



Corporations Amendment Regulations 2003 (No. 3)¹

Statutory Rules 2003 No. 85²

I, PETER JOHN HOLLINGWORTH, 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 1 May 2003

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

IAN CAMPBELL
Parliamentary Secretary to the Treasurer

1 Name of Regulations

These Regulations are the *Corporations Amendment Regulations 2003 (No. 3)*.

2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 2A.1.01, table

omit

Acturies,

insert

Actuaries,

[2] Regulation 7.1.29

substitute

7.1.29 Circumstances in which a person is taken not to provide a financial service

- (1) For paragraph 766A (2) (b) of the Act, a person who provides an eligible service is taken not to provide a financial service if:
 - (a) the person provides the eligible service in the course of conducting an exempt service; and
 - (b) it is reasonably necessary to provide the eligible service in order to conduct the exempt service; and

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- (c) the eligible service is provided as an integral part of the exempt service.
- (2) For this regulation, a person provides an *eligible service* if the person engages in conduct mentioned in paragraphs 766A (1) (a) to (f) of the Act.
- (3) For this regulation, a person who does any of the following provides an *exempt service*:
- (a) provides advice in relation to the preparation or auditing of financial reports or audit reports;
 - (b) provides advice on the risk associated with carrying on a business and identifies generic financial products or generic classes of financial product that will mitigate that risk, other than advice for inclusion in an exempt document or statement;
 - (c) provides advice on the acquisition or disposal, administration, due diligence, establishment, structuring or valuation of an incorporated or unincorporated entity, if the advice:
 - (i) is given to a person who is, or is likely to become, an interested party in the entity; and
 - (ii) to the extent that it is financial product advice — is confined to advice on a decision about:
 - (A) securities of a body corporate, or related body corporate, that carries on or may carry on the business of the entity; or
 - (B) interests in a trust (other than a superannuation fund or a managed investment scheme that is registered or required to be registered), the trustee of which carries on or may carry on the business of the entity in the capacity of trustee; and
 - (iii) does not relate to other financial products that the body corporate or the trustee of the trust may acquire or dispose of; and
 - (iv) is not advice for inclusion in an exempt document or statement;

- (d) provides advice on financial products that are:
 - (i) securities in a company (other than securities that are to be offered under a disclosure document under Chapter 6D of the Act); or
 - (ii) interests in a trust (other than a superannuation fund or a managed investment scheme that is registered or required to be registered);if the company or trust is not carrying on a business and has not, at any time, carried on a business;
 - (e) provides advice in relation to the transfer of financial products between related bodies corporate;
 - (f) arranges for another person to engage in conduct referred to in subsection 766C (1) in relation to interests in a self managed superannuation fund in the circumstances in paragraphs (5) (b) and (c);
 - (g) arranges for another person to engage in conduct referred to in subsection 766C (1), by preparing a document of registration or transfer in order to complete administrative tasks on instructions from the person;
 - (h) provides advice about the provision of financial products as security, other than where the security is provided for the acquisition of other financial products.
- (4) For this regulation, a person also provides an *exempt service* if:
- (a) the person provides advice to another person on taxation issues including advice in relation to the taxation implications of financial products; and
 - (b) the person will not receive a benefit (other than from the person advised or an associate of the person advised) as a result of the person advised acquiring a financial product mentioned in the advice, or a financial product that falls within a class of financial products mentioned in the advice; and
 - (c) either:
 - (i) the advice does not constitute financial product advice to a retail client; or

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- (ii) the advice constitutes financial product advice to a retail client and it includes, or is accompanied by, a written statement that:
- (A) the person providing the advice is not licensed to provide financial product advice under the Act; and
 - (B) taxation is only one of the matters that must be considered when making a decision on a financial product; and
 - (C) the client should consider taking advice from the holder of an Australian Financial Services Licence before making a decision on a financial product.
- (5) For this regulation, a person also provides an *exempt service* if:
- (a) the person provides advice in relation to the establishment, operation, structuring or valuation of a superannuation fund, other than advice for inclusion in an exempt document or statement; and
 - (b) the person advised is, or is likely to become:
 - (i) a trustee; or
 - (ii) a director of a trustee; or
 - (iii) an employer sponsor; or
 - (iv) a person who controls the management; of the superannuation fund; and
 - (c) except for advice that is given for the sole purpose, and only to the extent reasonably necessary for the purpose, of ensuring compliance by the person advised with the SIS Act (other than paragraph 52 (2) (f)), the SIS Regulations (other than regulation 4.09) or the *Superannuation Guarantee (Administration) Act 1992* — the advice:
 - (i) does not relate to the acquisition or disposal by the superannuation fund of specific financial products or classes of financial products; and
 - (ii) does not include a recommendation that a person acquire or dispose of a superannuation product; and
 - (iii) does not include a recommendation in relation to a person's existing holding in a superannuation

product to modify an investment strategy or a contribution level; and

- (d) if the advice constitutes financial product advice provided to a retail client — the advice includes, or is accompanied by, a written statement that:
 - (i) the person providing the advice is not licensed to provide financial product advice under the Act; and
 - (ii) the client should consider taking advice from the holder of an Australian Financial Services Licence before making a decision on a financial product.

- (6) In this regulation:

employer sponsor has the meaning given by subsection 16 (1) of the SIS Act.

exempt document or statement has the meaning given by subsection 766B (9) of the Act.

generic means without reference to a particular brand or product issuer.

interested party means:

- (a) an associate within the meaning of Division 2 of Part 1.2 of the Act; or
- (b) a manager; or
- (c) an officer; or
- (d) a trustee or director of a trustee.

self managed superannuation fund has the meaning given by section 17A of the SIS Act.

[3] After regulation 7.1.33C

insert

7.1.33D Investment-linked life insurance products

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

- (a) the person makes a market for a financial product (within the meaning of section 766D of the Act); and
- (b) the person is the issuer of the product; and

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- (c) the product is an investment-linked life insurance policy under an investment-linked contract (within the meaning of subsection 14 (4) of the *Life Insurance Act 1995*).

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

insert

- (la) a financial service provided by a person (*person 1*) to another person (*person 2*), if:
- (i) the financial service is provided in the ordinary course of person 1's business; and
 - (ii) person 1:
 - (A) holds an Australian financial services licence authorising the provision of financial services other than the financial service mentioned in subparagraph (i); or
 - (B) does not hold an Australian financial services licence; and
 - (iii) the financial service consists of either or both of the following:
 - (A) advising person 2 in relation to a non-cash payments facility that person 2 may use, or has used, to pay person 1 for a financial product or a financial service;
 - (B) arranging to deal in a non-cash payments facility that person 2 will use to pay person 1 for a financial product or a financial service.

[5] After subregulation 7.7.02 (3)

insert

- (3A) For subsection 941C (8) of the Act, a Financial Services Guide does not have to be given to a client for a financial service provided in the circumstances specified in paragraph 7.6.01 (1) (la).

[6] Regulation 7.7.05A

omit

For

insert

- (1) For

[7] Regulation 7.7.05A

insert

- (2) Subregulation (1) does not apply to a Financial Services Guide to which regulation 7.7.05B applies.

[8] After regulation 7.7.05A

insert

7.7.05B Personalised Financial Services Guide

- (1) This regulation applies if a body corporate:
- (a) is a financial services licensee; and
 - (b) distributes a financial product of another financial services licensee (*the original licensee*); and
 - (c) authorises an individual to provide financial services on behalf of the original licensee.
- (2) This regulation also applies if a body corporate:
- (a) is an authorised representative of a financial services licensee (*the original licensee*); and
 - (b) authorises an individual to provide financial services on behalf of the original licensee.

Note The individual is the providing entity in relation to any financial service provided.

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- (3) For paragraph 942C (4) (b) of the Act, the Financial Services Guide in relation to a financial service does not have to include the information in paragraph 942C (2) (a) of the Act, in respect of the individual, if:
- (a) the individual provides the financial service in accordance with the authorisation; and
 - (b) the financial service is dealing in a financial product or the provision of general advice, or both; and
 - (c) a Financial Services Guide for the financial service was prepared by the body corporate; and
 - (d) the Financial Services Guide includes a statement setting out:
 - (i) the contact details of the licensee and the body corporate; and
 - (ii) the individual's role and capacity; and
 - (e) the body corporate has reasonable grounds to believe that the identity or remuneration of the individual would not be material to a decision whether a retail client should obtain the financial service.

Note The Financial Services Guide will contain all information otherwise required by section 942C of the Act.

[9] Part 10.2, after Division 49

insert

Division 50 Warrants or options to acquire issued securities

10.2.213 Warrants or options to acquire issued securities

For section 1444 of the Act, if a warrant or option to acquire issued securities by way of transfer is a financial product:

- (a) to which the definition of *securities* in subsection 92 (3) of the old Corporations Act applied; and
- (b) to which Chapter 6D of that Act applied;

Chapter 6D is taken to apply during the transition period for those products.

[10] After regulation 12.7.05

insert

12.7.06 Certain provisions of the Friendly Societies Code cease to apply to FSR licensee

- (1) For clause 39 of Schedule 4 to the Act, the provisions of subclause 36 (1) of Schedule 4 cease to apply to a body to which Schedule 4 to the Act applies on the earlier of:
 - (a) 2 years after the FSR commencement; and
 - (b) the body giving notice under paragraph 1438 (3) (b) of the Act that the body wants the new product disclosure provisions to apply in relation to specified products issued by the body.
- (2) Subregulation (1) takes effect from the date specified in the notice as the date from which the new product disclosure provisions will apply.

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 and 48.
2. Notified in the *Commonwealth of Australia Gazette* on 8 May 2003.