



Corporations Amendment Regulations 2003 (No. 7)¹

Statutory Rules 2003 No. 202²

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 30 July 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. 7)*.

2 Commencement

These Regulations commence as follows:

- (a) on gazettal — regulations 1 to 3 and Schedule 1;
- (b) on 11 March 2004 — Schedule 2.

3 Amendment of *Corporations Regulations 2001*

Schedules 1 and 2 amend the *Corporations Regulations 2001*.

Schedule 1 Amendments commencing on gazettal

(regulation 3)

[1] Paragraph 7.1.07 (1) (d)

omit

Act.

insert

Act, other than a derivative.

[2] After regulation 7.1.22

insert

7.1.22A Retail clients and wholesale clients: value of foreign exchange contracts

- (1) This regulation makes arrangements about the value of a foreign exchange contract that is not a derivative.

Value

- (2) For paragraph 761G (7) (a) of the Act, the amount applicable to a foreign exchange contract is \$500 000.

Working out value: general rule

- (3) For paragraph 761G (10) (a) of the Act, the value of a foreign exchange contract is the amount paid or payable under the foreign exchange contract.

[3] Paragraph 7.6.01 (1) (t)*omit*

product.

insert

product;

[4] After paragraph 7.6.01 (1) (t)*insert*

(u) a financial service provided by a person in the following circumstances:

- (i) the financial service is advice included in a document issued in connection with a takeover bid or an offer of a financial product;
- (ii) the advice is an opinion on matters other than financial products and does not include advice on a financial product;
- (iii) the document includes a statement that the person is not operating under an Australian financial services licence when giving the advice;
- (iv) the person discloses, in the document, the information mentioned in paragraphs 947B (2) (d) and (e) of the Act;

Example

A geologist's report on a mining lease included in a PDS.

(v) a financial service provided by a person (the ***nominee***) in the following circumstances:

- (i) the nominee holds a financial product or a beneficial interest in a financial product on trust for or on behalf of a client of a financial services licensee who is a participant in a licensed market (the ***participant***);
- (ii) the financial product:
 - (A) was acquired on the licensed market by the participant on behalf of the client; or
 - (B) is to be disposed of on the licensed market by the participant on behalf of the client;

- (iii) the participant is authorised by an Australian financial services licence to provide a custodial or depository service;
- (iv) the participant's licence is subject to a condition requiring it to assume responsibility for the conduct of the nominee in relation to the provision of a financial service mentioned in this paragraph;
- (v) the nominee is a wholly-owned subsidiary of the participant.

[5] Subregulation 7.7.02 (1)

substitute

- (1) For paragraph 941C (6) (c) of the Act, the following are prescribed:
 - (a) a deposit product that is a facility in relation to which:
 - (i) there is no minimum period before which funds cannot be withdrawn or transferred from the facility without a reduction in the return generated for the depositor; or
 - (ii) if there is such a period, it expires on or before the end of the period of 2 years starting on the day on which funds were first deposited in the facility;
 - (b) travellers' cheques.

[6] Subregulation 7.7.02 (4)

substitute

- (4) For subsection 941C (8) of the Act, a Financial Services Guide does not have to be given to a client in respect of advice that:
 - (a) is provided by a providing entity that is:
 - (i) a product issuer; or
 - (ii) a related body corporate of a product issuer; or
 - (iii) a product distributor; or
 - (iv) an authorised representative of an entity mentioned in subparagraph (i), (ii) or (iii); and

- (b) is only general advice in relation to a financial product that is, or a class of financial products that includes, a financial product that is:
 - (i) issued by the providing entity or a related body corporate of the providing entity; or
 - (ii) offered by the providing entity; and
- (c) is not provided during a meeting; and
- (d) is not provided during a telephone call, unless:
 - (i) the advice:
 - (A) is provided in a telephone call to a person who holds a financial product that is issued by the providing entity or a related body corporate of the product issuer, or offered by the providing entity; and
 - (B) concerns a class of financial products that includes the financial product held by the client; or
 - (ii) there is no issue or sale of any financial product during the telephone call.

Note The providing entity must meet obligations under the Act in relation to the telephone call such as the prohibition of hawking in sections 992A and 992AA of the Act and the requirements for Product Disclosure Statements in Part 7.9 of the Act.

- (4A) If general advice is provided during a telephone call in accordance with paragraph (4) (d), the providing entity must tell the client that:
 - (a) a Financial Services Guide exists; and
 - (b) the provider will send out a Financial Services Guide on request.

[7] Subregulation 7.7.04 (2)

omit

and without limiting the generality of subsection 942B (3) of the Act,

[8] Subregulation 7.7.07 (2)

omit

and without limiting the generality of subsection 942C (3) of the Act,

[9] Regulation 7.7.10

substitute

7.7.10 Products for which a Statement of Advice is not required

For paragraph 946B (5) (c) of the Act, the following are prescribed:

- (a) a deposit product that is a facility in relation to which:
 - (i) there is no minimum period before which funds cannot be withdrawn or transferred from the facility without a reduction in the return generated for the depositor; or
 - (ii) if there is such a period, it expires on or before the end of the period of 2 years starting on the day on which funds were first deposited in the facility;
- (b) travellers' cheques.

[10] Subregulation 7.7.11 (2)

omit

and without limiting the generality of subsection 947B (3) of the Act,

[11] Subregulation 7.7.12 (2)

omit

and without limiting the generality of subsection 947C (3) of the Act,

[12] Subregulation 7.8.13 (2)*substitute*

- (2) For subsection 989B (3) of the Act, an auditor's report lodged with a true and fair profit and loss statement and balance sheet in respect of a financial year must contain a statement of the auditor's opinion on the following matters:
- (a) the effectiveness of internal controls used by a financial services licensee to comply with:
 - (i) Divisions 2, 3, 4, 5 and 6 of Part 7.8 of the Act; and
 - (ii) Division 7 of Part 7.8 of the Act other than section 991A;
 - (b) whether each account required by sections 981B and 982B of the Act to be maintained by the financial services licensee has been operated and controlled in accordance with those sections;
 - (c) whether all necessary records, information and explanations were received from the financial services licensee.

[13] After subregulation 7.8.21 (2)*insert*

- (3) For subsection 991F (3) of the Act, a body corporate may act as the agent of a person who is an employee of a financial services licensee that is a participant in a licensed market and is so employed in connection with a business of dealing in financial products, in respect of an acquisition mentioned in that subsection, if:
- (a) the body corporate holds an Australian financial services licence; and
 - (b) the body corporate is a participant in the same licensed market as the licensee; and
 - (c) the employer has given consent in writing to the particular acquisition before the acquisition takes place; and
 - (d) the employee gives the employer a copy of the confirmation of the transaction.

[14] After regulation 7.9.02B

insert

7.9.02C Trustees of self managed superannuation funds not required to lodge notice

For paragraph 1020G (1) (a) of the Act, the trustee of a self managed superannuation fund is exempt from subsection 1015D (2) of the Act.

[15] Paragraphs 7.9.04 (2) (a) and (b)

omit

interest

insert

product

[16] Subparagraph 7.9.15 (1) (c) (ii)

omit

financial product;

insert

product issuer;

[17] Subregulation 7.9.20 (2)

omit

member's

insert

members'

[18] Subregulation 7.9.61D (1)*omit*

section

insert

regulation

[19] Paragraph 7.9.61D (1) (e)*omit*

an eligible successor

insert

a successor

[20] After subregulation 7.9.61D (2)*insert*

- (3) Part 7.9 of the Act applies in relation to the financial products as if paragraph 1017F (6) (a) of the Act were replaced by the following paragraph:

‘(a) must be:

(i) by telephone; or

(ii) by writing; or

(iii) by another method that the responsible person knows, or reasonably believes, that the product holder is able to use; and’.

[21] Subparagraph 7.9.62 (4) (g) (ii)*omit*

made.

insert

made; or

[22] After subparagraph 7.9.62 (4) (g) (ii)

insert

- (iii) crediting negative interest to a member's notional account in a superannuation fund, ADF or pooled superannuation trust account.

[23] After regulation 7.9.71

insert

7.9.71A Periodic statements — exemption for passbook accounts

For paragraph 1020G (1) (b) of the Act, a basic deposit product (*an account*) for which the holder of the product is provided with, and keeps, a document commonly referred to as a 'passbook' is exempt from section 1017D of the Act if, under the terms of the operation of the account:

- (a) the client has a right to a reasonable opportunity to present the passbook to the issuer; and
- (b) the issuer enters particulars of each transaction involving the account including the amount of the transaction and the current balance of the account; and
- (c) there is no fee associated with the passbook or the entry of particulars into the passbook.

[24] Subregulation 7.9.78 (1)

omit everything before paragraph (a), insert

- (1) For paragraph 1017D (5) (g) of the Act, the prescribed details in relation to a superannuation product for which there is in force a notice under subregulation 6.17A (4) of the SIS Regulations, are:

[25] Paragraph 10.2.44A (1) (a)

omit

a document

insert

any document

[26] Subregulation 10.2.44A (3)

substitute

- (3) If the document is a periodic statement under section 1017D of the Act, subregulation (2) ceases to apply at the end of 3 years after the FSR commencement.
- (4) If the document is not a periodic statement under section 1017D of the Act, subregulation (2) ceases to apply at the end of 2 years after the FSR commencement.

Schedule 2 Amendments commencing on 11 March 2004

(regulation 3)

[1] After regulation 7.1.04D

insert

7.1.04E Issue of a new interest in a superannuation fund

- (1) This regulation applies if a member of a superannuation fund, who has a superannuation interest in the growth phase, elects to receive a pension in relation to that interest or part of that interest.
- (2) For paragraph 761E (7) (a) of the Act, the superannuation fund is taken to issue a new financial product when:
 - (a) it acknowledges receipt of the member's election; or
 - (b) it makes the first payment of the pension;whichever occurs first.
- (3) For this regulation:

growth phase has the meaning given by regulation 1.03AB of the SIS Regulations.

pension has the meaning given by subregulation 1.06 (1) of the SIS Regulations.

[2] Subregulation 7.9.04 (1)

substitute

- (1) For section 1012F of the Act, the following superannuation products are specified:
 - (a) a superannuation interest issued by the trustee of a regulated superannuation fund that is not a public offer superannuation fund, other than:
 - (i) a child account; or

- (ii) a financial product taken to be issued because of regulation 7.1.04E; or
 - (iii) an annuity or pension taken to be issued because of subregulation 7.9.02 (4);
- (b) a pension issued by a superannuation fund the rules of which do not allow a member to receive accumulated benefits in a form other than a pension from that fund;
- (c) a superannuation interest issued by the trustee of a successor fund in relation to the transfer of benefits in the fund.

[3] Paragraph 7.9.64 (1) (f)

substitute

- (f) a superannuation product that is issued in relation to a superannuation entity that is not a public offer superannuation entity, other than;
 - (i) a superannuation product taken to be issued because of regulation 7.1.04E; or
 - (ii) an annuity or pension taken to be issued because of subregulation 7.9.02 (4);
- (fa) a superannuation product that is issued in relation to:
 - (i) a public offer superannuation entity mentioned in paragraph 7.6.01 (1) (b), (c) or (d); or
 - (ii) a public offer superannuation entity that is a successor fund in relation to the transfer of benefits to that fund; or
 - (iii) a public offer superannuation entity that is an eligible rollover fund and in relation to which the superannuation product is issued pursuant to Part 24 of the SIS Act or Part 9 of the RSA Act;
- (fb) a superannuation product that is a pension issued by a superannuation fund the rules of which do not allow a member to receive accumulated benefits in a form other than a pension from that fund;

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, 85, 126, 127 and 194.
2. Notified in the *Commonwealth of Australia Gazette* on 6 August 2003.