



Corporations Amendment Regulations 2003 (No. 11)¹

Statutory Rules 2003 No. 369²

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Corporations Act 2001*.

Dated 18 December 2003

P. M. JEFFERY
Governor-General

By His Excellency's Command

ROSS CAMERON
Parliamentary Secretary to the Treasurer

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1 Name of Regulations

These Regulations are the *Corporations Amendment Regulations 2003 (No. 11)*.

2 Commencement

These Regulations commence as follows:

- (a) on gazettal — regulations 1 to 3 and Schedule 1;
- (b) on the commencement of Schedule 1 to the *Financial Services Reform Amendment Act 2003* — 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] After regulation 7.6.01B

insert

7.6.01C Obligation to cite licence number in documents

- (1) For subsection 912F (1) of the Act, the following documents are specified:
 - (a) a Financial Services Guide described in Division 2 of Part 7.7 of the Act;
 - (b) a supplementary Financial Services Guide described in Division 2 of Part 7.7 of the Act;
 - (c) a Product Disclosure Statement;
 - (d) a supplementary Product Disclosure Statement;
 - (e) a Statement of Advice described in Division 3 of Part 7.7 of the Act;
 - (f) an application form for an application under section 1016A of the Act;
 - (g) a document containing information required by regulations made under section 1017DA of the Act;
 - (h) a document prepared for section 1017B of the Act, notifying a person of changes and events.
- (2) On and after 1 July 2004, for subsection 912F (1) of the Act, a periodic statement under section 1017D of the Act is specified.

[2] After regulation 7.6.02

insert

7.6.02A Obligation to notify ASIC of certain matters

For subparagraph 912D (1) (a) (iii) of the Act, the following Commonwealth legislation is specified:

- (a) *Banking Act 1959*;
- (b) *Financial Sector (Collection of Data) Act 2001*;
- (c) *Financial Sector (Shareholdings) Act 1998*;
- (d) *Financial Sector (Transfers of Business) Act 1999*;
- (e) *Insurance Acquisitions and Takeovers Act 1991*;
- (f) *Insurance Act 1973*;
- (g) *Insurance Contracts Act 1984*;
- (h) *Life Insurance Act 1995*;
- (i) *Retirement Savings Accounts Act 1997*;
- (j) *Superannuation Industry (Supervision) Act 1993*;
- (k) *Superannuation (Resolution of Complaints) Act 1993*.

[3] After regulation 7.6.04

insert

7.6.04A Exemptions to notification of authorised representatives

For paragraph 916F (1AA) (d) of the Act, each of the following financial products is prescribed:

- (a) a general insurance product;
- (b) a basic deposit product;
- (c) a facility for making non-cash payments that is related to a basic deposit product.

[4] Regulation 7.7.05

substitute

7.7.05 Record of advice given by financial services licensee

For subparagraph 942B (2) (g) (iii) of the Act, the period within which a client may request a record of the advice to which that subparagraph relates is 90 days after the day on which the advice is provided.

[5] Regulation 7.7.08

substitute

7.7.08 Record of advice given by authorised representative of financial services licensee

For subparagraph 942C (2) (h) (iii) of the Act, the period within which a client may request a record of the advice to which that subparagraph relates is 90 days after the day on which the advice is provided.

[6] Part 7.7, after Division 2

insert

Division 2A Combined Financial Services Guide and Product Disclosure Statement**7.7.08A Combined Financial Services Guide and Product Disclosure Statement**

- (1) For subsection 942DA (1) of the Act, this regulation specifies the circumstances in which a Financial Services Guide and a Product Disclosure Statement may be combined in a single document.

- (2) A combined Financial Services Guide and Product Disclosure Statement may be issued as a single document if:
- (a) the providing entity for the financial service and the product issuer for a product issued in relation to that financial service are the same person; and
 - (b) the document is divided into 2 separate parts:
 - (i) a part identifiable as a Financial Services Guide that satisfies the requirements under the Act for a Financial Services Guide; and
 - (ii) a part identifiable as a Product Disclosure Statement that satisfies the requirements for a Product Disclosure Statement; and
 - (c) the title 'Combined Financial Services Guide and Product Disclosure Statement' is marked on or near the front of the document; and
 - (d) the document is provided to a client at the earlier of the time at which a Financial Services Guide must be provided and the time at which a Product Disclosure Statement must be provided.
- (3) A combined Financial Services Guide and Product Disclosure Statement may be issued as a single document if:
- (a) the providing entity for the financial service is a representative or a related body corporate of the product issuer; and
 - (b) the product is only a basic deposit product, a non-cash payment facility that is related to a basic deposit product, a general insurance product or a life risk insurance product; and
 - (c) the document is divided into 2 separate parts:
 - (i) a part identifiable as a Financial Services Guide that satisfies the requirements under the Act for a Financial Services Guide; and
 - (ii) a part identifiable as a Product Disclosure Statement that satisfies the requirements for a product Disclosure Statement; and
 - (d) the title 'Combined Financial Services Guide and Product Disclosure Statement' is marked on or near the front of the document; and

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- (e) the document clearly and prominently discloses:
 - (i) the identity of the providing entity and the product issuer; and
 - (ii) the nature of the relationship between the providing entity and the product issuer; and
 - (iii) the liability of the providing entity and the product issuer in relation to the document; and
 - (f) the document is provided to a client at the earlier of the time at which a Financial Services Guide must be provided and the time at which a Product Disclosure Statement must be provided.
- (4) For the single document:
- (a) the Financial Services Guide and the Product Disclosure Statement may provide for matters by the use of cross-references to each other rather than by fully setting out material; and
 - (b) if the document includes cross-references:
 - (i) the document as a whole must include all of the information required by subsections 942B (6A) and 1013C (3) of the Act; and
 - (ii) the use of the cross-references must not have the effect that the document is misleading or deceptive.

[7] Regulation 7.7.09, heading

substitute

7.7.09 Situations in which Statement of Advice is not required: record of further market-related advice

[8] Subregulation 7.7.09 (1)

omit

execution-related telephone advice

insert

further market-related advice

[9] Subregulation 7.7.09 (3)

substitute

- (3) The providing entity must keep the record until the earlier of the following times:
- (a) 90 days after the day on which the further market-related advice is provided;
 - (b) when the providing entity gives the record to the client.

[10] Part 7.7, after Division 3

insert

Division 4 General advice provided to a retail client

7.7.14 Product Disclosure Statement not required

For paragraph 926B (1) (a) of the Act, a providing entity that is giving general advice in relation to a financial product for which, under Part 7.9 of the Act, a Product Disclosure Statement is not required, does not have to give the warning in paragraph 949A (2) (c) of the Act.

Division 5 Other disclosure requirements

7.7.20 General advice to retail client — no obligation to warn client

For paragraph 949A (1) (c) of the Act, the provision of general advice in the circumstances set out in subregulation 7.7.02 (5A) is specified.

[11] After regulation 7.8.22

insert

7.8.22A Modification of Part 7.8

- (1) For paragraph 992C (1) (c) of the Act, Part 7.8 of the Act applies as if paragraph 992A (3) (e) of the Act were modified so as to read:
- ‘(e) given:
- (i) the name and contact details of the product issuer; and
 - (ii) an indication of the nature of the information contained in the Product Disclosure Statement relating to the product; and
 - (iii) the option of receiving, by way of oral communication, any information that is required to be included in a Product Disclosure Statement for the product.’
- (2) For paragraph 992C (1) (c) of the Act, Part 7.8 of the Act applies as if the following subsection were added after subsection 992A (3A) of the Act:
- ‘(3B) A regulated person must not influence a client’s decision to elect not to receive the information mentioned in paragraph (3) (e) (other than by asking the client if he or she wishes to do so).’

[12] Regulation 7.9.02C

omit

[13] Part 7.9, after Division 4A*insert***Division 4B Ongoing disclosure****7.9.16G Ongoing disclosure of material changes and significant events**

- (1) For paragraph 1017B (1) (d) of the Act, the circumstances in subregulation (2) are specified.
- (2) The circumstances are that the product issuer issued a financial product that was acquired by a holder as a retail client:
 - (a) in a sale situation in which the issuer is not required to give a Product Disclosure Statement for the product under section 1012C of the Act; or
 - (b) in a situation in which a Product Disclosure Statement is not required because of the operation of section 1012D of the Act other than subsection (1), (2), (2A) or (2B) of that section; or
 - (c) in an offer situation in which a Product Disclosure Statement is not required under section 1012E of the Act.

[14] Part 7.9, Division 10*omit***[15] Part 10.2, heading***substitute***Part 10.2 Transitional arrangements relating to Financial Services Reform legislation**

[16] Regulation 10.2.81

substitute

10.2.81 Ongoing disclosure

For section 1444 of the Act, if:

- (a) the issuer of a financial product would have had an obligation to notify the holder of a financial product of a change or event mentioned in subsection 1017B (1A) of the Act if Part 7.9 of the Act had applied at all times to the product; and
- (b) the issuer would have been exempt from the obligation because regulation 7.9.16G would have applied to the issuer in relation to the product if Part 7.9 of the Act had applied at all times to the product;

regulation 7.9.16G applies to the issuer in relation to the product during the transition period for the product.

[17] Part 10.2, after Division 50

insert

Division 51 Further market-related advice**10.2.214 Statement of Advice for further market-related advice**

- (1) For section 1444 of the Act, this regulation applies in relation to a providing entity if:
 - (a) the providing entity gives a client further market-related advice as described in subsection 946B (1) of the Act; and
 - (b) the client had a relationship with the providing entity at the latest of the following times:
 - (i) if the providing entity is a licensee — when the providing entity obtained its Australian Financial Services Licence;

- (ii) if the providing entity is an authorised representative — when the licensee on whose behalf the advice is provided obtained its Australian Financial Services Licence;
 - (iii) the commencement of item 46A of Schedule 2 to the *Financial Services Reform Amendment Act 2003*; and
- (c) the providing entity made 1 or more securities recommendations to the client under section 851 of the old Corporations Act:
- (i) on or after the FSR commencement; and
 - (ii) before the time identified under paragraph (b); and
- (d) the client's relevant personal circumstances in relation to the further market-related advice are not significantly different from the client's investment objectives, financial situation and particular needs that were determined for the last of the securities recommendations mentioned in paragraph (c); and
- (e) so far as the basis on which advice is given relates to other matters — the basis on which the further market-related advice is given is not significantly different from the basis on which the last of the securities recommendations mentioned in paragraph (c) was made.
- (2) Subsection 946B (1) applies to the providing entity as if paragraph 946B (1) (b) and subparagraphs 946B (1) (d) (i) and (ii) were omitted.

[18] Schedule 10A, clause 10.1, modified subsection 1017B (5A)

omit each mention of
responsible person

insert
issuer

[19] Schedule 10A, clause 10.1, modified paragraph 1017B (5B) (c)

omit

responsible person,

insert

issuer,

[20] Schedule 10A, clause 10.1, modified subsection 1017B (5C)

omit

responsible person of a superannuation entity

insert

issuer of a superannuation product

[21] Schedule 10A, clause 10.1, modified subsection 1017B (5C)

omit

responsible person must

insert

issuer must

[22] Schedule 10A, clause 10.1, modified paragraph 1017B (5C) (c)

omit

responsible person

insert

issuer

Schedule 2 Amendments commencing on the commencement of Schedule 1 to the *Financial Services Reform Amendment Act 2003*

(regulation 3)

[1] Regulation 7.1.33C

omit

[2] Part 7.9, after Division 12

insert

Division 13 Unsolicited offers to purchase financial products off market

7.9.96 Percentage increase or decrease in the market value of a product

For paragraph 1019J (1) (c) of the Act, 50% is specified.

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, 194, 202, 282, 367 and 368.
2. Notified in the *Commonwealth of Australia Gazette* on 23 December 2003.