

Queensland



STAMP AMENDMENT BILL 1994

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1994

A BILL

FOR

An Act to amend the Stamp Act 1894

The Parliament of Queensland enacts—

1

Short title

2

1. This Act may be cited as the *Stamp Amendment Act 1994*.

3

Commencement

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- 2.(1) Section 16 is taken to have commenced on 31 May 1994.

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- (2) Sections 4 to 15, 17 and 19(1) to (8) commence on 1 September 1994.

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Act amended

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3. This Act amends the *Stamp Act 1894*.

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Amendment of s 31A (Transfers of marketable securities and share rights)

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4. Section 31A—

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insert—

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- ‘(6) This section does not apply to an SCH-regulated transfer.’.

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Amendment of s 31B (Interpretation)

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- 5.(1) Section 31B(1), ‘In this section’ to ‘subject matter,’—

16

omit, insert—

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- ‘In sections 31A to 31Y and in Schedule 1—’.

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- (2) Section 31B(1)—

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insert—

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“**CHESS provisions**” means sections 31K to 31X;

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“**CHESS transfer document**” means a transfer document for an SCH-regulated transfer;

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23

Stamp Amendment

“error transaction” means—	1
(a) an SCH-regulated transfer made to reverse an SCH-regulated transfer that was made mistakenly not more than 7 days earlier; and	2 3 4
(b) the SCH-regulated transfer that was reversed;	5
“foreign company” has the meaning given by section 9 of the Corporations Law;	6 7
“identification code” , for an SCH participant, means a code that, under the SCH business rules, is the SCH participant’s identification code or one of the SCH participant’s identification codes;	8 9 10
“proper SCH transfer” has the meaning given by section 9 of the Corporations Law;	11 12
“Queensland registered company” means—	13
(a) a body incorporated, or taken to be incorporated, in Queensland as a company under the Corporations Law; and	14 15
(b) a foreign company that has a registered office, under the Corporations Law, in Queensland;	16 17
“relevant SCH participant” , for an SCH-regulated transfer, means—	18
(a) the SCH participant that, under the CHESS provisions, is liable to pay duty chargeable on the transfer; or	19 20
(b) if no duty is chargeable—the SCH participant that would be liable to pay duty on the transfer if duty were chargeable;	21 22
“SCH” means the securities clearing house registered by the Commissioner under section 31T;	23 24
“SCH business rules” has the meaning given by section 9 of the Corporations Law;	25 26
“SCH participant” has the meaning given by section 9 of the Corporations Law;	27 28
“SCH-regulated CHESS transfer” means an SCH-regulated transfer to which the CHESS provisions apply;	29 30
“SCH-regulated transfer” has the meaning given by section 9 of the Corporations Law;	31 32

Stamp Amendment

“transfer document” has the meaning given by section 1097 of the Corporations Law;	1 2
“transfer identifier” , for an SCH-regulated transfer, means the distinctive code assigned to the transfer as required by SCH;	3 4
“transfer value” , for an SCH-regulated transfer, means—	5
(a) for a transfer on sale—the greater of—	6
(i) the total consideration for the sale; or	7
(ii) the full unencumbered value of the security at the date of the sale; or	8 9
(b) in any other case—the full unencumbered value of the security at the date of the transfer.’.	10 11
 Amendment of s 31C (Sales and purchases to be recorded)	12
6.(1) Section 31C(4)(b)—	13
<i>omit.</i>	14
(2) Section 31C(7), ‘three’—	15
<i>omit, insert—</i>	16
‘5’.	17
 Amendment of s 31D (Returns to be lodged and duty paid)	18
7. Section 31D(1)(b), ‘purchase—’ and all following words to the proviso—	19 20
<i>omit, insert—</i>	21
‘purchase, 30 cents for each \$100, or part of \$100, of the sale price or the purchase price.’.	22 23
 Amendment of s 31E (Endorsement of transfer as to payment of duty)	24 25
8. Section 31E(1), after ‘subsections (4), (4A) or (5) of section 31C’—	26
<i>insert—</i>	27

‘and if the transfer on the sale or purchase is not an SCH-regulated transfer’.

Amendment of s 31G (Transfers of marketable securities not to be registered unless duly stamped)

9.(1) Section 31G(1)(a), after ‘in the case of a transfer’—

insert—

‘(other than an SCH-regulated transfer)’.

(2) Section 31G(1)(b), after ‘in the case of a transfer’—

insert—

‘(other than an SCH-regulated transfer)’.

Amendment of s 31GA (Retention of transfer instrument)

10.(1) Section 31GA(1), after ‘enters a transfer’—

insert—

‘(other than an SCH-regulated transfer)’.

(2) Section 31GA(1) and (2), ‘3’—

omit, insert—

‘5’.

(3) Section 31GA(2), after ‘a transfer’—

insert—

‘(other than an SCH-regulated transfer)’.

Amendment of s 31H (Duty on transactions on registers of Queensland incorporated companies)

11.(1) Section 31H(1), ‘in respect of a transfer’ to the end—

omit, insert—

‘for a transfer, including an SCH-regulated transfer, of a marketable security of the company if—

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(a) there is an instrument of transfer and the instrument is not duly stamped; or	1 2
(b) the transfer is an SCH-regulated transfer and the duty payable under this Act on the transfer has not been paid.’.	3 4
(2) Section 31H(2)—	5
<i>omit, insert—</i>	6
‘(2) A return lodged by a company under subsection (1) is chargeable with duty equal to the duty, in aggregate, payable under Schedule 1, CONVEYANCE OR TRANSFER, paragraph (3) on the transfers mentioned in subsection (1).	7 8 9 10
‘(2A) The company must pay the amount of duty chargeable on the return under subsection (2) when it lodges the return.’.	11 12
(3) Section 31H(3)(c)—	13
<i>omit.</i>	14
(4) Section 31H(7)—	15
<i>omit.</i>	16
Replacement of s 31I (Duties paid in and outside Queensland)	17
12. Section 31I—	18
<i>omit, insert—</i>	19
‘Transitional provision	20
‘31I. Sections 31H and 31I, as they were in force on 31 August 1994, continue to apply to transfers made before 1 September 1994.’.	21 22
Amendment of s 31J (Duty on certain transactions on the Stock Exchange of the United Kingdom)	23 24
13. Section 31J(6)(a)(ii), ‘attract duty of \$1 as’—	25
<i>omit, insert—</i>	26
‘not attract duty because it would have been’.	27

Insertion of new ss 31K–31X

14. After section 31J—

insert—

‘Application of CHESS provisions

‘31K. The CHESS provisions only apply to SCH-regulated transfers of marketable securities registered by a body approved as the securities clearing house under section 779B of the Corporations Law and registered by the Commissioner under section 31T if—

- (a) the transfer is a proper SCH transfer; and
- (b) the transfer is made other than on a sale or purchase to which sections 31C to 31F apply; and
- (c) the security is—
 - (i) a share, or a right in respect of a share, in a Queensland registered company; or
 - (ii) a unit of a unit trust scheme the register of which is situated in Queensland.

‘Transfer documents treated as instruments of conveyance

‘31L. A CHESS transfer document is chargeable with the same duty as if it had been effected by an instrument of transfer.

‘SCH participant liable to pay duty

‘31M.(1) If duty is chargeable on an SCH-regulated transfer, the SCH participant party to the transfer, or, if there is more than 1, the SCH participant who is the transferee or controls the transferee’s holding, is liable to pay the duty.

‘(2) If the SCH participant liable to pay duty on an SCH-regulated transfer is not the transferee under the transfer, the participant may recover from the transferee the amount of the duty paid as a debt by action in a court having jurisdiction for the amount and may keep, in reimbursement of the amount, an amount in the participant’s hands belonging to the transferee.

‘Record of SCH-regulated transfers

‘31N.(1) A record must be made immediately after an SCH-regulated CHESS transfer is made.

‘(2) The record must be made by the relevant SCH participant.

‘(3) The record must show the following information—

(a) the date of the transfer;

(b) the transfer identifier of the transfer;

(c) the name of the transferee and, unless another SCH participant controls the transferor’s holding, the name of the transferor;

(d) the identification code of the participant making the record and the identification code of the other SCH participant party to the transfer;

(e) the quantity and full description of the marketable security transferred;

(f) the transfer value of the marketable security;

(g) the amount of duty chargeable under Schedule 1 on the transfer;

(h) if ad valorem duty is not chargeable on the transfer—the reason why ad valorem duty is not chargeable;

(i) if an error transaction is made to reverse an earlier transfer that was made mistakenly—the transfer identifier of the earlier transfer;

(j) the other particulars prescribed by regulation.

‘(4) If a relevant SCH participant keeps information mentioned in subsection (3)(h), the participant must keep records to substantiate the claim that ad valorem duty is not chargeable on the transfer.

‘(5) An SCH participant may, in a record made under this section, incorporate additional information for the participant’s own use.

‘(6) The record must be kept by the SCH participant—

(a) in a legible written form, or in a way readily convertible into a legible written form; and

(b) for at least 5 years from the day of the transfer.

‘(7) An SCH participant who does not make or keep a record as required by this section commits an offence.

Maximum penalty—10 penalty units.

‘Particulars to be included by relevant participant in transfer document

‘31O. The relevant SCH participant must include in the CHESSE transfer document the particulars required by the Commissioner under the conditions of registration of the SCH.

Maximum penalty—10 penalty units.

‘Exemption if duty paid on instrument

‘31P.(1) If duty has been paid on a contract or agreement for sale, or on an instrument of transfer of a marketable security or right in respect of shares, and a subsequent SCH-regulated transfer of the same security or right is made to or for the benefit of the same transferee in the same capacity, the subsequent SCH-regulated transfer is not liable for duty.

‘(2) If duty has been paid under subsection (1), the relevant SCH participant must endorse a copy of the stamped instrument with the relevant transfer identifier.

‘(3) If the copy of the stamped instrument is endorsed with the relevant transfer identifier, a person required to take notice of whether or not duty has been paid on the transfer is entitled to regard the duty as having been paid.

‘(4) The relevant SCH participant must retain a copy of an instrument endorsed under subsection (2) for not less than 5 years from the day of the transfer.

Maximum penalty for subsection (4)—10 penalty units.

‘Statement to be made and duty paid

‘31Q.(1) The relevant SCH participant must, not more than 7 days after the end of a month in which the participant has been party to an SCH-regulated CHESSE transfer—

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(a) make a statement to the SCH on the transfer in the form approved by the Commissioner containing the particulars required under the conditions of registration of the SCH; and	1 2 3
(b) if duty is chargeable on the transfer— pay the duty to the SCH.	4
Maximum penalty—100 penalty units.	5
‘(2) If the Commissioner has reason to believe that a relevant SCH participant has contravened subsection (1), the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount, in the Commissioner’s opinion, payable under subsection (1).	6 7 8 9
‘(3) If the Commissioner makes an assessment under subsection (2)—	10
(a) the Commissioner must serve written notice of the assessment on the defaulting participant; and	11 12
(b) the participant is liable to pay to the Commissioner any duty assessed together with any further duty stated in the notice as payable by way of penalty under subsection (4), less any amounts already paid to the Commissioner.	13 14 15 16
‘(4) If an SCH participant is liable to pay duty because of an assessment under subsection (2), the participant is also liable to pay penalty duty equal to double the amount of the duty assessed.	17 18 19
‘(5) An SCH participant liable to pay duty because of an assessment under this section who does not pay the amount stated in the assessment notice on or before the day stated in the notice commits an offence.	20 21 22
Maximum penalty for subsection (5)—100 penalty units.	23
‘Failure to pay duty	24
‘31R.(1) If an SCH participant does not pay duty under section 31Q, the Commissioner may, by written notice, direct the SCH participant not to pay duty under the CHESS provisions for the period stated in the notice.	25 26 27
‘(2) The notice must state the reasons for giving the direction.	28
‘(3) A direction made under this section does not affect the liability of the SCH participant to pay duty that is chargeable under this Act.	29 30
‘(4) If the Commissioner gives a direction under this section, the Commissioner must at the same time notify the SCH of the direction.	31 32

Stamp Amendment

‘(5) If a direction is in force for an SCH participant, the SCH must not allow the participant to make an SCH-regulated transfer for which duty is chargeable under this Act.

‘(6) The SCH and an SCH participant are jointly and severally liable for the payment of duty if—

- (a) a direction is in force for an SCH participant; and
- (b) the participant makes an SCH-regulated transfer for which duty is chargeable under this Act; and
- (c) the transfer is made more than 7 days after the SCH has received notice under subsection (4).

‘Refund for error transaction

‘31S. On being satisfied that ad valorem duty has been paid to the Commissioner for an error transaction to which the CHESS provisions apply, the Commissioner must—

- (a) refund the amount of the duty paid; or
- (b) retain and credit the amount against other duty payable by the SCH participant for an SCH-regulated transfer.

‘Registration as the securities clearing house

‘31T.(1) On application by a body approved as the securities clearing house under section 779B of the Corporations Law, the Commissioner must register the body under this section if the Commissioner is satisfied it will comply with the Act.

‘(2) The registration is subject to terms decided by the Commissioner and notified to the SCH by writing.

‘(3) Subject to subsection (5), the Commissioner, by written notice, may suspend the registration for a stated time if the SCH contravenes a condition of the registration.

‘(4) Before suspending the registration, the Commissioner must give the SCH 7 days written notice stating the reasons why the Commissioner proposes to suspend the registration for the proposed time.

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‘(5) Within 7 days of receiving the notice, the SCH may apply to the Commissioner for a review of the proposed decision.

‘(6) The Commissioner may suspend the registration only—

- (a) at the end of the 7 days mentioned in subsection (4); and
- (b) if the SCH has been given an opportunity to make submissions about the suspension.

‘(7) Registration continues in force until it is cancelled on the application of the body registered.

‘Monthly return

‘31U.(1) On or before the fifteenth day of each month, the SCH must—

- (a) lodge a return in the form and containing the particulars required by the Commissioner under the conditions of registration of SCH; and
- (b) pay to the Commissioner on the return any duty paid to the SCH under this Act on an SCH-regulated transfer made in the previous month.

Maximum penalty—100 penalty units.

‘(2) If the Commissioner has reason to believe that the SCH has contravened subsection (1), the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount, in the Commissioner’s opinion, payable under the subsection.

‘(3) If the Commissioner makes an assessment under subsection (2)—

- (a) the Commissioner must give written notice of the assessment to the SCH; and
- (b) the SCH is liable to pay to the Commissioner any duty assessed together with any further duty stated in the notice as payable by way of penalty under subsection (4), less any amounts already paid to the Commissioner.

‘(4) If SCH is liable to pay duty because of an assessment under subsection (2), the SCH is also liable to pay penalty duty equal to the amount of the duty assessed.

‘(5) If SCH is liable to pay duty because of an assessment under this section and does not pay the amount stated in the assessment notice on or before the day stated in the notice, the SCH commits an offence.

Maximum penalty for subsection (5)—100 penalty units.

‘Particulars stated by participants to be kept by SCH

‘31V. The particulars stated to the SCH by an SCH participant under section 31Q must be kept by SCH in a legible written form, or in a way readily convertible into legible written form, for at least 5 years from the day on which the statement is made.

‘Disclosure to the SCH of information

‘31W. This Act does not prevent the disclosure to the SCH by the Commissioner of information acquired in or for the administration of the CHES provisions.

‘Liability to account for duty for a security loan or security lending scheme for more than 1 year

‘31X.(1) This section applies if—

- (a) a marketable security or a right in respect of shares is transferred (including a transfer by an SCH-regulated transfer) to perform obligations under a securities loan or a securities lending scheme mentioned under Schedule 1, CONVEYANCE OR TRANSFER, Exemption 16; and
- (b) the transfer of the marketable security is not reversed within 1 year.

‘(2) The transferee (including a transferee of an SCH-regulated transfer) must, within 1 month after 1 year after the making of the transfer mentioned in subsection (1), lodge a statement, in the form approved by the Commissioner, for the transfer made under the loan or scheme.

Maximum penalty for subsection (2)—100 penalty units plus an amount equal to double the amount of the duty payable under subsection (3) if the statement had been made.

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‘(3) The statement is chargeable with duty under Schedule 1 as if it were a transfer of the marketable security or right in respect of shares to which the statement relates for a consideration equal to the greater of—

(a) the full unencumbered value of the security or right at the time of the making of the transfer mentioned in subsection (1); or

(b) the amount paid on the transfer of the security or right.

‘(4) The transferee is liable to pay the duty under subsection (3) and penalty duty equal to the amount of the duty.

‘(5) The transferee is liable to pay to the Commissioner the amounts mentioned in subsection (4) when the statement is lodged.

‘Relevant SCH participant’s identification code equivalent to stamping

‘31Y.(1) If an SCH participant’s identification code is included in a CHESS transfer document, a person required to take notice of whether or not duty has been paid on the transfer is entitled to regard the duty as having been paid.

‘(2) Subsection (1) does not affect a relevant SCH participant’s liability to pay duty chargeable on the transfer document or the liability of a broker on a sale or purchase to which sections 31C to 31F apply.’.

Amendment of s 53 (Directions as to duty in certain cases)

15. Section 53(11), proviso, after ‘this Act apply’—

insert—

‘or to an SCH-regulated transfer’.

Insertion of new s 68C

16. After section 68B—

insert—

‘No duty on financial corporation debentures

‘68C.(1) Duty under Schedule 1, MORTGAGE, BOND,

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DEBENTURE AND COVENANT, does not apply to—	1
(a) a debenture issued by a financial corporation or related corporation—	2
(i) under an instrument of trust—	3
(A) to which the financial corporation or related corporation is a party; and	4
(B) that protects the interests of the holder of the debentures; or	5
(ii) if the repayment of the debenture is secured by a mortgage, bond or covenant executed by the financial corporation or related corporation; or	6
(b) an instrument of trust—	7
(i) to which a financial corporation or related corporation is a party; and	8
(ii) that protects the interests of the holders of debentures issued by the financial corporation or related corporation under the instrument; or	9
(c) a mortgage, bond or covenant executed by a financial corporation or related corporation to secure the repayment of debentures issued by the financial corporation or related corporation.	10
‘(2) Subsection (1) applies to a debenture issued, or an instrument of trust, or a mortgage, bond or covenant executed, by a related corporation only to the extent that the debenture is issued, or the instrument of trust or mortgage, bond or covenant is executed, to raise funds to be used by the financial corporation.	11
‘(3) In this section —	12
“ financial corporation ” means a corporation whose sole or principal business is the provision of finance to the public;	13
“ related corporation ” of a financial corporation means a corporation that is taken to be related to the financial corporation because of section 50 of the Corporations Law.’.	14

Insertion of new s 76

17. After section 75—

insert—

‘Alternative to prosecution

‘76.(1) Instead of bringing a proceeding against a person for an offence against section 31Q, 31U or 31X, the Commissioner may impose a penalty of—

- (a) 3% of the duty chargeable on the statement or return for the first month, or part of the first month, after the end of the period during which the statement was required to be lodged; and
- (b) 2% for each subsequent month or part of a month until the statement is lodged.

‘(2) If a penalty calculated under subsection (1) is less than \$10, the penalty is \$10.

‘(3) The Commissioner may reduce or waive a penalty that could be imposed under this section, section 31Q, 31U or 31X if the Commissioner considers a reduction or waiver to be the appropriate action to take in the circumstances.’.

Amendment of s 78A (Evidentiary provisions)

18. Section 78A—

insert—

‘(4B) A document purporting to be given by the Commissioner is validly given, and is evidence of the matters contained in the document, if the name of an authorised officer appears above the title ‘Commissioner of Stamp Duties’ on the document.’.

Amendment of Sch 1 (Stamp duties on instruments)

19.(1) Schedule 1, CONVEYANCE OR TRANSFER, paragraph (3), up to the first proviso—

omit, insert—

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‘(2A) The stock, marketable security or right in respect of shares mentioned in paragraph (3) are—	1
(a) a share or a right in respect of a share of a body incorporated, or taken to be incorporated, in Queensland as a company under the Corporations Law;	2 3 4 5
(b) a share or a right in respect of a share of a foreign company—	6
(i) if the transfer is an SCH-regulated transfer—that has a registered office, under the Corporations Law, in Queensland; or	7 8 9
(ii) if the transfer is not an SCH-regulated transfer—that has a register in Queensland on which the share is located;	10 11
(c) a unit of a unit trust scheme if—	
(i) the transfer is an SCH-regulated transfer and the register of the scheme is situated in Queensland; or	12 13 14
(ii) the transfer is not an SCH-regulated transfer and the unit is located on the Queensland register of the scheme.	15 16
‘(3) Of a stock, marketable security or right in respect of shares mentioned in paragraph (2A)—	17
(a) on sale for a consideration in money or money’s worth of at least the full unencumbered value of the stock, marketable security or right in respect of shares—	18 19 20
for every \$100 (or part of \$100) of the consideration	\$0.60 21

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(b) for no consideration in money or money's worth,	1
for a consideration in money or money's worth of	2
less than the full unencumbered value of the stock,	3
marketable security or right in respect of shares, by	4
way of division or exchange, or under sections 701	5
and 702 of the Corporations Law—	
for every \$100 (or part of \$100) of the full	6
unencumbered value	\$0.60'
	.
(2) Schedule 1, CONVEYANCE OR TRANSFER, paragraph (3), first	7
proviso, after provision (xii), '\$1.00'—	8
omit, insert—	9
'Nil'.	10
(3) Schedule 1, CONVEYANCE OR TRANSFER, paragraph (3)(c),	11
'\$1.00'—	12
omit, insert—	13
'Nil'.	14
(4) Schedule 1, CONVEYANCE OR TRANSFER, paragraph (4), the	15
proviso following subparagraph (b), after provision (xvi), '\$4.00'—	16
omit, insert—	17
'Nil'.	18
(5) Schedule 1, CONVEYANCE OR TRANSFER, Exemption 15,	19
after 'A transfer'—	20
insert—	21
'(including an SCH-regulated transfer)'.	22
(6) Schedule 1, CONVEYANCE OR TRANSFER, Exemptions—	23
insert—	24
'15A.(1) An SCH-regulated transfer to an entrepot nominee company, or	25
from an entrepot nominee company to another entrepot nominee company,	26
if the transfer is a qualifying transfer.	27
'(2) In subsection (1)—	28

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- “entrepot nominee company”** means a company formed by an SCH participant solely for the purpose of facilitating settlement of transactions, for marketable securities or rights in respect of shares, entered into in the ordinary course of business; 1
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3
4
- “qualifying transfer”** means a transfer of a marketable security or right in respect of shares to an entrepot nominee company, on the purchase or sale of the security or right if the security or right is to be held by the company for settlement purposes only on a temporary basis and not as general custodian or trustee.’. 5
6
7
8
9
- (7) Schedule 1, CONVEYANCE OR TRANSFER, Exemption 16(1), from ‘if the transfer’ to the end— 10
11
omit, insert— 12
- ‘if the transfer is endorsed by an SCH participant in a way approved by the Commissioner.’. 13
14
- (8) Schedule 1, CONVEYANCE OR TRANSFER, Exemption 16— 15
insert— 16
- ‘(3) This exemption applies only to a securities loan or a securities lending scheme for 1 year or less.’. 17
18
- (9) Schedule 1, CONVEYANCE OR TRANSFER, Exemptions— 19
insert— 20
- ‘17.(1) This exemption applies to the conveyance or transfer of a marketable security or right in respect of shares to or from— 21
22
- (a) a corporation that is a financial institution or trustee company within the meaning of the *Trustee Companies Act 1968* or a corresponding law of another State or a related corporation within the meaning of the Corporations Law; or 23
24
25
26
- (b) a corporation of a class prescribed by regulation. 27
- ‘(2) Subsection (1) only applies if— 28
- (a) the corporation’s principal business is to hold property as a trustee or nominee; and 29
30
- (b) the conveyance or transfer— 31
32
- (i) does not pass a beneficial interest in a marketable security or

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- right in respect of shares conveyed or transferred; and 1
- (ii) is not made in contemplation of the passing of a beneficial 2
interest in a marketable security or right in respect of shares 3
conveyed or transferred; and 4
- (iii) is not part of, or made under, a scheme under which a 5
beneficial interest in a marketable security or right in respect 6
of shares conveyed or transferred (whether vested or 7
contingent) has passed, or will or may pass.’. 8
9