



Corporations Amendment Regulations 2008 (No. 2)

Select Legislative Instrument 2008 No. 94

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 30 May 2008

P. M. JEFFERY
Governor-General

By His Excellency's Command

NICK SHERRY
Minister for Superannuation and Corporate Law

1 Name of Regulations

These Regulations are the *Corporations Amendment Regulations 2008 (No. 2)*.

2 Commencement

These Regulations commence on the day on which the *Agreement between the Government of Australia and the Government of New Zealand in relation to Mutual Recognition of Securities Offerings* [2006] ATNIF 5 enters into force for Australia.

3 Amendment of *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

Schedule 1 Amendments

(regulation 3)

[1] After Chapter 7
insert

Chapter 8 Mutual recognition of securities offers

Part 8.1 Preliminary

8.1.01 Prescribed foreign recognition scheme (Act s 1200A (1))

For the definition of *foreign recognition scheme* in subsection 1200A (1) of the Act, the provisions of Part 5 of the Securities Act 1978 of New Zealand and the Securities (Mutual Recognition of Securities Offerings — Australia) Regulations 2008 of New Zealand comprising a recognition scheme are prescribed.

8.1.02 Prescribed offeror (Act s 1200A (1))

For the definition of *offeror* of securities in subsection 1200A (1) of the Act:

- (a) an offer of an interest in a managed investment scheme governed by the laws of New Zealand is prescribed as a kind of offer; and
- (b) for that offer:
 - (i) if the scheme is a unit trust established under the Unit Trusts Act 1960 of New Zealand — the offeror is the manager of the scheme as defined in that Act; or

- (ii) if the scheme is a scheme within the meaning of the Securities Act 1978 of New Zealand — the offeror is the manager of the scheme as defined in that Act.

8.1.03 Prescribed recognised jurisdiction (Act s 1200A (1))

For the definition of *recognised jurisdiction* in subsection 1200A (1) of the Act, New Zealand is prescribed.

Part 8.2 Foreign offers that are recognised in this jurisdiction

Division 1 Recognised offers

8.2.01 Prescribed offer (Act s 1200C (4))

For subsection 1200C (4) of the Act, an offer of a security to which Part 2 of the Securities Act 1978 of New Zealand applies is a prescribed offer in relation to New Zealand.

Note For the purpose of Chapter 8 of the Act and Chapter 8 of these regulations, a security does not include all of the financial products defined as securities in Part 2 of the Securities Act 1978 of New Zealand — see the definition of *securities* in section 1200A (1) of the Act. For example, a security does not include an interest in a superannuation scheme or a life insurance policy.

8.2.02 Prescribed warning statements (Act s 1200E)

- (1) For paragraph 1200E (a) of the Act, the following warning statements are prescribed.
 - (a) this offer to Australian investors is a recognised offer made under Australian and New Zealand law. In Australia, this is Chapter 8 of the *Corporations Act 2001* and Regulations. In New Zealand, this is Part 5 of the New Zealand Securities Act 1978 and the Securities (Mutual Recognition of Securities Offerings) Regulations 2008;
 - (b) this offer and the content of the offer document are principally governed by New Zealand, rather than Australian, law. In the main, the New Zealand Securities

Act 1978 and New Zealand Securities Regulations 1983 set out how the offer must be made;

- (c) there are differences in how securities and financial products are regulated under New Zealand, as opposed to Australian, law. For example, the disclosure of fees for managed investment schemes is different under New Zealand law;
 - (d) the rights, remedies and compensation arrangements available to Australian investors in New Zealand securities and financial products may differ from the rights, remedies and compensation arrangements for Australian securities and financial products;
 - (e) both the Australian and New Zealand securities regulators have enforcement responsibilities in relation to this offer. If you need to make a complaint about this offer, please contact the Australian Securities and Investments Commission (ASIC). The Australian and New Zealand regulators will work together to settle your complaint;
 - (f) the taxation treatment of New Zealand securities and financial products is not the same as that for Australian securities and products;
 - (g) if you are uncertain about whether this investment is appropriate for you, you should seek the advice of an appropriately qualified financial advisor.
- (2) For paragraph 1200E (a) of the Act, the following additional warning statements are prescribed for offers involving the payment of proceeds, from securities or financial products, that are not Australian dollars:
- (a) The offer may involve a currency exchange risk. The currency for the security or financial product is in dollars that are not Australian dollars. The value of the security or financial product will go up and down according to changes in the exchange rate between those dollars and Australian dollars. These changes may be significant;
 - (b) If you receive any payments in relation to the security or financial product that are not in Australian dollars, you may incur significant fees in having the funds credited to a bank account in Australia in Australian dollars.

- (3) For paragraph 1200E (a) of the Act, the following additional warning statement is prescribed for offers involving securities and financial products, able to be traded on a financial market:

If the security or financial product is able to be traded on a financial market and you wish to trade the security or financial product through that market, you will have to make arrangements for a participant in that market to sell the security or financial product on your behalf. If the financial market is a foreign market that is not licensed in Australia (such as a securities market operated by the New Zealand Exchange Limited (NZX)) the way in which the market operates, the regulation of participants in that market and the information available to you about the security or financial product and trading may differ from Australian licensed markets.

8.2.03 Prescribed details to be given in warning statements (Act s 1200E (b))

For paragraph 1200E (b) of the Act, if a matter is referred to in an item of the Table, the details in the item are prescribed for the matter.

Item	Matter	Details to be provided
1	An offer to invest in a managed investment scheme is subject to an obligation to provide for a dispute resolution process	Details of the dispute resolution process available in relation to that offer
2	An offer is subject to continuous disclosure obligations	Details of the availability of the continuous disclosure notices that relate to that offer
3	An offer of a product that is currently listed or is to be listed on a financial market	Details of the financial market on which the product is listed, or on which it is proposed to be listed

8.2.04 Prescribed home regulators (Act s 1200G (13) and (14))

For subsections 1200G (13) and (14) of the Act:

- (a) an authority referred to in an item of the Table is prescribed as a home regulator for New Zealand; and
- (b) each matter listed in the item in relation to the authority is prescribed as a matter in relation to which the authority is to be regarded as the home regulator.

Item	Authority	Matter(s) in relation to which the authority is to be regarded as the home regulator
1	New Zealand Registrar of Companies	Each matter mentioned in: <ul style="list-style-type: none"> (a) items 1 to 4 of the Table at subsection 1200G (9) of the Act; or (b) item 4 of the Table at subsection 1200N (1) of the Act
2	New Zealand Securities Commission	Each matter mentioned in items 5 to 7 of the Table at subsection 1200G (9) of the Act

Division 4 Modification of the Act in relation to its application to recognised offers for interests in New Zealand managed investment schemes (Act s 1020G, 1200M)

8.4.01 Modification of Part 7.9 of the Act — New Zealand offer documents replace Product Disclosure Statements

For section 1020G of the Act, Part 7.9 of the Act is modified in its application in relation to managed investment schemes as set out in Part 18 of Schedule 10A.

8.4.02 Modification of Part 6D.2 of the Act and Part 7.9 of the Act — certain disclosure obligations not to apply

For section 1200M of the Act, Part 6D.2 of the Act and Part 7.9 of the Act are modified in relation to their application in respect of a recognised offer or a proposed offer of securities that may become a recognised offer as set out in Part 1 of Schedule 10AA.

[2] Schedule 10A, heading

substitute

Schedule 10A Modifications of Part 7.9 of the Act

(regulations 7.9.02, 7.9.04, 7.9.05, 7.9.06, 7.9.07, 7.9.11, 7.9.12, 7.9.24, 7.9.27, 7.9.30, 7.9.43, 7.9.47, 7.9.51, 7.9.56, 7.9.60, 7.9.61, 7.9.63, 7.9.73 and 8.4.01)

[3] Schedule 10A, after Part 17

insert

Part 18 Modification of Part 7.9 of the Act — New Zealand offer documents replace Product Disclosure Statements where an offer relates to interests in a New Zealand managed investment scheme

18.1 After subsection 1012D (9D)

insert

Recommendation, issue or sale situation — New Zealand mutual recognition scheme for securities

- (9E) In a recommendation situation, issue situation or sale situation, the regulated person does not have to give the client a Product Disclosure Statement for a financial product if:

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- (a) the regulated person reasonably believes that there is a recognised offer under Chapter 8 in relation to offer of the financial product; and
 - (b) the financial product is an interest in a managed investment scheme governed by the laws of New Zealand; and
 - (c) the regulated person has provided the client the documents and information required to accompany that offer by the Securities Act 1978 of New Zealand and Securities Regulation 1983 of New Zealand; and
 - (d) the regulated person has provided the client any warning statement or details prescribed under section 1200E in relation to the offer.
- (9F) For paragraph (9E) (c), section 1015C applies to the providing of documents and information, as if the documents and information were a Statement.
- (9G) For paragraph (9E) (d), section 1015C applies to the providing of warning statement or details prescribed under section 1200E, as if the warning statement or details were a Statement.

[4] After Schedule 10A

insert

**Schedule 10AA Modifications of the Act in
relation to their application in
respect of a recognised offer
or a proposed offer of
securities that may become a
recognised offer**

(regulation 8.4.02)

**Part 1 Modification of Part 6D.2 of the Act —
disclosure to investors not required for
recognised offer under Chapter 8**

1.1 After subsection 707 (3)

insert

- (3A) Subsection (3) does not apply to an offer of a body's securities for sale if the body issued the securities as part of a recognised offer under Chapter 8.
- (3B) Subsection (3) does not apply to an offer of a body's securities for sale if:
 - (a) the securities were issued by reason of the exercise of options or the conversion of convertible or converting securities; and
 - (b) the options or other convertible or converting securities were issued as part of a recognised offer under Chapter 8; and
 - (c) the exercise of the option, or the conversion of the security, did not involve any further offer.

1.2 After subsection 707 (5)

insert

- (5A) Subsection (5) does not apply to an offer of a body's securities for sale if the controller sold the securities as part of a recognised offer under Chapter 8.

**Part 2 Modification of Part 7.9 of the Act —
disclosure to investors not required for
recognised offer under Chapter 8**

2.1 After subsection 1012C (6)

insert

- (6A) Subsection (6) does not apply to an offer of a financial product for sale if the issuer issued the financial product as part of a recognised offer under Chapter 8.
- (6B) Subsection (6) does not apply to an offer of a financial product for sale if:
 - (a) the financial product was issued by reason of the exercise of an option or the conversion of another convertible or converting security; and
 - (b) the option or convertible or converting security was issued as part of a recognised offer under Chapter 8; and
 - (c) the exercise of the option, or the conversion of the security, did not involve a further offer.

2.2 After subsection 1012C (8)

insert

- (8A) Subsection (8) does not apply to the offer of a financial product for sale if the controller sold the financial product as part of a recognised offer under Chapter 8.

2.3 After subsection 1012IA (3)

insert

- (3A) In determining whether this section requires a provider to give a client a Product Disclosure Statement, Chapter 8 is to be disregarded.
- (3B) A provider is not required to give a client a Product Disclosure Statement for a financial product if:
 - (a) the provider reasonably believes there is a recognised offer under Chapter 8 in relation to the financial product; and

- (b) the financial product is an interest in a managed investment scheme governed by the laws of New Zealand; and
 - (c) the provider has provided the client the documents and information required to accompany that offer by the Securities Act 1978 of New Zealand and Securities Regulation 1983 of New Zealand; and
 - (d) the provider has provided the client any warning statement or details prescribed under section 1200E in relation to the offer.
- (3C) For paragraph (3B) (c), section 1015C applies to the providing of documents and information, as if the documents and information were a Statement.
- (3D) For paragraph (3B) (d), section 1015C applies to the providing of warning statement or details prescribed under section 1200E, as if the warning statement or details were a Statement.

Note Subsection 1012D (9E) of the Act is a modification of the Act that relates to Chapter 8 of the Act. The modification applies by force of:

- (a) regulation 8.4.01 of the *Corporations Regulations 2001*; and
- (b) item 18.1 of Part 18 of Schedule 10A to those Regulations.