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Corporations Amendment Regulations 2002 (No. 3)¹

Statutory Rules 2002 No. μ^2

41

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 28 FEB 2002 2002

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

IAN CAMPBELL
Parliamentary Secretary to the Treasurer

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1 Name of Regulations

These Regulations are the *Corporations Amendment Regulations 2002 (No. /)*.

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2 Commencement

- (1) Regulations 1, 2 and 3, and Schedule 1, commence at 12.02 am (in the Australian Capital Territory) on 11 March 2002.
- (2) Schedule 2 commences at 12.01 am (in the Australian Capital Territory) on the day on which the *Family Law Legislation Amendment (Superannuation) Act 2001* commences.

3 Amendment of *Corporations Regulations 2001*

Schedules 1 and 2 amend the *Corporations Regulations 2001*.

**Schedule 1 Amendments commencing at
12.02 am (in the Australian
Capital Territory) on 11 March
2002**

(regulation 3)

[1] Subregulation 1.0.02 (1), definition of *warrant*

substitute

warrant means a financial product:

- (a) that is:
 - (i) a derivative under section 761D of the Act;
or
 - (ii) a financial product to which the definition of *derivative* in subsection 761D (1) of the Act applies that is a security because of the effect of paragraph 761D (3) (c) of the Act, paragraph 764A (1) (a) of the Act and paragraph (c) of the definition of *security* in section 761A of the Act; and
- (b) that is transferable.

[2] Subregulation 1.0.05A (1)

omit

and Part 10.2

[3] Paragraph 1.0.05A (2) (e)

omit

prescribed form.

insert

prescribed form; and

[4] After paragraph 1.0.05A (2) (e)

insert

- (f) a document that is to be lodged with ASIC for Part 10.2 of the Act must be lodged in the prescribed form.

[5] Paragraph 6.5.01 (3) (b)

omit

shares

insert

securities

[6] Regulation 6CA.1.01

substitute

6CA.1.01 Continuous disclosure: other disclosing entities

For paragraph 675 (2) (d) of the Act, the disclosure of information under section 675 of the Act is not required if:

- (a) a reasonable person would not expect the information to be disclosed; and
- (b) the information is confidential; and
- (c) at least 1 of the following applies:
 - (i) the disclosure of the information would contravene a law;
 - (ii) the information is about a matter of supposition;
 - (iii) the information is not definite enough to make disclosure appropriate;
 - (iv) the information relates to an incomplete proposal or a matter that is in the course of negotiation;

-
- (v) the information was prepared or created for the internal management purposes of the entity;
 - (vi) the information is a trade secret.

[7] After regulation 7.1.03A

insert

7.1.03B Self managed superannuation funds

In this Chapter:

self managed superannuation fund has the same meaning as in the SIS Act.

[8] Regulation 7.1.04A, heading

substitute

7.1.04A Meaning of *kind* of financial products (section 1012IA of the Act)

[9] After regulation 7.1.04A

insert

7.1.04B Meaning of *class* of financial products (managed investment schemes)

- (1) For section 761CA of the Act, this regulation applies in relation to paragraph 1017F (4) (d) of the Act.
- (2) An interest in a managed investment scheme is in the same class as another interest in a managed investment scheme if they are both interests in the same managed investment scheme.

7.1.04C Meaning of *class* of financial products (superannuation products)

- (1) For section 761CA of the Act, this regulation applies in relation to paragraph 1017F (4) (d) of the Act.
- (2) A superannuation product is in the same class as another superannuation product if they are both issued by the same superannuation entity.

7.1.04D Meaning of *issuer* for certain derivatives

- (1) This regulation applies in relation to a financial product that:
 - (a) is a derivative; and
 - (b) is entered into, or acquired through a facility conducted in accordance with:
 - (i) the *Corporations (Exempt Futures Market — National Wholesale Electricity) Declaration 1999*; or
 - (ii) the *Corporations (Exempt Futures Market) Declaration 2001*.
- (2) For paragraph 761E (7) (a) of the Act, each person who is a party to the financial product is taken to be an issuer of the financial product.
- (3) For paragraph 761E (7) (a) of the Act, subsections 761E (5) and (6) of the Act do not apply to the financial product.

[10] Subparagraph 7.1.06 (1) (a) (iii)

substitute

- (iii) whether or not both credit and debit facilities are available; and
- (iv) that is not a financial product mentioned in paragraph 764A (1) (a), (b), (ba), (f), (g), (h), (i) or (j) of the Act; and
- (v) that is not a financial product mentioned in paragraph 763A (1) (a) of the Act;

[11] **After regulation 7.1.06**

insert

7.1.06A Arrangements for certain financial products that are not credit facilities

- (1) This regulation applies in relation to a financial product that would be a credit facility in accordance with regulation 7.1.06 if subparagraphs 7.1.06 (1) (a) (iv) and (v) did not apply.
- (2) For paragraph 761E (7) (a) of the Act, and in relation to the financial product:
 - (a) the credit provider is not taken to be the issuer of the financial product; and
 - (b) the debtor is taken to be the issuer of the financial product.
- (3) For paragraph 766A (2) (b) of the Act, and in relation to the financial product:
 - (a) the provision of financial product advice to the debtor, or the debtor's representative, is taken not to be the provision of a financial service; and
 - (b) a dealing in the credit facility by the credit provider, or the credit provider's representative, is taken not to be the provision of a financial service.
- (4) In this regulation:

credit, *credit provider* and *debtor* have the same meanings as in subregulation 7.1.06 (3).

[12] **Paragraph 7.1.08A (1) (a)**

substitute

- (a) a Product Disclosure Statement:
 - (i) that contains personal advice; or
 - (ii) that contains general advice about a financial product other than a financial product to which the Statement relates;

[13] After subregulation 7.1.08A (1)

insert

(1A) For subregulation (1), if a person:

- (a) acquires a financial product (*product 1*); and
- (b) will be able, by acquiring product 1, to give the product issuer an instruction to acquire a particular financial product or a financial product of a particular kind (within the meaning of section 1012IA of the Act) under a custodial arrangement (within the meaning of section 1012IA of the Act);

the Product Disclosure Statement for product 1 is taken to relate to the other financial product.

[14] Paragraph 7.1.08A (2) (a)

after

document

insert

that does not contain personal advice

[15] Paragraph 7.1.08A (2) (b)

after

statement

insert

that does not contain personal advice

[16] Paragraph 7.1.08A (2) (c)

after

statement

insert

that does not contain personal advice

[17] Subregulation 7.1.29 (1)

omit

the following circumstances are circumstances in which a qualified accountant

insert

each of the following is a circumstance in which a recognised accountant

[18] Subregulation 7.1.29 (2)

omit

qualified accountant

insert

recognised accountant

[19] After subregulation 7.1.29 (2)

insert

(2A) ASIC may, in writing published in the *Gazette*, declare that:

- (a) a specified person is a recognised accountant for this regulation; or
- (b) a person in a specified class is a recognised accountant for this regulation.

[20] Subregulation 7.1.29 (3), definition of *qualified accountant*

substitute

recognised accountant means a person to whom a declaration under subregulation (2A) applies.

[21] After regulation 7.1.32*insert***7.1.33 Handling insurance claims**

- (1) For paragraph 766A (2) (b) of the Act, a circumstance in which a person is taken not to provide a financial service within the meaning of paragraph 766A (1) (a) of the Act is the giving of advice that consists only of a recommendation or statement of opinion provided in the course of, and as a necessary or incidental part of, either or both of:
 - (a) the handling of claims or potential claims in relation to an insurance product; and
 - (b) the settlement of claims or potential claims in relation to an insurance product.
- (2) For paragraph 766A (2) (b) of the Act, a circumstance in which a person is taken not to provide a financial service within the meaning of paragraph 766A (1) (b) of the Act is a dealing in an insurance product that is a necessary or incidental part of either or both of:
 - (a) the handling of claims or potential claims in relation to that product; and
 - (b) the settlement of claims or potential claims in relation to that product.

Examples of services

- 1 Negotiations on settlement amounts.
- 2 Interpretation of relevant policy provisions.
- 3 Estimates of loss or damage.
- 4 Estimate of value or appropriate repair.
- 5 Recommendations on mitigation of loss.
- 6 Recommendations, in the course of handling a claim as described in subregulations (1) and (2), on increases in limits or different cover options to protect against the same loss in the future.
- 7 Claims strategy such as the making of claims under alternate policies.

(3) In this regulation:

insurance product includes a self-insurance arrangement through which a person manages financial risk.

7.1.33A Allocation of funds available for investment

For paragraph 766A (2) (b) of the Act, a circumstance in which a person is taken not to provide a financial service within the meaning of paragraph 766A (1) (a) of the Act is the provision of a service that consists only of a recommendation or statement of opinion provided to a person about the allocation of the person's funds that are available for investment among 1 or more of the following:

- (a) shares;
- (b) debentures;
- (c) debentures, stocks or bonds issued, or proposed to be issued, by a government;
- (d) deposit products;
- (e) managed investment products;
- (f) investment life insurance products;
- (g) superannuation products;
- (h) other types of asset.

Note This regulation does not apply to a recommendation or statement of opinion that relates to specific financial products or classes of financial products.

7.1.33B General advice

- (1) For paragraph 766A (2) (b) of the Act, this regulation applies in relation to the provision of a service by a person to another person in the following circumstances:
- (a) the service consists only of general advice in relation to a financial product or class of financial products;
 - (b) the advice is prepared by a product issuer of the financial product or class of financial products;

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- (c) the advice is given by a financial services licensee whose financial services licence covers the provision of the advice.
 - (2) The product issuer is taken not to provide a financial service within the meaning of paragraph 766A (1) (a) of the Act.
 - (3) The financial services licensee is taken to provide a financial service within the meaning of paragraph 766A (1) (a) of the Act.

[22] Part 7.2, after Division 5

insert

**Division 6 The Australian market
licence: other matters**

7.2.16 Potential conflict situations

- (1) For subsection 798E (1) of the Act, this regulation applies in relation to specific and significant conflicts, or potential conflicts that would be specific and significant, between:
 - (a) the commercial interests of Australian Stock Exchange Limited (*ASX*) in dealing with a body (the *competitor*) that operates a business with which:
 - (i) *ASX* is in competition; or
 - (ii) a subsidiary of *ASX* is in competition; or
 - (iii) a joint venture (however described) to which *ASX* is a party is in competition; or
 - (iv) a joint venture (however described) to which a subsidiary of *ASX* is a party is in competition; and
 - (b) the need for *ASX* to ensure that the market operated by it operates in the way mentioned in paragraph 792A (a) of the Act.

-
- (2) The competitor may lodge with ASIC in the prescribed form, an application for ASIC to decide that ASIC, instead of ASX, will make decisions and take action (or require ASX to take action on ASIC's behalf) in relation to:
- (a) if the competitor is seeking to be listed — the compliance by the competitor with the applicable listing rules of the market operated by ASX; or
 - (b) if the competitor is listed on the market operated by ASX — the compliance by the competitor with the applicable listing rules of the market operated by ASX.
- (3) As soon as practicable after receiving an application under subregulation (2), ASIC must:
- (a) consider whether a conflict, or potential conflict, exists as described in subregulation (1); and
 - (b) if it considers that a conflict, or potential conflict, exists — consider whether, having regard to ASX's obligations under subparagraph 792A (c) (i) of the Act, the conflict, or potential conflict, would be dealt with more appropriately and efficiently by a means other than taking the action mentioned in subregulation (2); and
 - (c) decide whether (and to what extent):
 - (i) to make decisions and take action; or
 - (ii) to require ASX to take action on ASIC's behalf;in relation to the matters mentioned in paragraphs (2) (a) and (b).
- (4) If ASIC decides to make decisions and take action (or to require ASX to take action on ASIC's behalf) as mentioned in subregulation (2), ASIC:
- (a) may consult with ASX and the competitor to identify the listing rules of the market operated by ASX for which ASIC needs to make the decisions and take the action; and

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- (b) must, as soon as practicable, decide the extent of ASIC's role, having regard to:
- (i) the rationale for the listing rules of the market operated by ASX; and
 - (ii) the desirability of treating the competitor consistently with other entities listed, or seeking to be listed, on that market; and
 - (iii) the extent to which action taken by ASIC is severable from the wider supervision of the competitor's compliance with the listing rules; and
 - (iv) its consultations (if any) with the competitor and ASX.
- (5) ASIC must, as soon as practicable, advise ASX and the competitor, in writing, of decisions under paragraphs (3) (c) and (4) (b).
- (6) If ASIC decides to make decisions and take action (or to require ASX to take action on ASIC's behalf) as mentioned in subregulation (2):
- (a) the decisions made and actions taken have effect despite anything in the listing rules of the market operated by ASX; and
 - (b) decisions made and actions taken by ASIC (or action taken by ASX on ASIC's behalf) have effect as if they were decisions made and actions taken under the listing rules.

Note 1 It is expected that the listing rules of the market will support ASIC's power to take a supervisory role in relation to compliance with some or all of the listing rules.

Note 2 Under section 246 of the *Australian Securities and Investments Commission Act 2001*, ASIC is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred or expressed to be conferred by or under the corporations legislation.

Note 3 The powers available to ASIC include the power:

- (a) to grant, or not to grant, waivers of the listing rules; and
- (b) to impose conditions on which the grant of a waiver is made.

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- (7) If ASIC believes, on reasonable grounds, that:
- (a) the period during which decisions will be made and action will be taken in a particular case is likely to be more than 3 months; and
 - (b) the decisions and actions likely to be required are not adequately reflected in the listing rules of the market operated by ASX;

ASIC must notify ASX, in writing, of its belief.

- (8) ASX must, as soon as practicable after being notified under subregulation (7), amend the listing rules of the market operated by ASX to the extent necessary to meet ASIC's concerns.

Note Amendments of the listing rules are subject to procedural requirements, including possible disallowance, mentioned in sections 793D and 793E of the Act.

- (9) If ASIC decides that it is no longer necessary for decisions to be made and action to be taken in relation to the particular conflict or potential conflict, ASIC must notify ASX and the competitor of its decision as soon as practicable.
- (10) ASX may repeal any listing rule or amendment made for subregulation (8) only if:
- (a) the repeal or amendment is necessary or convenient to meet ASIC's concerns more effectively; or
 - (b) ASIC has notified ASX under subregulation (9).
- (11) Paragraph (10) (b) does not prevent ASIC from:
- (a) reviewing a particular conflict or potential conflict; and
 - (b) deciding, at any time (with or without complying with paragraph (4) (a)), that it has again become necessary for ASIC to make decisions and take action (or for ASIC to require ASX to take action on ASIC's behalf) in relation to the conflict or potential conflict.

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- (12) If ASIC makes the decision mentioned in paragraph (11) (b), ASIC must notify ASX and the competitor of its decision as soon as practicable.
- (13) For this regulation, ASX must:
- (a) give ASIC the information and documentation that ASIC reasonably needs to make decisions and take action under this regulation; and
 - (b) establish administrative and procedural arrangements for that purpose.
- (14) A competitor may notify ASIC that the competitor no longer wishes ASIC to make decisions and take action (or for ASIC to require ASX to take action on ASIC's behalf) in relation to the conflict or potential conflict.
- (15) If subregulation (14) applies, ASIC must, as soon as practicable:
- (a) notify ASX that the competitor no longer wishes ASIC to make decisions and take action (or for ASIC to require ASX to take action on ASIC's behalf) in relation to the conflict or potential conflict; and
 - (b) cease to make the decisions and take the action (or cease to require ASX to take action on ASIC's behalf).

[23] Paragraph 7.3.04 (b)

omit

subparagraph 792A (c) (i)

insert

subparagraph 821A (c) (i)

[24] Paragraph 7.6.01 (1) (c)

substitute

- (c) dealing in a financial product by a person in the capacity of the trustee of a pooled superannuation trust in the following circumstances:
 - (i) the pooled superannuation trust is used for investment of the assets of a regulated superannuation fund;
 - (ii) the regulated superannuation fund has net assets of at least \$5 million, but less than \$10 million, on the date that it first invests in the pooled superannuation trust (whether that date is before or after the FSR commencement);
 - (iii) the trustee has a reasonable expectation that the net assets of the regulated superannuation fund will equal or exceed \$10 million not later than 3 months of the date on which it first invests in the pooled superannuation trust (whether that date is before or after the FSR commencement);

[25] Paragraph 7.6.01 (1) (h)

substitute

- (h) a dealing in a financial product that consists only of an employer sponsor paying contributions on behalf of an employee into a superannuation product or RSA product;
- (ha) a dealing in a financial product that consists only of a trustee of a superannuation fund paying the benefits of a member into a superannuation product or RSA product;
- (hb) a dealing in a financial product that consists only of an RSA provider paying the benefits of an RSA product holder into a superannuation product or RSA product;

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- (hc) a dealing in a financial product that consists only of an employer-sponsor arranging for the issue of a superannuation product to an employee;

[26] Paragraph 7.6.01 (1) (j)

omit

[27] After paragraph 7.6.01 (1) (j)

insert

- (k) a financial service provided in the following circumstances:
- (i) the financial service is provided in respect of a financial product by a person (who may be described as a 'sub-custodian') under an arrangement with a financial services licensee (the *master-custodian*);
 - (ii) the master-custodian is authorised by its Australian financial services licence to provide a custodial or depository service;
 - (iii) a beneficial interest in the financial product is held by the master-custodian on trust for or on behalf of a client as part of providing a custodial or depository service authorised by its Australian financial services licence;
- (l) a financial service provided by a person (*person 1*) in the following circumstances:
- (i) the financial service is provided to another person (*person 2*) in the ordinary course of person 1's business;
 - (ii) person 1 does not provide financial services as a significant part of person 1's business;
 - (iii) the financial service consists only of either or both of:
 - (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 goods or services; and

(B) arranging to deal in a non-cash payments facility that person 2 will use to pay person 1 for goods or services;

(iv) the goods and services do not include any financial products or financial services;

Example

A retailer might offer its customers a variety of payment methods for payment for goods and services, such as a credit card, Bpay, or direct debit.

A recommendation of a particular payment method, or the expression of an opinion about the payment methods available to the customer, should not require an Australian financial services licence.

(m) a financial service provided by a person in the following circumstances:

(i) the service consists only of either or both of:

(A) dealing in derivatives; and

(B) dealing in foreign exchange contracts;

(ii) the service does not involve the making of a market for derivatives or foreign exchange contracts;

(iii) the dealing is entered into for the purpose of managing a financial risk that arises in the ordinary course of a business;

(iv) the person does not deal in derivatives or foreign exchange contracts as a significant part of the person's business;

(v) the dealing is entered into on the person's own behalf;

Example of financial service to which paragraph (m) applies

A series of forward foreign exchange contracts entered into by a gold mining company to hedge against the risk of a fall in the price of gold.

Example of financial service to which paragraph (m) does not apply

The issue and disposal of derivatives relating to the wholesale price of electricity are not transactions to which this paragraph applies.

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- (n) a financial service provided by a person (*person 1*) to another person (*person 2*) in the following circumstances:
- (i) person 1 is not in this jurisdiction;
 - (ii) person 2 is in this jurisdiction;
 - (iii) the service consists only of dealing in a financial product or class of financial products;
 - (iv) a financial services licensee whose financial services licence covers the provision of the service arranges for person 1 to provide the service to person 2;
- (o) a financial service that is the provision of financial product advice in the following circumstances:
- (i) the advice is only general advice in relation to a financial product or class of financial products;
 - (ii) the advice is provided by the product issuer of the financial product or class of financial products;
 - (iii) the advice is provided in the media;
 - (iv) the product issuer provides the following information:
 - (A) the advice has been prepared without taking account of the client's objectives, financial situation or needs;
 - (B) for that reason, the client should, before acting on the advice, consider the appropriateness of the advice, having regard to the client's objectives, financial situation and needs;
 - (C) if the advice relates to the acquisition, or possible acquisition, of a particular financial product, the client should obtain a Product Disclosure Statement relating to the product and consider the Statement

before making any decision about whether to acquire the product;

- (p) a financial service provided by a person in the following circumstances:
- (i) the financial service relates to insurance entered into, or proposed to be entered into, for the purposes of a law (including a law of a State or Territory) that relates to workers compensation;
 - (ii) the person is licensed to provide the service under the law of the State or Territory in which the service is provided;

Example

The activities of a licensed insurer under the *Workers Compensation Act 1987* of New South Wales.

Note A licensed insurer would require an Australian financial services licence to the extent that the licensed insurer provides a financial service in respect of a non-workers compensation product or a non-workers compensation component of a product.

- (q) a financial service provided by a person in the following circumstances:
- (i) the financial service consists only of the variation or disposal of a financial product by the person;
 - (ii) the person also issued the original product;
 - (iii) the person provides the financial service under the terms of the financial product;
- (r) a financial service that is a dealing (or arranging for a dealing) in:
- (i) a debenture; or
 - (ii) a legal or equitable right or interest in a debenture; or
 - (iii) an option to acquire, by way of issue or transfer, a debenture or a legal or equitable right or interest in a debenture;
- by the issuer of the debenture, the legal or equitable right or interest or the option.

[28] After subregulation 7.6.01 (4)

insert

- (5) For paragraphs (1)(b) and (c), if a pooled superannuation trust is used for investment of the assets of more than 1 regulated superannuation fund:
 - (a) each of the regulated superannuation funds must comply with paragraph (1) (b) or (c); and
 - (b) it is not necessary for each of the regulated superannuation funds to comply with the same paragraph in relation to a particular pooled superannuation trust.
- (6) Paragraph (1) (r) ceases to have effect at the end of 2 years after the FSR commencement.
- (7) In this regulation:

media means any of the following:

 - (a) a newspaper, magazine, journal or other periodical;
 - (b) a radio or television broadcasting service;
 - (c) an electronic service (including a service provided by the Internet) that is:
 - (i) operated on a commercial basis; and
 - (ii) similar to a newspaper, a magazine, a radio broadcast or a television broadcast.

[29] After regulation 7.6.01A

insert

7.6.01B Need for Australian financial services licence: financial product advice provided by the media

- (1) For paragraph 911A (5) (a) of the Act, the exemptions from the requirement to hold an Australian financial services licence provided for in paragraphs 911A (2) (ea), (eb) and (ec) apply subject to the condition that a person mentioned in any of those

paragraphs, or a representative of a person mentioned in any of those paragraphs, who provides financial product advice states the following matters, to the extent to which they would reasonably be expected to influence, or be capable of influencing, the provision of the financial product advice:

- (a) any remuneration the person or the person's representative is to receive for providing the advice;
 - (b) any pecuniary or other interest that the provider of the advice, or an associate of the provider, has in relation to the advice, if the provider of the advice, or an associate of the provider, would be likely to obtain a material financial benefit, or avoid a material financial loss, if the advice were acted upon.
- (2) The statement mentioned in subregulation (1) must be presented in a way that:
- (a) will adequately bring it to the attention of a reasonable person who may read or hear the financial product advice to which the statement relates; and
 - (b) is easy for a reasonable person to understand.
- (3) Subregulation (1) does not apply if:
- (a) a person mentioned in paragraph 911A (2) (ea), (eb) or (ec) of the Act, and the person's representatives:
 - (i) comply with an industry code of practice; or
 - (ii) comply with the Statement of Principles laid down by the Australian Press Council; or
 - (iii) are subject to an internal policy that is approved by the board or governing body of the person; and
 - (b) the code, Statement of Principles or policy contains requirements relating to:
 - (i) the manner in which financial conflicts of interest are dealt with; or

-
- (ii) the prevention of financial conflicts of interest.
- (4) Subregulation (1) does not apply in relation to:
- (a) a newspaper or periodical, a transmission made by means of an information service, or a sound recording, video recording or data recording, the principal purpose of which is to report and provide comment on news, and not to provide financial product advice; and
 - (b) paid advertising in relation to which a reasonable person is able to distinguish the advertising from other material in the newspaper, periodical, transmission, sound recording, video recording or data recording.
- (5) A reference in subparagraph 911A (2) (eb) (ii) of the Act to transmissions that are generally available to the public includes transmissions provided as part of a subscription broadcasting service within the meaning of the *Broadcasting Services Act 1992*.
- (6) For paragraph 911A (6) (d) of the Act, each of the following services is an information service:
- (a) a broadcasting service within the meaning of the *Broadcasting Services Act 1992*;
 - (b) a datacasting service within the meaning of the *Broadcasting Services Act 1992*;
 - (c) a service provided by the Internet.
- (7) In this regulation:
- associate** means:
- (a) in relation to a body corporate — a related body corporate; and
 - (b) in relation to an individual — a spouse (including a defacto partner), child, step-child, parent, step-parent, brother, half-brother, sister or half-sister of the individual.
- internal policy** includes a code of ethics or editorial guidelines.

material financial benefit means a financial benefit exceeding \$10 000 in value.

material financial loss means a financial loss exceeding \$10 000 in value.

[30] Paragraph 7.6.04 (1) (a)

omit

not later than the end of the first business day after the day on which the financial services licensee becomes aware of the event;

insert

as soon as practicable, and in any case not later than 3 business days, after the financial services licensee becomes aware of the event;

[31] Paragraph 7.7.01 (1) (a)

omit

or 946B (3)

[32] Paragraph 7.7.01 (1) (b)

omit

or 946B (3)

[33] Paragraph 7.7.01 (1) (c)

omit

or 946B (3)

[34] Paragraph 7.7.01 (1) (d)

omit

or 946B (3)

[35] Subregulation 7.7.01 (2)

omit

[36] Regulation 7.7.02

omit

For paragraph 941C (6) (c)

insert

- (1) For paragraph 941C (6) (c)

[37] Regulation 7.7.02

insert

- (2) For subsection 941C (4A) of the Act, an event or broadcast is a **public forum** if:
 - (a) any person is permitted to attend the event or view or hear the broadcast; and
 - (b) for an event that can be attended, the event is attended by:
 - (i) more than 10 retail clients; or
 - (ii) retail clients the number of which could not reasonably be ascertained before the event commenced.

Examples

- 1 Television broadcasts.
- 2 Radio broadcasts.
- 3 Internet webcasts.
- 4 Public lectures or seminars.
- 5 Flyers and other promotional material displayed in a public place.

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

[38] After subregulation 7.8.01 (4)

insert

- (4A) For subparagraph 981B (1) (b) (iv) of the Act, if a financial services licensee is required by the operating rules of a licensed financial market to pay an amount into an account to which section 981B relates, the amount is money which may be paid into that account.

[39] Paragraph 7.8.01 (5) (c)

after

all moneys paid into the account

insert

(other than moneys paid to the financial services licensee under the financial services licensee's obligation to call margins from clients under the rules of a licensed financial market)

[40] After subregulation 7.8.01 (5)

insert

- (6) For subparagraph 981B (1) (b) (iv) of the Act, money received under section 1017E of the Act is money which may be paid into:
- (a) an account to which section 981B relates; or
 - (b) an insurance broking account maintained under section 26 of the *Insurance (Agents and Brokers) Act 1984*.

- (7) For paragraph 981B (1) (c) of the Act, if money received under section 1017E of the Act is paid into an account under subregulation (6), Part 7.8 of the Act applies to the money.

Note See also subregulation 7.9.08 (3).

- (8) For paragraph 981B (1) (c) of the Act, if a financial services licensee is required to call margins from a

client under the operating rules of a licensed financial services market:

- (a) the financial services licensee may operate an account to which that paragraph applies as:
- (i) a clients' segregated account; or
 - (ii) a trust account;

in accordance with the operating rules of the licensed financial market; and

- (b) if:
- (i) the account is operated outside Australia; and
 - (ii) the law in force in the jurisdiction where it is maintained requires the account to be designated in a particular way;

the financial services licensee must designate the account in that way.

Note The operating rules of a licensed financial market may require client monies including moneys used for margining to be held either in a trust account or in a client segregated account.

Subregulation (5) will not apply to financial services licensees that are not direct participants of a financial services market.

- (9) For subparagraph 981B (1) (b) (iv) of the Act, if an account is operated in accordance with subregulation (8), all money received by the financial services licensee under Subdivision A of Division 2 of Part 7.8 of the Act is money that may be paid into that account.
- (10) Subregulation (8) does not affect the operation of section 981E of the Act.

[41] Paragraph 7.8.02 (1) (e)

omit

by law.

insert

by law;

[42] After paragraph 7.8.02 (1) (e)

insert

- (f) paying to the financial services licensee money to which the financial services licensee is entitled pursuant to the operating rules of a licensed financial market.

[43] After subregulation 7.8.02 (1)

insert

(1A) For paragraph 981C (a) and subparagraph 981B (1) (b) (iv) of the Act, if, under paragraph (1) (a), a financial services licensee (the *paying licensee*) withdraws money from an account maintained for section 981B of the Act and pays it to another financial services licensee (the *receiving licensee*):

- (a) the paying licensee must ensure that the receiving licensee is notified, at the same time as the payment is made or as soon as practicable, that the money:
 - (i) has been withdrawn from an account of the paying licensee maintained for section 981B of the Act; and
 - (ii) should be paid into an account of the receiving licensee maintained for section 981B of the Act; and
- (b) not later than the day after the receiving licensee receives the payment, the receiving licensee must pay the money into an account of the receiving licensee maintained for section 981B of the Act.

[44] Subregulation 7.8.02 (4)

substitute

- (4) For paragraph 981A (4) (a) of the Act, subregulation (3) does not apply to money to which subregulation 7.8.01 (4) applies.

[45] Subregulation 7.8.02 (7)

substitute

- (7) For paragraph 981C (c) of the Act, if money is held in an account maintained for section 981B of the Act:
- (a) the financial services licensee is entitled to the interest on the account; and
 - (b) the interest on the account is not required to be paid into the account;
- only if the financial services licensee discloses to the client that the financial services licensee is keeping the interest (if any) earned on the account.

[46] After subregulation 7.8.05 (3)

insert

- (4) For paragraph 981C (c) of the Act, if money to which this regulation applies is held in an account maintained for section 981B of the Act:
- (a) the financial services licensee is entitled to the interest on the account; and
 - (b) the interest on the account is not required to be paid into the account.

[47] Subregulation 7.8.08 (18), penalty

substitute

Penalty: 10 penalty units.

[48] Regulations 7.8.09 and 7.8.10

omit

[49] After subregulation 7.8.21 (1)

insert

(1A) For subsection 991F (2) of the Act, that subsection does not have effect in relation to a financial services licensee that gives credit in good faith to a person employed by:

- (a) the financial services licensee; or
- (b) a person related to the financial services licensee; to enable the person to acquire an insurance product in relation to a credit facility provided by the financial services licensee to the person.

Example

Mortgage insurance is an insurance product in relation to a credit facility.

[50] After regulation 7.8.21

insert

7.8.22 Hours for hawking certain financial products

For paragraph 992A (3) (a) of the Act, the prescribed hours are from 8 am to 9 pm on a day in the State or Territory in which the person to whom the offer is made is located, excluding:

- (a) Christmas Day; and
- (b) Good Friday; and
- (c) Easter Sunday.

7.8.23 Return of financial product: transfer between superannuation entities or RSAs

- (1) For paragraph 992A (4) (b) of the Act, this regulation applies in relation to a superannuation product or an RSA product that has been issued to the holder of the product as a result of a transfer between superannuation entities or RSAs.

-
- (2) It is a requirement of the exercise of the right to return the superannuation product or RSA product that, if the money to be repaid includes:
- (a) restricted non-preserved benefits; or
 - (b) preserved benefits;
- the holder of the superannuation product, or the RSA holder, must nominate a superannuation fund, approved deposit fund or RSA into which the money representing restricted non-preserved benefits or preserved benefits is to be repaid.
- (3) For paragraph 992A (4) (b) of the Act, if the right of return is exercised, the responsible person must return the money as directed.

7.8.24 Right of return not to apply

For subparagraph 992A (4) (c) (i) of the Act, the following subclasses of financial products are excluded from subsection 992A (4) of the Act:

- (a) a financial product offered or issued under a distribution reinvestment plan or switching facility;
- (b) a financial product the acquisition of which is an additional contribution required by an existing agreement or contract;
- (c) a financial product issued as consideration for an offer made under a takeover bid under Chapter 6 of the Act;
- (d) an interim contract of insurance within the meaning of subsection 11 (2) of the *Insurance Contracts Act 1984*;
- (e) a superannuation product that is issued in relation to:
 - (i) a non-public offer superannuation entity; or
 - (ii) a public offer superannuation entity mentioned in paragraph 7.6.01 (1) (b), (c) or (d);

-
- (f) a risk insurance product that is:
- (i) of less than 12 months duration; and
 - (ii) a renewal of an existing product on the terms and conditions to which the product is currently subject.

7.8.25 Variation of amount to be repaid

For paragraph 992A (4) (b) of the Act, if a financial product is subject to a distribution, the amount that would otherwise be repaid on the exercise of the right to return the financial product may be reduced by the amount of that distribution.

[51] Regulation 7.9.06

omit

[52] Regulation 7.9.07

omit

Part 4

insert

Part 3

[53] Regulation 7.9.07C

omit

the rules of a licensed market

insert

the operating rules of a licensed financial market

[54] After subregulation 7.9.08 (2)*insert*

- (3) For paragraph 1020G (1) (c) of the Act, if money received under section 1017E of the Act is paid into an account under subregulation 7.8.01 (6), Part 7.8 of the Act applies to the money.

Note See also subregulation 7.8.01 (7).

- (4) For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act applies as if section 1017E of the Act were modified by omitting paragraph 1017E (2) (b) and inserting the following paragraph:

- ‘(b) any money may be paid into the account, provided that:
- (i) money to which this section applies; and
 - (ii) interest on the amount from time to time standing to the credit of the account;
- is identified and held in accordance with all other provisions of this section; and’.

[55] After regulation 7.9.08*insert***7.9.08A Dealing with interest**

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act applies as if section 1017E of the Act were modified by adding after subsection 1017E (2C):

- ‘(2D) In relation to money to which this section applies:
- (a) the product provider is entitled to the interest on the account; and
 - (b) the interest on the account is not required to be paid into the account;
- only if the product provider discloses to the person who paid the money that the product provider is keeping the interest (if any) earned on the account.’.

7.9.08B Crediting of payments before money is received

(1) For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act applies as if section 1017E of the Act were modified by adding after subsection 1017E (1):

‘(1A) This section also applies to money paid by a product provider in the following circumstances:

(a) the product provider knows, or believes on reasonable grounds, that money (*the client’s money*) will be paid to the product provider to acquire, or acquire an increased interest in, one or more of the financial products mentioned in paragraph (1) (a) or (b) from the product provider (whether or not the acquisition would be by a person as a retail client);

(b) either:

(i) the financial product or increased interest was offered in this jurisdiction; or

(ii) the application for the financial product or increased interest was made in this jurisdiction; or

(iii) the money will be received in this jurisdiction;

(c) before receiving the client’s money, the product provider pays an equivalent amount of money (*the product provider’s money*) into an account described in subsection (2).’

(2) For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act applies as if section 1017E of the Act were modified by adding after subsection 1017E (5):

‘(5A) If subsection (1A) applies:

(a) the product provider is not required to comply with this section in relation to the client’s money; and

(b) subsections (2A), (2B), (2C), (2D), (3), (4), (5) and (6) apply to the product provider’s

money as if the money had been paid by the person who paid, or is expected to pay, the client's money.'.

- (3) For paragraph 1017E (3) (d) of the Act, money may be taken out of an account if:
- (a) the circumstances described in the modified subsection 1017E (1A) of the Act exist; and
 - (b) after paying the product provider's money, the product provider becomes aware, or has reasonable grounds to believe, that the client's money will not be paid.

[56] Paragraph 7.9.14 (2) (a)

omit

superannuation fund, approved deposit fund or

insert

superannuation entity or

[57] After subregulation 7.9.14 (2)

insert

- (2A) The right of return is taken to have been exercised only on receipt by the responsible person of the nomination.

[58] After regulation 7.9.16

insert

7.9.16A Small scale offerings of managed investment and other prescribed financial products (20 issues or sales in 12 months)

For paragraph 1012E (1) (b) of the Act, interests in unregistered managed investment schemes are prescribed.

[59] Subparagraph 7.9.61D (1) (e) (ii)

omit

regulation 7.9.06A.

insert

regulation 7.9.06B.

[60] After subregulation 7.9.62 (1)

insert

(1A) For paragraph 1017F (4) (c) of the Act, a transaction is not required to be confirmed by the trustee of a superannuation fund if the transaction relates to a superannuation product provided by a self managed superannuation fund.

[61] Paragraph 7.9.62 (2) (a)

omit

RSA;

insert

RSA; and

[62] Paragraph 7.9.62 (2) (b)

omit

RSA; and

insert

RSA.

[63] Paragraph 7.9.62 (3) (a)

after

fees

insert

, taxes

[64] Subregulation 7.9.63B (7)

omit

in the ordinary course of business of a licensed market,

insert

on-market,

[65] After regulation 7.9.63E

insert

7.9.63F Confirmation of transaction — acquisition of financial product

- (1) For subparagraph 1017F (8) (c) (iii) of the Act, this regulation applies in relation to the confirmation of a transaction that is the acquisition of a financial product.
- (2) The details of the transaction relating to the amount paid or payable by the holder in relation to the transaction need include only the amount the holder is required to pay to acquire the product.

7.9.63G Confirmation of transaction — disposal of financial product

- (1) For paragraph 1017F (8) (d) of the Act, this regulation applies in relation to the confirmation of a transaction that is the disposal of a financial product.
- (2) The confirmation must include the amount paid or payable to the holder as a result of the disposal.

7.9.63H Certain product issuers and regulated persons must meet appropriate dispute resolution requirements — self managed superannuation funds

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act applies in relation to a self managed superannuation fund as if section 1017G of the Act were omitted.

[66] Paragraph 7.9.64 (1) (h)

omit

1016D (2)

insert

1016D (1)

[67] Paragraph 7.9.64 (1) (h)

omit

applies.

insert

applies;

[68] After paragraph 7.9.64 (1) (h)

insert

- (i) a managed investment product:
 - (i) to which Chapter 6D of the old Corporations Act applied; and
 - (ii) that was listed before the FSR commencement.

[69] After regulation 7.9.64

insert

7.9.64A Notification of exercise of right of return — risk insurance products

For paragraph 1019B (2) (c) of the Act, a right of return may be exercised in relation to a risk insurance product by notifying the responsible person in a way permitted by the responsible person.

[70] Paragraph 7.9.65 (1) (a)

substitute

(a) the 14-day period mentioned in subsection 1019B (3) of the Act; and

[71] Subregulation 7.9.66 (3)

omit

provider

insert

responsible person

[72] Subregulation 7.9.66 (4)

omit

product issuer

insert

responsible person

[73] Subregulation 7.9.66 (5)

omit

product issuer

insert

responsible person

[74] Subregulation 7.9.66 (6)

omit

product issuer

insert

responsible person

[75] After subregulation 7.9.66 (6)

insert

(7) For subsection 1019B (7) of the Act, if the right of return is exercised, the responsible person must return the money as directed.

[76] Paragraph 7.9.67 (2) (b)

omit

product issuer

insert

responsible person

[77] Paragraph 7.9.67 (3) (b)

omit

product issuer

insert

responsible person

[78] Paragraph 7.9.67 (4) (b)

omit

product issuer

insert

responsible person

[79] Subregulation 7.9.67 (5)*omit*

product issuer

insert

responsible person

[80] Paragraph 7.9.67 (6) (a)*omit*

product issuer

insert

responsible person

[81] Subparagraph 7.9.67 (6) (b) (i)*omit*

issuer

insert

responsible person

[82] Subregulation 7.9.67 (7)*after*

otherwise be repaid

insert

in relation to the return of a financial product (other than an RSA product)

[83] Subregulation 7.9.67 (7)*omit*

incurred by the issuer of a financial product (other than an RSA product)

insert

incurred by the responsible person

[84] Subregulation 7.9.68 (3)

omit

mandated employer contributions,

insert

employer contributions (whether or not they are mandated employer contributions),

[85] Subregulation 7.9.68 (3)

omit

the mandated employer contributions are to be repaid.

insert

the employer contributions are to be repaid.

[86] Subregulation 7.9.68 (4)

omit

provider

insert

responsible person

[87] Subregulation 7.9.68 (5)

omit

product issuer

insert

responsible person

[88] Subregulation 7.9.68 (6)

omit

product issuer

insert

responsible person

[89] Subregulation 7.9.68 (7)

omit

product issuer

insert

responsible person

[90] Subregulation 7.9.68 (8)

omit

monies paid for the superannuation product by the standard employer-sponsored member

insert

monies paid in relation to the superannuation product by the standard employer-sponsored member (including monies rolled over or transferred from another superannuation entity or RSA)

[91] Subregulation 7.9.68 (8)

omit

product issuer:

insert

responsible person:

[92] Subregulation 7.9.68 (9)

omit

product issuer

insert

responsible person

[93] Regulation 9.12.01, heading

substitute

9.12.01 Exemptions from Chapter 7

[94] **After regulation 9.12.01**

insert

9.12.02 Exemptions from Chapter 7 — insider trading (natural person)

For section 1368 of the Act, if a natural person (*person 1*) would contravene subsection 1043A (1) of the Act by entering into a transaction or agreement (the *new transaction or agreement*) in relation to financial products issued by another person (*person 2*) merely because person 1 is aware that he or she proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to financial products issued by a person other than person 2, subsection 1043A (1) does not have effect in relation to person 1 in relation to the new transaction or agreement.

9.12.03 Exemptions from Chapter 7 — insider trading (body corporate)

- (1) For section 1368 of the Act, if a body corporate would contravene subsection 1043A (1) of the Act by entering into a transaction or agreement (the *new transaction or agreement*) in relation to financial products issued by another person (*person 2*) merely because the body corporate is aware that it proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to financial products issued by a person other than person 2, subsection 1043A (1) does not have effect in relation to the body corporate in relation to the new transaction or agreement.
- (2) Subject to subregulation (3), if a body corporate would contravene subsection 1043A (1) by entering into a transaction or agreement (the *new transaction or agreement*) in relation to financial products issued by another person (*person 2*) merely because an officer of the body corporate is aware that the body corporate

proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to financial products issued by a person other than person 2, subsection 1043A (1) does not have effect in relation to the body corporate in relation to the new transaction or agreement.

- (3) Subregulation (2) does not apply unless the officer of the body corporate becomes aware of the matters referred to in that subregulation in the course of the performance of duties as an officer of the body corporate.

9.12.04 Exemptions from Chapter 7 — insider trading (officers or agents of body corporate)

- (1) For section 1368 of the Act, if a person (*person 1*) would contravene subsection 1043A (1) of the Act by entering into a transaction or agreement (the *new transaction or agreement*) on behalf of a person (*person 2*) in relation to financial products issued by another person (*person 3*) merely because person 1 is aware that person 2 proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to financial products issued by a person other than person 3, subsection 1043A (1) does not have effect in relation to person 1 in relation to the new transaction or agreement.
- (2) Subregulation (1) does not apply unless person 1 became aware of the matters referred to in that subregulation in the course of:
- (a) the performance of duties as an officer of person 2; or
 - (b) acting as an agent of person 2.

[95] **After regulation 10.2.02**

insert

10.2.02A References to transition periods

In these Regulations, unless the contrary intention appears, a reference to a transition period includes a transition period that has been extended under section 1437 of the Act.

10.2.02B References to the application of Division 2 of Part 7.9 of the Act

In these Regulations, unless the contrary intention appears:

- (a) a reference to Division 2 of Part 7.9 of the Act not applying to or in relation to a financial product is taken to refer only to circumstances in which that Division does not apply because of the effect of a provision of Part 10.2 of the Act; and
- (b) a reference to a financial product to which, or in relation to which, Division 2 of Part 7.9 of the Act applies is taken to include any financial product except a financial product to which that Division does not apply because of the effect of a provision of Part 10.2 of the Act.

**Division 1A Treatment of proposed
markets that have not
started to operate by the
FSR commencement**

10.2.02C Proposed markets

For paragraph 1412 (1) (b) of the Act, the following markets are identified:

- (a) a market in futures contracts proposed to be operated by Atriax Limited;
- (b) a market in futures contracts proposed to be operated by Hong Kong Futures Exchange Limited;
- (c) a market in securities proposed to be operated by Bloomberg L.P.;
- (d) a market in futures contracts proposed to be operated by The London Metal Exchange;
- (e) a market in futures contracts proposed to be operated by Credit Suisse First Boston (Europe) Limited.

[96] Regulation 10.2.38, table, after item 6

insert

7	A person whose licence is suspended under subsection 827 (1) of the old Corporations Act (whether the suspension occurred before, on or after the FSR commencement)	(a) While the suspension is in force — no activities	All relevant old legislation in relation to the kind of licence
		(b) If the suspension ceases to be in force on or before 10 March 2004, and from the time the suspension ceases to be in force — the activities that	

		the licence (as in force immediately before it was suspended) authorised the person to carry on	
8	A person whose licence is suspended under subsection 1192 (1) of the old Corporations Act (whether the suspension occurred before, on or after 11 March 2002)	<p>(a) While the suspension is in force — no activities</p> <p>(b) If the suspension ceases to be in force on or before 10 March 2004, and from the time the suspension ceases to be in force — the activities that the licence (as in force immediately before it was suspended) authorised the person to carry on</p>	All relevant old legislation in relation to the kind of licence
9	A person whose registration is suspended under section 25 of the <i>Insurance (Agents and Brokers) Act 1984</i>	<p>(a) While the suspension is in force — no activities</p> <p>(b) If the suspension ceases to be in force on or before 10 March 2004, and from the time the suspension ceases to be in force — the</p>	All of the provisions of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement, and any associated provisions

- activities that the licence (as in force immediately before it was suspended) authorised the person to carry on
- 10 A person whose registration is suspended under section 25 of the *Insurance (Agents and Brokers) Act 1984* who is covered by a specification in writing by ASIC under subsection 25 (3) of that Act
- (a) While the specification is in force — such of the person's activities as ASIC specifies in writing under subsection 25 (3) of the *Insurance (Agents and Brokers) Act 1984*
- All of the provisions of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement, and any associated provisions
- (b) If the suspension ceases to be in force on or before 10 March 2004, and from the time the suspension ceases to be in force — the activities that the registration (immediately before it was suspended) authorised the person to carry on

-
- | | | | |
|----|--|---|--|
| 11 | A person whose registration is suspended under section 31H of the <i>Insurance (Agents and Brokers) Act 1984</i> | (a) While the suspension is in force — no activities

(b) If the suspension ceases to be in force on or before 10 March 2004, and from the time the suspension ceases to be in force — the activities that the registration (immediately before it was suspended) authorised the person to carry on | All of the provisions of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement, and any associated provisions |
| 12 | A person whose registration is suspended under section 31H of the <i>Insurance (Agents and Brokers) Act 1984</i> who is covered by a specification in writing by ASIC under subsection 31H (3) of that Act | (a) While the specification is in force — such of the person's activities as ASIC specifies in writing under subsection 31H (3) of the <i>Insurance (Agents and Brokers) Act 1984</i> | All of the provisions of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement, and any associated provisions |

-
- (b) If the suspension ceases to be in force on or before 10 March 2004, from the time the suspension ceases to be in force — the activities that the registration (immediately before it was suspended) authorised the person to carry on

[97] After regulation 10.2.44

insert

10.2.44A Obligation to cite licence number in documents

- (1) For section 1444 of the Act, this regulation applies if:
- (a) a person who has not been granted a financial services licence prepares copies of a Product Disclosure Statement; and
 - (b) the copies of the Product Disclosure Statement do not include a licence number for the person; and
 - (c) the person is granted a financial services licence after preparing the copies of the Product Disclosure Statement.
- (2) Section 912F of the Act does not apply to the financial services licensee in relation to the copies of the Product Disclosure Statement.
- (3) Subregulation (2) ceases to apply at the end of 2 years after the FSR commencement.

[98] After regulation 10.2.47

insert

10.2.47A Modification of pre-FSR authority

- (1) For section 1444 of the Act, this regulation applies if a person:
 - (a) is a regulated principal in relation to 2 or more regulated activities; and
 - (b) holds an authority under the relevant old legislation in relation to those regulated activities; and
 - (c) either:
 - (i) becomes a financial services licensee in relation to 1 or more of those regulated activities; or
 - (ii) is exempt from the requirement to hold a financial services licence in relation to 1 or more of those regulated activities.
- (2) ASIC may vary the authority to take account of the fact that the person has become a financial services licensee, or is exempt from the requirement to hold a financial services licence.
- (3) ASIC must not vary the authority unless ASIC has given the person an opportunity:
 - (a) to appear at a hearing before ASIC that takes place in private; and
 - (b) to make submissions and give evidence to ASIC in relation to the matter.
- (4) ASIC must give written notice of the variation to the person.
- (5) The variation takes effect when the written notice of the variation is given to the person.

[99] After regulation 10.2.50

insert

10.2.50A Treatment of arrangements under which a person can instruct another person to acquire a financial product

- (1) For section 1444 of the Act, this regulation applies in relation to a custodial arrangement (within the meaning of section 1012IA of the Act) in which the client is the holder of a superannuation product issued to the client by the provider.
- (2) Section 1012IA of the Act does not apply to a regulated acquisition (within the meaning of that section) that occurs under the custodial arrangement.
- (3) Subregulation (2) ceases to apply at the end of 2 years after the FSR commencement.

[100] Subregulation 10.2.52A (1)

omit

applies in relation to a financial product

insert

applies in relation to an offer of a financial product

[101] Subregulation 10.2.52A (2)

substitute

- (2) The offer is taken to comply with the condition set out in paragraph 1012E (9) (c) of the Act.

[102] Subregulation 10.2.71 (2)

omit

securities

insert

derivatives

[103] After regulation 10.2.73

insert

10.2.73A Advertising for financial products

- (1) For section 1444 of the Act, this regulation applies in relation to:
 - (a) a financial product; or
 - (b) a class of financial products that includes the financial product;
for which a notice has been lodged with ASIC in accordance with paragraph 1438 (3) (b) of the Act.
- (2) At any time in the period of 3 months ending immediately before the date specified in the notice in accordance with paragraph 1438 (3) (b) of the Act, the issuer of the financial product may decide to comply with Division 4 of Part 7.9 of the Act in relation to the financial product.
- (3) If the product issuer makes the decision mentioned in subregulation (2):
 - (a) Division 4 of Part 7.9 of the Act applies in relation to the financial product until the date specified in the notice; and
 - (b) section 734 of the old Corporations Act does not apply in relation to the financial product.

Note Under subsection 1438 (5) of the Act, it is possible for the date specified in accordance with paragraph 1438 (3) (b) of the Act to be changed.
- (4) If the notice is lodged with ASIC less than 3 months before the date specified in the notice in accordance

with paragraph 1438 (3) (b) of the Act, subregulation (2) applies only during the period:

- (a) starting when the notice is lodged; and
- (b) ending immediately before the date specified in the notice.

10.2.73B Freezing accounts

- (1) For section 1444 of the Act, this regulation applies if a person:
 - (a) holds or held a licence under Chapter 7 or 8 of the old Corporations Act in relation to an activity; and
 - (b) the licence is revoked or suspended at any time before or after the FSR commencement.
- (2) Subsection 983A (3) of the Act applies to the person as if the person were a person who holds, or has at any time held, an Australian financial services licence that has been revoked or suspended.

[104] Subregulation 10.2.74 (2)

omit

A managed investment product

insert

Subject to subregulation (2A), a managed investment product

[105] After subregulation 10.2.74 (2)

insert

- (2A) A financial product that is an interest in a registered scheme is in the same class as another financial product if the other financial product is an interest in the same registered scheme.

[106] After subregulation 10.2.74 (10)

insert

- (11) A warrant is in the same class as another financial product only if the other financial product is a warrant.

[107] Subregulation 10.2.75 (3)

substitute

- (3) A reference in paragraph 761E (6) (d) of the Act to an authorised representative includes a representative of a regulated principal.
- (4) A reference in paragraph (d) of the definition of *regulated person* in section 1011B of the Act to an authorised representative includes a representative of a regulated principal.
- (5) A reference in paragraph 1015C (3) (b) of the Act to an authorised representative includes a representative of a regulated principal.
- (6) A reference in paragraph 1017A (1) (c) of the Act to an authorised representative includes a representative of a regulated principal.
- (7) Subregulations (1) to (6) cease to apply in relation to the regulated principal and the authorised representative at the end of the transition period in relation to the regulated principal.

[108] Regulation 10.2.77

substitute

10.2.77 References to issue of product

For section 1444 of the Act, a reference in subsection 1438 (1) of the Act to financial products in a class of products that are first issued by a person after the FSR commencement does not include financial products in

a class of products if the person who is, or will be, the product issuer first made an offer to issue a financial product in that class of products before the FSR commencement.

[109] Paragraph 10.2.79 (b)

omit

(c).

insert

(c);

[110] After paragraph 10.2.79 (b)

insert

(c) subparagraph 1012D (2) (b) (ii).

[111] After regulation 10.2.94

insert

10.2.94A Prohibitions under paragraphs 827 (1) (d) and 1192 (1) (d) of the old Corporations Act made before FSR commencement

- (1) For section 1444 of the Act, on and after the FSR commencement, a prohibition under paragraph 827 (1) (d) or 1192 (1) (d) of the old Corporations Act made before the FSR commencement:
- (a) continues in force to the extent practicable to allow it to apply to conduct or another matter:
 - (i) as it is described on and after the FSR commencement; or
 - (ii) as it is regulated on and after the FSR commencement; and
 - (b) is taken to be a prohibition made under paragraph 827 (1) (d) or 1192 (1) (d) of the old Corporations Act.

-
- (2) On and after the FSR commencement, paragraph 827 (1) (d) or 1192 (1) (d) of the old Corporations Act, and associated provisions, continue to apply to the extent necessary to allow the prohibition to continue in force.
 - (3) For subregulation (2), nothing in the relevant old legislation (including the *Australian Securities and Investments Commission Act 2001*) prevents ASIC from drafting or amending the terms of a prohibition for the purpose of ensuring that the prohibition has the same effect under the amended Corporations Act as it had under the old Corporations Act, or an effect equivalent to the effect it had under the old Corporations Act.

10.2.94B Prohibitions under paragraphs 827 (1) (d) and 1192 (1) (d) of the old Corporations Act made after FSR commencement

- (1) For section 1444 of the Act, on and after the FSR commencement, paragraphs 827 (1) (d) and 1192 (1) (d) of the old Corporations Act, and associated provisions, continue to apply to the extent necessary to allow a prohibition to be made or enforced against a person in relation to:
 - (a) conduct or another matter that occurred before the FSR commencement; or
 - (b) conduct or another matter that:
 - (i) occurred after the FSR commencement; and
 - (ii) is regulated in accordance with section 1432 or 1436A of the Act.
- (2) A prohibition made in relation to conduct or another matter mentioned in subregulation (1) is taken to be a prohibition made under paragraph 827 (1) (d) or 1192 (1) (d) of the old Corporations Act.
- (3) For subregulation (2), nothing in the relevant old legislation (including the *Australian Securities and Investments Commission Act 2001*) prevents ASIC

from drafting or amending the terms of a prohibition for the purpose of ensuring that the prohibition has the same effect under the amended Corporations Act as it had under the old Corporations Act, or an effect equivalent to the effect it had under the old Corporations Act.

[112] Subregulation 10.2.102 (1), note

substitute

Note A number of representatives in the financial services industry currently act:

- (a) on behalf of more than one principal; or
- (b) as a principal in some circumstances but as a representative in others; or
- (c) in both capacities.

On this basis, it is possible that different liability regimes simultaneously apply to the representative, depending on the kind of conduct. These regimes include:

- (a) the Corporations Act as in force before the FSR commencement; and
- (b) the Corporations Act as in force after the FSR commencement; and
- (c) the *Australian Securities and Investments Commission Act 2001*; and
- (d) the *Insurance (Agents and Brokers) Act 1984*; and
- (e) the common law.

[113] Subregulations 10.2.102 (4) and (5)

substitute

- (4) If, as a result of the conduct of the representative, 1 or more of the principals issues, transfers, varies, or disposes of a financial product:
 - (a) each of those principals is jointly and severally liable for the conduct of the representative; and
 - (b) the nature of the liability is to be determined in accordance with the relevant law that applies to

the conduct under the relevant legal regime under which the particular principal is operating.

- (5) If subregulation (4) does not apply:
- (a) the liability for the conduct is to be determined in accordance with the relevant law that applies to the conduct; and
 - (b) section 917B and subsection 917C (4) of the Act apply in relation to the liability of an FSR principal only if the conduct is in a class of financial services that the FSR principal has authorised the representative to provide.

[114] After regulation 10.2.119A

insert

10.2.119B Disqualifications made before FSR commencement

- (1) For section 1444 of the Act, on and after the FSR commencement, a disqualification under subsection 25 (5) or 31H (5) of the *Insurance (Agents and Brokers) Act 1984* made before the FSR commencement:
- (a) continues in force to the extent practicable to allow it to apply to conduct or another matter:
 - (i) as it is described on and after the FSR commencement; or
 - (ii) as it is regulated on and after the FSR commencement; and
 - (b) is taken to be a disqualification made under subsection 25 (5) or 31H (5) of the *Insurance (Agents and Brokers) Act 1984*.
- (2) For section 1444 of the Act, on and after the FSR commencement, subsections 25 (5) and 31H (5) of the *Insurance (Agents and Brokers) Act 1984*, and associated provisions, continue to apply to the extent

necessary to allow the disqualification to continue in force.

- (3) For subregulation (2), nothing in the relevant old legislation (including the *Australian Securities and Investments Commission Act 2001*) prevents ASIC from drafting or amending the terms of a prohibition for the purpose of ensuring that the prohibition has the same effect under the Act as it had under the relevant old legislation, or an effect equivalent to the effect it had under the relevant old legislation.

10.2.119C Disqualifications made after FSR commencement

- (1) For section 1444 of the Act, on and after the FSR commencement, subsections 25 (5) and 31H (5) of the *Insurance (Agents and Brokers) Act 1984*, and associated provisions, continue to apply to the extent necessary to allow a disqualification to be made or enforced against a person in relation to:
- (a) conduct or another matter that occurred before the FSR commencement; or
 - (b) conduct or another matter that:
 - (i) occurred after the FSR commencement; and
 - (ii) is regulated in accordance with section 1432 or 1436A of the Act.
- (2) A disqualification made in relation to conduct or another matter mentioned in subregulation (1) is taken to be a disqualification made under subsection 25 (5) or 31H (5) of the *Insurance (Agents and Brokers) Act 1984*.
- (3) For subregulation (2), nothing in the relevant old legislation (including the *Australian Securities and Investments Commission Act 2001*) prevents ASIC from drafting or amending the terms of a prohibition for the purpose of ensuring that the prohibition has the same effect under the amended Corporations Act as it

had under the old legislation, or an effect equivalent to the effect it had under the old legislation.

[115] After paragraph 10.2.120B (2) (d)

insert

(da) regulation 3.10;

[116] Before regulation 10.2.123

insert

10.2.122 Solvency and insolvency

For section 1444 of the Act, a reference in the Act to solvency or insolvency is to be read as if subsections 95A (1) and (2) of the old Corporations Act had not been repealed on the FSR commencement.

[117] Subparagraph 10.2.124 (b) (i)

after

Corporations Act

insert

if the scheme were registered

[118] Part 10.2, after Division 27

insert

Division 27A Transitional matters under other legislation**10.2.135A References to authorised foreign exchange dealers**

- (1) For section 1444 of the Act, this regulation applies to a reference, in a law of the Commonwealth (within the meaning of Division 2 of Part 10.2 of the Act), to:
 - (a) an authorised foreign exchange dealer; or
 - (b) a person authorised to carry on business as a dealer in foreign exchange.
- (2) On and after the FSR commencement, the reference is taken to include a holder of an Australian financial services licence that authorises the holder to buy and sell foreign currency.

[119] Paragraph 10.2.138 (3) (a)

omit

the transition period

insert

the end of the transition period

[120] Paragraph 10.2.138 (3) (b)

omit

ceases to be a person mentioned in subregulation (1).

insert

ceases to have the status that made the person a regulated person.

[121] Subregulation 10.2.146 (2)

after
licensed market

insert
for securities

[122] Subregulation 10.2.146 (3)

omit each mention of
or listing rules

[123] Subregulation 10.2.146 (3)

after
licensed market

insert
for securities

[124] Regulation 10.2.148, heading

substitute

10.2.148 Conditions of dealers licence

[125] Subregulation 10.2.151 (2)

after
licensed market

insert
for securities

[126] Subregulation 10.2.156 (3)

after
licensed market

insert
for securities

[127] Subregulation 10.2.156 (4)

omit
a market licensee.

insert
an operator of a licensed market for securities.

[128] Subregulation 10.2.169 (2)

omit
financial market.

insert
licensed market for derivatives.

[129] Subregulation 10.2.197 (3)

omit
managed investment product,

insert
managed investment scheme,

[130] Regulation 10.2.198, heading

substitute

10.2.198 Hawking financial product — other arrangements

[131] Paragraph 10.2.200 (1) (b)

omit

in relation to the financial product.

insert

in relation to the financial product; and

[132] After paragraph 10.2.200 (1) (b)

insert

- (c) the particular document:
 - (i) was publicly available; or
 - (ii) had been distributed to users; or
 - (iii) had been lodged with ASIC; or
 - (iv) was otherwise in existence and in use, or available for use;before the FSR commencement.

[133] Subregulation 10.2.200 (2)

omit

The document is not taken to be misleading or deceptive in relation to information about any cooling-off regime if:

insert

The issuer of the financial product is not civilly or criminally liable in relation to information about the cooling off regime applying after the FSR commencement if:

[134] Subregulation 10.2.206 (2)

substitute

- (2) The fund reporting period for the financial product, worked out in accordance with Subdivision 2.4.1, is taken to be a fund reporting period for Subdivision 5.5 of Part 7.9 of these Regulations.

[135] Regulation 10.2.207*substitute***10.2.207 Periodic statements for retail clients for financial products that have an investment component**

- (1) For section 1444 of the Act, this regulation applies if:
 - (a) a person acquired a financial product, as described in subsection 1017D (1) of the Act; and
 - (b) the issuer of the financial product was a regulated principal in relation to the financial product.
- (2) The reporting period for the financial product, worked out in accordance with the old Corporations Act, is taken to be a reporting period for the Act.

[136] Part 10.2, after Division 46*insert***Division 47 Agreements with unlicensed persons relating to the provision of financial services****10.2.210 Agreements**

- (1) For section 1444 of the Act, this regulation applies if:
 - (a) a person (*person 1*) enters into an agreement with another person (*person 2*) in the course of an activity conducted by person 2; and
 - (b) at that time, Part 7.6 of the Act does not apply to person 2 in relation to the activity; and
 - (c) the activity would constitute carrying on a financial services business if Part 7.6 of the Act applied to person 2 in relation to the activity; and

-
- (d) the agreement is not completed when Part 7.6 of the Act first applies to person 2 in relation to the activity; and
 - (e) when Part 7.6 of the Act first applies to person 2 in relation to the activity, person 2:
 - (i) does not hold an Australian financial services licence covering the activity; and
 - (ii) is not exempt from the requirement to hold that licence.
- (2) Division 11 of Part 7.6 of the Act applies in relation to the agreement to the extent that that Division is not inconsistent with Division 2 of Part 7.3 of the old Corporations Act.

Division 48 Arrangements for Lloyd's

10.2.211 Lloyd's

- (1) For section 1444 of the Act, subsection 911A (1) of the Act does not apply in relation to a financial service:
 - (a) that is provided by:
 - (i) a Lloyd's underwriting member; or
 - (ii) a listed Lloyd's syndicate of underwriting members; and
 - (b) to which subregulation (2) applies.
- (2) The financial service must be a service in relation to which the Lloyd's underwriting member, or the syndicate, is regulated by APRA at any time within 2 years after the FSR commencement.
- (3) In this regulation:
Lloyd's means the society incorporated by the Act of the United Kingdom known as the Lloyd's Act 1871.

Division 49 Hawking of certain financial products

10.2.212 Hawking of managed investment products

- (1) For section 1444 of the Act, a reference in subsection 992AA (2) of the Act to a financial services licensee includes a regulated principal.
- (2) Subregulation (1) ceases to apply in relation to a regulated principal at the end of the transition period in relation to the regulated principal.

[137] Schedule 10A, items 6.1 and 6.2

substitute

6.1 After subsection 1016A (2)

insert

- (2A) Subsection (2) does not apply in relation to a member who:
 - (a) held an interest in a superannuation fund as a standard employer-sponsored member; and
 - (b) is issued with an interest in relation to another sub-plan of the superannuation fund as a result of a transfer related to the cessation of the member's employment with the employer-sponsor.

6.2 After subsection 1016A (3)

insert

- (3A) Subsection (3) does not apply in relation to a superannuation product if:
 - (a) the issuer is a public offer entity that is a successor fund; and

-
- (b) an employer became a standard employer-sponsor of a fund in the following way:
- (i) the employer was a standard employer-sponsor of a fund (*fund 1*);
 - (ii) the benefits of members in fund 1 were transferred to a successor fund;
 - (iii) the employer was a standard employer-sponsor of fund 1 immediately before those benefits were so transferred;
 - (iv) the employer was a standard employer-sponsor of the successor fund immediately after those benefits were so transferred.

[138] Schedule 10A, item 12.2

omit

[139] Schedule 10A, item 15.1

substitute

15.1 After subsection 1017F (5A)

insert

(5B) Despite subsection (5), if:

- (a) the cost of a transaction (including taxes and charges) is not known at the time at which confirmation of the transaction would be required to be given; and
- (b) all of the other information required under subsection (7) in relation to confirmation of the transaction is known at that time;

the confirmation of the transaction is to be provided in accordance with subsection (5C).

(5C) Confirmation is to be provided as follows:

- (a) all of the information required, except for the cost of the transaction, is to be provided as soon as practicable in accordance with subsection (5);
- (b) the cost of the transaction may be provided in whichever of the following can be done first:
 - (i) a secondary confirmation notice provided as soon as practicable after the cost is known;
 - (ii) a standing facility mentioned in paragraph 1017F (5) (b);
 - (iii) the first periodic report under section 1017D after the cost is known.

[140] Schedule 10A, item 17.1, new subparagraph 1012B (4B) (b) (ii)

omit

regulation 7.9.06A

insert

regulation 7.9.06B

[141] Schedule 10A, item 17.2, new paragraph 1012I (2C) (a)

omit

regulation 7.9.06A

insert

regulation 7.9.06B

[142] Schedule 10B, item 1.2

after

issuer

insert

or fund

[143] Schedule 10C, item 1.2

after

issuer

insert

or fund

Schedule 2 Amendments commencing at 12.01 am (in the Australian Capital Territory) on the day on which the *Family Law Legislation Amendment (Superannuation) Act 2001* commences

(regulation 3)

[1] Subregulation 7.9.44 (1)

omit

will be paid to an eligible rollover fund

insert

will be paid (otherwise than under a payment split) to an eligible rollover fund

[2] Schedule 10A, item 10.1, new paragraph 1017B (5B) (a)

after

superannuation entity

insert

(other than a change that gives effect to a payment split)

[3] Schedule 10A, item 10.1, new paragraph 1017B (5B) (b)

after

an RSA

insert

(other than a change that gives effect to a payment split)

[4] Schedule 10A, item 10.1, new subsection 1017B (5E)

substitute

Fund and RSA transfers

- (5E) For subsections (5), (6) and (7), a reference to an event includes:
- (a) in relation to a superannuation product:
 - (i) the transfer of a member to a different category of membership or to a different fund; and
 - (ii) the transfer of the benefits of a member to an RSA or EPSSS (otherwise than under a payment split); and
 - (b) in relation to an RSA product — the transfer of an amount of an RSA (otherwise than under a payment split) to:
 - (i) another RSA offered by an RSA product issuer; or
 - (ii) a superannuation entity; or
 - (iii) an EPSSS.

[5] Schedule 10A, after item 10.1

insert

10.2 After subsection 1017B (9)

insert

- (10) This section does not apply to a change or event in relation to a superannuation product or an RSA product that relates to a payment split in respect of the product.

Notes

1. These Regulations amend Statutory Rules 2001 No. 193, as amended by 2001 Nos. 208, 318 and 319; 2002 Nos. 15 and 16.
2. Notified in the *Commonwealth of Australia Gazette* on 7 2002. 7 March