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Director – Payments Licensing Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By Email ONLY: paymentslicensingconsultation@treasury.gov.au

To whom it may concern

Payments System Modernisation (Licensing: Defining Payment Functions)

OFX welcomes the opportunity to respond to the Australian Government’s consultation paper on Payments System Modernisation (Licensing: Defining Payment Functions) (the **Paper**).

OzForex Limited, trading as OFX, (**OFX**) (ABN 65 092 375 703) is an Australian headquartered global foreign exchange and payments company. OFX holds an Australian Financial Services Licence (No. 226 484) regulated by ASIC and is a registered remittance provider with AUSTRAC. Its parent company, OFX Group Limited, is listed on the ASX (ASX:OFX).

OFX Group Limited is a global company offering its products and services in eight jurisdictions globally (including the UK, EU, Singapore and Canada). OFX’s business model includes being based on improving the way customers receive, store, hold, make payments and manage their money globally.

As has been identified in the Strategic Plan for Australia’s Payments System June 2023, the current regulatory framework in Australia is limiting the opportunity for Australian Payment Service Providers (**PSPs**) (such as OFX) to innovate, grow and provide Australian customers with the features and products that they demand, especially when compared to other jurisdictions such as the UK and EU.

OFX strongly supports the modernising of the licensing framework in Australia and agrees that reform is required to ensure the regulatory framework is fit-for-purpose now and in the future. Australia needs a mature regulatory framework that is fit-for-purpose, modern, promotes a safe and resilient system and aligns with broader digital economic transformation. This is directly aligned to the overall principles of providing clarity and transparency, and consistency with other payment regulations internationally.

We look forward to providing further submissions and consulting further with Government specifically in relation to the regulatory obligations that should be imposed under the new licensing framework.

OFX has reviewed the Paper and the consultation questions contained therein regarding the list of payment functions that are intended to underpin the new licensing framework. This submission is focused on those consultation questions that will materially impact OFX, its business and its customers now and into the future, as well as those areas where OFX has direct and relevant experience.

Tel +61(0) 2 8667 8000 • customer.service@ofx.com • ofx.com
Level 19, 60 Margaret Street, Sydney NSW 2000 Australia

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The responses to the consultation questions are in the order they are listed in the Paper and are numbered accordingly.

1. Are there any other principles that should be considered in developing the list of payment functions?

OFX agrees with the principles, particularly the second principle relating to ensuring that the new framework will impose graduated regulations based on the different types of risks associated with performing each payment function.

All of the principles should always be read in the context of the stated objectives of the new regulatory framework. OFX specifically supports the principle of consistency with other payment regulations, as a truly global business addressing the needs and wants of clients that themselves are global citizens, consistency will improve certainty and ensure the framework is fit for purpose.

3. Should all payment functions be treated as financial products under the corporations legislation or should some be treated as a financial service?

The existing definition of financial product under the *Corporations Act 2001* (Cth) (**Corps Act**) is unnecessarily complex and implementing a list of payment functions and a new definition of payment services will assist in bringing clarity and transparency to the regulation. The proposed payment functions would form a non-exhaustive list of payment services and should be described as such without attempting to fit them within the existing concept of what a financial product is. This is also consistent with the objective of aligning Australia's payments regulatory framework with international jurisdictions.

A defined list of payment services with associated definitions and applicable regulatory obligations will assist in providing clarity to PSPs and improving regulatory certainty. This will also assist where there are multiple providers and/or issuers within the one service value chain, and each should be able to provide their payment service without over regulation or double up on requirements.

In addition, there needs to be clarity on what is not considered a payment service which attracts regulation as there are incidental or complementary services which unlock value to the customer which, if not directly a payment service, should not attract regulation or licensing. The protection afforded to the end user and the regulatory oversight would come from the provider of the regulated payment service needing to be correctly licensed. OFX supports the proposal that the incidental product exclusion apply to the proposed list of payment functions.

The existing regulatory obligations under the Corps Act which attach to financial products, for example the design and distribution obligations, should only attach to the payment service if the obligation addresses a risk posed by the service provided and the obligation is commensurate to such risk.

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Clarity and detail on the definitions of what is and is not considered a regulated payment service, including what specific activities fall within the definition, is crucial to ensure consistency and promote competition.

4. **Does the term ‘payment stablecoins’ accurately describe the types of stablecoins this paper seeks to capture for regulation or are there other terms that may be more appropriate? and**
5. **Does the proposed definition of ‘payment stablecoins’ adequately distinguish itself from other stablecoin arrangements?**

The term ‘payment stablecoins’ and the associated definition appears to be confusing in relation to the intent and scope of the regulation addressed in this Paper. The definition is drafted broadly and could capture more than intended. As is discussed in the Paper, consistency with the payment functions to the likes of the UK or Singapore regulatory regimes has been considered and this should include utilising the same or at least similar terminology. This aligns to the principle of consistency with other payment regulations and ensuring a harmonised approach.

As the Paper has rightly stated, many Australian PSPs operate globally and therefore the intended objectives of the new regulatory framework to ensure consistency and improve regulatory clarity should be paramount.

6. **Is regulation as an SVF an appropriate framework for the regulation of payment stablecoin issuers? If not, why? What would be an appropriate alternative?**

Issuing of payment stablecoins should be subject to a separate payment function specifically considering the underlying level of risk posed to the end user by the PSP.

Considering the principle of targeting regulation to the risk posed, it does not appear that the SVF framework and associated regulatory obligations which would attach to all SVF providers is the appropriate framework. The risk to the customer and the risk of the stablecoin issuer is not the same or commensurate to regular SVF provider and it therefore does not align to the principles of clarity and targeting regulation to risk posed.

7. **Does the list of proposed payment functions adequately capture the range of payment services offered in Australia currently and into the future that should be regulated under a payments licensing regime?**

The proposed list of payment functions is sufficient for what is in market right now in relation to actual payment services and, as long as the legal definitions and associated regulatory obligations are in line with the principle of the ensuring the list can change and adapt, it should be fit for the future. It is important to allow for a level of flexibility to add and or update a payment function to adapt to changes in technology and or the market.

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The above position assumes that there will be updates and amendments to the existing definitions under the Corps Act, for example “deal in a financial product” and specific things that are and are not financial products in s764A and s765A Corps Act respectively.

It is also assumed that the list of payment functions are intended to include derivatives and arranging for financial products on behalf of another person. OFX notes that the ALRC Interim Report C Financial Services Legislation June 2023 includes proposals to consolidate and update definitions within the Corps Act.

The list of proposed payment functions does not address associated services such as financial product advice, financial market or dealing in securities, nor does it address the concept of issuing products or services to retail vs wholesale clients.

OFX confirms that the concept of retail vs wholesale clients should remain especially considering the two customer segments have different risk profiles and the intent that regulation should target the risk posed. Whilst the Paper places both consumers and businesses in the one stakeholder group, when outlining and addressing risks associated in issuing and providing financial products and financial services the two customer segments are very different. The new regulatory framework should reflect the existing model that identifies the distinction between retail and wholesale clients, however the current definitions are overly confusing and are not beneficial to either the PSP or the customer. This position is recognised and reflected in the proposed definitions of and distinctions between a Major and a Standard SVF provider.

See response to question 16 below for further comments and analysis.

8. Does the list need to be broken down in more detail, for example, should facilitation, authentication, authorisation and processing be separate functions?

Yes. To ensure clarity and enable PSPs to be regulated according to the payment functions that they issue and provide it would be better to breakdown these functions in more detail.

9. Should any other payment functions be included?

Please see response to question 7 above. In addition OFX confirms that, in its view, the list should not be overly prescriptive which will help to ensure the objective of it remaining fit for purpose and the principle of ensuring the list can change and adapt are achieved.

10. Would the removal of the identified exclusions create unintended consequences?

It is important to ensure that the new framework doesn't amount to over regulation unnecessarily. As has been identified by the Council of Financial Regulators, the ALRC and as set out in the Strategic Plan

Tel +61(0) 2 8667 8000 • customer.service@ofx.com • ofx.com
Level 19, 60 Margaret Street, Sydney NSW 2000 Australia



for Australia's Payment System June 2023, it is imperative that new licensing framework provide clarity and transparency.

Where the regulatory obligations associated to a payment function are genuinely based on addressing the risk posed by that particular payment function, then the removal of the identified exclusions should not create unintended consequences. OFX suggests that the Government, when considering each identified exclusion, should focus on whether the risk posed is minimal and whether the regulation would be disproportionately burdensome. The underlying end user of the PSP receiving the services should be taken into consideration as part of the assessment of the overall risk.

As further discussed at questions 7 and 16, the risk profile of a consumer is different to the risk profile of a business or corporate entity. Therefore, it is not only the payment function itself that needs to be taken into consideration, it is just as important to consider the underlying end user when addressing and mitigating potential risk.

OFX supports moving existing carveouts into primary law or regulation as suggested in the Paper.

11. Which existing exclusions and exemptions applicable to non-cash payment facilities should be amended or removed to support regulation of the proposed payment functions? Do any existing exclusions or exemptions require updating, such as the relief for low-value facilities?

Whilst it is proposed that the concept of the 'non-cash payment facility' be replaced by more appropriately described payment services including the issuance of payment accounts or facilities, OFX supports amending the existing exclusions and exemptions provided by ASIC and the RBA. These exemptions and exceptions should be reviewed and modernised to ensure they are applicable in today's market, for example by increasing the values noted considering the existing values were set 15+ years ago.

12. Should the incidental product exclusion apply to the proposed list of payment functions?

Yes, please see responses to question 3 above.

13. Should any exclusions or exemptions be revised to be more consistent with comparable jurisdictions? For example, should the 'single payee' exclusions and relief for loyalty schemes, electronic road toll devices, prepaid mobile phone account and gift cards be replaced by a general exclusion for payment instruments that can be used only in a limited way?

It is OFX's position that a general exclusion for payment instruments that can be used only in a limited way will help in ensuring consistent regulation and is aligned to the principles of clarity and ensuring the list can adapt and change. The list of payment functions and or payment services should not be overly prescriptive in any event, as this could likely create grey areas and inconsistency for PSPs.

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The overall intent of the regulatory framework should be to encourage meaningful compliance with the substance and intent of the law (which is echoed in the ALRC Interim Report C Financial Services Legislation June 2023).

16. Are there any other risk characteristics of a payment function that should be considered?

OFX largely agrees with the categories of risks set out the Paper.

With respect to financial risks, it is imperative that the associated regulations and obligations are articulated to address the actual risk posed. The legislative framework should not be overly complex and should be able to be implemented to ensure the underlying purpose of mitigating the risk that a customer loses their funds stored with the respective institution or is not able to access their funds as agreed under the applicable agreement.

It is OFX's experience, in having to comply with various safeguarding obligations across multiple jurisdictions, that the existing legislation is overly complex which can lead to the provider having to incur unnecessary costs and or the regulator having to provide detailed and prescriptive guidance. The legislative regime should be sufficiently clear to enable providers to comply with the intent and achieve the outcome of mitigating the risk without being disproportionately burdensome. Without clarity and consistency in the requirements and obligations, providers can take different interpretations which leads to differences in the level of protection of customer funds and ultimately doesn't achieve the intended outcome of addressing the outlined financial risks.

With respect to stakeholders impacted by the risks, the Paper couples both individual consumers and businesses into the one category. OFX disagrees with this position.

OFX agrees that all customers should be able to understand the products and services they are offered and to be able to use them as intended, however the sophistication and different risk profile between individual consumers and businesses is particularly relevant when characterising risks. In addition, there are individual consumers with a level of sophistication which means the level of risk posed to them is not as high as a regular consumer.

To say that it is difficult for customers to determine the safety of the payment system and or the payment service provider is not fully accurate or consistent across all PSPs. In addition, PSPs are required to and do provide a multitude of information which is readily available for all customers. It is recognised that the comprehension of the information may differ specifically between individual consumers and businesses. Therefore, the vulnerability of a customer differs as does the risk profile and therefore so should the level of regulation which should address the risks posed. As discussed in response to question 7 above, whilst the concept of retail vs wholesale customer exists today, when considering the risk characteristics of each payment function this concept should be considered and modernised in line with the update to the regulatory framework.

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Level 19, 60 Margaret Street, Sydney NSW 2000 Australia**



With respect to the financial system, as outlined in the Paper the systemic risk and the broader financial instability implications of payment system participants would have a large impact on all participants including PSPs and customers. Therefore, the regulatory burden should appropriately reflect that impact.

17. What are the types of payment risks posed by the performance of each of the proposed payment functions?

OFX largely agrees with the key risks outlined per payment function in the Paper, however it is important to ensure that the actual risks are adequately addressed via regulation and the perceived risks are understood so as not to overregulate. As discussed in question 16 above, the financial risks associated with the simple payment services provided by PSPs are not equivalent to more complex payment services that are provided by a bank or payments clearing and settlement participant. The actual risk posed by the payment function of, for example issuance of a payment account accounts, facilities or instruments that allow value to be stored, is loss of customer funds. The regulatory obligations should address this risk but not make it commercially unviable to provide the service to create barriers to entry or prescribe ways of complying that unnecessarily limit the operations of a PSP.

In relation to the issuance of payment instruments, payment initiation services, and money transfer services, the responsibility for unauthorised transactions needs to be balanced and there are existing protections put in place by providers (such as OFX) which confirm that, if a payment is sent to the wrong recipient due to its mistake, the transaction value is refunded. Where a PSP has addressed the risks via compliance with AML laws, screening and checks and performs in accordance with the customers instructions, the risk rightly sits with the customer. This is reflected in the case law on this issue. The risk of potential compromise to consumer data and or misleading and deceptive conduct exist within the provision of payment services however they are not unique to payment services and are already managed by existing consumer protection and other obligations.

18. While having regard to the obligations proposed to be imposed on the payment functions (outlined in Section 7), are the risks posed by the performance of each payment function appropriately mitigated by the payments licensing regime? Or are they more appropriately addressed by a framework outside of the payments licensing regime such as the PSRA or AML/CTF Act?

The risk categories of financial risk, misconduct risk, operational risk and some of the risk to stakeholders set out in the paper would be appropriately mitigated via the proposed payments licensing regime. There are additional risks to stakeholders that are more appropriately addressed via the Privacy Act, consumer protection laws and the AML/CTF Act including in relation to personal data protection, misleading and deceptive conduct and activities related to fraud and scams.

OFX agrees with the recommendation in the Payments System Review that proposed that the RBA will be responsible for authorising industry standard-setting bodies, including that these bodies will set core technical standards for PSPs.



19. Is the proposed risk-based approach to applying regulatory obligations appropriate?

OFX strongly supports the risk-based approach to applying regulatory obligations. For the reasons outlined in this response, a risk-based approach aligns to ensuring meaningful compliance with the laws and regulations including the intent of the law and it also supports achieving the desired outcome of mitigating the underlying risks to the end user.

In relation to the proposed set of regulatory obligations, OFX suggests that the stock cap associated with a SVF provider and individual customers is too low. In addition, the time limit associated with the stock cap is too short. As has been the case in Singapore, it is likely these would need to be updated shortly after implementation to reflect customer needs.

20. Should payment functions that are not customer facing be required to hold a payments licence? Should providers of these non-customer facing payment functions have different regulatory obligations, such as only having to comply with relevant industry standards?

It is OFX's position that where the provider is performing a payment function as it is defined then it should be subject to the payments licence requirements. Although the payment function may not be directly customer facing, if it is a payment function identified as part of the payments supply chain then the risk posed by that function should be adequately managed and addressed by the provider of that function.

However, as further discussed in response to question 3 above, there are certain existing requirements in the Corps Act, such as the design and distribution obligations, the anti-hawking prohibition and the disclosure obligations, that should not become applicable. The application of these particular obligations generally needs to be reconsidered as they are not fit for purpose and do not practically or effectively address the underlying risk posed by the financial product or service.

21. Should the common access requirements and industry standards be linked to the payments licence? For example, would it be appropriate for some entities to only be required to comply with mandatory industry standards but not be required to hold an AFSL or comply with the ePayments code?

OFX supports the position of opening access to Australia's payment systems to payment service providers that do not hold an ADI licence. It is OFX's position that the access rules should be common across all participants, rather than creating a two-tier access system which will likely stifle innovation and competition.

As set out in the Strategic Plan for Australia's Payments System June 2023, OFX agrees that facilitating greater access to payment systems through the provision of clear, objective, proportionate and transparent access requirements will support greater competition between payment service providers

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and encourage development of more payment innovations for consumers. In principle this initiative positively impacts the payments sector within which OFX operates and will likely increase innovation and customer service.

The common access requirements and industry standards should be linked to the payments licence to ensure consistency of requirements to mitigate operational, financial and systemic risks.

22. What types of businesses should be subject to the common access requirements? There is limited information available on the number and size of non-bank PSPs interested in directly participating in Australian payment systems to clear and settle payments. If this is something that your business is interested in, please provide further information (including via a confidential submission).

The review of the licensing framework presents a large opportunity to modernise the current regulations in relation to access to the payments infrastructure to ensure efficiencies and clarity within the system and its oversight.

It has been OFX's experience that it is the reservation of banks to work collaboratively with PSPs, such as OFX, that is the real issue, and therefore the focus on the refining of regulation to support these relationships would be advantageous to both the payments industry and the consumer, and also increase competition.

OFX supports any participant that meets the common access requirements, industry standards and holds the appropriate licence to be able to gain access.

OFX confirms that it is interested in participating in the Australian payments system to clear and settle payments, however OFX supports the position that participants should have the choice of either investing to build the required infrastructure and operations to connect directly, or partnering with a third party and rely on that third party for the infrastructure.

23. Further information is sought to help identify the number and profile of participants that perform each payment function and therefore may potentially be affected by the new licensing framework.

Based on the information provided in the Paper and the OFX product offering in Australia, under the new licensing framework OFX would likely look to perform the following payment functions: Issuance of Payment accounts or facilities; Issuance of Payment Instruments, Payment facilitation, authentication and processing services; and Money Transfer services. It is unclear at this stage whether OFX would be considered a Major SVF or a Standard SVF in relation to the payment services it intends to provide to its customers.

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24. How can the payments licensing processes across regulators be further streamlined?

It is OFX's view that the simplification of the process of obtaining different authorisations and the recommendation of ASIC to be the single point of contact, assumes that there will be an overhaul of the current process and procedures in line with the new licensing framework. This would ensure there is not a bottleneck or that misaligned standards are applied.

To achieve the outcome of ensuring consistent and appropriate regulation of PSPs and improving regulatory certainty, the cooperation and alignment between regulators is critical. A single point of contact for licensing processing and ongoing management of licensees is preferable.

The new payments licensing framework will need to consider and support other regulatory licensing reviews such as APRA's broader review of APS610 and the ALRC's review of the financial services legislation.

25. Is the proposal to provide central guidance and a website portal for PSP licensing processes a good alternative to the single point of contact proposal recommended by the Payments System Review?

Central guidance and a single portal for licensing processes will help to improve the existing regulatory environment, however it doesn't go far enough to achieve the recommendation, which OFX supports, in having a single point of contact.

Whilst it is proposed that Major SVF providers are regulated by both APRA and ASIC, there needs to be clarity on the roles and responsibilities of each regulator and distinction between requirements so as not to overregulate or create red tape. Having one regulator responsible for a particular process will assist with streamlining authorisation processes, and it is important this principle is also maintained for ongoing monitoring and management of licensed PSPs.

To support the new licensing framework there needs to be greater collaboration between the payment system regulators. There needs to be inter-agency collaboration and communication, including the sharing of applicable data. This supports the plan for one efficient payments system in Australia as well as the outcomes of improving regulatory certainty and better alignment with internal jurisdictions.

OFX welcomes the recognition that the regulatory architecture governing payments needs to be updated. We would appreciate the Government considering the above points when conducting its analysis and welcome any further points for clarification.

We look forward to consulting further with Government, industry bodies and regulators in due course. Please feel free to contact me if you would like to discuss our submission.

**Tel +61(0) 2 8667 8000 • customer.service@ofx.com • ofx.com
Level 19, 60 Margaret Street, Sydney NSW 2000 Australia**



Yours sincerely

A handwritten signature in blue ink, appearing to be 'L. Fagan'.

Lucinda Fagan

Senior Legal Counsel - Global Licensing and Product

OzForex Limited

Lucinda.fagan@ofx.com

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