulations made for the purposes of the Corporations Act

deal Any of the following conduct:

- (a) applying for or acquiring a financial product;
- (b) issuing a financial product;
- (c) in relation to securities or managed investment schemes, underwriting the securities or interests;
- (d) varying a financial product;
- (e) disposing of a financial product; or
- (f) arranging for a person to engage in conduct referred to in (a)–(e), unless an exemption applies

Note: This is a definition contained in s766C.

ePayments Code The code (formerly known as the Electronic Funds Transfer Code of Conduct) which regulates electronic payments, including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking, and BPAY

financial product The meaning set out in s763A

financial product advice A recommendation or a statement of opinion, or a report of either of those things, that is intended to influence a person in making a decision about a financial product, or could reasonably be regarded as being intended to have such an influence, which is not exempted from the definition of ‘financial product advice’

Note: This is a definition contained in s766B.

financial service The meaning set out in s766A

Financial Services Guide (FSG) A document that must be given to a retail client for the provision of a financial service under Div 2 of Part 7.7

FSR Act The *Financial Services Reform Act 2001*

general advice Financial product advice that is not personal advice

Note: This is a definition contained in s766B.

issuer The meaning in s761E

licence An AFS licence

licensee A financial services licensee defined as such under s761A (i.e. a person who holds an AFS licence)

NCP facility A facility through which, or through the acquisition of which, a person makes a non-cash payment

non-cash payment (NCP) A payment made or caused to be made, otherwise than by the physical delivery of Australian or foreign currency in the form of notes and/or coins

Part 7.6 (for example) A part of the Corporations Act (in this example numbered 7.6)

personal advice Financial product advice that is given or directed to a person in circumstances where the provider of the advice has considered one or more of the person's objectives, financial situation and needs, or a reasonable person might expect the provider to have considered one or more of those matters

Note: This is a definition contained in s766B.

persons providing financial services in relation to Includes issuers, other dealers and advisers

disclosure provisions The provisions set out in Part 7.9 and related regulations

Product Disclosure Statement (PDS) A document that must be given to a retail client in relation to the offer or issue of a financial product under Div 2 of Part 7.9

RG 168 (for example) A regulatory guide (in this example numbered 168)

RBA The Reserve Bank of Australia

reg 7.1.07G (for example) A regulation of the Corporations Regulations (in this example numbered 7.1.07G)

retail client A client defined as such under s761G

s761 (for example) A section of the Corporations Act (in this example numbered 761)

Statement of Advice (SOA) A document that must be given to a retail client in relation to the provision of personal advice in accordance with Subdivisions C and D of Division 3 of Part 7.7.

Related information

RG 185.87

Headnotes

Non-cash payment facility, licensing, conduct and disclosure relief, hawking prohibition relief, declaration, low value non-cash payment facility, gift voucher or card, prepaid mobile phone account, loyalty scheme, electronic road toll device

Class orders

ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211

Regulatory guides

RG 1–RG 3 *AFS Licensing Kit*

RG 36 *Licensing: Financial product advice and dealing*

RG 38 *The hawking prohibitions*

RG 146 *Licensing: Training of financial product advisers*

RG 164 *Licensing: Organisational capacities*

RG 165 *Licensing: Internal and external dispute resolution*

RG 166 *Licensing: Financial requirements*

RG 167 *Licensing: Discretionary powers*

RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

RG 169 *Disclosure: Discretionary powers*

RG 175 *Licensing: Financial product advisers—Conduct and disclosure*

RG 181 *Licensing: Managing conflicts of interest*

Legislation and codes

Corporations Act, Chapters 7 and 5C, Parts 7.6–7.10, s761A, 761E, 761G, 762C, 763A, 763D, 763E, 765A, 766A, 766B, 766C, 911A, 992A and 992AA and regulations 7.1.06, 7.1.07F, 7.1.07G, 7.6.01, 7.6.01B; ASIC Act, Part 2, Division 2; Australian Prudential Regulation Authority Act; Banking Act; FSR Act; Payment Systems (Regulation) Act; Telecommunications Act; Competition and Consumer Act; ePayments Code; National Credit Code, s155 and 156

Consultation papers

CP 59 *Non-cash payment facilities* (December 2004)

Reports

Refinements to Financial Services Regulation: Proposals Paper, Department of Treasury, Commonwealth Government (May 2005)

Media and information releases

[IR 04/6] ASIC guidelines for interim relief for loyalty schemes
(24 February 2004)

[IR 04/7] ASIC guidelines for interim relief for low value non-cash
payments (24 February 2004)

[IR 04/74] ASIC consults on the regulation of non-cash payment
facilities (22 December 2004)

[MR 05/110] ASIC welcomes financial services refinements proposals
paper (2 May 2005)

[IR 05/22] ASIC provides details on financial services refinement
projects (12 May 2005)

[IR 05/27] ASIC extends interim relief for some non-cash payment
facilities (1 June 2005)

Speeches

ASIC and the regulation of non-cash payment products, Mark Adams,
Director, Regulatory Policy, Australian Securities and Investments
Commission, Presentation to the CARDS Australia Conference
(5 August 2004)



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211

I, Stephen Yen PSM, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 18 March 2016

Stephen Yen

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211*.

2 Commencement

This instrument commences at the same time as the commencement of the *ASIC Corporations (Repeal) Instrument 2016/212*.

3 Cessation

This instrument ceases to apply three years after it commences.

4 Authority

This instrument is made under subsections 765A(2) and 1020F(1) and paragraphs 601QA(1)(a), 926A(2)(a), 951B(1)(a) and 992B(1)(a) of the *Corporations Act 2001*.

5 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

device means any object by which a person may use a low value non-cash payment facility or gift facility.

eligible non-cash payment facility means a non-cash payment facility that:

- (a) is issued by a financial services licensee; or
- (b) is issued by a participant in a designated payment system, within the meaning of section 7 of the *Payments Systems (Regulation) Act 1998*, and that relates to that system.

expiry date means a date after which a non-cash payment facility cannot be used to make non-cash payments.

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

gift facility means a non-cash payment facility in relation to which all of the following apply:

- (a) the amount available for making non-cash payments under the facility:

- (i) is set when the facility is issued;
- (ii) cannot be increased after the facility is issued unless it is because of the reversal of a payment made under the facility or the correction of an error;
- (iii) cannot be withdrawn from the facility by means of a cash payment unless all of the following apply:
 - (A) one or more non-cash payments have already been made using the facility;
 - (B) the amount available for making non-cash payments is an amount that, in the reasonable opinion of the issuer of the facility, is unlikely to be able to be conveniently used under the facility;
 - (C) the withdrawal is of the full amount standing to the credit of the facility;
- (b) the facility may be used to make non-cash payments on more than one occasion;
- (c) the facility is only promoted or marketed as a gift product;
- (d) where the facility has an expiry date and the person who holds the facility is provided with a device to use the facility:
 - (i) 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) the date of issue of the facility (or a date that is no later than 3 months after that date) is prominently set out on the device together with a statement that the facility cannot be used after a specified period after the date set out on the device;
- (e) where the facility has an expiry date but no device is provided, the expiry date is prominently displayed in a manner that:
 - (i) could reasonably be expected to come to the attention of a person who is given, or given use, of the facility at the time it is given and at the time it is used; and
 - (ii) makes clear that it is an expiry date;
- (f) the facility is not a component of another financial product.

low value non-cash payment facility means a non-cash payment facility in relation to which all of the following apply:

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

loyalty scheme means a non-cash payment facility in relation to which all of the following apply:

- (a) the facility is issued as part of a scheme the dominant purpose of which is to promote the purchase of goods from, or the use of services of, the issuer of the facility or another person;
- (b) a person who uses or holds the facility is allocated credits (however described) as a result of the purchase of goods from, or the use of the services of, the issuer of the facility or the other person;
- (c) the credits allocated under the facility can be used to make a payment or part payment for goods or services or to obtain some other benefit;
- (d) the facility is not a component of another financial product.

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

non-cash payment facility means a facility through which, or through the acquisition of which, a person makes non-cash payments.

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

prepaid mobile facility means a non-cash payment facility in relation to which all of the following apply:

- (a) the facility is part of an arrangement for the supply of a public mobile telecommunications service under which the service may be used to the extent it is covered by the amount (the **prepaid amount**) paid in advance which remains unused;
- (b) the non-cash payments made under the facility are debited against the prepaid amount;
- (c) the facility is not a component of another financial product.

public mobile telecommunications service has the meaning given by section 32 of the *Telecommunications Act 1997*.

Part 2—Relief for non-cash payment facilities

6 Loyalty schemes

Operation of a loyalty scheme

- (1) A person does not have to comply with subsection 601ED(5) of the Act in relation to a loyalty scheme.

Declaration not to be a financial product

- (2) A loyalty scheme is not a financial product for the purposes of Chapter 7 of the Act.

7 Road toll facilities

A facility through which, or through the acquisition of which, a person makes a non-cash payment of a toll for the use of a road, but no other kind of non-cash payment, is not a financial product for the purposes of Chapter 7 of the Act.

8 Non-cash payment facilities used for third party payments

A financial services licensee does not have to comply with subsection 911A(1) of the Act for the provision of a financial service if:

- (a) the financial service is provided in the ordinary course of the licensee's business; and
- (b) the financial service consists of either or both of the following:
 - (i) advising a person in relation to an eligible non-cash payment facility that the person may use, or has used, to pay a person other than the licensee for goods or services;
 - (ii) arranging for a person to deal (other than by way of issue) in an eligible non-cash payment facility that the person may use to pay a person other than the licensee for goods or services; and
- (c) the licensee is not the issuer of a non-cash payment facility; and
- (d) the licence held by the licensee does not cover the provision of a financial service referred to in paragraph (b).

9 Low value non-cash payment facilities

Exemptions

- (1) A person providing financial services in relation to a low value non-cash payment facility does not have to comply with subsection 911A(1), section 992A and Part 7.9 of the Act in relation to those services.
- (2) A financial services licensee providing financial services in relation to a low value non-cash payment facility does not have to comply with 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 in relation to those services.
- (3) An authorised representative of a financial services licensee providing financial services in relation to a low value non-cash payment facility does not have to comply with Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to those services.

Note: The person will not be able to rely on the exemptions in the circumstances specified in subsection (6).

Conditions: Issuers of low value non-cash payment facilities

- (4) An issuer of a low value non-cash payment facility who relies on any of the exemptions in subsections (1), (2) and (3) must take reasonable steps to ensure that 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 (***disclosure document***) which sets out the terms and conditions of the facility and separately sets out in a prominent manner information about:
 - (i) whether any of the terms and conditions of the facility may be unilaterally varied by the issuer and a statement of how a person (***client***) who holds the facility may get information about the new terms and conditions;
 - (ii) whether the facility has an expiry date and, if so, where the expiry date may be found;
 - (iii) the procedures for dealing with any unauthorised or mistaken transactions relating to the facility or the loss or theft of the device (if any) through which the facility is used;
 - (iv) fees or charges for acquiring and using the facility and where any 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;

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- (b) the information in the disclosure document is worded and presented in a clear, concise and effective manner;
 - (c) where the facility has an expiry date and the client is provided with a device to use the facility:
 - (i) 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) the date of the issue of the facility (or a date no later than 3 months after that date) is prominently set out on the device together with a statement that the facility cannot be used after a specified period after the date set out on the device;
 - (d) where the facility has an expiry date but no device is provided, the expiry date is set out in the disclosure document or in a written statement attached to the disclosure document;
 - (e) 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) check any expiry date associated with the facility;
 - (iii) obtain at reasonable intervals a record of the past 10 transactions under the facility;
 - (f) if the terms and conditions of the facility are unilaterally varied, or the fees or charges for using the facility are changed during the life of the facility:
 - (i) information about the variation or change is:
 - (A) made available to the client in accordance with the information in the disclosure document referred to in paragraph (a)(i) or (iv); and
 - (B) displayed in a clear and prominent way at each place and each website the facility may be acquired; and
 - (ii) the new terms and conditions or fees and charges are made available to the client on request;
 - (g) if a low value non-cash payment facility is issued to a person as a retail client, the issuer maintains an internal dispute resolution procedure that:
 - (i) complies with standards and requirements made or approved by ASIC for the purposes of subparagraph 912A(2)(a)(i) of the

Act, or approved by such an instrument under that provision;
and

- (ii) covers complaints against the issuer made by retail clients in connection with financial services provided in relation to the facility.

Conditions: Other people

- (5) A person who relies upon any of the exemptions in subsections (1), (2) and (3) but is not the issuer of the low value non-cash payment facility must take reasonable steps to ensure that 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 provided with the disclosure document;
 - (b) where the facility has an expiry date and the client is provided with a device to use the facility:
 - (i) 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) the date of the issue of the facility (or a date no later than 3 months after that date) is prominently set out on the device together with a statement that the facility cannot be used after a specified period after the date set out on the device;
 - (c) where the facility has an expiry date but no device is provided, the expiry date is set out in the disclosure document or in a written statement attached to the disclosure document.

Non-compliance with conditions

- (6) If a condition in subsection (4) or (5) applies to a person and the person does not comply with the condition, the exemptions in subsections (1), (2) and (3) cease to apply to the person.

10 Gift facilities

- (1) A person providing financial services in relation to a gift facility does not have to comply with subsection 911A(1), section 992A and Part 7.9 of the Act in relation to those services.
- (2) A financial services licensee providing financial services in relation to a gift facility does not have to comply with 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 in relation to those services.

- (3) An authorised representative of a financial services licensee providing financial services in relation to a gift facility does not have to comply with Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to those services.

11 Prepaid mobile facilities

- (1) A person providing financial services in relation to a prepaid mobile facility does not have to comply with subsection 911A(1), section 992A and Part 7.9 of the Act in relation to those services.
- (2) A financial services licensee providing financial services in relation to a prepaid mobile facility does not have to comply with 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 in relation to those services.
- (3) An authorised representative of a financial services licensee providing financial services in relation to a prepaid mobile facility does not have to comply with Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to those services.

12 Requirement to confirm transactions for travellers' cheques

Travellers' cheques are exempt from section 1017F of the Act.

EXPLANATORY STATEMENT for

ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes the *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211* under subsections 765A(2) and 1020F(1) and paragraphs 601QA(1)(a), 926A(2)(a), 951B(1)(a) and 992B(1)(a) of the *Corporations Act 2001* (the Act).

Paragraph 601QA(1)(a) of the Act provides that ASIC may exempt a person from a provision of Chapter 5C of the Act.

Subsection 765A(2) of the Act provides that ASIC may declare that a specified facility, interest or other thing is not a financial product for the purposes of Chapter 7 of the Act.

Paragraph 926A(2)(a) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.6 of the Act (other than Divisions 4 and 8).

Paragraph 951B(1)(a) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.7 of the Act.

Subsection 992B(1)(a) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.8 of the Act.

Subsection 1020F(1) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.9 of the Act and may declare that Part 7.9 of the Act applies in relation to a person or a class of persons as if specified provisions were omitted, modified or varied.

1. Background

The Act provides that a facility through which, or through the acquisition of which, a person makes payments otherwise than through the delivery of notes or coins – a non-cash payment facility - is a financial product.

These products are subject to the financial services regulatory regime, which requires persons to:

- hold an Australian financial services (AFS) licence in order to provide financial services in relation to a financial product;
- comply with the conduct obligations in Part 7.8 of the Act; and
- provide Product Disclosure Statements and confirmations of transactions to retail clients.

Shortly after the commencement of the financial services regulatory regime, it became apparent that the scope of some of these rules was unintentionally broad. ASIC addressed these issues by making seven legislative instruments relating to non-cash payments products.

2002 – relief for travellers’ cheques

ASIC made Class Order [CO 02/1075] ([CO 02/1075]) *Travellers’ cheques and confirmation of transactions* to address the unnecessary application of the requirement to give a confirmation of transaction in relation to travellers’ cheques at the time of purchase or disposal of the cheque. The benefits associated with the confirmation requirements would be negligible.

[CO 02/1075] sunsets on 1 April 2017.

2003 – relief for licensees who assist clients with payments to third parties

The Corporations Regulations contain AFS licence exemptions for:

- persons who do not generally carry on financial services businesses but advise their customers about forms of payment or ‘deal in’ a non-cash payment facility that a customer may use to pay for their services (regulation 7.6.01(l)) – e.g. a gym who advises their clients about paying for their membership by direct debit; and
- persons who advise their customers about forms of payment or ‘deal in’ a non-cash payment facility that a customer may use to pay them for financial services they provide (regulation 7.6.01(la)) – e.g. an insurer who advises their clients about paying for their insurance by BPAY.

However, these exemptions do not apply to payments to third parties that are related to the person’s business. For instance, a financial planner could rely on reg 7.6.01(la) in order to advise their clients on how to pay a fee for service, but would require a non-cash payments AFS licence authorisation in order to suggest that the same client use a certain facility to pay for an investment they had recommended.

The AFS licensing requirement was disproportionately burdensome in these circumstances relative to the low risk of this kind of conduct and the cost to the affected AFS licensees who otherwise had limited involvement with non-cash payments facilities.

ASIC addressed this problem by making Class Order [CO 03/705] ([CO 03/705]) *Non-cash payment facilities – licensing exemption*. ASIC limited the scope of this instrument to:

- AFS licensees who do not issue their own non-cash payments facilities (as issuers would normally require a non-cash payments licence authorisation in the course of their business); and

- services provided in relation to specified classes of conventional non-cash payments facilities (in order to reduce the risk that technological developments would alter the effect of the relief).

[CO 03/705] sunsets on 1 April 2017.

2005 – Refinements to Financial Services Regulation

In 2005, the Government stated in its proposals paper Refinements to Financial Services Regulation (May 2005) that:

- it was not intended that loyalty schemes (potentially a kind of non-cash payment facility) should be regulated under the Act;
- some non-cash payment facilities, such as retail gift vouchers and some stored value cards, are non-cash payment facilities but should not be treated in the same way as other financial products; and
- ASIC will exempt from the definition of ‘non-cash payment facility’ products not intended to be covered and products where there is no need for compliance with some or all of the Corporations Act obligations.

Even where the intention of the Act is for a particular facility to be a financial product, the compliance with all the usual obligations may not be necessary given the risks posed by the facility. Certain types of non-cash payment facilities pose lower risks for consumers because:

- they are generally simple, easy-to-use and well understood by retail consumers;
- the amount stored in the facility is generally low and does not present a high level of financial risk to the retail consumer;
- losses may occur in only a small proportion of cases; and
- alternative regulation may be available.

In 2005, ASIC addressed these issues by making the following legislative instruments:

- Class Order [CO 05/736] ([CO 05/736]) *Low value non-cash payment facilities* – which contained a tailored regulatory regime for ‘low value’ products;
- Class Order [CO 05/737] ([CO 05/737]) *Loyalty schemes* – which declared that loyalty schemes are not financial products;
- Class Order [CO 05/738] ([CO 05/738]) *Gift facilities* - which exempted non-reloadable payment products marketed solely as gift facilities from the licensing, conduct and disclosure obligations in the Act;
- Class Order [CO 05/739] ([CO 05/739]) *Road toll facilities*– which declared that facilities solely used for paying road tolls are not financial products; and

- Class Order [CO 05/740] ([CO 05/740]) *Prepaid mobile facilities* – which exempted prepaid mobile phone accounts from the licensing, conduct and disclosure obligations in the Act.

[CO 05/736], [CO 05/737], [CO 05/738], [CO 05/739] and [CO 05/740] sunset on 1 April 2016.

The Financial System Inquiry

The 2014 Financial System Inquiry (FSI) also considered the policy settings underpinning the regulation of non-cash payment facilities. The final report of the FSI recommended that the Government:

- Enhance graduation of retail payments regulation by clarifying thresholds for regulation by ASIC and the Australian Prudential Regulation Authority (APRA).
- Strengthen consumer protection by mandating the ePayments Code.
- Introduce a separate prudential regime with two tiers for purchased payment facilities.

In its response to the FSI, the Government stated that APRA, ASIC and the Reserve Bank of Australia would review the framework for payments system regulation and develop clear guidance. This work is ongoing and the Government, Treasury and the relevant regulators are still considering how to give effect to the FSI's recommendation that payments regulation be made clearer and more graduated.

In order to provide certainty while the final policy settings for payments regulation as established, ASIC remade [CO 02/1075], [CO 03/705], [CO 05/736], [CO 05/737], [CO 05/738], [CO 05/739] and [CO 05/740] without substantive changes as the *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211* for three years.

2. Purpose of the instrument

The purpose of the *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211* is to preserve the effect of [CO 02/1075], [CO 03/705], [CO 05/736], [CO 05/737], [CO 05/738], [CO 05/739] and [CO 05/740] for three years while the policy settings for the regulation of payments products are clarified.

3. Operation of the instrument

Loyalty schemes

Clause 6 provides that a loyalty scheme is not a financial product and does not need to be registered as a managed investment scheme. As a result, the financial services regime in the Act does not apply to these products.

This relief applies to loyalty schemes where:

- the dominant purpose of the scheme is to promote the purchase of goods from, or the use of services of, the issuer or participating third parties;
- clients are allocated credits (however described) as a result of the purchase of goods from, or the use of the services of, the issuer or participating third parties;
- the credits can be used to make a payment or part payment for goods or services or to obtain some other benefit; and
- the scheme is not part of another financial product.

Road toll facilities

Clause 7 provides that a non-cash payment facility used to make payments for road tolls, but no other kinds of payments, is not a financial product. As a result, the financial services regime in the Act does not apply to these products.

Licensing exemption for payments to third parties

Clause 8 provides that an AFS licensee does not need to hold a licence authorisation relating to payments products in order to:

- advise a person in relation to a non-cash payment facility that the person may use, or has used, to pay a third party; or
- arrange for a person to deal in a non-cash payment facility that that person may use to pay a third party.

This exemption applies to licensees who do not themselves issue payments products (as those entities are likely to have the relevant authorisations on their AFS licence). Additionally, the exemption is limited to services provided in relation to conventional payment products (e.g. those issued by licensed persons)

Low value non-cash payment facilities

Clause 9 provides conditional relief to persons to provide financial services in relation to 'low value non-cash payment facilities'. A facility is 'low value' if:

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

Clause 9 contains conditions that issuers of low-value facilities and other persons must comply with in order to rely on the relief.

Issuers are required to provide retail clients with a clear, concise and effective disclosure document, which includes the terms and conditions of the facility and separate information about:

- variations to the terms and conditions;
- expiry dates (including where those dates can be found);
- the procedures for dealing with unauthorised or mistaken transactions, as well as the loss or theft of the device (if any) through which the facility is used; and
- the fees associated with the facility (and if those fees are varied, how updated information can be obtained).

Issuers are also subject to obligations relating to:

- how expiry dates are disclosed, including on any device that is used to access the facility;
- the provision of a cost-free way for consumers to check the amount of value standing to the credit of the facility, the expiry date and the last 10 transactions (at reasonable intervals);
- disclosure of changes to terms, conditions or fees; and
- the maintenance of an appropriate internal dispute resolution system.

Persons who provide financial services in relation to low value non-cash payment facilities but do not issue those facilities may also rely on the exemptions in clause 9 where:

- retail clients are provided with a disclosure document; and
- any expiry date associated with the facility is disclosed on the device (or, if no device is provided to access the facility, in the disclosure document or another written statement).

As this instrument is a re-enactment of [CO 05/736], persons who rely on the exemptions in clause 9 will continue to benefit from the exemption in reg 9.12.04 (first occurring) from Division 2 of Part 7.7A of the Act: section 10A *Acts Interpretation Act 1901*; subsection 13(1) *Legislation Act 2003*.

Gift facilities

Clause 10 provides relief from the licensing, conduct and disclosure obligations in the Act for certain gift facilities. The relief applies to payment products if:

- the product is non-reloadable;
- the funds standing to the credit of the facility cannot be withdrawn as cash unless the facility has been used to make one or more payments and the withdrawal is of the full

amount standing to the credit of the facility (which is an amount that unlikely to be able to be conveniently used);

- the facility may be used to make non-cash payments on more than one occasion;
- the facility is only promoted or marketed as a gift product;
- any expiry date is prominently and clearly disclosed (including on the device used to access the facility if such a device is provided); and
- the facility is not a component of another financial product.

Prepaid mobile facilities

Clause 11 provides relief from the licensing, conduct and disclosure obligations in the Act for prepaid mobile facilities where:

- the facility is a part of an arrangement for the supply of a public mobile telecommunication service under which the service may be used to the extent it is covered by an amount paid in advance which remains unused;
- the non-cash payments made under the facility are debited against the prepaid amount; and
- the facility is not a component of another financial product.

Travellers' cheques and confirmation of transactions

Clause 12 provides that travellers' cheques are exempt from the requirements of section 1017F of the Act to provide confirmation of transactions.

4. Consultation

ASIC consulted with industry stakeholders on its proposal to remake [CO 02/1075], [CO 03/705], [CO 05/736], [CO 05/737], [CO 05/738], [CO 05/739] and [CO 05/740] for a period of 3 years while the final policy settings for payments regulation are determined and the FSI recommendation is implemented. We received four responses, each of which broadly approved of the way in which we have remade our non-cash payments relief. One response included suggested changes to the policy settings for low value payments products; ASIC will consider these suggestions in the context of the implementation of the FSI recommendation.

Once the policy uncertainty associated with payments regulation is resolved, ASIC will review the *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211*. At this time we will consult publically on any changes that we propose to make.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211

ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 provides relief for the following types of non-cash payment products:

- travellers' cheques, which are exempt from the requirement to provide confirmation of transaction under the Corporations Act;
- loyalty schemes and road toll facilities, which are not subject to the financial services laws in the Corporations Act;
- prepaid mobile facilities and some non-reloadable gift facilities, which are exempt from the licensing, conduct and disclosure obligations in the Corporations Act;
- low value payments products, which are exempt from the licensing, conduct and disclosure obligations in the Corporations Act but subject to alternative disclosure and dispute resolution obligations.

The *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211* also exempts financial services licensees from the need to hold a payment product authorisation in order to advise their clients on, and arrange for their clients to deal in, conventional payments products they may use to pay third parties for goods and services.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission