Corporations Amendment (Financial Market Supervision) Act 2010

No. 26, 2010

An Act to amend the law in relation to corporations, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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No. 26, 2010

An Act to amend the law in relation to corporations, and for related purposes

[*Assented to 25 March 2010*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Corporations Amendment (Financial Market Supervision) Act 2010*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	25 March 2010
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, the provision(s) are repealed on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Supervision of financial markets

Corporations Act 2001

1 Section 9 (paragraph (c) of the definition of *civil penalty order*)

Omit "or 1317HA", substitute ", 1317HA or 1317HB".

2 Section 9

Insert:

> ***market integrity rules***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

3 Paragraph 199A(2)(b)

Omit "or 1317HA", substitute ", 1317HA or 1317HB".

4 Subsection 199A(3) (note 1)

Omit "or 1317HA", substitute ", 1317HA or 1317HB".

5 Section 760B (after table item 2)

Insert:

2A	7.2A	supervision of financial markets

6 Section 761A

Insert:

> ***market integrity rules*** means the rules made by ASIC under section 798G.

7 Paragraph 792A(c)

Omit "(whether they involve a self-regulatory structure or the appointment of an independent person or related entity) for supervising", substitute "(which may involve the appointment of an independent person or related entity) for operating".

8 Subparagraphs 792A(c)(ii) and (iii)

Repeal the subparagraphs, substitute:

(ii) monitoring and enforcing compliance with the market's operating rules; and

9 Paragraph 792A(d)

Omit "and for the required supervisory arrangements to be provided".

10 Section 793B

Before "The", insert "(1)".

11 At the end of section 793B

Add:

(2) However, if there is an inconsistency between the operating rules of a financial market and the market integrity rules, the market integrity rules prevail to the extent of the inconsistency.

(3) Subsection (2) does not apply in relation to a financial market the operator of which is licensed under subsection 795B(2) (overseas markets).

12 Paragraph 795B(1)(d)

Omit "(whether they involve a self-regulatory structure or the appointment of an independent person or related entity) for supervising", substitute "(which may involve the appointment of an independent person or related entity) for operating".

13 Subparagraphs 795B(1)(d)(ii) and (iii)

Repeal the subparagraphs, substitute:

(ii) monitoring and enforcing compliance with the market's operating rules; and

14 After Part 7.2

Insert:

Part 7.2A—Supervision of financial markets

798F ASIC to supervise financial markets

ASIC has the function of supervising financial markets the operators of which are licensed under subsection 795B(1).

798G Market integrity rules

(1) ASIC may, by legislative instrument, make rules (the ***market integrity rules***) that deal with the following:

(a) the activities or conduct of licensed markets;

(b) the activities or conduct of persons in relation to licensed markets;

(c) the activities or conduct of persons in relation to financial products traded on licensed markets.

Note: The market integrity rules will not apply in relation to all licensed markets: see subsection 798H(2).

(2) The market integrity rules may include a penalty amount for a rule. A penalty amount must not exceed $1,000,000.

(3) ASIC must not make a market integrity rule unless the Minister has consented, in writing, to the making of the rule.

Emergency rules

(4) Despite subsection (3), ASIC may make a market integrity rule without the consent of the Minister if ASIC is of the opinion that it is necessary, or in the public interest, to protect people dealing in a financial product or class of financial products.

(5) However, if ASIC does so, ASIC must:

(a) provide the Minister, on the following day, with a written explanation of the need for the rule; and

(b) amend or revoke the rule in accordance with any written directions of the Minister.

Minister's instruments are not legislative instruments

(6) None of the following is a legislative instrument:

(a) a consent given under subsection (3);

(b) a direction given under paragraph (5)(b).

798H Complying with market integrity rules

(1) The following entities must comply with the market integrity rules:

(a) operators of licensed markets;

(b) participants in licensed markets;

(c) entities prescribed by the regulations for the purposes of this paragraph.

Note: This subsection is a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

(2) Subsection (1) does not apply in relation to a financial market the operator of which is licensed under subsection 795B(2) (overseas markets).

798J Directions by ASIC

(1) If ASIC is of the opinion that it is necessary, or in the public interest, to protect people dealing in a financial product or class of financial products by:

(a) giving a direction to an entity to suspend dealings in the financial product or class of financial products; or

(b) giving some other direction in relation to those dealings;

ASIC may give written advice to the entity of that opinion and the reasons for it.

Note: ASIC may also give directions to entities that are market licensees under section 794D. A failure to comply with a direction under that section is an offence (see subsection 1311(1)).

(2) If, after receiving ASIC's advice and reasons, the entity does not take:

(a) in the case of a proposed direction to suspend dealings in the financial products—action to prevent such dealings; or

(b) in any other case—such other action as in ASIC's view is adequate to address the situation raised in the advice;

and ASIC still considers that it is appropriate to give the direction to the entity, ASIC may give the entity the written direction with a statement setting out its reasons for making the direction.

(3) The direction has effect for the period specified in it (which may be up to 21 days). During that period, the entity must comply with the direction and must not allow any dealings to take place contrary to it.

(4) If the entity fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the entity comply with the direction.

(5) If, at any time after the entity receives ASIC's advice under subsection (1), the entity requests in writing that ASIC refer the matter to the Minister, ASIC must do so immediately. In that event, the Minister may, if he or she considers it appropriate, require ASIC not to make, or to revoke, the direction. ASIC must immediately comply with such a requirement.

(6) ASIC may vary a direction by giving written notice to the entity if ASIC is of the opinion that the variation is necessary, or in the public interest, to protect people dealing in a financial product or class of financial products.

(7) ASIC may revoke a direction by giving written notice to the entity.

(8) A direction given under subsection (2) is not a legislative instrument.

798K Alternatives to civil proceedings

(1) The regulations may provide for a person who is alleged to have contravened subsection 798H(1) (complying with market integrity rules) to do one or more of the following as an alternative to civil proceedings:
   (a) pay a penalty to the Commonwealth;
   (b) undertake or institute remedial measures (including education programs);
   (c) accept sanctions other than the payment of a penalty to the Commonwealth;
   (d) enter into a legally enforceable undertaking.

(2) The penalty payable under regulations made under paragraph (1)(a) in relation to a market integrity rule must not exceed three-fifths of the penalty amount set out in the market integrity rules for the rule.

(3) Without limiting regulations that may be made under paragraph (1)(d), those regulations may provide for one or more of the following kinds of undertakings:
   (a) an undertaking to take specified action within a specified period;
   (b) an undertaking to refrain from taking specified action;

(c) an undertaking to pay a specified amount within a specified period to the Commonwealth or to some other specified person.

798L Exemptions and modifications by regulations

(1) The regulations may:

(a) exempt a person or class of persons from all or specified provisions of this Part; or

(b) exempt a financial market or class of financial markets from all or specified provisions of this Part; or

(c) provide that this Part applies in relation to a person or a financial market, or a class of persons or financial markets, as if specified provisions were omitted, modified or varied as specified in the regulations.

(2) For the purpose of this section, the provisions of this Part include definitions in this Act, or in the regulations, as they apply to references in this Part.

15 At the end of section 1042E

Add “or 798J(2)”.

16 Subsection 1100A(1)

Omit all the words after “ASIC”, substitute:

that the person:

(a) is required to give under this Chapter or regulations made for the purposes of this Chapter; or

(b) gives in relation to a contravention or suspected contravention of subsection 798H(1) (complying with market integrity rules).

17 Paragraph 1100A(2)(c)

Omit “supervise a licensed market or licensed facility”, substitute “operate a licensed market or supervise a licensed CS facility”.

18 Subparagraph 1100C(a)(iii)

Omit “supervise a licensed market or licensed CS facility”, substitute “operate a licensed market or supervise a licensed CS facility”.

19 Paragraph 1101B(1)(d)

After “person of”, insert “subsection 798H(1) (complying with market integrity rules) or”.

20 Subparagraph 1101B(1)(d)(i)

Omit “or condition”.

21 Paragraph 1101B(4)(b)

After “complying with”, insert “the market integrity rules or”.

22 Subparagraph 1101B(4)(c)(i)

After “contravened”, insert “the market integrity rules or”.

23 Subparagraph 1101B(4)(d)(i)

After “contravened”, insert “the market integrity rules or”.

24 After paragraph 1317C(gc)

Insert:

(gca) a decision by ASIC to make market integrity rules under section 798G; or

(gcb) a decision by the Minister to:

(i) consent to the making of a market integrity rule; or

(ii) direct ASIC to revoke or amend a market integrity rule; or

(gcc) a decision by ASIC to do or not do anything under regulations made for the purposes of section 798K (alternatives to civil proceedings); or

25 Section 1317DA (definition of *corporation/scheme civil penalty provision*)

Omit “a financial services civil penalty provision”, substitute “in paragraphs 1317E(1)(ja) to (jg)”.

26 Section 1317DA (definition of *financial services civil penalty provision*)

After “paragraphs 1317E(1)(ja)”, insert “and (jaa)”.

27 After paragraph 1317E(1)(ja)

Insert:

(jaaa) subsection 798H(1) (complying with market integrity rules);

28 After subsection 1317G(1B)

Insert:

Market integrity rules

(1C) A Court may order a person to pay the Commonwealth a pecuniary penalty if:

(a) a declaration of contravention by the person has been made under section 1317E; and

(b) the contravention is of subsection 798H(1) (complying with market integrity rules).

(1D) The maximum amount that the court may order the person to pay for contravening a market integrity rule is the penalty amount set out in the market integrity rules for the rule.

29 After section 1317HA

Insert:

1317HB Compensation orders—market integrity rules

Compensation for damage suffered

(1) A Court may order a person (the ***liable person***) to compensate another person (including a corporation), or a registered scheme, for damage suffered by the person or scheme if:

(a) the liable person has contravened subsection 798H(1) (complying with market integrity rules); and

(b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

(2) Subsection (1) does not apply in relation to a contravention by the operator of a licensed market acting in that capacity.

Damage includes profits

(3) In determining the damage suffered by a person or scheme for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

Damage to scheme includes diminution of value of scheme property

(4) In determining the damage suffered by a registered scheme for the purposes of making a compensation order, include any diminution in the value of the property of the scheme.

Recovery of damage

(5) A compensation order may be enforced as if it were a judgment of the Court.

30 Section 1324B

After “6D”, insert “, subsection 798H(1)”.

31 Subsection 1325(1)

After “6D” (wherever occurring), insert “, subsection 798H(1)”.

32 Subsection 1325(2)

After “6D”, insert “, subsection 798H(1)”.

33 Subsection 1325(3)

After “6D” (wherever occurring), insert “, subsection 798H(1)”.

34 At the end of Chapter 10

Add:

Part 10.14—Transitional provisions relating to the Corporations Amendment (Financial Market Supervision) Act 2010

1511 Definition

In this Part:

amending Schedule means Schedule 1 to the *Corporations Amendment (Financial Market Supervision) Act 2010*.

1512 Application of amendments

(1) The amendments made by items 2, 5 to 11, 14, 17 and 18 of the amending Schedule apply in relation to Australian market licences granted before, on or after the commencement of the amending Schedule.

(2) The amendments made by items 12 and 13 of the amending Schedule apply in relation to applications for an Australian market licence:

(a) that were made but had not yet been decided before the day on which the amending Schedule commences; and

(b) that are made on or after the commencement of the amending Schedule.

1513 Regulations may deal with transitional matters

(1) The regulations may make provisions of a transitional, application or saving nature relating to the amendments and repeals made by the amending Schedule.

(2) Without limiting subsection (1), regulations made for the purpose of that subsection may modify provisions of this Act.

[*Minister's second reading speech made in—*
House of Representatives on 10 February 2010
Senate on 24 February 2010]

(34/10)