



Corporations Amendment Regulations 2007 (No. 12)¹

Select Legislative Instrument 2007 No. 324

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 26 September 2007

P. M. JEFFERY
Governor-General

By His Excellency's Command

CHRISTOPHER JOHN PEARCE
Parliamentary Secretary to the Treasurer

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1 Name of Regulations

These Regulations are the *Corporations Amendment Regulations 2007 (No. 12)*.

2 Commencement

These Regulations commence as follows:

- (a) on the day after they are registered — regulations 1 to 3 and Schedule 1;
- (b) on the commencement of items 218 and 219 of Part 3 of Schedule 1 to the *Corporations Legislation Amendment (Simpler Regulatory System) Act 2007* — Schedule 2;
- (c) on 1 July 2008 — Schedule 3.

3 Amendment of *Corporations Regulations 2001*

Schedules 1 to 3 amend the *Corporations Regulations 2001*.

Schedule 1 Amendments commencing on day after registration

(regulation 3)

[1] Paragraph 7.6.01C (1) (h)

omit

events.

insert

events;

[2] After paragraph 7.6.01C (1) (h)

insert

(i) a Replacement Product Disclosure Statement.

[3] After subregulation 7.7.05B (2)

insert

(2A) For paragraph 942C (4) (b) of the Act, the Financial Services Guide in relation to a financial service does not have to include a statement setting out the name and contact details of a person if:

(a) the person is:

(i) a franchisee of the holder of an Australian financial services licence (the ***franchisor***) and a corporate authorised representative of the franchisor; or

(ii) an employee of a franchisee of the holder of an Australian financial services licence; and

(b) the franchisor is an authorised deposit-taking institution (within the meaning of the *Banking Act 1959*) and regulated by APRA; and

(c) the franchise agreement:

(i) subjects the person to the policies of the franchisor; and

- (ii) requires compliance by the person with the policies of the franchisor that were made to give effect to the franchisor's obligations under the Australian financial services licence; and
- (d) the Financial Services Guide produced by the franchisor explains that the franchisor takes responsibility for the services provided by the person.

[4] After Division 2A of Part 7.7 of Chapter 7

insert

Division 2B Record of small investment advice

7.7.08C Record of small investment advice — content requirements

- (1) For subsection 946AA (4) of the Act, a record of advice to a client must set out:
 - (a) the matters set out in subregulation (2); and
 - (b) the information that, if a Statement of Advice were to be given, would be required in that statement by paragraphs 947B (2) (d) and (e) of the Act or paragraphs 947C (2) (e) and (f) of the Act.
- (2) For paragraph (1) (a), the matters that the record of advice must set out are:
 - (a) brief particulars of the recommendations made to the client and the basis on which the recommendations are made; and
 - (b) brief particulars of the information that would be required by subsection 947D (2) of the Act if a Statement of Advice were given to the client; and
 - (c) the statement that would be required by subsection 947D (3) of the Act if a Statement of Advice were given to the client.

Note A client is entitled to ask the providing entity for a record of advice and the providing entity must give a copy of the record of advice to the client — see paragraph 946AA (5) (a) of the Act.

[5] After regulation 7.7.09*insert***7.7.09A Situations in which Statement of Advice is not required: small investments threshold**

- (1) For subparagraph 946AA (1) (a) (i) of the Act, the threshold amount is \$15 000.
- (2) Subregulations (3) and (4) apply to each of the following financial products:
 - (a) shares;
 - (b) rights issues;
 - (c) options over unissued shares;
 - (d) partly paid shares;
 - (e) debentures;
 - (f) stapled securities.
- (3) For small investment advice to a client that is related to the acquisition of one or more of the financial products listed in paragraphs (2) (a) to (f), the threshold amount in subregulation (1) must be calculated to include the total value of all financial investments that would be committed to by the client if the advice were accepted by the client.

Examples

1 If the small investment advice related to the purchase of options over unissued shares the total cost of the options would be both the cost to buy the options and the cost of the exercise price on the face of the options.

2 If the small investment advice relates to the purchase of partly paid shares the total cost of the shares must be calculated as if all calls had been made on the shares.

Note The total value of all financial investments in relation to which small investment advice is provided is calculated in accordance with subsection 946AA (2) of the Act.

- (4) For small investment advice to a client that is related to the disposal of one or more of the financial products listed in paragraphs (2) (a) to (f), the threshold amount in subregulation (1) must be calculated to include the total value of all financial investments that would be disposed of by the client if the advice were accepted by the client.

Note The total value of all financial investments in relation to which small investment advice is provided is calculated in accordance with subsection 946AA (2) of the Act.

- (5) Subregulations (6) and (7) apply to each of the following financial products:
- (a) superannuation;
 - (b) managed investment schemes;
 - (c) non-derivative instalment warrants.
- (6) For small investment advice to a client that is related to the acquisition of one or more of the financial products listed in paragraphs (5) (a) to (c), the threshold amount in subregulation (1) must be calculated to include:
- (a) both:
 - (i) the cost to the client of the initial investment; and
 - (ii) other amounts that would be committed to by the client if the advice is taken; and
 - (b) if the investment is not finite — the value of the investment is calculated for the 12-month period beginning from the date that the record of advice is required by subregulation (10), (11) or (12) to be given to the client.

Examples

1 Advice given in relation to switching superannuation funds

A person earning \$50 000 per annum is given advice to switch an existing superannuation fund balance of \$12 000 to another superannuation fund and direct all future superannuation guarantee contributions to that same fund. In this event the total of the superannuation guarantee contributions in the first 12-month period (ie $\$50\,000 \times 0.09 = \$4\,500$) when added to the initial \$12 000 transfer, would exceed the \$15 000 threshold. In this example the exemption, in section 946AA of the Act, from the requirement to provide a Statement of Advice would not apply.

2 Advice given to acquire non-derivative instalment warrants

The terms of the non-derivative instalment warrants are that \$10 000 must be paid initially, a second payment of \$12 000 in 18 months time and a third and final payment of \$12 000 in 3 years time. The investment advice, assuming the client has committed to implementing the advice, concerns a \$34 000 investment and therefore the exemption, in section 946AA of the Act, from the requirement to provide a Statement of Advice would not apply.

Note The total value of all financial investments in relation to which small investment advice is provided is calculated in accordance with subsection 946AA (2) of the Act.

- (7) For small investment advice to a client that is related to the disposal of one or more of the financial products listed in paragraphs (5) (a) to (c), the threshold amount in subregulation (1) must be calculated to include:
- (a) the value to the client of the total divestment; and
 - (b) other amounts reasonably related to the divestment that would be expended if the advice is taken.

Note The total value of all financial investments in relation to which small investment advice is provided is calculated in accordance with subsection 946AA (2) of the Act.

- (8) If the total value of an investment, to which investment advice to a client relates, is not able to be ascertained under subsection 946AA (2) of the Act, the investment advice is taken to exceed the threshold amount in subregulation (1).
- (9) If an investment, to which investment advice relates, is jointly held by more than 1 client, the sum of the values of each client's investment must be calculated to determine whether the threshold amount in subregulation (1) is exceeded.

When record of advice is given

- (10) For subsection 946AA (4) of the Act, a record of advice is required to be given to a client when, or as soon as practicable after, investment advice is provided to the client and, in any event, subject to subregulation (12), before the providing entity provides the client with any further financial service that arises out of or in connection with the investment advice.

Statement of certain information if record of advice not given when advice provided

- (11) If the record of advice is not given to the client when the investment advice is provided, the providing entity must, at the time the investment advice is provided, give the client a statement that contains the information that would be required to be in a Statement of Advice by:
- (a) paragraphs 947B (2) (d) and (e) of the Act; or
 - (b) paragraphs 947C (2) (e) and (f) of the Act;
- as the case requires, and by section 947D of the Act, if applicable.

Time-critical cases

- (12) If:
- (a) a client expressly instructs that they require a further financial service to be provided immediately, or by a specified time; and
 - (b) the further financial service arises out of, or in connection with, the investment advice given to the client; and
 - (c) it is not reasonably practicable to give a record of advice to the client before the further service is provided as so instructed;
- the providing entity must give the client the record of advice:
- (d) unless paragraph (e) applies — within 5 days after providing the further service, or as soon as practicable; or
 - (e) if the further financial service is the provision to the client of a financial product and section 1019B of the Act applies to the acquisition of the product by the client — before the start of the period applicable under subsection 1019B (3) of the Act, or sooner if practicable.

[6] After regulation 7.7.10AA

insert

7.7.10AAA Record of advice without a recommendation to purchase or sell — content requirements

For subsection 946B (9) of the Act, a record of advice must set out the following:

- (a) the investment advice given to a client by the providing entity;
- (b) brief particulars of the recommendations made to the client and the basis on which the recommendations are made;
- (c) if the providing entity is a financial services licensee — the information that, if a Statement of Advice were to be given, would be required in that Statement by paragraphs 947B (2) (d) and (e) of the Act;
- (d) if the providing entity is an authorised representative — the information that, if a Statement of Advice were to be given, would be required in that Statement by paragraphs 947C (2) (e) and (f) of the Act.

Note A client is entitled to ask the providing entity for a record of advice under subsections 942B (8) and 942C (8) of the Act.

[7] Subregulation 7.9.01 (1), definition of *publication date*

omit

[8] Regulation 7.9.07K

substitute

7.9.07K Definition of *defective*: Product Disclosure Statement, Short-Form PDS or Replacement Product Disclosure Statement

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act applies as if section 1022A of the Act were varied by omitting paragraph (b) of the definition of *defective* in subsection (1) and the following paragraph were inserted:

- ‘(b) if it is a Product Disclosure Statement, a Short-Form PDS or a Replacement Product Disclosure Statement — either:
- (i) it is not prepared in accordance with section 1013A; or
 - (ii) there is an omission from the Product Disclosure Statement, Short-Form PDS or Replacement Product Disclosure Statement of material required by section 1013C, other than material required by section 1013B or 1013G; or’.

[9] Regulation 7.9.13A

omit

Schedule 2 **Amendments commencing on
commencement of items 218
and 219 of Schedule 1 to the
Corporations Legislation
Amendment (Simpler
Regulatory System) Act 2007**
(regulation 3)

[1] After Regulation 7.1.04C

insert

7.1.04CA Kinds of financial products

- (1) For section 761CA of the Act, this regulation applies in relation to paragraph 917C (3) (ba) of the Act.
- (2) The following are kinds of financial product:
 - (a) motor vehicle insurance;
 - (b) home building insurance;
 - (c) home contents insurance;
 - (d) sickness and accident insurance;
 - (e) consumer credit insurance;
 - (f) travel insurance.

[2] Subregulation 7.7.02 (2)*substitute*

- (2) For subsection 941C (4) of the Act:
- (a) providing general advice to the public, or a section of the public, at an event organised by or for financial services licensees to which retail clients are invited is prescribed; and
 - (b) a broadcast of general advice to the public, or a section of the public, that may be viewed or heard by any person is prescribed; and
 - (c) distributing or displaying promotional material that:
 - (i) provides general advice to the public, or a section of the public; and
 - (ii) is available in a place that is accessible to the public is prescribed.

Examples

- 1 Television or radio broadcasts.
- 2 Distributing promotional material contained in newspapers and magazines.
- 3 Sending a broadcast via an Internet website or webcast.
- 4 Giving a public lecture or seminar for retail clients, including employees of a workplace.

Note If general advice is given to the public, or a section of the public, the requirements of subsection 941C (5) of the Act must be complied with. Additionally, if general advice is provided to 1 or more retail clients, the providing entity must comply with section 949A of the Act.

Schedule 3 Amendment commencing on 1 July 2008

(regulation 3)

[1] After Division 4C of Part 7.9

insert

Division 4D Other requirements relating to Product Disclosure Statements and Supplementary Product Disclosure Statements

Subdivision 4D.1 Requirement to lodge a notice with ASIC

7.9.16T Variation of paragraph 1015D (2) (b) of the Act

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act applies as if paragraph 1015D (2) (b) of the Act were omitted and the following paragraph and note were inserted:

- ‘(b) a change is made to the fees and charges set out in the enhanced fee disclosure table in the Statement;

Note The templates for the enhanced fee disclosure table are set out in items 201 and 202 of Schedule 10 to the *Corporations Regulations 2001*.’.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.