

18 March 2014  
Arun Maharaj

To: BBY Ltd

Level 17, 60 Margaret Street  
Sydney, NSW 2000

Dear Arun ,

We are writing to inform you of some amendments which need to be made to certain documentation you have signed with ABN AMRO Clearing Sydney Pty Ltd (**AACS**) and ABN AMRO Clearing Sydney Nominees Pty Ltd (**AACSN**).

### **The Security Deed**

As you are probably aware, the *Personal Property Securities Act 2009* (Cth) (**PPSA**) came into force last year. The PPSA establishes a single national law governing security interests and substantively alters the law of charges. For example, under the PPSA the concept of a floating charge has been broadly substituted with the concept of circulating assets. As such, your existing Security Deed with AACS and AACSN needs to be updated to reflect the new legislative environment. These updates include:

- definitional changes;
- new confidentiality provisions;
- references to specific sections of the PPSA that the parties may contract out of;
- a new definition of Beneficiary, designed to cater for omnibus trading via the ABN AMRO Clearing Group.

### **The Standard Client Agreement**

Recent regulatory changes, the introduction of Chi-X and changes to the global ABN AMRO Clearing Risk and Internal Policy will require amendments to your Standard Client Agreement (**SCA**) with AACS.

### **The Documentation**

Please find attached the following documentation:

1. Deed of Variation to the Security Deed (attaching the Security Deed as an annexure); and
2. Amendment Deed to the SCA (attaching the SCA as an annexure).

Please review the documentation carefully and confirm your agreement by signing where indicated. Please then return it to us at the address shown above. We will countersign and post your counterpart original out to you.

We remind you of your continuing obligations to pay any stamp duty liabilities that may arise as a result of activities contemplated under this arrangement. We recommend that you seek your own external stamp duty advice as you see fit.

Should you have any questions, please contact Adrian Rubin on 8221 3094 or via email [Adrian.Rubin@au.abnamroclearing.com](mailto:Adrian.Rubin@au.abnamroclearing.com) .

Yours sincerely

**ABN AMRO Clearing Sydney Pty Ltd and ABN AMRO Clearing Sydney Nominees Pty Ltd**



Adrian Rubin  
Head of Sales Asia Pacific

# ABN AMRO Clearing Services Agreements

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I have read the ABN AMRO Clearing Sydney Pty Limited (AACS) Standard Client Agreement.

The agreement is an umbrella agreement for third-party clearing and ancillary services. It contains an introductory section which relates to the establishment of the primary relationship with AACS and incorporates Schedules for each of the products and particular issues such as pricing relevant to those products.

As there are no pre-set parameters by which to gauge the document: set out below is a summary of its key features.

The parties to the agreement are ABN AMRO Clearing Sydney Pty Limited and BBY Limited. The agreement relates only to the Services which include:

- dealing
- dealing loan facility
- custody services
- securities lending

Dealing Services are provided primarily through ASX Clear and both AACS and BBY appoint ASX Clear its agent for the purposes of the default provisions of the Operating Rules. BBY is required to appoint ASX Clear as its agent and BBY appoints AACS as its agent and attorney. The purpose of these provisions is to allow the Exchange or the Participant to authorize transactions and completion of transactions; primarily in the event of default but also in other circumstances deemed necessary by AACS.

## **Dealing Services**

Dealing Services are specified in Schedule 2 commencing on Page 54. All Dealing Services will be provided in accordance with the rules of the relevant exchange.

Monies deposited with AACS must be deposited into either the Client Money Account relevant to Dealing Client Money or the Client Money Account relevant to Futures Client Money. AACS has slightly different authorities in relation to these different accounts. Refer clause 5.

Clause 6 specifies a number of accounts which need to be opened in order for the Dealing Services to be provided. These accounts are established in the books of AACS and will record monies or securities deposited by BBY with AACS in accordance with the agreement.

Clauses 6.6 and 6.10 require careful understanding. Those clauses entitle AACS to pool BBY monies and BBY collateral with AACS's other clients' monies and to use BBY money and collateral to cover AACS obligations in relation to its other clients. In this way BBY is exposed to the overall management of AACS and in particular to the manner in which AACS manages its credit exposure to which other clients.

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Clause 7 makes the operating rules of the relevant exchange the dominant terms. Where operating rules change the agreement with AACS will be changed to reflect those underlying changes.

## **Securities Lending**

Security Lending is provided pursuant to documentation set out in schedule 13 which is the standard ASLA agreement.

AACS is only required to use reasonable endeavours to meet any Securities Lending requirement. If it is unable to obtain the stock to lend, it is not required to enter into a transaction. Stock availability will have to be confirmed and borrowing locked in for intended short sales before orders are placed. For unplanned stock borrowing requirements in connection with settlements where customers are short of scrip, borrowing arrangements are not guaranteed.

AACS enters into its borrowing and lending arrangements as principal. Accordingly risk of each transaction is to and from AACS.

## **Dealing loan facility**

AACS offers to provide a Facility in terms of schedule 3. The facility may only be used for its intended purpose and may not be used outside the Agreed Index or to finance Approved Non-Exchange Transactions unless AACS consents.

## **Custody**

Custody services are specified in schedule 4. All securities lodged with AACS for the purposes of this agreement will be held under the terms of the Custody Agreement. Where BBY lodges scrip in custody BBY will need to have accurate records of the underlying ownership so that that information can be provided if required.

## **Fees**

Fees are specified in schedule 7 and may be changed on a month's notice. BBY grants authority to AACS to debit fees and expenses to any money standing in the Client Money Account.

## **Indemnities**

Clause 13 contains a broad indemnity in favour of AACS. The indemnity not only covers any loss arising from a breach of the agreement by BBY but also losses which arise from any act, omission or conduct of BBY, even if that conduct is proper conduct under the terms of the agreement. The indemnity also covers AACS losses if it gets called into a third-party dispute.

## **Limitation of liability**

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AACS liability is limited in terms of clause 14. The cap of any loss is the lesser of market value and replacement value of financial products that did not clear in a transaction plus interest.

## **Payment and set off of claims**

Amounts due between BBY and AACS may be set off by AACS. Refer clause 15.

## **Event of default**

Particular attention needs to be given to the events of default in clause 16.2 which relate only to BBY. BBY will need to confirm that its systems are capable of measuring accurately or responding to defined terms such as an LV, Risk Amount, Stress Test Multiple etc. There are new definitions "Basel Stress Test Haircut" and "Single Equity Basel Stress Test Haircut". The definition of Gross Delta Equivalent and a number of other terms have been dropped. We may have been using these terms in previous operating procedures relating to this agreement and those operating procedures will need to be updated.

## **Solvency ratio**

The solvency ratio must be at least 4%. I refer you to the limitation on Credit Line Utilisation (clause 16.3). This limitation will need to be incorporated into BBY's operating procedures.

## **Documentation and reporting**

We should add to our corporate calendar the requirement to provide solvency notices twice in a 12 month period, an Audited Solvency Notice annually as well as any other regular report required by AACS.

Particular attention should be given to clause 16.4(d) which appears to be out of place because it is not so much a documentation or reporting issue but imposes potentially strict limits on BBY's borrowing ability. The clause requires that BBY is not to incur any Financial Indebtedness without the prior written consent of AACS other than Financial Indebtedness provided here under. This is somewhat ambiguous. The document does not make any specific provision for Financial Indebtedness other than the Dealing Loan Facility under clause 9 and Schedule 3. However the definition of Financial Indebtedness (page 45) includes Financial Indebtedness which is not provided for under the agreement.

Clause 22.2 contains warranties to be given by BBY which refers to Financial Indebtedness. BBY warrants on a continuing basis that other than under this Agreement or as disclosed by BBY to AACS in writing prior to the date hereof the client has no obligations or liabilities (present or future actual or contingent) to any person with respect to Financial Indebtedness.

Effectively BBY has to expose the full extent of its Financial Indebtedness to AACS and in future seek AACS consent to any addition to those arrangements.

## **Consequences of default**

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The consequences of any particular default will depend upon the circumstances. Importantly, on default all power is placed in the hands of AACS to combine consolidate merge closeout will take such other actions as it considers necessary. However, if the default is a monetary default AACS certain grace periods are provided.

The primary message is that on a default by BBY, BBY will have no control over the unfolding events. Therefore, it may be important to manage the relationship with AACS so that the theoretical risk to AACS on default is kept to a minimum.

If AACS defaults BBY may instruct AACS to take liquidation actions which are set out in 17.3 or terminate the agreement under clause 18.3. Termination will be in accordance with the relevant exchanges rules.

## **Termination Consequences**

Termination Consequences are set out in clause 19. If AACS gives notice of default it can take over BBY's open contracts. If the notice is given under clause 18.3 AACS will retain the profits and losses associated with any position.

AACS and BBY have the right to terminate the agreement by giving three months' notice. The provisions of clause is 19.1, 19.2 and 19.3 apply to this type of termination depending on how the termination is initiated.

## **Disclosure**

AACS is expressly entitled to disclose BBY information for the purposes set out in clause 20. Otherwise the parties are required to keep matters confidential in accordance with the requirements of clause 21.

## **Representations and warranties**

The representations and warranties are mostly standard for this type of agreement but note the representations and warranties in clause 22.2 (b), (c), and(k).

These sub-clauses state that except as disclosed in writing to AACS, BBY is not a party to any agreement to dealing derivatives with any entity other than AACS. This is a continuing warranty. It would therefore mean that BBY would have to get prior approval from AACS before entering into any future agreement to deal in derivatives with another party.

BBY is also required to represent that there are no open contracts of BBY registered in an account with the exchange opened in the name of a party other than AACS.

As mentioned above, BBY also gives the representation warranty that it has no Financial Indebtedness other than that which is disclosed to AACS prior to entering into the agreement.

## **Definitions**

Note the new definitions which include the market integrity rules for both the ASX and Chi-X, Basel Stress Test Multiple, Russell Stress Test Haircut, Block, Cash Credit Limit, Credit

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Limit, Credit Line Utilization, Financial Indebtedness, Global Commitments, Loss, Principal Trader, PT Access, Securities Lending Line Utilization, Stress Test Multiple, Total Client Liabilities, and Trading Messages.

Each of these represent a change in the functioning of the Services.

## **Dealing Services**

The detailed provisions defining Dealing Services are set out in Schedule 2, commencing on page 54. There are not many changes to the provisions relating to Dealing Services from those set out in the previous version of this Schedule. The primary changes relate to trading restrictions, payment netting, and DMA services.

The principles relating to the conduct of the Dealing Services remain unchanged. BBY is responsible for the authenticity and accuracy of all instructions no matter how they are given. All contracts are settled in cash unless otherwise agreed. Instructions are only valid for the day on which they are given. AACS is only obliged to use reasonable endeavours to execute transactions and has no liability other than for its own negligence, breach of duty, fraud or wilful misconduct.

AACS retains general authority to cancel Exchange Transactions and Approved Non-Exchange Transactions.

Any Misdirected Transactions, that is transactions attributed to AACS incorrectly, must be rectified as quickly as possible and BBY is required to undertake an internal investigation into the circumstances of the cause of a Misdirected Transaction.

AACS may place Trading Restrictions on BBY. It may Block BBY from withdrawing assets from AACS. Trading Restrictions and Blocks bind BBY immediately. BBY is responsible for providing notice to AACS at the end of each day of all transactions entered into. This notice is to be given by BBY or can be given by the relevant exchange.

## **Clearinghouse**

AACS will register all transactions with the Exchange unless the transaction is in breach of a trading restriction, the exchange or clearinghouse does not permit the registration of that transaction or AACS ceases to be a Participant.

Clause 4.2 sets out a slightly different formulation of payment netting. In practice the change of terminology may not make much difference to the actual cash flows; the change of wording may indicate a change in calculation methodology.

BBY should confirm that its systems calculate its exposure in a manner consistent with the formula in clause 4.2. Note also the specific addition of the sentence providing that AACS is not obliged to make any Advance to the client in relation to an excess. Perhaps the operation of this provision in practice needs to be confirmed. BBY undertakes to satisfy any payment obligations of AACS which relate to the Clearing Account.

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## **Options**

Options instructions must be given within reasonable time and BBY must provide funds to enable the exercise of the options.

Clause 6 contains specific authority is to enable settlement of various transactions.

## **Purchase and sale transactions**

Settlement of purchases only occurs where the transaction is funded or an Advance has been arranged. Where there are insufficient funds AACS is not obliged transfer Financial Products until it receives of the required amount.

## **Collateral**

AACS is entitled to call for collateral in its absolute discretion. Collateral in the form securities will be held in the Custody Account

Collateral in the form of cash will be held on the Client Money Account.

Collateral must be free of security interests.

Clause 7.4 is important. It entitles AACS to use BBY collateral by depositing it with the clearinghouse to satisfy AACS's obligations in respect of margin or any other cover requirements imposed by the clearinghouse. This may not be limited to BBY transactions. As pointed out above, BBY collateral may be used to provide credit support for non-BBY transactions.

Collateral is locked up while ever there is a default.

## **Electronic processing**

Transactions may be given electronically by a protocol to be agreed. BBY agrees to protect AACS's intellectual property rights in relation to electronic transactions. BBY accepts the risks associated with electronic order routing. BBY undertakes to keep passwords confidential. AACS retains the right to restrict or terminate electronic order routing at any time.

## **Direct Market Access**

Direct Market Access services are offered subject to additional provisions set out in schedule 11 and schedule 11 A, for the Japan market.

If BBY uses the Principal Trader (PT access) service sSchedule 12 will govern those transactions.

## **BBY liabilities**

BBY is liable to AACS for its Client Liabilities on a daily basis. This clause will not have much effect in relation to ordinary transactions but may impose additional obligations on

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BBY in circumstances where indemnity amounts are claimed under the agreement. This clause would entitle AACS to suspend services until those indemnity amounts paid.

## **Relationship between AACS and the Exchange**

Clause 10 sets out the relationship between a ACS and the Exchange. Fundamentally, for each transaction entered into by BBY, AACS is obligagted as principal to the Exchange. BBY has no rights against the Exchange. BBY has separate contractual rights under this agreement against AACS.

## **Futures and Options**

Additional provisions relate to Futures and Options trading. BBY must meet all its obligations under the Operating Rules when entering exchange transactions. This incorporates the Operating Rules into the contract and gives AACS rights against BBY in the event the Operating Rules are breached.

BBY specifically is required to acknowledge Operating Rules and Market Integrity Rules in relation to Futures and Options contracts. These requirements are set out in clauses 15 and 16..

## **SYCOM interface**

There are additional provisions attaching to use of a SYCOM interface. BBY is specifically required to accept the risks of using such interface.

## **Dealing loan facility**

The details of the Dealing Loan Facility (amount, interest rate etc) will need to be negotiated separately. The Dealing Loan Facility will operate automatically where BBY has an obligation to pay an amount to AACS and BBY does not pay the amount or AACS pays an amount to a third person on BBY's behalf, BBY is deemed to draw an Advance equal to the amount due to or paid by a ACS.

AACS will only make the Advance where the principle outstanding after the Advance is paid would not exceed the limits of the facility and AACS is satisfied that there has been no Default. Interest accrues daily.

Advances are repaid by crediting amounts which AACS is obliged to pay BBY on any particular day or AACS sends a notice to BBY declaring an amount to be outstanding and requiring repayment by a particular date.

The payments must be made in accordance with AACS's written directions without set-off and grossed up in the event of any withholdings.

There is an increased cost and change of law provision which will enable AACS to pass on to BBY any increase in costs arising from a regulatory change.

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AACS may terminate facility in the event there is a change of law which makes the facility impracticable or illegal. The amount repayable under the Advanced may be set off against amounts owing by AACS to BBY.

## **Custody-Schedule 4**

This Schedule appoints AACS as BBY's custodian. All financial products acquired by BBY through AACS will be held by AACS Nominees.

The facility acts as a normal custody account with all assets other than bearer securities certain other securities registered under AACS Nominees HIN.

Importantly, please note clause 7.1 of schedule 4. This clause enables AACS to use BBY Custody Assets for its own purposes. When this happens BBY will cease to hold any legal or beneficial interest in the relevant Custody Assets and AACS will have an obligation to transfer Equivalent Securities and equivalent Custody Funds to BBY on request.

This means that BBY has no property interest in those particular assets and will have only a contractual right as Creditor to recover payment and assets from AACS in the event of an default.

In clause 9 of this Schedule 4 particular protection is given to those entities which are supervised by APRA. These are minimum standards set by the law. It seems to me those protections ought to be available to all clients and not just supervised entities.

Schedule 6 sets out the reporting to which BBY is entitled and schedule 7 sets out the fees which are payable. I have no comment in relation to either schedule. Schedule 8 is a standard Risk Disclosure Statement. I have no comment.

Schedule 10 is a form of written direction to be given by BBY to AACS. The Direction effectively defines AACS's obligations to act in accordance with BBY directions on a daily basis. Confirmation should be obtained from the operating areas that the information which AACS is being directed to provide is adequate for BBY purposes.

Schedule 11 and Schedule 11A set out detailed provisions for the operation of Direct Market Access. Direct Market Access is available to BBY and to Authorised Persons. Authorised Persons are those persons nominated by BBY. The provisions are designed to ensure that AACS retains control of the entire trading environment. BBY has the responsibility for ensuring that it and its Authorised Persons comply with the rules of the exchanges and AACS. If BBY was to make these Direct Market Access facilities available it would need agreements and operating systems in place with its clients to ensure that whatever obligations are placed upon BBY are able to be passed onto and enforced against BBY nominated Authorised Persons.

Schedule 12 deals with Principal Trader Access. Will BBY be using this service?

Schedule 13 is the Security Lending Document. The ALSA document is in the standard industry form. The commercial terms which address BBY's particular circumstances are set

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out in schedule 1. These terms set out the collateral, margin, valuation and other terms relating specifically to BBY. Effectively the only variables are these provisions in the Schedule. We can discuss the operation of these commercial terms in our meeting so as to ensure they meet BBY requirements.

I note there is also the Pershing ASLA. It is also in the industry standard ALSA document with commercial terms set out in its schedule. We should discuss this also in our meeting.

Regards