

Corporations Amendment Regulations 1999 (No. 6) 1999 No. 293

EXPLANATORY STATEMENT

Statutory Rules 1999 No. 293

Issued by the authority of the Minister for Financial Services and Regulation

Corporations Act 1989

Corporations Amendment Regulations 1999 (No. 6)

Section 22 of the Corporations Act 1989 (the Act) empowers the Governor-General to make regulations not inconsistent with the Act or the Corporations Law (the Law), prescribing matters which are required or permitted by the Law to be prescribed by regulations, or are necessary or convenient to be prescribed by regulations for carrying out or giving effect to the Law.

The purpose of the regulations is to amend Corporations Regulations 7.1.03, 8.1.02, Subregulation 7.3.13A, and Schedule 9.

Regulation 7.1.03 prescribes indexes for subparagraph (b)(ii) of the definition of an option contract in section 9 of the Corporations Law. Regulation 8.1.02 prescribes indexes for the purposes of paragraph (b) of the definition of an eligible exchange-traded option in section 9 of the Corporations Law.

The prescription of additional indexes in Regulation 7.1.03, will enable the Australian Stock Exchange (ASX) and any other approved securities exchange to trade options over the indexes, and third parties to write warrants over the indexes and list them on a securities exchange. At present, options can be listed on a securities exchange over a number of ASX indices, which include the Fifty Leaders, Twenty Leaders, All Industrials, All Resources and Gold share price indices. Regulation 7.1.03 also prescribes a number of overseas indices on which option contracts can be listed, including the Nikkei and FT-SE 100 indices, as well as the S&P 500 Composite Stock Price Index.

The amendment to Regulation 8.1.02 to prescribe additional indexes, will allow any approved futures exchange, including the Sydney Futures Exchange (SFE) to also offer index linked exchange-traded option products. At present, the only prescribed index that an exchange traded option is traded on, is the ASX Twenty Leaders Share Price Index (SPI).

The following indexes are to be prescribed in Regulations 7.1.03 and 8.1.02:

- * ASX 100 Share Price Index;
- * ASX 100 Accumulation Index; and
- * ASX All Ordinaries Accumulation Index.

The amendment to Subregulation 7.3.13A will correct a technical problem in the operation of the regulation. It will ensure that its original purpose, to regulate the authorisation of representatives of certain friendly societies, is achieved.

Schedule 9 of the Corporations Regulations lists companies which are authorised trustee corporations for the purposes of the Corporations Law. The amendments to Schedule 9 reflect the change of name of two of these trustee corporations.

Details of the regulations are set out in the Attachment.

The regulations commence on gazettal.

ATTACHMENT

These regulations are known as the Corporations Amendment Regulations 1999 (No. 6) and are to amend the Corporations (Regulations). They are to commence on gazettal.

Items [1] and [2] - Regulation 7.1.03

Prescribes the following indexes in Regulation 7.1.03, in addition to those already prescribed, for the purposes of an option contract:

- * ASX 100 Share Price Index;
- * ASX 100 Accumulation Index; and
- * ASX All Ordinaries Accumulation Index.

An option contract is one that is entered into on a securities exchange. As they are traded on a securities exchange, they fall under the definition of a security, and as such are subject to Chapter 7 of the Law. The provisions relating to the trading of securities contracts, therefore, apply to the trading of option contracts.

Item [3] - Subregulation 7.3.13A(3)

The amendment to Subregulation 7.3.13A(3) will correct a technical problem in the current operation of the subregulation.

Current Regulation 7.3.13A provides that a friendly society which is exempted from the licensing provisions of the Corporations Law under Subregulation 7.3.13(4), and its representatives, is subject to a range of obligations. In particular, current Subregulation 7.3.13A(3) requires representatives of these friendly societies to be authorised by the friendly society.

The regulation of friendly societies was previously regulated under the Friendly Societies Codes and was transferred to the Corporations Law on 1 July 1999. As a result, it was intended that current Subregulation 7.3.13A(3) recognise the authorisation of representatives under the Friendly Societies Code prior to 1 July 1999 (current paragraphs (b) and (c)). After 1 July 1999, it was intended that current Subregulation 7.3.13A(3) require representatives to be authorised in 'the approved form' (current paragraph (a)).

It has become apparent that there is a technical problem with the wording of current Subregulation 7.3.13A(3). The words 'immediately before the transfer date' should only apply to paragraphs (b) and (c). The current application of those words to paragraph (a) has the effect that, following the transfer date, friendly societies are unable to authorise a person as a representative.

The amendment will rewrite Subregulation 7.3.13A(3) to overcome this problem. Under the proposed formulation of the subregulation, the authorisation of representatives under the old Friendly Societies Code will be recognised and, going forward, friendly societies will be able to authorise representatives under the Corporations Law in the approved form.

Items [4] and [5] - Regulation 8.1.02

Prescribes the following indexes in Regulation 8.1.02, in addition to the ASX Twenty Leaders Share Price Index, for the purposes of an eligible exchange-traded option:

- * ASX 100 Share Price Index;

- * ASX 100 Accumulation Index; and
- * ASX All Ordinaries Accumulation Index.

Eligible exchange traded options refer to options on an index, that are entered into on a futures exchange. Because they are entered into on a futures exchange, these options fall under the definition of a futures contract (for the purposes of section 72 of the Law), and as such are subject to Chapter 8 of the Law. The provisions relating to the trading of futures contracts, therefore, apply to the trading of eligible exchange traded options.

Items r61, r71 and r81 - Schedule 9

Section 9 of the Corporations Law defines an 'authorised trustee corporation' as a body corporate declared in the regulations to be an authorised trustee corporation. Regulation 7. 1.01 of the Corporations Regulations provides that a body corporate listed in Schedule 9 of the Corporations Regulations is an authorised trustee corporation.

Item 14 of Schedule 9 lists Farmers' Co-operative Executors and Trustees Limited as an, authorised trustee company. Farmers' Co-operative Executors and Trustees Limited has changed its name to IOOF Australia Trustees Limited.

Item 51 of Schedule 9 lists Winchcombe Carson Trustee Company Limited as an authorised trustee company. Winchcombe Carson Trustee Company Limited has changed its name to IOOF Australia Trustees (N.S.W.) Limited.

The amendments to Schedule 9 reflect the change of name of these two trustee corporations.