



# Corporations Amendment Regulations 2003 (No. 4)<sup>1</sup>

**Statutory Rules 2003 No. 126<sup>2</sup>**

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I, GUY STEPHEN MONTAGUE GREEN, Administrator of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Corporations Act 2001*.

Dated 12 June 2003

G. S. M. GREEN  
Administrator

By His Excellency's Command

IAN CAMPBELL  
Parliamentary Secretary to the Treasurer

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**1 Name of Regulations**

These Regulations are the *Corporations Amendment Regulations 2003 (No. 4)*.

**2 Commencement**

These Regulations commence on gazettal.

**3 Amendment of *Corporations Regulations 2001***

Schedule 1 amends the *Corporations Regulations 2001*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Paragraphs 7.1.04 (1) (a) and (2) (a)**

*omit*

spot

**[2] Subregulation 7.1.04 (3)**

*omit*

**[3] Paragraph 7.1.33B (1) (c)**

*omit*

given

*insert*

provided

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**[4] After regulation 7.1.34**

*insert*

**7.1.35 Conduct that does not constitute dealing in a financial product**

- (1) For subsection 766C (7) of the Act, conduct is not taken to be dealing in a financial product if:
  - (a) the conduct is of a kind:
    - (i) mentioned in paragraph 766C (1) (a), (d) or (e) of the Act; or
    - (ii) mentioned in paragraph 766C (1) (b) of the Act, where it is the issue of a beneficial interest in a financial product, that arises from conduct that would constitute providing a custodial or depository service but for the operation of regulation 7.1.40; and
  - (b) the conduct is carried out by a person (*person 1*) in relation to a product that person 1 holds on trust for, or on behalf of, another person (*person 2*) and the holding of that financial product would not constitute the provision of a custodial or depository service because of paragraphs 7.1.40 (a) to (d).
- (2) Subregulation (1) does not apply to conduct carried out by person 1 in relation to a financial product that is held under a custodial arrangement as defined in section 1012IA of the Act unless:
  - (a) person 2 is an associate of person 1; or
  - (b) the financial product is held in the manner mentioned in paragraph 7.1.40 (d).

**[5] Part 7.1, after Division 4***insert***Division 5 Custodial or depository services****7.1.40 Conduct that does not constitute the provision of a custodial or depository service**

For paragraph 766E (3) (e) of the Act, conduct that is mentioned in subsection 766E (1) of the Act does not constitute providing a custodial or depository service if:

- (a) the financial product held by the provider is a basic deposit product (within the definition in section 761A of the Act) or is an account mentioned in subsection 981B (1) of the Act; or
- (b) the client is an associate of the provider (within the meaning of Division 2 of Part 1.2 of the Act); or
- (c) the provider and its associates have no more than 20 clients in aggregate for all custodial or depository services that they provide; or
- (d) the financial product is held as part of the arrangements for securing obligations under:
  - (i) a credit facility; or
  - (ii) a debenture that is held as trustee under a trust deed:
    - (A) entered into under section 283AA of the Act or former section 260FA of the Corporations Law of a State or Territory; or
    - (B) mentioned in former section 1052 of the Corporations Law of a State or Territory; or
- (e) the provider is a participant in a licensed market and the financial product held is a derivative acquired on the licensed market by the provider on behalf of a client; or
- (f) the provider is a participant in a licensed clearing and settlement facility and the financial product held is a derivative registered on the licensed clearing and settlement facility by the provider on behalf of the client; or
- (g) the financial product is held under an order of the Court.

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**[6] After subparagraph 7.6.01 (1) (f)**

*insert*

- (fa) a financial service is provided in the following circumstances:
- (i) a person (*person 1*) is a person that is not in the jurisdiction;
  - (ii) person 1 enters into an arrangement with the holder of an Australian financial services licence under which a financial product, or a beneficial interest in a financial product, is to be held on trust for, or on behalf of, another person (*person 2*);
  - (iii) person 1 believes on reasonable grounds that person 2 is not in the jurisdiction;

**[7] Paragraph 7.6.01 (1) (r)**

*omit*

option.

*insert*

option;

**[8] After paragraph 7.6.01 (1) (r)**

*insert*

- (s) the provision of financial product advice if the advice:
- (i) is provided to a financial services licensee; and
  - (ii) is only general advice in relation to a financial product or a class of financial products; and
  - (iii) is advice that the financial services licensee is authorised to provide; and
  - (iv) is provided by:
    - (A) the product issuer; or
    - (B) a related body corporate of the product issuer.

**[9] After subregulation 7.8.15 (1)***insert*

(1A) If an applicant for a financial services licence:

- (a) specifies, in the application for the licence, the name of a person or firm that is to be, or has been, appointed to audit the applicant's financial statements; and
- (b) the auditor or auditors specified are appointed before the end of 1 month after the licence takes effect;

the applicant is taken to have lodged a notice under subsection 990B (6) of the Act.

**[10] After regulation 10.2.48***insert***10.2.48A Obligation to give a Financial Services Guide for a custodial and depository service**

- (1) For section 1444 of the Act, sections 941A and 941B of the Act are taken not to require a person to give a Financial Services Guide to a client, in accordance with Division 2 of Part 7.7 of the Act, in relation to a financial service (the *new financial service*), if:
  - (a) the new financial service constitutes:
    - (i) the provision of a custodial or depository service under section 766E of the Act; or
    - (ii) dealing in a financial product that is held on trust for or on behalf of the client as a necessary part of the custodial or depository service; or
    - (iii) issuing, to the client, a financial product that is a beneficial interest in a financial product held on trust for or on behalf of the client as a necessary part of the custodial or depository service; and
  - (b) the person entered into the arrangement under which the custodial or depository service is provided, before the FSR commencement; and
  - (c) the arrangement continued unaltered after the person became subject to Part 7.7 of the Act.

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- (2) For paragraph (1) (c), an arrangement is taken to continue unaltered if:
- (a) the person holds, under the arrangement, financial products that are different financial products from those held under the arrangement before the person became subject to Part 7.7 of the Act; and
  - (b) none of the different financial products is held on instruction from the client.
- (3) Subparagraph (1) (a) (ii) does not apply to dealing in a financial product if the dealing consists of the issue of a financial product to a person other than the client to whom the custodial or depository service is provided.

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## Notes

1. These Regulations amend Statutory Rules 2001 No. 193, as amended by 2001 Nos. 208, 318 and 319 (rr 7.9.10 and 7.9.11 were disallowed by the Senate on 16 September 2002); 2002 Nos. 15, 16 (rr 7.9.10, 7.9.11 (1), 7.9.11 (1) (a), 7.9.11 (1) (b) and 7.9.11 (2) were disallowed by the Senate on 16 September 2002), 41, 53, 126, 145, 182, 265 and 282; 2003 Nos. 31, 48 and 85.
2. Notified in the *Commonwealth of Australia Gazette* on 19 June 2003.