



Corporations Amendment Regulations 2003 (No. 8)¹

Statutory Rules 2003 No. 282²

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 6 November 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. 8)*.

2 Commencement

These Regulations commence as follows:

- (a) on gazettal — regulations 1 to 3 and Schedule 1;
- (b) on 11 March 2004 — Schedule 2;
- (c) on 1 July 2004 — regulation 4 and Schedule 3.

3 Amendment of *Corporations Regulations 2001*

- (1) Schedules 1 and 3 amend the *Corporations Regulations 2001*.
- (2) Schedule 2 amends the *Corporations Regulations 2001*, as amended by the *Corporations Amendment Regulations 2003 (No. 7)*.

4 Transitional

The amendments made by Schedule 3 apply in relation to Statements of Advice, Product Disclosure Statements and periodic statements prepared on or after 1 July 2004.

Schedule 1**Amendments commencing on gazettal**

(regulation 3)

[1] After regulation 7.1.07D*insert***7.1.07E Specific things that are not financial products: rights of the holder of a debenture**

- (1) This regulation applies to a facility that consists of the rights of the holder of a debenture against a trustee under a trust deed entered into under:
 - (a) section 283AA of the Act; or
 - (b) Chapter 2L or Division 4 of Part 7.12 of the old Corporations Law.
- (2) For paragraph 765A (1) (y) of the Act, the facility is not a financial product.

7.1.07F Specific things that are not financial products: money orders

For paragraph 765A (1) (y) of the Act, a money order issued as a money order by, or for, Australia Post is not a financial product.

[2] After regulation 7.1.33D*insert in Division 3***7.1.33E Advice about the existence of a custodial or depository service**

For paragraph 766A (2) (b) of the Act, a person is taken not to provide a financial service if:

- (a) the person provides advice about a custodial or depository service; and
- (b) the advice is not about a financial product; and
- (c) the advice is not intended to influence, and could not reasonably be regarded as being intended to influence, a decision about a financial product other than a product that is a financial product only because it is an equitable right or interest in:
 - (i) a share in a body; or
 - (ii) a debenture of a body; or
 - (iii) an interest in a registered scheme.

Note Paragraph (c) describes financial products under paragraph (c) of the definition of **security** in section 761A of the Act and financial products under subparagraph 764A (1) (b) (ii) of the Act.

[3] Regulation 7.1.34*substitute***7.1.34 Conduct that does not constitute dealing in a financial product**

For subsection 766C (7) of the Act, the following conduct does not constitute dealing in a financial product:

- (a) the enforcement of rights under a credit facility, including the enforcement of rights by a person acting under a power of attorney;

- (b) the disposal of a financial product that is subject to a mortgage or the transfer of such a product to the mortgagor, whether the disposal or transfer is carried out at the direction of the mortgagor or occurs as a result of the mortgagor fulfilling its obligations under the mortgage.

Example for paragraph (a)

A mortgagee exercising a power of sale under a mortgage.

[4] After paragraph 7.6.01 (1) (la)

insert

- (lb) a financial service that is the issue of a non-cash payment facility if:
 - (i) it is a facility for making non-cash payments; and
 - (ii) under the facility, payments may be made only to the issuer of the facility or a related body corporate of the issuer;
- (lc) an Australia Post presentment and payment processing facility known as POSTbillpay or billmanager;

[5] Subparagraph 7.6.01 (1) (v) (v)

omit

participant.

insert

participant;

[6] After paragraph 7.6.01 (1) (v)

insert

- (w) a financial service that is provided:
 - (i) by the Export Finance and Insurance Corporation established by the *Export Finance and Insurance Corporation Act 1991*; and
 - (ii) only to a wholesale client.

[7] After regulation 7.6.03*insert***7.6.03A Australian financial services licence — requirements for a foreign entity to appoint local agent**

- (1) For paragraph 913B (1) (d) of the Act, a foreign entity that:
 - (a) is not a foreign company; and
 - (b) applies for an Australian financial services licence; must meet the requirements in subregulations (2) and (3).
- (2) The foreign entity must:
 - (a) have appointed, as an agent, a person who is:
 - (i) a natural person or a company; and
 - (ii) resident in this jurisdiction; and
 - (iii) authorised to accept, on the foreign entity's behalf, service of process and notices; and
 - (b) lodge, with the application, a memorandum of appointment or a power of attorney that is duly executed by or on behalf of the foreign entity and states the name and address of the agent.
- (3) If the memorandum of appointment, or power of attorney, lodged under paragraph (2) (b) was executed on behalf of the foreign entity, the foreign entity must also lodge a copy declared in writing to be a true copy of the document authorising the execution.

7.6.03B Foreign entity must continue to have local agent

- (1) For paragraph 912A (1) (j) of the Act, a foreign entity that:
 - (a) is not a foreign company; and
 - (b) is a financial services licensee; must meet the requirements in subregulation (2).

(2) The foreign entity must:

- (a) at all times, have an agent who is:
 - (i) a natural person or a company; and
 - (ii) resident in this jurisdiction; and
 - (iii) authorised to accept, on the foreign entity's behalf, service of process and notices; and
- (b) notify ASIC of any change to:
 - (i) the agent; or
 - (ii) the name or address of the agent; not later than 1 month after the change; and
- (c) make arrangements that ensure that ASIC may treat a document as being served on the foreign entity by leaving it at, or by sending it by post to:
 - (i) an address of the agent that has been notified to ASIC; or
 - (ii) if a notice or notices of a change or alteration to that address has or have been given to ASIC — the address shown in the most recent notice.

[8] After subregulation 7.7.01 (1)

insert

(2) For paragraph 940C (7) (a) of the Act, a Financial Services Guide and a Statement of Advice may be given to a person in either of the following ways:

- (a) making the Guide or Statement available to the person in any way that:
 - (i) is agreed to by the person; and
 - (ii) allows the regulated person to be satisfied, on reasonable grounds, that the person has received the Guide or Statement;
- (b) making the Guide or Statement available to the person's agent in any way that:
 - (i) is agreed to by the agent; and
 - (ii) allows the regulated person to be satisfied, on reasonable grounds, that the agent has received the Guide or Statement.

[9] After subregulation 7.8.21 (3)*insert*

(4) For subsection 991F (3) of the Act, a person who is:

- (a) an employee of a financial services licensee that is a participant in a licensed market; and
- (b) employed in connection with a business of dealing in financial products;

may, on the person's own behalf, acquire, or agree to acquire, a financial product that is able to be traded on that licensed market, without the licensee's acting as an agent in respect of the transaction, if the person's employment is not directly connected with the licensee's business of dealing in financial products on that licensed market.

[10] Subregulation 7.9.02A (1)*substitute*

(1) For subsection 1015C (4) of the Act, the following are alternative ways of giving a Product Disclosure Statement to a person:

- (a) making the Product Disclosure Statement available to the person in any way that:
 - (i) is agreed to by the person; and
 - (ii) allows the regulated person to be satisfied, on reasonable grounds, that the person has received the Product Disclosure Statement;
- (b) making the Product Disclosure Statement available to the person's agent in any way that:
 - (i) is agreed to by the agent; and
 - (ii) allows the regulated person to be satisfied, on reasonable grounds, that the agent has received the Product Disclosure Statement.

[11] Regulation 7.9.07D, heading
substitute

7.9.07D Product Disclosure Statement not required for offers of bundled contracts of insurance

[12] After regulation 7.9.07D
insert in Division 2C

7.9.07E Product Disclosure Statement not required if offer of financial product is declined

For paragraph 1020G (1) (c) of the Act, section 1012D of the Act is modified by adding before subsection 1012D (10):

- ‘(9J) In an issue situation or sale situation, the regulated person does not have to give the client a Product Disclosure Statement for a financial product if:
 - (a) the situation is an offer to issue or sell the financial product; and
 - (b) the client informs the regulated person, in the course of the contact during which the offer is made, that the client does not intend to acquire the financial product; and
 - (c) no issue or sale results from the offer.
- (9K) For paragraph (9J) (c), the client must inform the regulated person explicitly but may inform the regulated person orally or in any other way.’.

7.9.07F Product Disclosure Statement not required if the client is not contactable

For paragraph 1020G (1) (c) of the Act, section 1012D of the Act is modified by adding before subsection 1012D (10):

- ‘(9L) In an issue situation, the regulated person does not have to give the client a Product Disclosure Statement, if:
 - (a) the regulated person has not given the client a Product Disclosure Statement because the regulated person did not need to give a Product Disclosure

Statement at or before the time when it would otherwise be required to be given because of the operation of section 1012F or 1012G of the Act, regulation 7.9.04 or Part 17 of Schedule 10A; and

(b) either:

- (i) the regulated person:
 - (A) has an address for the client; and
 - (B) is satisfied, on reasonable grounds that the address is incorrect; and
 - (C) has taken reasonable steps to locate the client but is unable to do so; or
- (ii) the regulated person:
 - (A) does not have an address for the client; and
 - (B) is unable to obtain an address for the client; and
 - (C) has taken reasonable steps to locate the client but has been unable to do so.

(9M) If a regulated person does not give a client a Product Disclosure Statement in reliance on subsection (9L), and the regulated person becomes aware of the address or location of the client, the regulated person must give the client a Product Disclosure Statement as soon as practicable.'

[13] After regulation 7.9.08B

insert in Division 3

7.9.08C Money held in trust for a superannuation product or RSA product

For subsection 1017E (2C) of the Act, if money is paid to a product provider for a financial product that is a superannuation product or an RSA product, as defined in section 761A of the Act:

(a) subsection 1017E (2A) of the Act does not apply in relation to the money; and

- (b) the money is taken to be held in trust by the product provider for the benefit of the person who is entitled to the money.

[14] Regulation 7.9.75

substitute

7.9.75 Content of periodic statements: costs of transactions

- (1) For paragraph 1017D (5) (g) of the Act, the prescribed details in relation to a financial product include:
 - (a) the amounts paid by the holder of the financial product in respect of the financial product during the period; and
 - (b) if subregulation (2) does not apply and the amounts paid in respect of the financial product, and amounts paid in respect of other financial products, are paid into a common fund — any amounts deducted from the common fund by way of fees, expenses or charges; and
 - (c) a statement informing the product holder:
 - (i) that there is a dispute resolution mechanism that covers complaints by holders of the product; and
 - (ii) of the means by which a product holder is able to gain access to that mechanism; and
 - (d) a statement that further information in relation to the financial product is available on request.
- (2) If a periodic statement for a financial product mentioned in subsection 1017D (1) of the Act includes, or is accompanied by, statements to the effect that:
 - (a) amounts for fees, expenses or charges have been deducted from a common fund to which the product relates in relation to the reporting period; and
 - (b) those deductions are borne indirectly by the holders of the product and may affect the return to the holders; and
 - (c) further information about the deductions can be obtained by contacting the issuer of the product;the product issuer does not have to include the details in paragraph (1) (b) in the periodic statement.

[15] After regulation 7.9.80A*insert in Division 8***7.9.80B Short selling of certain warrants**

For paragraph 1020B (1) (d) of the Act, a financial product that is transferable and is:

- (a) a derivative under section 761D of the Act; or
- (b) a financial product that would, apart from the effect of paragraph 761D (3) (c) of the Act, be a derivative for section 761D of the Act and is excluded from that paragraph only because it is a security under paragraph (c) of the definition of *security* in section 761A of the Act; or
- (c) a legal or equitable right or interest in an interest in a managed investment scheme of the kind mentioned in paragraph 764A (1) (ba) of the Act;

is prescribed.

Note Paragraph 764A (1) (ba) of the Act refers to a managed investment scheme that is not a registered scheme, other than a scheme (whether or not operated in this jurisdiction) in relation to which none of paragraphs 601ED (1) (a), (b) and (c) of the Act are satisfied.

[16] Paragraph 10.2.51 (c)*substitute*

- (c) section 1012C of the Act does not apply in relation to a financial product that is issued before the end of the transition period in relation to the financial product, other than:
 - (i) a security that is not also a warrant; and
 - (ii) a managed investment product that is not also a warrant.

**Schedule 2 Amendments commencing on
11 March 2004**
(regulation 3)**[1] Subparagraph 7.9.04 (1) (a) (iii)***omit*

7.9.02 (4);

insert

7.9.02 (4); or

[2] After subparagraph 7.9.04 (1) (a) (iii)*insert*

- (iv) an interest in a self-managed superannuation fund that is not acquired at the time that the fund is established;

**Schedule 3 Amendments commencing on
1 July 2004**

(regulation 3)

[1] Subparagraphs 7.7.11 (2) (a) (i) and (ii)*substitute*

- (i) stated as an amount in dollars; or
- (ii) if it is not reasonably practicable for an amount to be identified when the Statement of Advice is provided — set out as a description of the remuneration, commission and benefits as a percentage of a specified matter (including, if appropriate, worked dollar examples); or
- (iii) if it is not reasonably practicable for an amount or a percentage to be identified when the Statement of Advice is provided — set out as a description of the method of calculating the remuneration, commission and benefits (including, if appropriate, worked dollar examples);

[2] Subparagraphs 7.7.12 (2) (a) (i) and (ii)*substitute*

- (i) stated as an amount in dollars; or
- (ii) if it is not reasonably practicable for an amount to be identified when the Statement of Advice is provided — set out as a description of the remuneration, commission and benefits as a percentage of a specified matter (including, if appropriate, worked dollar examples); or
- (iii) if it is not reasonably practicable for an amount or a percentage to be identified when the Statement of Advice is provided — set out as a description of the method of calculating the remuneration, commission and benefits (including, if appropriate, worked dollar examples);

[3] After regulation 7.7.12

insert in Division 3

7.7.13 Additional information about charges or benefits

For paragraph 947D (2) (c) of the Act, the Statement of Advice must include:

- (a) the amount, in dollars, of each charge or pecuniary benefit mentioned in paragraph 947D (2) (a) of the Act; or
- (b) if it is not reasonably practicable for an amount to be identified when the Statement of Advice is provided — a description of the charge or pecuniary benefit as a percentage of a specified matter (including, if appropriate, worked dollar examples); or
- (c) if it is not reasonably practicable for an amount or a percentage to be identified when the Statement of Advice is provided — a description of the method of calculating the charge or benefit (including, if appropriate, worked dollar examples).

[4] After regulation 7.9.15

insert

7.9.15A Information about benefits, costs and payments

For paragraph 1013D (4) (c) of the Act, a Product Disclosure Statement must include, in the statements of information required by subsection 1013D (1) of the Act:

- (a) the amount, in dollars, of:
 - (i) a benefit mentioned in paragraph 1013D (1) (b); and
 - (ii) a cost or an amount mentioned in paragraph 1013D (1) (d); and
 - (iii) a payment mentioned in paragraph 1013D (1) (e); or
- (b) if it is not reasonably practicable for an amount to be identified when the Product Disclosure Statement is provided — a description of the benefit, cost, amount or payment as a percentage of a specified matter (including, if appropriate, worked dollar examples); or

- (c) if it is not reasonably practicable for an amount or a percentage to be identified when the Product Disclosure Statement is provided — a description of the method of calculating the benefit, cost, amount or payment (including, if appropriate, worked dollar examples).

[5] Regulation 7.9.19

omit everything before paragraph (a), insert

- (1) This regulation applies to a periodic statement that relates to a reporting period (within the meaning of subsection 1017D (2) of the Act) commencing before 1 July 2004.
- (2) For paragraph 1017D (5) (g) of the Act, a periodic statement for a member of a fund (other than a self managed superannuation fund) or an RSA holder must include the following details:

[6] After regulation 7.9.19

insert

7.9.19A Specific requirements for periodic statements: superannuation funds (other than self managed superannuation funds) and RSAs

- (1) This regulation applies to:
 - (a) a periodic statement for a superannuation product, given to a member of a superannuation fund (other than a self managed superannuation fund), that relates to a reporting period (within the meaning of subsection 1017D (2) of the Act) commencing on or after 1 July 2004; or
 - (b) a periodic statement for an RSA product, given to an RSA holder, that relates to a reporting period (within the meaning of subsection 1017D (2) of the Act) commencing on or after 1 July 2004.

(2) For paragraph 1017D (5) (g) of the Act, the periodic statement must include the following details:

- (a) the issuer's contact details;
- (b) the amount of the withdrawal benefit for the product holder at the start of the reporting period;
- (c) the following information about the withdrawal benefit for the product holder at the end of the reporting period:
 - (i) the amount of the withdrawal benefit;
 - (ii) the method by which that amount was worked out;
 - (iii) the amount of the withdrawal benefit (if any) that consists of preserved benefits;
 - (iv) the amount of the withdrawal benefit (if any) that consists of restricted non-preserved benefits;
 - (v) the amount of the withdrawal benefit (if any) that consists of unrestricted non-preserved benefits;
- (d) a statement informing the product holder that:
 - (i) the information about the withdrawal benefit for the product holder at the end of the reporting period is based on notional amounts that would have been attributable to the product holder if the product holder had disposed of his or her interest in the product on the date shown in the statement; and
 - (ii) the amounts on which that information is based might change; and
 - (iii) before disposing of the product, the product holder should seek information from the issuer on the withdrawal benefit at that time;
- (e) a statement informing the product holder that the issuer is obliged to provide a member with any information that he or she reasonably requires to understand his or her benefit entitlements;
- (f) a statement of the way in which a product holder is able to gain access to information in relation to his or her investment in the financial product.

(3) In providing details of the amount of withdrawal benefit at the end of the reporting period, in accordance with subparagraph (2) (c) (i), if a deduction for fees, charges or expenses has been made or might be made, the product issuer must provide details of the deduction including:

- (a) the amount in dollars; or
- (b) if it is not reasonably practicable for an amount to be identified — a description of the fees, charges or expenses as a percentage of a specified matter (including, if appropriate, worked dollar examples); or
- (c) if it is not reasonably practicable for an amount or a percentage to be identified:
 - (i) a statement informing the holder of the product that amounts for fees, charges or expenses are applicable; and
 - (ii) if information about access to the information about the amount of a deduction is not provided in the statement mentioned in paragraph (2) (e) — details of the means by which a product holder can gain access to information relating to the amount of the deduction.

[7] Paragraph 7.9.20 (1) (k)

substitute

- (k) for a reporting period (within the meaning of subsection 1017D (2) of the Act) commencing before 1 July 2004 — details, including the amount or method of working out, of other significant benefits, including, in particular, disability benefits;
- (ka) for a reporting period (within the meaning of subsection 1017D (2) of the Act) commencing on or after 1 July 2004:
 - (i) details of other significant benefits, including disability benefits, and the amount of the benefits at the end of the reporting period, or the method of working out the amount of the benefits; and

- (ii) if the periodic statement includes an amount mentioned in subparagraph (i) — a statement informing the holder of the product that:
 - (A) the details of the significant benefit reflects the situation for the member on the date shown in the statement and the amount might change; and
 - (B) the issuer is obliged to provide product holders with any information they reasonably require for the purpose of understanding their benefit entitlements; and
- (iii) details of the means by which a product holder is able to gain access to information relating to the amount of a significant benefit;

[8] After subregulation 7.9.20 (1)

insert

- (1A) In providing details of the amount of other significant benefits at the end of the reporting period for subparagraph (1) (ka) (i), if a deduction has been made for fees, charges or expenses, the issuer must provide details of the deduction, including:
 - (a) the amount in dollars; or
 - (b) if it is not reasonably practicable for an amount to be identified — a description of the fees charges or expenses as a percentage of a specified matter (including, if appropriate, worked dollar examples); or
 - (c) if it is not reasonably practicable to provide an amount or a percentage — a statement informing the holder of the product:
 - (i) that an amount for fees, charges or expenses is applicable; and
 - (ii) if information about the deduction is not provided in the statement mentioned in sub subparagraph (1) (ka) (ii) (B) — of details of the means by which a product holder is able to gain access to information relating to the amount.

[9] Regulation 7.9.75*substitute***7.9.75 Content of periodic statements: costs of transactions**

- (1) For paragraph 1017D (5) (g) of the Act, the prescribed details in relation to a financial product include:
 - (a) amounts paid by the holder of the financial product in respect of the financial product during the period; and
 - (b) for amounts paid in respect of the financial product, and amounts paid in respect of other financial products, that are paid into a common fund:
 - (i) if any amounts are deducted from the common fund by way of fees, expenses or charges during the period:
 - (A) a proportion of the amount deducted that is actually or notionally attributable to the product holder's interest; and
 - (B) if applicable — a statement informing the product holder that the notional proportion of the amount may not give an accurate estimate of the effect of the deduction on the product holder's interest; or
 - (ii) if it is not reasonably practicable for the issuer to determine a proportion in accordance with subparagraph (i), a statement to the effect that:
 - (A) amounts for fees, expenses or charges have been deducted from the common fund to which the product relates in relation to the reporting period; and
 - (B) these deductions are borne indirectly by the holders of the product and may affect the return to the holders; and
 - (c) a statement informing the product holder:
 - (i) that information in relation to the financial product, including details of benefits or fees and charges is available on request; and
 - (ii) of the means by which a product holder is able to gain access to that information; and

- (d) a statement informing the product holder:
 - (i) that there is a dispute resolution mechanism that covers complaints by holders of the product; and
 - (ii) of the means by which a product holder is able to gain access to that mechanism.
- (2) For paragraph (1) (a) an amount has been paid in respect of a financial product by the holder of the financial product if:
 - (a) the product holder has paid an amount in respect of the product; or
 - (b) an amount has been deducted from:
 - (i) a payment made by the product holder; or
 - (ii) a payment made to the product holder; or
 - (c) the product holder has paid an amount or an amount has been deducted or debited as a fee, expense or charge in relation to the financial product; or
 - (d) an amount is held on the product holder's behalf under the financial product (excluding any amounts referred to in paragraph (1) (b) deducted from a common fund).
- (3) The details of amounts mentioned in paragraph (1) (a) and subparagraph (1) (b) (i) must include:
 - (a) the amount in dollars; or
 - (b) if it is not reasonably practicable for an amount to be identified — a description of the item as a percentage of a specified matter; or
 - (c) if it is not reasonably practicable to provide an amount or a percentage:
 - (i) a statement informing the holder of the product that the amount is applicable; and
 - (ii) details of the means by which a product holder is able to gain access to information relating to the amount.
- (4) For paragraph 1017D (5) (g) of the Act, if a financial product has:
 - (a) an opening or closing balance mentioned in paragraph 1017D (5) (a); or

- (b) the termination value mentioned in paragraph 1017D (5) (b); or
- (c) an increase in contributions mentioned in paragraph 1017D (5) (d); or
- (d) a return on investment mentioned in paragraph 1017D (5) (e);
the periodic statement must include the details in subregulation (5).

(5) For subregulation (4), the details are:

- (a) the amount in dollars; or
- (b) if it is not reasonably practicable for an amount to be identified when the periodic statement is provided — a description of the balance, value, increase or return as a percentage of a specified matter (including, if appropriate, worked dollar examples); or
- (c) if it is not reasonably practicable for an amount or a percentage to be identified when the periodic statement is provided:
 - (i) a statement informing the holder of the product that the amount is applicable; and
 - (ii) details of the means by which a product holder is able to gain access to information relating to the amount.

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 and 202.
2. Notified in the *Commonwealth of Australia Gazette* on 13 November 2003.