

EXPOSURE DRAFT



EXPOSURE DRAFT

Life Insurance Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2023

David Hurley
Governor-General

By His Excellency's Command

Stephen Jones [DRAFT ONLY—NOT FOR SIGNATURE]
Assistant Treasurer
Minister for Financial Services

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Preliminary **Part 1**

Section 1

Part 1—Preliminary

1 Name

This instrument is the *Life Insurance Regulations 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as Schedule 1 to the <i>Treasury Laws Amendment (Measures for Consultation) Act 2023</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Life Insurance Act 1995*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Court;
- (b) policy.

In this instrument:

Act means the *Life Insurance Act 1995*.

certified copy of a document means a copy of the document that has been certified in writing, by a person prescribed for the purposes of paragraph 8(b) of the *Statutory Declarations Act 1959*, to be a true copy of the document.

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Part 2 Explanation of key concepts

Section 5

Part 2—Explanation of key concepts

5 Life policy—minimum terms of annuities

For the purposes of paragraph 9(1)(d) of the Act, the term of 10 years is prescribed.

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Special provisions relating to Australian branches of foreign life insurance companies **Part 2B**

Section 6

Part 2B—Special provisions relating to Australian branches of foreign life insurance companies

6 Eligible foreign life insurance company

- (1) For the purposes of paragraph 16ZD(1)(e) of the Act, the following condition is specified: the condition that:
 - (a) the body corporate:
 - (i) is authorised to carry on life insurance business in China; and
 - (ii) is incorporated in China; or
 - (b) the body corporate:
 - (i) is authorised to carry on life insurance business in Japan; and
 - (ii) is incorporated in Japan; or
 - (c) the body corporate:
 - (i) is authorised to carry on life insurance business in New Zealand; and
 - (ii) is incorporated in New Zealand; or
 - (d) the body corporate:
 - (i) is authorised to carry on life insurance business in the Republic of Korea; and
 - (ii) is incorporated in the Republic of Korea; or
 - (e) the body corporate:
 - (i) is authorised to carry on life insurance business in the United States of America; and
 - (ii) is incorporated in the United States of America.
- (2) In paragraph (1)(a) of this section, a reference to China does not include a reference to the following members of the World Trade Organization:
 - (a) Hong Kong, China;
 - (b) Macao, China;
 - (c) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

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Part 9 Transfers and amalgamations of life insurance business

Section 7

Part 9—Transfers and amalgamations of life insurance business

7 Application for confirmation of scheme

- (1) For the purposes of paragraph 191(2)(e) of the Act, the following requirement is prescribed: the application must not be made earlier than 15 days after the first day on which an approved summary of the scheme has been given to every affected policy holder in accordance with paragraph 191(2)(c) of the Act.
- (2) This section does not apply if, under subsection 191(5) of the Act, the Court dispenses with the need for compliance with paragraph 191(2)(c) of the Act in relation to the scheme.

8 Documents to be given to APRA

- (1) For the purposes of subsection 197(1) of the Act, if any part of the life insurance business carried on by a life company is transferred to, or amalgamated with the life insurance business of, another company, the latter company must give APRA the following documents:
 - (a) a statement of the nature and terms of the transfer or amalgamation;
 - (b) a certified copy of each of the following documents:
 - (i) the scheme providing for the transfer or amalgamation;
 - (ii) each actuarial report or other report (if any) on which the scheme, and the agreement or deed by which the transfer or amalgamation is carried out, are founded;
 - (iii) the agreement or deed by which the transfer or amalgamation is carried out;
 - (iv) the Court order confirming the scheme;
 - (v) a statement of the assets and liabilities of each company affected by the scheme (within the meaning of section 189 of the Act);
 - (c) a statutory declaration by the principal executive officer of the latter company:
 - (i) setting out, in relation to the transfer or amalgamation, each payment made; and
 - (ii) setting out, in relation to the transfer or amalgamation, a reasonable estimate of each payment to be made in the future; and
 - (iii) stating that he or she reasonably believes that no other payment has been made, or will be made, in relation to the transfer or amalgamation, by, or with the knowledge of, a party to the agreement or deed by which the transfer or amalgamation is carried out.
- (2) For the purposes of subsection 197(2) of the Act, and subject to subsection (3) of this section, the documents must be given to APRA within 30 days after the transfer or amalgamation is completed.

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- (3) A company may apply, in writing, to APRA, before the end of the 30 days referred in subsection (2), for an extension of the time in which to give the documents to APRA.
- (4) If APRA receives an application under subsection (3) from a company for an extension of time in which to give documents to APRA, APRA must, within 14 days after receiving the application:
 - (a) either:
 - (i) if APRA believes that, when the application was made, it was not reasonably possible for the company to give the documents to APRA within the 30 days referred to in subsection (2)—give the company an extension of time of no longer than 30 days; or
 - (ii) otherwise—refuse the application; and
 - (b) give the company written notice of APRA’s decision on the application.
- (5) For the purposes of subparagraph (zt)(ii) of the definition of ***reviewable decision*** in subsection 236(1) of the Act, a decision to refuse an application under subparagraph (4)(a)(ii) of this section is prescribed.

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Part 10 Provisions relating to policies

Section 9

Part 10—Provisions relating to policies

9 Interest on overdue premiums—prescribed terms

- (1) For the purposes of subsection 210(3) of the Act, the following term is prescribed: the term that the rate of interest that may be charged on an overdue premium on a day is the interest rate worked out using the following formula:

10 year Commonwealth Government bond yield + 3%
- (2) The *10 year Commonwealth Government bond yield* is the mean of the 10 year Commonwealth Government bond yields (as shown in figures published by the Reserve Bank of Australia) at the end of each of the last 6 successive half financial years ending before that day.
- (3) If the mean worked out under subsection (2) is not a multiple of 0.25%, round it down to the nearest multiple of 0.25%.

10 Unclaimed money—interest payable

- (1) This section applies if:
 - (a) a life company paid unclaimed money to the Commonwealth under section 216 of the Act; and
 - (b) some or all of the unclaimed money is paid to the life company under subsection 216(7) of the Act.
- (2) For the purposes of paragraph 216(7A)(a) of the Act, this section sets out how to work out the amount of interest that is to be paid in relation to the payment made to the life company.
- (3) If the life company paid the unclaimed money to the Commonwealth in more than one payment, work out the interest separately for each payment to the Commonwealth.
- (4) To avoid doubt, if the Commonwealth pays the unclaimed money to the life company in more than one payment, work out the interest separately for each payment to the life company.

Example: A life company pays \$100 of unclaimed money to the Commonwealth on day 1, and \$200 on day 2. On day 3, the Minister causes \$175 of unclaimed money to be paid to the life company, consisting of:

- (a) the \$100 of unclaimed money paid to the Commonwealth on day 1; and
- (b) \$75 of the unclaimed money paid to the Commonwealth on day 2.

Under subsection (3), interest for the \$100 and the \$75 are worked out separately.

On day 4, the Minister causes \$125 of unclaimed money to be paid to the life company, being the remainder of the unclaimed money paid to the Commonwealth on day 2.

Under subsection (4), interest for the \$175 is worked out separately from the interest for the \$75 mentioned in paragraph (b) of this example.

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Meaning of interest period

- (5) For the purposes of this section, the **interest period** is the period that:
- (a) starts on the later of:
 - (i) 1 July 2013; and
 - (ii) the day when the life company paid the unclaimed money to the Commonwealth; and
 - (b) ends on the 14th day after the day on which the Minister causes the unclaimed money to be paid to the life company.

Interest

- (6) Work out the amount of interest by adding together the interest for each financial year that occurs wholly or partly during the interest period.
- (7) Work out the interest for each financial year using the following formula:

$$\frac{\text{Amount} \times \text{Days interest payable} \times \text{Interest rate for the financial year}}{\text{Number of days in the financial year}}$$

where:

amount means the amount of the unclaimed money paid to the life company plus the interest (if any) worked out for each earlier financial year that occurs wholly or partly during the interest period.

days interest payable means the number of days in the financial year that occur during the interest period.

interest rate has the meaning given by subsection (9).

- (8) If the amount worked out using the formula in subsection (7) is not a whole number of dollars and cents, round the amount down to the nearest whole number of dollars and cents.

Meaning of interest rate

- (9) For the purposes of subsection (7), the **interest rate** for a financial year is the percentage worked out using the following formula:

$$\frac{\text{Index number for the latest March CPI quarter} - \text{Index number for the second latest March CPI quarter}}{\text{Index number for the second latest March CPI quarter}} \times 100\%$$

where:

index number for a March CPI quarter means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) first published by the Australian Statistician for the quarter.

latest March CPI quarter means the latest March CPI quarter for which the index number is published before the start of the financial year.

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Part 10 Provisions relating to policies

Section 11

March CPI quarter means a period of 3 months ending on 31 March.

second latest March CPI quarter means the second latest March CPI quarter for which the index number is published before the start of the financial year.

- (10) If the interest rate is not a multiple of 0.0001%, round it up to the nearest multiple of 0.0001%.
- (11) If the interest rate is less than 0%, round it up to 0%.

11 Calculation of net claim value of policy

- (1) For the purposes of subsection 223(2) of the Act, this section sets out how to calculate the net claim value of a policy at a particular time.
- (2) The net claim value is the amount worked out using the following formula:

Amount payable in respect of claim – Debts

where:

amount payable in respect of claim means:

- (a) if, at that particular time:
 - (i) the policy has matured; or
 - (ii) the person whose life is insured under the policy has died; the amount payable on a claim arising under the policy in respect of that maturing or death; or
- (b) otherwise—the amount that, were the policy to be voluntarily terminated at that particular time, would be payable on a claim arising under the policy in respect of that termination.

debts means the total amount of any debts that, at that particular time, are:

- (a) owed to the relevant life company under the policy; or
- (b) secured by the policy.

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Application, transitional and saving provisions **Part 12**
Provisions relating to this instrument as originally made **Division 1**

Section 12

Part 12—Application, transitional and saving provisions

Division 1—Provisions relating to this instrument as originally made

12 Application of section 7

Section 7 applies in relation to an application for confirmation of a scheme made on or after the commencement of this section.

13 Application of section 8

- (1) Despite the repeal of regulation 9.04 of the *Life Insurance Regulations 1995* by the *Treasury Laws Amendment (Insurance) Regulations 2023*, that regulation continues to apply, on and after the commencement of this section, in relation to a transfer or amalgamation that is completed before that commencement.
- (2) Section 8 of this instrument applies in relation to a transfer or amalgamation that is completed on or after the commencement of this section.

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Part 13 Dictionary

Section 14

Part 13—Dictionary

14 Definition of *allocated annuity policy*

For the purposes of the definition of *allocated annuity policy* in Schedule 1 to the Act, *allocated annuity policy* means a policy that provides for an annuity:

- (a) that is paid, within a specified range of minimum and maximum payments, from an identifiable lump sum; or
- (b) that arises under a contract that meets the standards of subregulation 1.05(4) of the *Superannuation Industry (Supervision) Regulations 1994*.

15 Definition of *approved body*

For the purposes of the definition of *approved body* in Schedule 1 to the Act, *approved body* has the meaning given by Schedule 1 to this instrument.

16 Definition of *derivative*

For the purposes of paragraph (b) of the definition of *derivative* in Schedule 1 to the Act, something is prescribed if any of paragraphs 6(2)(a) to (h) of the *Payment Systems and Netting Regulations 2001* apply to an obligation under that thing.

Note: Paragraphs 6(2)(a) to (h) of the *Payment Systems and Netting Regulations 2001* identifies obligations that are not eligible obligations in relation to a close-out netting contract. These include obligations under credit facilities, reciprocal purchase agreements (otherwise known as repurchase agreements), sell-buyback arrangements, securities loan arrangements, contracts of insurance and managed investment schemes.

Schedule 1—Approved bodies

Note: See section 15.

1 Approved bodies

Each exchange, market, clearing house, body or entity listed in the following table is an *approved body*.

Approved bodies	
Item	Exchange, market, clearing house, body or entity
1	AB NASDAQ Vilnius (XLIT)
2	ASX24
3	ASX Clear (Futures) Pty Limited
4	ASX Clear Pty Limited
5	ASX operated by ASX Limited
6	ASX Settlement Pty Limited
7	Athens Exchange (ATHEX)
8	Athens Exchange Clearing House (ATHEX Clear)
9	Austraclear Limited
10	Australian Energy Market Operator Limited
11	Bloomberg SEF LLC
12	Bloomberg Tradebook Singapore Pte Ltd.
13	Bloomberg Trading Facility B.V.
14	Bloomberg Trading Facility Limited
15	BME Clearing
16	Bombay Stock Exchange
17	Borsa Istanbul
18	Borsa Istanbul Futures & Options Market
19	Boston Options Exchange
20	Bourse de Montréal
21	BrokerTec Europe Limited
22	B3 S.A.
23	Budapesti Értéktőzsde
24	Bursa Malaysia Derivatives (BMD)
25	BZX Options Exchange
26	Cantor Clearinghouse, L.P.
27	Cassa di Compensazione e Garanzia S.p.A (CCG)
28	Cboe Exchange, Inc
29	Cboe Futures Exchange
30	Cboe FX Markets, LLC

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Schedule 1 Approved bodies

Clause 1

Approved bodies

Item	Exchange, market, clearing house, body or entity
31	CBOT
32	CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH (CCP.A)
33	CDS Clear operated by LCH SA
34	CEGH Gas Exchange of Vienna Stock Exchange
35	Central Depository (Pte) Limited
36	Chicago Board Options Exchange (Cboe)
37	Chicago Mercantile Exchange Inc (CME)
38	China Financial Futures Exchange (CFFEX)
39	CME Clearing
40	CME operated by Chicago Mercantile Exchange Inc.
41	COMEX operated by Commodity Exchange, Inc.
42	CommodityClear operated by LCH SA
43	Dalian Commodity Exchange
44	Dubai Gold & Commodities Exchange (DGCX)
45	Dubai Mercantile Exchange (DME)
46	Electronic Liquidity Exchange operated by ELX Futures LP
47	EPEX SPOT SE
48	Eurex Clearing AG
49	Eurex Deutschland
50	EuroGCplus operated by LCH SA
51	Euronext Amsterdam Derivatives Regulated Market operated by Euronext Amsterdam NV
52	Euronext Amsterdam Securities Regulated Market operated by Euronext Amsterdam NV
53	Euronext Brussels Derivatives Regulated Market operated by Euronext Brussels SA/NV
54	Euronext Brussels Securities Regulated Market operated by Euronext Brussels SA/NV
55	Euronext Lisbon Derivatives Regulated Market operated by Euronext Lisbon – Sociedade Gestora de Mercados Regulamentados, S.A.
56	Euronext Lisbon Securities Regulated Market operated by Euronext Lisbon – Sociedade Gestora de Mercados Regulamentados, S.A.
57	Euronext London Securities Regulated Market operated by Euronext London Limited
58	Euronext Paris Derivatives Regulated Market by Euronext Paris S.A.
59	Euronext Paris MATIF (Marché à Terme International de France) (XMAT)
60	Euronext Paris MONEP (Marché des Options Négociables de Paris) (XMON)
61	Euronext Paris Securities Regulated Market by Euronext Paris S.A.
62	European Central Counterparty N.V. (EuroCCP)
63	European Climate Exchange (ECX)
64	European Commodity Clearing AG
65	European Energy Exchange (EEX)
66	Financial & Risk Transaction Services Ireland Limited
67	ForexClear operated by LCH Ltd
68	HKFE Clearing Corporation Limited (HKCC)

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Approved bodies **Schedule 1**

Clause 1

Approved bodies

Item	Exchange, market, clearing house, body or entity
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69	Hong Kong Exchange and Clearing Ltd (HKEX)
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70	Hong Kong Futures Exchange Limited (HKFE)
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71	Hong Kong Securities Clearing Company Limited (HKSCC)
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72	Hungarian Power Exchange operated by HUPX Ltd
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73	ICAP Brokers Pty Ltd
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74	ICAP Securities and Derivatives Exchange (ISDX)
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75	ICE Clear Credit LLC
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76	ICE Clear Europe Limited
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77	ICE Clear Netherlands B.V.
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78	ICE Clear Singapore
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79	ICE Clear US, Inc
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80	ICE Endex Markets B.V.
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81	ICE Futures Canada, Inc
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82	ICE Futures Europe
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83	ICE Futures U.S., Inc
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84	International Securities Exchange
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85	Italian Derivatives Market (IDEM)
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86	Italian Stock Exchange operated by Borsa Italiana S.p.A
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87	Jakarta Futures Exchange (JFX)
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88	Japan Securities Clearing Corporation (JSCC)
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89	Johannesburg Stock Exchange (JSE)
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90	JSE Commodity Derivatives Market
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91	KDPW_CCP S.A.
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92	Keler CCP
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93	KOSPI Market operated by the Korea Exchange
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94	LME Clear Limited
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95	MarketAxess Europe Limited
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96	MarketAxess Singapore Pte Limited
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97	Mercado Español de Futuros Financieros
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98	Mexican Derivatives Exchange (MexDer)
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99	Minneapolis Grain Exchange, Inc.
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100	Montréal Climate Exchange (MCex)
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101	NASDAQ BX, Inc.
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102	NASDAQ Commodities operated by NASDAQ Oslo ASA
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103	NASDAQ Copenhagen A/S
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104	NASDAQ Derivatives Markets operated by NASDAQ Stockholm AB
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105	NASDAQ Futures (NFX) operated by NASDAQ Futures, Inc.
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106	NASDAQ Helsinki Ltd
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107	NASDAQ Iceland hf.
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Schedule 1 Approved bodies

Clause 1

Approved bodies

Item	Exchange, market, clearing house, body or entity
108	NASDAQ NLX Ltd
109	NASDAQ OMX Armenia
110	NASDAQ PHLX LLC
111	NASDAQ PSX operated by NASDAQ PHLX LLC
112	NASDAQ Riga, AS (XRIS)
113	NASDAQ Stockholm AB (XSTO)
114	NASDAQ Tallinn AS (XTAL)
115	National Stock Exchange of India Ltd
116	New York Stock Exchange (NYSE) operated by the New York Stock Exchange LLC
117	Nodal Clear, LLC
118	Nodal Exchange, LLC
119	NYMEX Emissions operated by New York Mercantile Exchange, Inc.
120	NYMEX operated by New York Mercantile Exchange, Inc.
121	NYSE Amex Option operated by NYSE MKT LLC
122	NYSE Arca Equities operated by NYSE Arca Equities, Inc.
123	NYSE Arca Options operated by NYSE Arca Equities, Inc.
124	NYSE MKT operated by NYSE MKT LLC
125	NZX Main Board operated by NZX Limited
126	OMIClear, C.C., S.A.
127	OneChicago LLC
128	Osaka Exchange, Inc. (OSE)
129	Oslo Bors operated by Oslo Børs ASA
130	OTC Clearing Hong Kong Limited (OTC Clear)
131	Power Exchange Central Europe, a.s. (PXE)
132	Powernext SA
133	Refinitiv Transaction Services Limited
134	Refinitiv Transaction Services Pte. Ltd.
135	RepoClear Ltd operated by LCH Ltd
136	RepoClear SA operated by LCH SA
137	Shanghai Futures Exchange (SHFE)
138	Singapore Exchange Derivatives Clearing Limited (SGX-DC)
139	Singapore Exchange Derivatives Trading Limited (SGX-DT)
140	Singapore Exchange Securities Trading Limited (SGX-ST)
141	SIX x-clear Ltd
142	SwapAgent Limited
143	SwapClear operated by LCH Ltd
144	Taiwan Futures Exchange (TAIFEX)
145	Tel Aviv Stock Exchange Ltd
146	Thailand Futures Exchange (TFEX) operated by the Thailand Futures Exchange Public Company Limited

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Approved bodies **Schedule 1**

Clause 1

Approved bodies

Item	Exchange, market, clearing house, body or entity
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147	The derivatives market operated by Moscow Exchange MICEX-RTS
148	The equity and bond market operated by Moscow Exchange MICEX-RTS
149	The equity derivatives market operated by the Johannesburg Stock Exchange Limited
150	The London Metal Exchange
151	The London Stock Exchange Derivatives Market
152	The Main Market operated by the London Stock Exchange
153	The Official Market and Second Regulated Market operated by Wiener Börse AG
154	The Options Clearing Corporation (OCC)
155	The SEHK Options Clearing House Limited (SEOCH)
156	The Stock Exchange of Hong Kong Limited
157	Tokyo Commodity Exchange, Inc
158	Tokyo Financial Exchange, Inc (TFX)
159	Tokyo Stock Exchange, Inc. (TSE)
160	Toronto Stock Exchange operated by TSX Inc.
161	TradeWeb EU B.V.
162	TradeWeb Europe Limited
163	TriOptima AB
164	Tullett Prebon (Australia) Pty Ltd
165	TW SEF LLC
166	Warsaw Stock Exchange (GPW)
167	A body or entity that performs clearing house functions, in relation to an approved body (covered by another item of this table) that does not itself perform those functions, in accordance with: (a) the rules of the approved body; or (b) a law of the Commonwealth, a State, a Territory or a foreign country (including a part of a foreign country)
