



# Corporations Regulations 2001

Statutory Rules No. 193, 2001 as amended

made under the

*Corporations Act 2001*

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This compilation has been split into 7 volumes

Volume 1: regulations 1.0.01–6D.5.02

Volume 2: regulations 7.1.02–7.6.08E

**Volume 3: regulations 7.7.01–8.4.02**

Volume 4: regulations 9.0.01–12.9.03

Volume 5: Schedules 1, 2 and 2A

Volume 6: Schedules 3–12

Volume 7: Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Corporations Regulations 2001* as in force on 14 June 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 14 June 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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## **Chapter 7—Financial services and markets**

### **Part 7.7—Financial service disclosure**

#### **Division 1—Preliminary**

##### **7.7.01 How documents, information and statements are to be given**

- (1) For subsection 940C(3) of the Act:
  - (a) if general advice is given orally in a public forum, information that subsection 941C(5) of the Act requires to be given must be given orally; and
  - (b) if general advice is given in electronic form in a public forum, information that subsection 941C(5) of the Act requires to be given must be given in electronic form; and
  - (c) if general advice is given in writing (otherwise than in electronic form) in a public forum, information that subsection 941C(5) of the Act requires to be given must be given in writing; and
  - (d) if general advice is given in any other manner in a public forum, information that subsection 941C(5) of the Act requires to be given must be given in the same manner.
- (2) For paragraph 940C(7)(a) of the Act, a Financial Services Guide and a Statement of Advice may be given to a person in either of the following ways:
  - (a) making the Guide or Statement available to the person in any way that:
    - (i) is agreed to by the person; and
    - (ii) allows the regulated person to be satisfied, on reasonable grounds, that the person has received the Guide or Statement;
  - (b) making the Guide or Statement available to the person's agent in any way that:
    - (i) is agreed to by the agent; and

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- (ii) allows the regulated person to be satisfied, on reasonable grounds, that the agent has received the Guide or Statement.
- (3) For paragraph 940C(7)(b) of the Act, a document, information or statement that is to be given in electronic form must, as far as practicable, be presented in a way that will allow the person to whom it is given to keep a copy of it so that the person can have ready access to it in the future.
- (4) A document or statement that is to be given in electronic form must be presented in a way that clearly identifies the information that is part of the document or statement.

**Division 2—Financial Services Guide****7.7.02 Situations in which Financial Services Guide is not required**

- (1) For paragraph 941C(6)(c) of the Act, the following are prescribed:
- (a) a deposit product that is a facility in relation to which:
    - (i) there is no minimum period before which funds cannot be withdrawn or transferred from the facility without a reduction in the return generated for the depositor; or
    - (ii) if there is such a period, it expires on or before the end of the period of 2 years starting on the day on which funds were first deposited in the facility;
  - (b) travellers' cheques;
  - (c) a cash management trust interest;
  - (d) a capital guaranteed FHSA product.
- (2) For subsection 941C(4) of the Act:
- (a) providing general advice to the public, or a section of the public, at an event organised by or for financial services licensees to which retail clients are invited is prescribed; and
  - (b) a broadcast of general advice to the public, or a section of the public, that may be viewed or heard by any person is prescribed; and
  - (c) distributing or displaying promotional material that:
    - (i) provides general advice to the public, or a section of the public; and
    - (ii) is available in a place that is accessible to the public is prescribed.

**Examples:**

- 1 Television or radio broadcasts.
- 2 Distributing promotional material contained in newspapers and magazines.
- 3 Sending a broadcast via an Internet website or webcast.
- 4 Giving a public lecture or seminar for retail clients, including employees of a workplace.

**Note:** If general advice is given to the public, or a section of the public, the requirements of subsection 941C(5) of the Act must be complied with.

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Additionally, if general advice is provided to 1 or more retail clients, the providing entity must comply with section 949A of the Act.

- (3) For subsection 941C(8) of the Act, a Financial Services Guide does not have to be given to a client in the following circumstances:
- (a) a person (*person 1*) makes an inquiry by telephone in relation to the rental of a vehicle from another person (*person 2*);
  - (b) as a result of that inquiry, it becomes apparent to person 2 that a financial service will be, or is likely to be, provided to person 1;
  - (c) the financial service is the issue of an insurance product that relates to either or both of:
    - (i) the accidental death of, or bodily injury to, a person caused by an accident in connection with the use of the rented vehicle during the rental period; and
    - (ii) the loss or destruction of, or damage to, either or both of baggage and personal effects belonging to a person in the rented vehicle caused by an insured event during the rental period;
  - (d) person 2 makes arrangements for a document that is the equivalent of a Financial Services Guide to be given to person 1 no later than the start of the use to which the insurance product relates.

Example: The commencement of a journey of the rental vehicle is a use to which the insurance product relates.

- (3A) For subsection 941C(8) of the Act, a Financial Services Guide does not have to be given to a client for a financial service provided in the circumstances specified in paragraph 7.6.01(1)(la).
- (4) For subsection 941C(8) of the Act, a Financial Services Guide does not have to be given to a client in respect of advice that:
- (a) is provided by a providing entity that is:
    - (i) a product issuer; or
    - (ii) a related body corporate of a product issuer; or
    - (iii) a product distributor; or
    - (iv) an authorised representative of an entity mentioned in subparagraph (i), (ii) or (iii); and

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- (b) is only general advice in relation to a financial product that is, or a class of financial products that includes, a financial product that is:
  - (i) issued by the providing entity or a related body corporate of the providing entity; or
  - (ii) offered by the providing entity; and
- (c) is not provided during a meeting; and
- (d) is not provided during a telephone call, unless:
  - (i) the advice:
    - (A) concerns a class of financial products that includes a financial product already held by the client; and
    - (B) is provided by the providing entity for that financial product; or
  - (ii) there is no issue or sale of any financial product during the telephone call.

**Note:** The providing entity must meet obligations under the Act in relation to the telephone call such as the prohibition of hawking in sections 992A and 992AA of the Act and the requirements for Product Disclosure Statements in Part 7.9 of the Act.

- (4A) If general advice is provided during a telephone call in accordance with paragraph (4)(d), the providing entity must tell the client that:
  - (a) a Financial Services Guide exists; and
  - (b) the provider will send out a Financial Services Guide on request.
- (5) If subregulation (4) applies and the providing entity does not give a Financial Services Guide to the client when the advice is provided, the providing entity must give to the client:
  - (a) the information that would be required to be in the Financial Services Guide by paragraphs 942B(2)(a), (e) and (f) of the Act; or
  - (b) the information that would be required to be in the Financial Services Guide by paragraphs 942C(2)(a), (c), (f) and (g) of the Act;as the case requires.

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Note: If general advice is provided to 1 or more retail clients, the providing entity must comply with section 949A of the Act.

- (5A) For subsection 941C(8) of the Act, a Financial Services Guide does not have to be given to a client in the following circumstances:
- (a) the advice is provided in circumstances in which section 1018A of the Act applies or will apply at the end of the transition period;
  - (b) the advice is only general advice in relation to a financial product that is, or a class of financial products that includes, a financial product issued by the product issuer;
  - (c) the advice is in the form of advertising the financial product:
    - (i) on a billboard or a poster; or
    - (ii) in the media within the meaning of subregulation 7.6.01(7);
  - (d) the advertisement indicates that a person should consider whether or not the product is appropriate for the person.
- (5B) For subsection 941C(8) of the Act, a Financial Services Guide does not have to be given to a client in the following circumstances:
- (a) the providing entity is an issuer of derivatives that are able to be traded on a financial market;
  - (b) the financial service is a dealing (within the meaning of section 766C of the Act) in a derivative by the providing entity;
  - (c) at the time of the dealing, the providing entity is not a participant in the financial market on which the particular derivative may be traded;
  - (d) the only financial service that the providing entity provides to the client is the issuing of the derivative.
- (6) In this regulation:
- product distributor** means a licensee that offers a financial product for sale.
- (7) If:
- (a) a financial service is provided by a person (the **secondary service provider**) to a client by causing or authorising another

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person (the *intermediary*) to provide or pass on the service;  
and

- (b) but for the operation of section 52 of the Act, the secondary service provider would not be taken to be providing the financial service to the client; and
- (c) the intermediary does not act on behalf of the secondary service provider in providing or passing on the service for the secondary service provider (see section 911B of the Act); and
- (d) the intermediary is a financial services licensee or an authorised representative of a financial services licensee; and
- (e) the secondary service provider has a written agreement with the intermediary under which the intermediary agrees to either:
  - (i) give the secondary service provider's Financial Services Guide relating to the financial service provided by the secondary service provider to the client; or
  - (ii) inform the client how to obtain the secondary service provider's Financial Services Guide relating to the financial service provided by the secondary service provider;

then, for subsection 941C(8) of the Act, the secondary service provider does not have to give the client a Financial Services Guide for the financial service.

**7.7.02A Situations when Financial Services Guide is not required**

- (1) For paragraph 951C(1)(c) of the Act, section 941C of the Act is modified by inserting after subsection 941C(1) the following subsection:

“(1A) The providing entity does not have to give the client a Financial Services Guide if the client has already received the documents referred to in paragraphs (7A)(b) and (c), in the circumstances set out in that subsection, that together contain all of the information that the new Financial Services Guide is required to contain.”

- (2) For paragraph 951C(1)(c) of the Act, section 941C of the Act is modified by inserting after subsection 941C(7) the following subsections:

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- “(7A) The providing entity does not have to give the client a Financial Services Guide in the following circumstances:
- (a) if the providing entity will, or is likely to, provide a financial service to the client in a recommendation situation (see section 1012A), an issue situation (see section 1012B) or a sale situation (see section 1012C);
  - (b) the providing entity gives to the client a Product Disclosure Statement;
  - (c) the providing entity gives to the client a statement that:
    - (i) contains so much of the information required by section 942B or 942C (as the case may be), and any regulations made for the purposes of the appropriate section, as is not already set out in the Product Disclosure Statement; and
    - (ii) complies with the requirements set out in subsection (7B);
  - (d) the statements mentioned in paragraphs (b) and (c) are given at the same time.
- (7B) The statement referred to in paragraph (7A)(c) must:
- (a) be up to date as at the time it is given to the client; and
  - (b) may contain information apart from that referred to in subparagraph (7A)(c)(i); and
  - (c) meet the requirements of subsections 942B(3) and (6A) or subsections 942C(3) and (6A) (as the case may be).”

**7.7.03 Financial Services Guide given by financial services licensee:  
description of documents**

- (1) For paragraph 942B(2)(k) of the Act, the Financial Services Guide given by a financial services licensee must include a statement that:
  - (a) describes the purpose and content of the Financial Services Guide; and
  - (b) if appropriate:
    - (i) informs the client that the client may also receive either or both of a Statement of Advice and a Product Disclosure Statement; and
    - (ii) describes the purpose and content of those documents.



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- (2) In describing the purpose and content of the Financial Services Guide as mentioned in subregulation (1), the client's attention must be drawn to the following matters:
  - (a) the Guide is designed to assist the client in deciding whether to use any of the services offered in the Guide;
  - (b) the Guide contains information about remuneration that may be paid to the financial services licensee and other relevant persons in relation to the services offered;
  - (c) the Guide contains information on how complaints against the financial services licensee are dealt with.
- (3) In describing the purpose and content of a Statement of Advice or Product Disclosure Statement, the client's attention must be drawn to a description of the circumstances in which the Statement of Advice or Product Disclosure Statement will be given.
- (4) Subregulations (2) and (3) do not prevent the statement required under subregulation (1) from drawing attention to other matters relating to the purpose and content of the Financial Services Guide, the Statement of Advice or the Product Disclosure Statement.
- (5) The statement required under subregulation (1) must be:
  - (a) presented in a manner that is easy for the client to understand; and
  - (b) displayed prominently in the Financial Services Guide.
- (6) A statement is displayed prominently if it:
  - (a) appears at, or close to, the front of the Financial Services Guide; and
  - (b) stands out from the other information contained in the Guide.

Note: Ideally, the statement should be placed:

- (a) on the inside cover or inside facing page of a paper-based Financial Services Guide form; or
- (b) in an equivalent position of a Financial Services Guide that is not provided in a paper-based form.

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**7.7.03A Financial Services Guide given by financial services licensee: compensation arrangements**

- (1) For paragraph 942B(2)(k) of the Act, the Financial Services Guide given by a financial services licensee must include a statement about:
  - (a) the kind of compensation arrangements that the licensee has in place; and
  - (b) whether those arrangements satisfy the requirements for compensation arrangements under section 912B of the Act.
- (2) This regulation commences, for a particular financial services licensee, on the date that subregulations 7.6.02AAA(1), (2) and (3) take effect for that licensee.

**7.7.04 Financial Services Guide given by financial services licensee: remuneration, commission and benefits**

- (1) For paragraph 942B(2)(k) of the Act, the Financial Services Guide given by a financial services licensee must include information, to the extent that the information is able to be ascertained at the time the Financial Services Guide is given to the client, about all remuneration (including commission) and other benefits that a person (*person 1*) has received, or is to receive, for referring another person to the financial services licensee.

*Overview of regulation*

- (2) For paragraph 942B(4)(c) of the Act, the information required in particular situations by paragraph 942B(2)(e) in relation to persons mentioned in paragraph 942B(2)(e) or person 1 (see subregulation (1)) is as set out in subregulations (3), (4) and (5).

*If remuneration is ascertainable at the time FSG is given*

- (3) The following information is required if the remuneration, commission or other benefits are able to be worked out at the time the Financial Services Guide is given to the client:

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- (a) in a case where the remuneration, commission or other benefits are to be received by a person who is a licensed trustee company, either:
  - (i) the remuneration, commission or other benefits; or
  - (ii) the remuneration, commission or other benefits stated as a percentage of the income from the estate or as a percentage of the capital value of the estate;
- (b) in any other case—the remuneration, commission or other benefits.

*If remuneration is not ascertainable at the time FSG is given and personal advice will be given*

- (4) If:
  - (a) the remuneration (including commission) or other benefits are not able to be ascertained at the time the Financial Services Guide is given to the client; and
  - (b) the providing entity reasonably believes that personal advice will be given to the client;the following information is required:
  - (c) either:
    - (i) particulars of the remuneration (including commission) or other benefits, including, to the extent relevant, a statement of the range of amounts or rates of remuneration (including commission) or other benefits; or
    - (ii) general information about the remuneration (including commission) or other benefits and the manner in which the remuneration (including commission) or other benefits are to be calculated;
  - (d) a statement that:
    - (i) if the remuneration (including commission) or other benefits are calculable at the time the personal advice is given, the remuneration (including commission) or other benefits the person receives on specific financial products to which the personal advice relates will be disclosed at the time the personal advice is given or as soon as practicable after that time; or

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- (ii) if the remuneration (including commission) or other benefits are not calculable at the time the personal advice is given, the manner in which the remuneration (including commission) or other benefits are to be calculated will be disclosed at the time the personal advice is given or as soon as practicable after that time.

*If remuneration is not ascertainable at the time FSG is given and personal advice will not be given*

(5) If:

- (a) the remuneration (including commission) or other benefits are not able to be ascertained at the time the Financial Services Guide is given to the client; and
- (b) the providing entity reasonably believes that personal advice will not be given to the client;

the following information is required:

- (c) particulars of the remuneration (including commission) or other benefits, including, to the extent relevant, a statement of the range of amounts or rates of remuneration (including commission) or other benefits; or
- (d) both of the following:
  - (i) general information about the remuneration (including commission) or other benefits and the manner in which the remuneration (including commission) or other benefits are to be calculated;
  - (ii) a statement that the client may request particulars of the remuneration (including commission) or other benefits but that the request must be made within a reasonable time after the client is given the Financial Services Guide and before any financial service identified in the Guide is provided to the client.

**7.7.04A Financial services guide given by financial services licensee: more detailed information about remuneration etc**

(1) For subsection 942B(7) of the Act, if:

- (a) the remuneration (including commission) or other benefits that a person mentioned in paragraph 942B(2)(e) or person 1

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in subregulation 7.7.04(1) has received, or is to receive, are not able to be ascertained at the time the Financial Services Guide is given to the client; and

(b) the providing entity reasonably believes that personal advice will not be given to the client; and

(c) the Financial Services Guide does not contain particulars of the remuneration (including commission) or other benefits;

the client may request, from the financial services licensee, particulars of the remuneration (including commission) or other benefits.

(2) A request under subregulation (1) must be made within a reasonable time after the client is given the Financial Services Guide and before any financial service identified in the Guide is provided to the client.

(3) For subregulation (1), the particulars must, to the extent relevant, include a statement of the range of amounts or rates of remuneration (including commission) or other benefits.

Examples:

- 1 Remuneration is paid within the range of \$X to \$Y.
- 2 Commission is paid at rates between X% and Y%.

(4) The particulars mentioned in subregulation (3) must be presented in a manner that is easy for the client to understand.

**7.7.04AA Financial Services Guide given by financial services licensee: non-monetary benefit that is not conflicted remuneration**

(1) This regulation is made for paragraph 942B(4)(b) of the Act.

(2) Information about a non-monetary benefit that, in accordance with paragraph 963C(b) of the Act, is not conflicted remuneration is not required by paragraph 942B(2)(e) of the Act.

Note: Under paragraph 963C(b) of the Act, if a non-monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

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**7.7.04AB Financial Services Guide given by authorised representative: non-monetary benefit that is not conflicted remuneration**

- (1) This regulation is made for paragraph 942C(4)(b) of the Act.
- (2) Information about a non-monetary benefit that, in accordance with paragraph 963C(b) of the Act, is not conflicted remuneration is not required by paragraph 942C(2)(f) of the Act.

Note: Under paragraph 963C(b) of the Act, if a non-monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

**7.7.05 Record of advice given by financial services licensee**

For subparagraph 942B(2)(g)(iii) of the Act, the period within which a client may request a record of the advice to which that subparagraph relates is 7 years after the day on which the advice is provided.

**7.7.05A Financial Services Guide given by authorised representative of financial services licensee: authorised representative number**

- (1) For paragraph 942C(2)(m) of the Act, the Financial Services Guide given by an authorised representative must include the authorised representative number allocated by ASIC to the authorised representative.
- (2) Subregulation (1) does not apply to a Financial Services Guide to which regulation 7.7.05B applies.

**7.7.05B Personalised Financial Services Guide**

- (1) This regulation applies if:
  - (a) a financial services licensee; or
  - (b) an authorised representative (the *authoriser*) of a financial services licensee;

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authorises an individual to provide financial services on behalf of the licensee.

- (2) For paragraph 942C(4)(b) of the Act, the Financial Services Guide in relation to a financial service does not have to include the information in paragraph 942C(2)(a) of the Act, in respect of the individual, if:
- (a) the financial service is dealing in a financial product or the provision of general advice or both; and
  - (b) the individual provides the financial service in accordance with the authorisation; and
  - (c) the licensee has reasonable grounds to believe that the identity or remuneration of the individual would not be material to a decision by a retail client whether or not to obtain the financial service; and
  - (d) the Financial Services Guide includes:
    - (i) the contact details and licence number of the licensee; and
    - (ii) a statement setting out, in general terms, the individual's role and capacity in providing the financial service.
- (2A) For paragraph 942C(4)(b) of the Act, the Financial Services Guide in relation to a financial service does not have to include a statement setting out the name and contact details of a person if:
- (a) the person is:
    - (i) a franchisee of the holder of an Australian financial services licence (the **franchisor**) and a corporate authorised representative of the franchisor; or
    - (ii) an employee of a franchisee of the holder of an Australian financial services licence; and
  - (b) the franchisor is an authorised deposit-taking institution (within the meaning of the *Banking Act 1959*) and regulated by APRA; and
  - (c) the franchise agreement:
    - (i) subjects the person to the policies of the franchisor; and
    - (ii) requires compliance by the person with the policies of the franchisor that were made to give effect to the

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- franchisor's obligations under the Australian financial services licence; and
- (d) the Financial Services Guide produced by the franchisor explains that the franchisor takes responsibility for the services provided by the person.
- (3) For paragraph 942C(4)(b) of the Act, the Financial Service Guide in relation to a financial service does not have to include the information in paragraph 942C(2)(a) of the Act, in respect of an authoriser, if:
- (a) the financial service is dealing in a financial product or the provision of general advice or both; and
  - (b) the authoriser provides the financial service in accordance with the authorisation; and
  - (c) the licensee has reasonable grounds to believe that the identity or remuneration of the authoriser would not be material to a decision by a retail client whether or not to obtain the financial service; and
  - (d) the Financial Services Guide includes:
    - (i) the contact details and licence number of the licensee; and
    - (ii) a statement setting out, in general terms, the authoriser's role and capacity in providing the financial service.

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

**7.7.05C Exemption from providing certain information in a Financial Services Guide**

- (1) For paragraph 942B(4)(b) of the Act, for a Financial Services Guide:
- (a) information is not required by paragraph 942B(2)(c) of the Act about a financial service to which subsection 941C(6) of the Act applies; and
  - (b) information is not required by paragraph 942B(2)(e) of the Act in relation to remuneration (including commission) or other benefits that are received only in respect of, or that are only attributable to, a financial service to which subsection 941C(6) of the Act applies.



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- (2) For paragraph 942C(4)(b) of the Act, for a Financial Services Guide:
- (a) information is not required by paragraph 942C(2)(d) of the Act, about a financial service to which subsection 941C(6) of the Act applies; and
  - (b) information is not required by paragraph 942C(2)(f) of the Act, in relation to remuneration (including commission) or other benefits that are received only in respect of, or that are only attributable to, a financial service to which subsection 941C(6) of the Act applies.

**7.7.06 Financial Services Guide given by authorised representative of financial services licensee: description of documents**

- (1) For paragraph 942C(2)(m) of the Act, the Financial Services Guide given by an authorised representative must include a statement that:
- (a) describes the purpose and content of the Financial Services Guide; and
  - (b) if appropriate:
    - (i) informs the client that the client may also receive either or both of a Statement of Advice and a Product Disclosure Statement; and
    - (ii) describes the purpose and content of those documents.
- (2) In describing the purpose and content of the Financial Services Guide as mentioned in subregulation (1), the client's attention must be drawn to the following matters:
- (a) the Guide is designed to assist the client in deciding whether to use any of the services offered in the Guide;
  - (b) the Guide contains information about remuneration that may be paid to the authorised representative and other relevant persons in relation to the services offered;
  - (c) the Guide contains information on how complaints against the authorised representative are dealt with.
- (3) In describing the purpose and content of a Statement of Advice or Product Disclosure Statement, the client's attention must be drawn

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to a description of the circumstances in which the Statement of Advice or Product Disclosure Statement will be given.

- (4) Subregulations (2) and (3) do not prevent the statement required under subregulation (1) from drawing attention to other matters relating to the purpose and content of the Financial Services Guide, the Statement of Advice or the Product Disclosure Statement.
- (5) The statement required under subregulation (1) must be:
  - (a) presented in a manner that is easy for the client to understand; and
  - (b) displayed prominently in the Financial Services Guide.
- (6) A statement is displayed prominently if it:
  - (a) appears at, or close to, the front of the Financial Services Guide; and
  - (b) stands out from the other information contained in the Guide.

Note: Ideally, the statement should be placed:

- (a) on the inside cover or inside facing page of a paper-based Financial Services Guide form; or
- (b) in an equivalent position of a Financial Services Guide that is not provided in a paper-based form.

**7.7.06A Financial Services Guide given by authorised representative of financial services licensee—licence number**

For paragraph 942C(2)(m) of the Act, a providing entity that is an authorised representative of a financial services licensee must include the licensee's licence number in a Financial Services Guide given to a client.

**7.7.06B Financial Services Guide given by authorised representative of financial services licensee: compensation arrangements**

- (1) For paragraph 942C(2)(m) of the Act, the Financial Services Guide given by the authorised representative of a financial services licensee must include a statement about:
  - (a) the kind of compensation arrangements that the licensee has in place; and

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- (b) whether those arrangements satisfy the requirements for compensation arrangements under section 912B of the Act.
- (2) This regulation commences, for a particular authorised representative, on the date that subregulations 7.6.02AAA(1), (2) and (3) take effect for the financial services licensee for whom he or she is a representative.

**7.7.07 Financial Services Guide given by authorised representative of financial services licensee: remuneration, commission and benefits**

- (1) For paragraph 942C(2)(m) of the Act, the Financial Services Guide given by an authorised representative of a financial services licensee must include information, to the extent that the information is able to be ascertained at the time the Financial Services Guide is given to the client, about all remuneration (including commission) and other benefits that a person (*person 1*) has received, or is to receive, for referring another person to:
  - (a) the authorised representative; or
  - (b) the financial services licensee.

*Overview of regulation*

- (2) For paragraph 942C(4)(c) of the Act, the information required in particular situations by paragraph 942C(2)(f) in relation to persons mentioned in paragraph 942C(2)(f) or person 1 (see subregulation (1)) is as set out in subregulations (3), (4) and (5).

*If remuneration is ascertainable at the time FSG is given*

- (3) The following information is required if the remuneration, commission or other benefits are able to be worked out at the time the Financial Services Guide is given to the client:
  - (a) in a case where the remuneration, commission or other benefits are to be received by a person who is a licensed trustee company, either:
    - (i) the remuneration, commission or other benefits; or

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- (ii) the remuneration, commission or other benefits stated as a percentage of the income from the estate or as a percentage of the capital value of the estate;
- (b) in any other case—the remuneration, commission or other benefits.

*If remuneration is not ascertainable at the time FSG is given and personal advice will be given*

- (4) If:
  - (a) the remuneration (including commission) or other benefits are not able to be ascertained at the time the Financial Services Guide is given to the client; and
  - (b) the providing entity reasonably believes that personal advice will be given to the client;the following information is required:
  - (c) either:
    - (i) particulars of the remuneration (including commission) or other benefits, including, to the extent relevant, a statement of the range of amounts or rates of remuneration (including commission) or other benefits; or
    - (ii) general information about the remuneration (including commission) or other benefits and the manner in which the remuneration (including commission) or other benefits are to be calculated;
  - (d) a statement that:
    - (i) if the remuneration (including commission) or other benefits are calculable at the time the personal advice is given, the remuneration (including commission) or other benefits the person receives on specified financial products to which the personal advice relates will be disclosed at the time the personal advice is given or as soon as practicable after that time; or
    - (ii) if the remuneration (including commission) or other benefits are not calculable at the time the personal advice is given, the manner in which the remuneration (including commission) or other benefits are to be

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calculated will be disclosed at the time the personal advice is given or as soon as practicable after that time.

*If remuneration is not ascertainable at the time FSG is given and personal advice will not be given*

(5) If:

- (a) the remuneration (including commission) or other benefits are not able to be ascertained at the time the Financial Services Guide is given to the client; and
- (b) the providing entity reasonably believes that personal advice will not be given to the client;

the following information is required:

- (c) particulars of the remuneration (including commission) or other benefits, including, to the extent relevant, a statement of the range of amounts or rates of remuneration (including commission) or other benefits; or
- (d) both of the following:
  - (i) general information about the remuneration (including commission) or other benefits and the manner in which the remuneration (including commission) or other benefits are to be calculated;
  - (ii) a statement that the client may request particulars of the remuneration (including commission) or other benefits but that the request must be made within a reasonable time after the client is given the Financial Services Guide and before any financial service identified in the Guide is provided to the client.

**7.7.07A Financial services guide given by authorised representative:  
more detailed information about remuneration etc**

(1) For subsection 942C(7) of the Act, if:

- (a) the remuneration (including commission) or other benefits that a person mentioned in paragraph 942C(2)(f) or person 1 in subregulation 7.7.07(1) has received, or is to receive, are not able to be ascertained at the time the Financial Services Guide is given to the client; and

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- (b) the providing entity reasonably believes that personal advice will not be given to the client; and
  - (c) the Financial Services Guide does not contain particulars of the remuneration (including commission) or other benefits; the client may request, from the authorised representative, particulars of the remuneration (including commission) or other benefits.
- (2) A request under subregulation (1) must be made within a reasonable time after the client is given the Financial Services Guide and before any financial service identified in the Guide is provided to the client.
- (3) For subregulation (1), the particulars must, to the extent relevant, include a statement of the range of amounts or rates of remuneration (including commission) or other benefits.  
Examples:
  - 1 Remuneration is paid within the range of \$X to \$Y.
  - 2 Commission is paid at rates between X% and Y%.
- (4) The particulars mentioned in subregulation (3) must be presented in a manner that is easy for the client to understand.

**7.7.08 Record of advice given by authorised representative of financial services licensee**

For subparagraph 942C(2)(h)(iii) of the Act, the period within which a client may request a record of the advice to which that subparagraph relates is 7 years after the day on which the advice is provided.

## **Division 2A—Combined Financial Services Guide and Product Disclosure Statement**

### **7.7.08A Combined Financial Services Guide and Product Disclosure Statement**

- (1) For subsection 942DA(1) of the Act, this regulation specifies the circumstances in which a Financial Services Guide and a Product Disclosure Statement may be combined in a single document.
- (1A) This regulation does not apply if the Product Disclosure Statement is for an FHSA product.
- (1A) This regulation does not apply if the Product Disclosure Statement is for an FHSA product.
- (1B) This regulation does not apply if the Product Disclosure Statement is for a margin loan.
- (1C) This regulation does not apply if the Product Disclosure Statement is for a superannuation product to which Subdivision 4.2B of Division 4 of Part 7.9 applies.
- (1D) This regulation does not apply if the Product Disclosure Statement is for a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 applies.
- (2) A combined Financial Services Guide and Product Disclosure Statement may be issued as a single document if:
  - (a) the providing entity for the financial service and the product issuer for a product issued in relation to that financial service are the same person; and
  - (b) the document is divided into 2 separate parts:
    - (i) a part identifiable as a Financial Services Guide that satisfies the requirements under the Act for a Financial Services Guide; and
    - (ii) a part identifiable as a Product Disclosure Statement that satisfies the requirements for a Product Disclosure Statement; and

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- (c) the title ‘Combined Financial Services Guide and Product Disclosure Statement’ is marked on or near the front of the document; and
  - (d) the document is provided to a client at the earlier of the time at which a Financial Services Guide must be provided and the time at which a Product Disclosure Statement must be provided.
- (3) A combined Financial Services Guide and Product Disclosure Statement may be issued as a single document if:
  - (a) the providing entity for the financial service is a representative or a related body corporate of the product issuer; and
  - (b) the product is only a basic deposit product, a non-cash payment facility that is related to a basic deposit product, a general insurance product or a life risk insurance product; and
  - (c) the document is divided into 2 separate parts:
    - (i) a part identifiable as a Financial Services Guide that satisfies the requirements under the Act for a Financial Services Guide; and
    - (ii) a part identifiable as a Product Disclosure Statement that satisfies the requirements for a product Disclosure Statement; and
  - (d) the title ‘Combined Financial Services Guide and Product Disclosure Statement’ is marked on or near the front of the document; and
  - (e) the document clearly and prominently discloses:
    - (i) the identity of the providing entity and the product issuer; and
    - (ii) the nature of the relationship between the providing entity and the product issuer; and
    - (iii) the liability of the providing entity and the product issuer in relation to the document; and
  - (f) the document is provided to a client at the earlier of the time at which a Financial Services Guide must be provided and the time at which a Product Disclosure Statement must be provided.



- (4) For the single document:
  - (a) the Financial Services Guide and the Product Disclosure Statement may provide for matters by the use of cross-references to each other rather than by fully setting out material; and
  - (b) if the document includes cross-references:
    - (i) the document as a whole must include all of the information required by subsections 942B(6A) and 1013C(3) of the Act; and
    - (ii) the use of the cross-references must not have the effect that the document is misleading or deceptive.

## **Division 2AA—Combined Financial Services Guide and credit guide**

### **7.7.08B Modification of section 942DA of the Act**

- (1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if section 942DA of the Act were modified by substituting the heading of the section with the following section heading and subsection heading:

#### **‘942DA Combining a Financial Services Guide and another instrument**

*Financial Services Guide and a Product Disclosure Statement’.*

- (2) Part 7.7 of the Act applies as if section 942DA of the Act were also modified by inserting after subsection (3) the following subsection heading and subsections:

*‘Financial Services Guide and a credit guide*

- (4) If:
- (a) a person:
    - (i) is:
      - (A) a financial services licensee; or
      - (B) an authorised representative of a financial services licensee; and
    - (ii) is required to give a Financial Services Guide to a client under this Act; and
  - (b) the person:
    - (i) either:
      - (A) holds an Australian credit licence under the *National Consumer Credit Protection Act 2009*; or
      - (B) is a credit representative (within the same meaning as in the *National Consumer Credit Protection Act 2009*); and
    - (ii) is required to give a credit guide to a consumer under that Act;

the person may combine the Financial Services Guide and credit guide in a single document.

- (5) If the person combines the Financial Services Guide and credit guide in a single document, any statements or information to be included in the credit guide that are identical to statements or information to be included in the Financial Services Guide need only be included once.'

## **Division 2B—Record of small investment advice**

### **7.7.08C Record of small investment advice—content requirements**

- (1) For subsection 946AA(4) of the Act, a record of advice to a client must set out:
  - (a) the matters set out in subregulation (2); and
  - (b) the information that, if a Statement of Advice were to be given, would be required in that statement by paragraphs 947B(2)(d) and (e) of the Act or paragraphs 947C(2)(e) and (f) of the Act.
- (2) For paragraph (1)(a), the matters that the record of advice must set out are:
  - (a) brief particulars of the recommendations made to the client and the basis on which the recommendations are made; and
  - (b) brief particulars of the information that would be required by subsection 947D(2) of the Act if a Statement of Advice were given to the client; and
  - (c) the statement that would be required by subsection 947D(3) of the Act if a Statement of Advice were given to the client.

**Note:** A client is entitled to ask the providing entity for a record of advice and the providing entity must give a copy of the record of advice to the client—see paragraph 946AA(5)(a) of the Act.

**Division 3—Statement of Advice****7.7.09 Situations in which statement of advice is not required:  
further advice**

- (1) For subsection 946B(3A) of the Act, a record of advice must set out:
  - (a) the following:
    - (i) the advice given to the client by the providing entity;
    - (ii) if information or a statement required by subsections 947D(2) and (3) is given—the information and statement; or
  - (b) the following:
    - (i) brief particulars of the recommendations made and the basis on which the recommendations are made;
    - (ii) if information under subsection 947D(2) is given—brief particulars of the information;
    - (iii) if a statement under subsection 947D(3) is given—an acknowledgement that the statement has been given.
- (2) The providing entity may keep the record in any form, for example, a tape recording.
- (3) The providing entity must keep the record for 7 years after the day on which the further advice is provided.

**7.7.09A Situations in which Statement of Advice is not required:  
small investments threshold**

- (1) For subparagraph 946AA(1)(a)(i) of the Act, the threshold amount is \$15 000.
- (2) Subregulations (3) and (4) apply to each of the following financial products:
  - (a) shares;
  - (b) rights issues;
  - (c) options over unissued shares;
  - (d) partly paid shares;

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- (e) debentures;
- (f) stapled securities.

- (3) For small investment advice to a client that is related to the acquisition of one or more of the financial products listed in paragraphs (2)(a) to (f), the threshold amount in subregulation (1) must be calculated to include the total value of all financial investments that would be committed to by the client if the advice were accepted by the client.

Examples:

- 1 If the small investment advice related to the purchase of options over unissued shares the total cost of the options would be both the cost to buy the options and the cost of the exercise price on the face of the options.
- 2 If the small investment advice relates to the purchase of partly paid shares the total cost of the shares must be calculated as if all calls had been made on the shares.

Note: The total value of all financial investments in relation to which small investment advice is provided is calculated in accordance with subsection 946AA(2) of the Act.

- (4) For small investment advice to a client that is related to the disposal of one or more of the financial products listed in paragraphs (2)(a) to (f), the threshold amount in subregulation (1) must be calculated to include the total value of all financial investments that would be disposed of by the client if the advice were accepted by the client.

Note: The total value of all financial investments in relation to which small investment advice is provided is calculated in accordance with subsection 946AA(2) of the Act.

- (5) Subregulations (6) and (7) apply to each of the following financial products:

- (a) superannuation;
- (b) managed investment schemes;
- (c) non-derivative instalment warrants.

- (6) For small investment advice to a client that is related to the acquisition of one or more of the financial products listed in paragraphs (5)(a) to (c), the threshold amount in subregulation (1) must be calculated to include:

- (a) both:

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- (i) the cost to the client of the initial investment; and
- (ii) other amounts that would be committed to by the client if the advice is taken; and
- (b) if the investment is not finite—the value of the investment is calculated for the 12-month period beginning from the date that the record of advice is required by subregulation (10), (11) or (12) to be given to the client.

Examples:

**1 Advice given in relation to switching superannuation funds**

A person earning \$50 000 per annum is given advice to switch an existing superannuation fund balance of \$12 000 to another superannuation fund and direct all future superannuation guarantee contributions to that same fund. In this event the total of the superannuation guarantee contributions in the first 12-month period (ie  $\$50\,000 \times 0.09 = \$4\,500$ ) when added to the initial \$12 000 transfer, would exceed the \$15 000 threshold. In this example the exemption, in section 946AA of the Act, from the requirement to provide a Statement of Advice would not apply.

**2 Advice given to acquire non-derivative instalment warrants**

The terms of the non-derivative instalment warrants are that \$10 000 must be paid initially, a second payment of \$12 000 in 18 months time and a third and final payment of \$12 000 in 3 years time. The investment advice, assuming the client has committed to implementing the advice, concerns a \$34 000 investment and therefore the exemption, in section 946AA of the Act, from the requirement to provide a Statement of Advice would not apply.

**Note:** The total value of all financial investments in relation to which small investment advice is provided is calculated in accordance with subsection 946AA(2) of the Act.

- (7) For small investment advice to a client that is related to the disposal of one or more of the financial products listed in paragraphs (5)(a) to (c), the threshold amount in subregulation (1) must be calculated to include:

- (a) the value to the client of the total divestment; and
- (b) other amounts reasonably related to the divestment that would be expended if the advice is taken.

**Note:** The total value of all financial investments in relation to which small investment advice is provided is calculated in accordance with subsection 946AA(2) of the Act.

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- (8) If the total value of an investment, to which investment advice to a client relates, is not able to be ascertained under subsection 946AA(2) of the Act, the investment advice is taken to exceed the threshold amount in subregulation (1).
- (9) If an investment, to which investment advice relates, is jointly held by more than 1 client, the sum of the values of each client's investment must be calculated to determine whether the threshold amount in subregulation (1) is exceeded.

*When record of advice is given*

- (10) For subsection 946AA(4) of the Act, a record of advice is required to be given to a client when, or as soon as practicable after, investment advice is provided to the client and, in any event, subject to subregulation (12), before the providing entity provides the client with any further financial service that arises out of or in connection with the investment advice.

*Statement of certain information if record of advice not given when advice provided*

- (11) If the record of advice is not given to the client when the investment advice is provided, the providing entity must, at the time the investment advice is provided, give the client a statement that contains the information that would be required to be in a Statement of Advice by:
  - (a) paragraphs 947B(2)(d) and (e) of the Act; or
  - (b) paragraphs 947C(2)(e) and (f) of the Act;as the case requires, and by section 947D of the Act, if applicable.

*Time-critical cases*

- (12) If:
  - (a) a client expressly instructs that they require a further financial service to be provided immediately, or by a specified time; and
  - (b) the further financial service arises out of, or in connection with, the investment advice given to the client; and



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- (c) it is not reasonably practicable to give a record of advice to the client before the further service is provided as so instructed;
- the providing entity must give the client the record of advice:
- (d) unless paragraph (e) applies—within 5 days after providing the further service, or as soon as practicable; or
  - (e) if the further financial service is the provision to the client of a financial product and section 1019B of the Act applies to the acquisition of the product by the client—before the start of the period applicable under subsection 1019B(3) of the Act, or sooner if practicable.

**7.7.09AA Statement of Advice from financial services licensee**

- (1) For paragraph 947B(2)(g) of the Act, a Statement of Advice given by a financial services licensee in relation to a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA(1) of the Act must include the following information:

- (a) whether the client has taken out a loan to fund the secured property or transferred securities contributed by the client for establishing the margin lending facility;

Note: This is sometimes referred to as ‘double gearing’.

- (b) if a loan to fund the secured property or transferred securities contributed by the client for establishing the margin lending facility has been taken out—whether the security for the loan includes the primary residential property of the client;
  - (c) whether there is a guarantor for the margin lending facility, and, if so:
    - (i) if the financial services licensee has the necessary information—a statement as to whether the guarantor has been appropriately informed of, and warned about, the risks and possible consequences of providing the guarantee; or
    - (ii) if the financial services licensee does not have the necessary information—a statement that the financial services licensee does not have the information;
  - (d) the amount of any other debt incurred by the client;

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- (e) any other matter that ASIC has specified in a legislative instrument for subregulation (2).
- (2) ASIC may specify in a legislative instrument any matter ASIC considers to be relevant for the purpose of establishing whether the margin lending facility, or the margin lending facility with the increased limit, is unsuitable for the client.

**7.7.09AB Modification of subsection 947B (4) of the Act**

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 947B(4) of the Act were modified by:

- (a) substituting the full stop at the end of paragraph (c) with a semi-colon; and
- (b) inserting after paragraph (c) the following paragraph:  
'(d) that ASIC may specify in a legislative instrument matters ASIC considers to be relevant for the purposes of paragraph 947B(2)(g) of the Act.'

**7.7.09B Statement of Advice from providing entity—information not included in the Statement**

- (1) For paragraphs 947B(4)(b) and 947C(4)(b) of the Act, a providing entity is not required to include a statement or information mentioned in Part 7.7 of the Act in a Statement of Advice to the client if the Statement of Advice:
  - (a) refers to the statement or information; and
  - (b) provides sufficient details about the statement or information to enable the client:
    - (i) to identify by a unique identifier the document, or part of the document, that contains the statement or information; and
    - (ii) to decide whether or not to read the statement or information or obtain a copy of the statement or information; and
  - (c) states that a copy of the statement or information may be obtained from the providing entity on request, at no charge.

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- (2) Subject to subregulation (3), the providing entity must give the client the document, or part of the document (whichever is applicable), unless the providing entity has already given the document or part of the document to the client.
- (3) If the providing entity is an authorised representative of an Australian financial services licensee, the document, or part of the document (whichever is applicable), may be provided to the client:
  - (a) by another authorised representative appointed by and acting on behalf of the licensee; or
  - (b) by the licensee.
- (4) If the client requests a copy of a statement or information that the providing entity is not required to include in accordance with subregulation (1), the providing entity must provide the copy as soon as practicable, at no charge.
- (5) If a statement or information is not required to be included in a Statement of Advice because of subregulation (1), the statement or information is taken to be included in the Statement of Advice.
- (6) The exemption in subregulation (1) does not apply to a statement or information that is required by section 947D or 961H of the Act.

**7.7.09BA Statement of Advice from authorised representative**

- (1) For paragraph 947C(2)(h) of the Act, a Statement of Advice given by an authorised representative in relation to a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA(1) of the Act must include the following information:
    - (a) whether the client has taken out a loan to fund the secured property or transferred securities contributed by the client for establishing the margin lending facility;
- Note: This is sometimes referred to as ‘double gearing’.
- (b) if a loan to fund the secured property or transferred securities contributed by the client for establishing the margin lending facility has been taken out—whether the security for the loan includes the primary residential property of the client;

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- (c) whether there is a guarantor for the margin lending facility, and, if so:
    - (i) if the authorised representative has the necessary information—a statement as to whether the guarantor has been appropriately informed of, and warned about, the risks and possible consequences of providing the guarantee; or
    - (ii) if the authorised representative does not have the necessary information—a statement that the authorised representative does not have the information;
  - (d) the amount of any other debt incurred by the client;
  - (e) any other matter that ASIC has specified in a legislative instrument for subregulation (2).
- (2) ASIC may specify in a legislative instrument any matter ASIC considers to be relevant for the purpose of establishing whether the margin lending facility, or the margin lending facility with the increased limit, is unsuitable for the client.

**7.7.09BB Modification of subsection 947C(4) of the Act**

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 947C(4) of the Act were modified by:

- (a) substituting the full stop at the end of paragraph (c) with a semi-colon; and
- (b) inserting after paragraph (c) the following paragraph:
  - ‘(d) that ASIC may specify in a legislative instrument matters ASIC considers to be relevant for the purposes of paragraph 947C(2)(h) of the Act.’

**7.7.09BC Statement of Advice given by financial services licensee: non-monetary benefit that is not conflicted remuneration**

- (1) This regulation is made for paragraph 947B(4)(b) of the Act.
- (2) Information about a non-monetary benefit that, in accordance with paragraph 963C(b) of the Act, is not conflicted remuneration is not required by paragraph 947B(2)(d) of the Act.

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Note: Under paragraph 963C(b) of the Act, if a non-monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

**7.7.09BD Statement of Advice given by authorised representative: non-monetary benefit that is not conflicted remuneration**

- (1) This regulation is made for paragraph 947C(4)(b) of the Act.
- (2) Information about a non-monetary benefit that, in accordance with paragraph 963C(b) of the Act, is not conflicted remuneration is not required by paragraph 947C(2)(e) of the Act.

Note: Under paragraph 963C(b) of the Act, if a non-monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

**7.7.09C Requirement to keep Statement of Advice and other documents**

A Statement of Advice and a document, or part of a document, mentioned in the Statement, must be retained, by the providing entity that gave the Statement, for 7 years after the day on which the Statement is provided to the client.

**7.7.10 Products for which a Statement of Advice is not required**

For paragraph 946B(5)(c) of the Act, the following are prescribed:

- (a) a deposit product that is a facility in relation to which:
  - (i) there is no minimum period before which funds cannot be withdrawn or transferred from the facility without a reduction in the return generated for the depositor; or
  - (ii) if there is such a period, it expires on or before the end of the period of 2 years starting on the day on which funds were first deposited in the facility;
- (b) travellers' cheques;
- (c) a cash management trust interest;
- (d) a motor vehicle insurance product (see regulation 7.1.11);

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- (e) a home building insurance product (see regulation 7.1.12);
- (f) a home contents insurance product (see regulation 7.1.13);
- (g) a travel insurance product (see regulation 7.1.16);
- (h) a personal and domestic property insurance product (see regulation 7.1.17);
- (i) a general insurance product prescribed by regulations made for the purposes of subparagraph 761G(5)(b)(viii) (see regulation 7.1.17A);
- (j) a capital guaranteed FHSA product.

**7.7.10AA Obligation on authorised representative to give a financial services guide**

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 941B(2) were omitted and the following subsection were substituted:

- “(2) A Financial Services Guide must not be given to the person by the providing entity unless the authorising licensee, or each of the authorising licensees, on whose behalf the providing entity provides the financial services, has authorised its distribution by the providing entity.”

**7.7.10AAA Record of advice without a recommendation to purchase or sell—content requirements**

For subsection 946B(9) of the Act, a record of advice must set out the following:

- (a) the investment advice given to a client by the providing entity;
- (b) brief particulars of the recommendations made to the client and the basis on which the recommendations are made;
- (c) if the providing entity is a financial services licensee—the information that, if a Statement of Advice were to be given, would be required in that Statement by paragraphs 947B(2)(d) and (e) of the Act;
- (d) if the providing entity is an authorised representative—the information that, if a Statement of Advice were to be given,

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would be required in that Statement by paragraphs 947C(2)(e) and (f) of the Act.

Note: A client is entitled to ask the providing entity for a record of advice under subsections 942B(8) and 942C(8) of the Act.

**7.7.10AB Financial services guide—contents of guide***Financial services guide given by financial services licensee*

- (1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 942B(2)(c) of the Act were omitted and the following paragraph were substituted:

“(c) either:

- (i) information about the financial services (the **authorised services**) that the providing entity will be, or is likely to be, providing to the client, and the kinds of financial products to which those services relate; or
- (ii) information about the kinds of financial services (the **authorised services**) that the providing entity is authorised by its licence to provide, and the kinds of financial products to which those services relate; and”.

*Financial services guide given by authorised representative*

- (2) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraphs 942C(2)(c), (d) and (e) of the Act were omitted and the following paragraphs were substituted:

“(c) either:

- (i) information about the financial services (the **authorised services**) that the providing entity will be, or is likely to be, providing to the client, and the kinds of financial products to which those services relate; or
- (ii) information, in relation to the authorising licensee or each of the authorising licensees, about the kinds of financial services (the **authorised services**) that the providing entity provides as representative of the authorising licensee, and the kinds of financial products to which those services relate; and

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- (d) information about who the authorising licensee, or each of the authorising licensees, acts for when the authorised services are provided on their behalf by the providing entity; and
- (e) a statement:
  - (i) setting out the name and contact details of the authorising licensee, or of each of the authorising licensees, mentioned in paragraph (d); and
  - (ii) stating that the providing entity is the authorised representative of that licensee or those licensees; and”.

**7.7.10AC Financial services guide**

*Financial services guide given by financial services licensee—  
contents of guide*

- (1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 942B(2)(g) were omitted and the following paragraph were substituted:
  - “(g) if the providing entity provides further advice—a statement in relation to which the following requirements are satisfied:
    - (i) the statement must indicate that the client may request a record of further advice that is provided to them, if they have not already been provided with a record of that advice;
    - (ii) the statement must set out particulars of how the client may request such a record;



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- (iii) any limitation in those particulars relating to the time within which the client may request such a record must be consistent with any applicable requirements in regulations made for the purposes of this subparagraph or, if there are no such applicable requirements, must be such as to allow the client a reasonable opportunity to request a record of the advice; and”.

*Financial services guide given by financial services licensee—  
compliance with statement*

- (2) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 942B(8) were omitted and the following subsection were substituted:

“(8) If:

- (a) the Financial Services Guide includes a statement to the effect that a client may request a record of further advice; and
- (b) the client is provided with further advice to which that statement applies; and
- (c) the client has not already been provided with a record of that advice;

the providing entity must comply with a request made in accordance with that statement for a record of that advice.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).”

**7.7.10AD Financial services guide***Financial services guide given by authorised representative—  
contents of guide*

- (1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 942C(2)(h) were omitted and the following paragraph were substituted:

“(h) if the providing entity, when acting as representative of the authorising licensee or any of the authorising licensees, provides further advice—a statement in relation to which the following requirements are satisfied:

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- (i) the statement must indicate that the client may request a record of further advice that is provided to them, if they have not already been provided with a record of that advice;
- (ii) the statement must set out particulars of how the client may request such a record;
- (iii) any limitation in those particulars relating to the time within which the client may request such a record must be consistent with any applicable requirements in regulations made for the purposes of this subparagraph or, if there are no such applicable requirements, must be such as to allow the client a reasonable opportunity to request a record of the advice; and”.

*Financial services guide given by authorised representative—  
compliance with statement*

- (2) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 942C(8) were omitted and the following subsection were substituted:

“(8) If:

- (a) the Financial Services Guide includes a statement to the effect that a client may request a record of further advice; and
- (b) the client is provided with further advice to which that statement applies; and
- (c) the client has not already been provided with a record of that advice;

the providing entity must comply with a request made in accordance with that statement for a record of that advice.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).”

**7.7.10AE Situations in which Statement of Advice not required**

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if section 946B of the Act were omitted and the following section were substituted:

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**“946B Situations in which a Statement of Advice is not required***First situation: further advice*

- (1) The providing entity does not have to give the client a Statement of Advice for particular advice (the *further advice*) if subsection (2) or (2A) applies.
- (2) This subsection applies if:
  - (a) the providing entity has previously given the client a Statement of Advice that set out the client’s relevant personal circumstances in relation to the advice (the *previous advice*) set out in that Statement; and
  - (b) the client’s relevant personal circumstances in relation to the further advice (determined having regard to the client’s objectives, financial situation and needs as currently known to the providing entity) are not significantly different from the client’s relevant personal circumstances in relation to the previous advice; and
  - (c) so far as the basis on which advice is given relates to other matters—the basis on which the further advice is given is not significantly different from the basis on which the previous advice was given.

Note: Paragraphs 947B(2)(b) and 947C(2)(b) require a Statement of Advice to include information about the basis on which the advice is or was given, which may include the client’s relevant personal circumstances, in which case paragraph (a) of this subsection would be satisfied.

- (2A) This subsection applies if:
  - (a) the client had a relationship with the providing entity before:
    - (i) if the providing entity is a licensee—the day on which the providing entity obtained its Australian financial services Licence; or
    - (ii) if the providing entity is an authorised representative—the day on which the licensee on whose behalf the advice is provided obtained its Australian financial services Licence; and
  - (b) the providing entity gave the client advice (the *earlier advice*) of a kind that if it were given after the day the

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Australian financial services Licence was obtained would be considered to be personal advice; and

- (c) the client's relevant personal circumstances in relation to the further advice are not significantly different from the client's investment objectives, financial situation and particular needs that were determined for the earlier advice; and
  - (d) so far as the basis on which advice is given relates to other matters—the basis on which the further advice is given is not significantly different from the basis on which the earlier advice was given.
- (3) At the same time or as soon as practicable after the further advice is given to the client, the client must be given a statement that contains the information that would, if a Statement of Advice were to be given, be required to be in the Statement by paragraphs 947B(2)(d) and (e), or 947C(2)(e) and (f), as the case requires, and by section 947D, if applicable.
- (3A) The providing entity must keep a record of the further advice and, in doing so, must comply with any applicable requirements of regulations made for the purposes of this subsection.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 2: For the client's right to a record of the advice, see subsections 942B(8) and 942C(8).

Note 3: Subsections 947D(2) and (3) require additional information to be included in the record in certain circumstances.

*Second situation: certain basic deposit and other products*

- (5) The providing entity does not have to give the client a Statement of Advice if the advice relates to any or all of the following:
- (a) a basic deposit product;
  - (b) a facility for making non-cash payments (see section 763D) that is related to a basic deposit product;
  - (c) a financial product of a kind prescribed by regulations made for the purposes of this paragraph.
- (6) However, if subsection (4) applies and the client is not given a Statement of Advice, the client must instead, when, or as soon as

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practicable after, the advice is provided, be given the information that would be required to be in the Statement of Advice by paragraphs 947B(2)(d) and (e), or 947C(2)(e) and (f), as the case requires.”

**7.7.10AF Various consequential amendments to Division 7 of Part 7.7 concerning situations where Financial Services Guides do not have to be given**

- (1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if the provision set out in column 2 of the following table were modified as set out in columns 3 and 4:

Column 1 Item	Column 2 provision of Act	Column 3 is modified by...	Column 4 and...
1	paragraph (a) of the definition of <i>defective</i> in subsection 952B(1)	omitting “941D(2)”	substituting “941D(2) or paragraph 941C(7A)(c) or”
2	subparagraph (a)(iv) of the definition of <i>defective</i> in subsection 952B(1)	omitting “941D(2)”	substituting “941D(2) or paragraph 941C(7A)(c) or”
3	paragraph (d) of the definition of <i>disclosure document or statement</i> in subsection 952B(1)	omitting “946C(2)”	substituting “946C(2) or paragraph 941C(7A)(c),”
4	paragraph 952E(3)(a)	omitting “946C(2)”	substituting “946C(2) or paragraph 941C(7A)(c),”
5	paragraph 952F(1)(b)	omitting “946C(2)”	substituting “946C(2) or paragraph 941C(7A)(c),”
6	subparagraph 952F(1)(c)(i)	omitting “946C(2)”	substituting “946C(2) or paragraph 941C(7A)(c),”
7	paragraph 952G(1)(b)	omitting “946C(2)”	substituting “946C(2) or paragraph 941C(7A)(c),”
8	subparagraph 952G(1)(c)(i)	omitting “946C(2)”	substituting “946C(2) or paragraph 941C(7A)(c),”

**Chapter 7** Financial services and markets

**Part 7.7** Financial service disclosure

**Division 3** Statement of Advice

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Column 1	Column 2	Column 3	Column 4
Item	provision of Act	is modified by...	and...
9	paragraph (a) of the definition of <i>defective</i> in subsection 953A(1)	omitting “941D(2)”	substituting “941D (2) or paragraph 941C (7A)(c) or”
10	subparagraph (a)(iv) of the definition of <i>defective</i> in subsection 953A(1)	omitting “941D(2)”	substituting “941D(2) or paragraph 941C(7A)(c) or”
11	paragraph (d) of the definition of <i>disclosure document or statement</i> in subsection 953A(1)	omitting “946C(2)”	substituting “946C(2) or paragraph 941C(7A)(c),”

(2) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 940C(1) were modified by omitting “or a Statement of Advice” and substituting “, a Statement of Advice or a statement referred to in paragraph 941C(7A)(c)”.

(3) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 941D(4) were omitted and the following subsection were substituted:

“(4) The client must then be given:

- (a) the statement referred to in paragraph 941C(7A)(c) together with a Product Disclosure Statement as required by paragraph 941C(7A)(b) in accordance with the requirements of subsections 941C(7A) and (7B); or

- (b) a Financial Services Guide;

within 5 business days after having given the statement referred to in subsection (3), or sooner if practicable.”

(4) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if the following subsection were inserted at the end of section 941F:

“(2) If:

- (a) a statement referred to in paragraph 941C(7A)(c) is given to the client before the financial service is provided; and
- (b) the following conditions are satisfied:

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- (i) there is a change in circumstances before the service is provided and the statement does not contain the information it would be required to contain if it were given to a person immediately after that change;
- (ii) the fact that the statement does not contain the up to date information is materially adverse from the point of view of a reasonable person deciding, as a retail client, whether to proceed to be provided with the financial service;

the providing entity must, before the service is provided, give the client another statement of the kind referred to in paragraph 941C(7A)(c) that contains the up to date information before the service is provided.”

### 7.7.10AG Various consequential amendments to Division 7 of Part 7.7

- (1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if the provisions set out in column 2 of the following table were modified as set out in columns 3 and 4:

Column 1	Column 2	Column 3	Column 4
Item	provision of Act	is modified by...	and...
1	paragraph (b) of the definition of <i>defective</i> in subsection 952B(1)	omitting “Statement of Advice”	substituting “Statement of Advice, a record of advice required by subsection 946B(3A),”
2	paragraph 952E(3)(a)	omitting “Statement of Advice”	substituting “Statement of Advice, a record of advice required by subsection 946B(3A),”
3	paragraph 952F(1)(b)	omitting “Statement of Advice”	substituting “Statement of Advice, a record of advice required by subsection 946B(3A),”

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**Part 7.7** Financial service disclosure

**Division 3** Statement of Advice

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Column 1	Column 2	Column 3	Column 4
Item	provision of Act	is modified by...	and...
4	subparagraph 952F(1)(c)(i)	omitting “Statement of Advice”	substituting “Statement of Advice, a record of advice required by subsection 946B(3A),”
5	paragraph 952G(1)(b)	omitting “Statement of Advice”	substituting “Statement of Advice, a record of advice required by subsection 946B(3A),”
6	subparagraph 952G(1)(c)(i)	omitting “Statement of Advice”	substituting “Statement of Advice, a record of advice required by subsection 946B(3A),”
7	paragraph (b) of the definition of <i>defective</i> in subsection 953A(1)	omitting “Statement of Advice”	substituting “Statement of Advice, a record of advice required by subsection 946B(3A),”

- (2) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if the provisions set out in column 2 of the following table were modified as set out in column 3:

Column 1	Column 2	Column 3
Item	provision of Act	is modified by...
1	the definition of <i>defective</i> in subsection 952B(1)	inserting after subparagraph 952B(1)(b)(ii): (iiA) if it is a record of advice required by subsection 946B(3A)—there is an omission from the record of advice of material required by subsection 946B(3A) or section 947D; or
2	the definition of <i>disclosure document or statement</i> in subsection 952B(1)	inserting after paragraph (c) of the definition the following paragraph: (ca) a record of advice required by subsection 946B(3A); or



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Column 1	Column 2	Column 3
Item	provision of Act	is modified by...
3	the definition of <i>defective</i> in subsection 953A(1)	inserting after subparagraph 952B(1)(b)(ii) the following paragraph: (iiA) if it is a record of advice required by subsection 946B(3A)—there is an omission from the record of advice of material required by subsection 946B(3A) or section 947D; or
4	the definition of <i>disclosure document or statement</i> in subsection 953A(1)	inserting after paragraph (c) of the definition the following paragraph: (ca) a record of advice required by subsection 946B(3A); or

**7.7.10AH Business days**

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 946C(3)(c) was modified by omitting “5 days” and substituting “5 business days”.

**7.7.10AI Obligation to warn client that advice does not take account of client’s objectives, financial situation or needs—carbon units, Australian carbon credit units and eligible international emissions units**

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit as if paragraph 949A(2)(c) read as follows:

- “(c) if the advice relates to the acquisition, or possible acquisition, of a carbon unit, the providing entity must:
- (i) provide the client with the address of the website of the Clean Energy Regulator mentioned in section 202 of the *Clean Energy Act 2011*; and
  - (ii) inform the client that the client should consider each statement mentioned in section 202 of the *Clean Energy Act 2011* before making any decision about whether to acquire the financial product; and

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- (d) if the advice relates to the acquisition, or possible acquisition, of an Australian carbon credit unit, the providing entity must:
  - (i) provide the client with the address of the website of the Clean Energy Regulator mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; and
  - (ii) inform the client that the client should consider each statement mentioned in section 162 of that Act before making any decision about whether to acquire the financial product; and
- (e) if the advice relates to the acquisition, or possible acquisition, of an eligible international emissions unit, the providing entity must:
  - (i) provide the client with the address of the website of the Clean Energy Regulator mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*; and
  - (ii) inform the client that the client should consider each statement mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011* before making any decision about whether to acquire the financial product.”.

**7.7.10A Statements of Advice—requirement to state information as amounts in dollars**

- (1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 947B(2)(h) of the Act were modified to read as follows:
  - ‘(h) unless in accordance with the regulations and a determination by ASIC, information to be disclosed in accordance with paragraph (d) and subparagraph (e)(i) must be stated as amounts in dollars.’.
- (2) For paragraph 951C(1)(a) of the Act, a providing entity does not have to provide the information mentioned in paragraph 947B(2)(h) of the Act, in the form required by that paragraph, in a Statement of Advice prepared before 1 January 2005.

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- (3) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 947C(2)(i) of the Act were modified to read as follows:
- ‘(i) unless in accordance with the regulations and a determination by ASIC, information to be disclosed in accordance with paragraph (e) and subparagraph (f)(i) must be stated as amounts in dollars.’.
- (4) For paragraph 951C(1)(a) of the Act, a providing entity does not have to provide the information mentioned in paragraph 947C(2)(i) of the Act, in the form required by that paragraph, in a Statement of Advice prepared before 1 January 2005.
- (5) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 947D(2)(d) of the Act were modified to read as follows:
- ‘(d) unless in accordance with the regulations and a determination by ASIC, information to be disclosed in accordance with paragraph (a) must be stated as amounts in dollars.’.
- (6) For paragraph 951C(1)(a) of the Act, a providing entity does not have to provide the information mentioned in paragraph 947D(2)(d) of the Act, in the form required by that paragraph, in a Statement of Advice prepared before 1 January 2005.

**7.7.10B Insertion of definition—further advice**

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if the following definition were inserted in section 761A:

*“further advice* means advice to which subsection 946B(2) or (2A) applies.”

**7.7.10C Omission of definition—further market-related advice**

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if the definition of “further market-related advice” were omitted from section 761A.

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**7.7.10D Additional information in Statement of Advice**

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 947D(2) of the Act were modified by omitting “Statement of Advice” and substituting “Statement of Advice or the record of advice under subsection 946B(3A), as the case requires,”.

**7.7.10E Additional information in Statement of Advice**

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 947D(3) of the Act were modified by omitting “Statement of Advice” and substituting “Statement of Advice or the record of advice under subsection 946B(3A), as the case requires”.

**7.7.11 Statement of Advice given by financial services licensee**

- (1) For paragraph 947B(2)(g) of the Act, a Statement of Advice given by a financial services licensee must include information about all remuneration (including commission) and other benefits that a person (*person 1*) has received, or is to receive, for referring another person to the financial services licensee.
- (2) For paragraph 947B(2)(h) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 947B(2)(d) or subparagraph 947B(2)(e)(i) as an amount in dollars, the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (3) For paragraph 947B(2)(h) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 947B(2)(d) or subparagraph 947B(2)(e)(i) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the remuneration, benefits or interests (including worked dollar examples, unless that is inappropriate).

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- (4) A determination under subregulation (2) or (3) must be:
  - (a) in writing; and
  - (b) published in the *Gazette*.
- (5) The statements and descriptions must be presented in a manner that is easy for the client to understand.

**7.7.11A Statement of Advice given by authorised representative of financial services licensee—licence number**

For paragraph 947C(2)(h) of the Act, a providing entity that is an authorised representative of a financial services licensee must include the licensee's licence number in a Statement of Advice given to a client.

**7.7.11B Statement of Advice—disclosure of dollar amounts**

- (1) For paragraph 947B(2)(h) of the Act, if ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars:
  - (a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or
  - (b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or
  - (c) would not be in the interests of a client, or a class of clients; the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (2) For paragraph 947B(2)(h) of the Act, if ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars, or to describe the amount as a percentage:
  - (a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or

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- (b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or
  - (c) would not be in the interests of a client, or a class of clients; the information may be set out as a description of the method of calculating the remuneration, benefits or interests (including worked dollar examples, unless that is inappropriate).
- (3) A determination under subregulation (1) or (2) must be:
  - (a) in writing; and
  - (b) published in the *Gazette*.

**7.7.12 Statement of Advice given by authorised representative of financial services licensee**

- (1) For paragraph 947C(2)(h) of the Act, a Statement of Advice given by an authorised representative of a financial services licensee must include information about all remuneration (including commission) and other benefits that a person (*person 1*) has received, or is to receive, for referring another person to the authorised representative or the financial services licensee.
- (2) For paragraph 947C(2)(i) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 947C(2)(e) or subparagraph 947C(2)(f)(i) as an amount in dollars, the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (3) For paragraph 947C(2)(i) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 947C(2)(e) or subparagraph 947C(2)(f)(i) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the remuneration, benefits or interests (including worked dollar examples, unless that is inappropriate).
- (4) A determination under subregulation (1) or (2) must be:

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- (a) in writing; and
  - (b) published in the *Gazette*.
- (5) The statements and descriptions must be presented in a manner that is easy for the client to understand.

**7.7.13 Statement of Advice provided by authorised representative—disclosure of dollar amounts**

- (1) For paragraph 947C(2)(i) of the Act, if ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars:
  - (a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or
  - (b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or
  - (c) would not be in the interests of a client, or a class of clients; the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (2) For paragraph 947C(2)(i) of the Act, if ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars, or to describe the amount as a percentage:
  - (a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or
  - (b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or
  - (c) would not be in the interests of a client, or a class of clients; the information may be set out as a description of the method of calculating the remuneration, benefits or interests (including worked dollar examples, unless that is inappropriate).
- (3) A determination under subregulation (1) or (2) must be:
  - (a) in writing; and

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- (b) published in the *Gazette*.

**7.7.13A Additional information about charges or benefits—  
disclosure of dollar amounts**

- (1) For paragraph 947D(2)(d) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 947D(2)(a) as an amount in dollars, the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (2) For paragraph 947D(2)(d) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 947D(2)(a) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the charge or benefit (including worked dollar examples, unless that is inappropriate).
- (3) A determination under subregulation (1) or (2) must be:
  - (a) in writing; and
  - (b) published in the *Gazette*.

**7.7.13B Additional information about charges or benefits—  
disclosure of dollar amounts**

- (1) For paragraph 947D(2)(d) of the Act, if ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars:
  - (a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or
  - (b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or
  - (c) would not be in the interests of a client, or a class of clients;



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the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

- (2) For paragraph 947D(2)(d) of the Act, if ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars, or to describe the amount as a percentage:
- (a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or
  - (b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or
  - (c) would not be in the interests of a client, or a class of clients;
- the information may be set out as a description of the method of calculating the charge or benefit (including worked dollar examples, unless that is inappropriate).
- (3) A determination under subregulation (1) or (2) must be:
- (a) in writing; and
  - (b) published in the *Gazette*.

## **Division 4—General advice provided to a retail client**

### **7.7.14 Product Disclosure Statement not required**

For paragraph 926B(1)(a) of the Act, a providing entity that is giving general advice in relation to a financial product for which, under Part 7.9 of the Act, a Product Disclosure Statement is not required, does not have to give the warning in paragraph 949A(2)(c) of the Act.

## **Division 5—Other disclosure requirements**

### **7.7.20 General advice to retail client—no obligation to warn client**

For paragraph 949A(1)(c) of the Act, the provision of general advice in the circumstances set out in subregulation 7.7.02(5A) is specified.

#### **7.7.20A Extension of disclosure requirements to wholesale clients dealing with certain unauthorised insurers**

- (1) For paragraph 949B(1)(e) of the Act, a person must give a wholesale client the information set out in subregulation (3) for a financial service provided by that person to the wholesale client if:
  - (a) the service relates to an insurance contract specified in regulation 4C or 4D of the *Insurance Regulations 2002* that may be offered or issued by an unauthorised foreign insurer (within the meaning of those Regulations) (the **insurer**); and
  - (b) either:
    - (i) the person would be required to give a Statement of Advice if the service were provided to a retail client; or
    - (ii) the contract is offered or issued to the wholesale client.

Note: Failure to comply with this subregulation is an offence punishable by a fine of up to 50 penalty units or imprisonment for 1 year, or both—see section 1311 and item 272A of Schedule 3 to the *Corporations Act 2001*.

- (2) For paragraph 949B(1)(e) of the Act, a person must give a wholesale client the information set out in subregulation (3) for a financial service provided by that person to the wholesale client if:
  - (a) the service relates to the wholesale client dealing with an entity (the **insurer**) specified in regulation 12 of the *Insurance Regulations 2002*; and
  - (b) either:
    - (i) the person would be required to give a Statement of Advice if the service were provided to a retail client; or
    - (ii) the insurer offers or issues a financial product to the wholesale client.

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Note: Failure to comply with this subregulation is an offence punishable by a fine of up to 50 penalty units or imprisonment for 1 year, or both—see section 1311 and item 272A of Schedule 3 to the *Corporations Act 2001*.

- (3) The information is:
- (a) a statement that the insurer is not authorised under the *Insurance Act 1973* to conduct insurance business in Australia; and
  - (b) a statement that the insurer is not subject to the provisions of the *Insurance Act 1973*, which establishes a system of financial supervision of general insurers in Australia; and
  - (c) a statement that the wholesale client should consider whether to obtain further information, including:
    - (i) the country in which the insurer is incorporated, and whether the country has a system of financial supervision of insurers; and
    - (ii) the paid up capital of the insurer; and
    - (iii) which country's laws will determine disputes in relation to the financial product; and
  - (d) a statement that the insurer cannot be a declared general insurer for the purpose of Part VC of the *Insurance Act 1973*, and, if the insurer becomes insolvent, the wholesale client will not be covered by the financial claims scheme provided under Part VC of that Act.

## **Division 6—Exemptions from application of Part 7.7 of the Act**

### **7.7.21 Exemption from application of Part 7.7 of the Act**

For paragraph 951C(1)(a) of the Act, Part 7.7 of the Act does not apply to a financial services licensee or an authorised representative in respect of financial services provided to retail clients who are not in this jurisdiction.

Note: Regulation 7.9.98 also contains exemptions from the operation of Part 7.7 of the Act.

## Part 7.7A—Best interests obligations and remuneration

Note: Regulations 7.7A.01 to 7.7A.09 are reserved for future use.

### Division 2—Best interests obligations

#### Subdivision 1—Duty to act in client's best interests

##### 7.7A.1 Duty if advising on combination of products

- (1) This regulation:
  - (a) is made for paragraph 961B(5)(b) of the Act; and
  - (b) prescribes the circumstances in which a provider is not required to prove he or she has taken the steps mentioned in paragraphs 961B(2)(d) to (g) of the Act to satisfy the duty to act in the best interests of the client, in relation to advice about the following products:
    - (i) a basic banking product;
    - (ii) a general insurance product.
- (2) A provider is not required to prove it has taken those steps if:
  - (a) the provider is:
    - (i) an agent or an employee of an Australian ADI; or
    - (ii) otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI; and
  - (b) any personal advice that is provided relates only to:
    - (i) a basic banking product; or
    - (ii) a general insurance product; or
    - (iii) a combination of those products.

Note: The definition of *personal advice* is in subsection 766B(3) of the Act.

- (3) A provider is not required to prove the provider has taken those steps in relation to advice about a general insurance product, even if the provider, at the same time, provides other advice (whether or not personal advice).

## **Division 3—Charging ongoing fees to clients**

### **7.7A.10 Arrangements that are not ongoing fee arrangements**

- (1) This regulation is made for subsection 962A(5) of the Act.
- (2) An arrangement of a kind mentioned in subsection 962A(1) or (2) of the Act is not an ongoing fee arrangement to the extent that the arrangement relates to a product fee mentioned in subregulation (3).
- (3) Each of the following is a product fee:
  - (a) a fee for the administration, management or operation of a financial product that is charged to a retail client to which the product is issued by the issuer of the product;

Example 1: A monthly account keeping fee charged by the provider of a basic deposit product.

Example 2: A monthly administration or investment fee charged by a trustee of a superannuation fund or a responsible entity of a managed investment scheme.
  - (b) a fee that:
    - (i) is a cost of providing financial product advice; and
    - (ii) under section 99F of the *Superannuation Industry (Supervision) Act 1993*, is not prohibited or prevented from being passed on to a member of a regulated superannuation fund.

### **7.7A.11 Fee disclosure statements: product fee**

- (1) This regulation is made for paragraph 962H(3)(a) of the Act.
- (2) Information about a product fee mentioned in subregulation 7.7A.10(3) is not required by subsection 962H(2) of the Act.

## Division 4—Conflicted remuneration

### Subdivision 1—Monetary benefits

#### 7.7A.12 What subdivision is about

This subdivision:

- (a) is made for paragraph 963B(1)(e) of the Act; and
- (b) prescribes the circumstances in which a monetary benefit given to a financial services licensee, or representative of a financial services licensee, (the *provider*) who provides financial product advice to persons as retail clients is not conflicted remuneration.

Note: The definition of *financial product advice* is in subsection 766B(1) of the Act.

#### 7.7A.12A Life risk insurance products

A monetary benefit is not conflicted remuneration if the benefit is given in relation to a life risk insurance product, other than:

- (a) a group life policy for members of a superannuation entity; or
- (b) a life policy for a member of a default superannuation fund.

Note 1: The definitions of *group life policy for members of a superannuation entity* and *life policy for a member of a default superannuation fund* are in section 963B of the Act.

Note 2: If a benefit is given in relation to a financial product that consists of both general insurance and life risk insurance, the benefit is to be treated as relating to a general insurance product and a life risk insurance product.

#### 7.7A.12B Stamping fees

- (1) A monetary benefit is not conflicted remuneration:
  - (a) if the benefit is given to a provider by or on behalf of an entity in relation to the provider dealing in an approved financial product issued by the entity, on behalf of a retail client; or
  - (b) if:



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- (i) the benefit is given to a provider by or on behalf of an entity in relation to the provider dealing in an approved financial product issued by the entity, on behalf of a retail client; and
  - (ii) the provider gives the benefit, directly or indirectly, to a representative of the provider.
- (2) However, subregulation (1) does not apply if the entity is an investment entity.
- (3) In this regulation:

***approved financial product*** means:

- (a) debentures, stocks or bonds that are, or are proposed to be, issued by a government; or
- (b) shares in, or debentures of, a body that are, or are proposed to be, listed on a prescribed financial market; or
- (c) interests in a managed investment scheme that is, or is proposed to be, listed on a prescribed financial market; or
- (d) a right to acquire, by way of issue, shares, debentures or interests mentioned in paragraph (b) or (c).

***infrastructure entity*** means an entity that provides a return to its shareholders or members mainly from owning or operating any of the following:

- (a) airports;
- (b) electricity generation, transmission or distribution facilities;
- (c) gas transmission or distribution facilities;
- (d) hospitals;
- (e) ports;
- (f) railways;
- (g) roads;
- (h) sewerage facilities;
- (i) telecommunication facilities;
- (j) water supply facilities.

***investment entity*** means an entity, when taken together with any subsidiaries or other entities that are the subject of a joint venture to which the entity is a party, that:

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- (a) provides a return to its shareholders or members mainly from either or both of the following:
  - (i) investments in financial products;
  - (ii) owning real property, other than for the purpose of developing the property; and
- (b) is not an infrastructure entity.

**joint venture** means an agreement under which 2 or more persons undertake an activity that is subject to joint control.

**7.7A.12C Time-sharing schemes**

A monetary benefit is not conflicted remuneration if the benefit is given for advice that relates to an interest in a time-sharing scheme.

**7.7A.12D Brokerage fees**

- (1) A monetary benefit is not conflicted remuneration if:
  - (a) the benefit consists of a percentage, of no more than 100%, of a brokerage fee that is given to a provider who is a trading participant of a prescribed financial market; and
  - (b) the provider, directly or indirectly, gives the benefit to a representative of the provider.

Note: The definition of **prescribed financial market** is in regulation 1.0.02A.

- (1A) A monetary benefit is not conflicted remuneration if:
  - (a) the benefit is a fee paid between a financial services licensee that is a trading participant of a prescribed financial market and a financial services licensee that is not a trading participant in respect of dealings undertaken by a retail client through a specified service; and
  - (b) each of those trades is executed by the trading participant on behalf of the retail client; and
  - (c) the fee is a percentage, not exceeding 100%, of a brokerage fee paid directly or indirectly by the retail client; and
  - (d) no portion of the benefit is paid to a person other than the trading participant or the licensee that is not a trading participant.

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(2) In this regulation:

**brokerage fee** means a fee that a retail client pays to a provider in relation to a transaction in which the provider, on behalf of the retail client, deals in a financial product that is traded on:

- (a) a prescribed financial market; or
- (b) a prescribed foreign financial market.

Note: Subregulations 7.7A.17 and 7.7A.18 relate to exemptions in relation to the charging of asset-based fees on borrowed amounts.

**prescribed foreign financial market** means a financial market that:

- (a) has its principal place of business in a foreign country; and
- (b) has been authorised by an authority in that country that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information of May 2002.

**specified service** means a service which:

- (a) is provided for retail clients under the name or brand name of:
  - (i) the financial services licensee that is not a trading participant; or
  - (ii) the trading participant and the financial services licensee that is not a trading participant; and
- (b) relates to the dealing, on behalf of the retail client, in a financial product traded on:
  - (i) a prescribed financial market; or
  - (ii) a prescribed foreign financial market; and
- (c) is provided in either or both of the following ways:
  - (i) by direct electronic access;
  - (ii) by telephone, but only if:
    - (A) direct electronic access is not available for a temporary period, or the retail client expresses a preference that the service be provided by telephone; and
    - (B) neither the trading participant nor the financial services licensee that is not a trading participant

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is to provide financial product advice to the retail client by telephone in relation to the dealing undertaken on the retail client's behalf; and

- (d) is provided in circumstances in which neither the trading participant nor the financial services licensee that is not a trading participant provides personal advice to the retail client in relation to the dealing undertaken on the retail client's behalf.

*trading participant* of a prescribed financial market means a person who:

- (a) is a participant of the market admitted under the market's operating rules; and
- (b) is allowed, under the market's operating rules, to deal in one or more of the financial products that are able to be traded on the market.

**7.7A.12E Fees paid by clients for dealing services**

A monetary benefit is not conflicted remuneration if the benefit is given to the provider by a retail client in relation to the provider dealing in a financial product on behalf of the client.

**7.7A.12EA Application of ban on conflicted remuneration—  
purchase or sale of financial advice business**

A monetary benefit is not conflicted remuneration to the extent that:

- (a) the benefit is given to a financial services licensee or a representative of the licensee; and
- (b) the benefit is paid as part of:
  - (i) the purchase or sale of all or part of the licensee's financial advice business; or
  - (ii) the purchase or sale of all or part of the representative's financial advice business; and
- (c) the price is calculated using a formula:

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- (i) which is based, in whole or in part, on the number or value of all or part of the financial products held by the licensee's clients or the representative's clients; and
- (ii) in which the weighting attributed to the financial products issued by the licensee or a related body corporate or other person is the same as the weighting attributed to other similar financial products.

## **Subdivision 2—Monetary or non-monetary benefits**

### **7.7A.12F What subdivision is about**

This subdivision:

- (a) is made for paragraphs 963B(1)(e) and 963C(f) of the Act; and
- (b) prescribes the circumstances in which a monetary or non-monetary benefit given to a financial services licensee, or representative of a financial services licensee, (the *provider*) who provides financial product advice to persons as retail clients is not conflicted remuneration.

Note: The definition of *financial product advice* is in subsection 766B(1) of the Act.

### **7.7A.12G General insurance**

A benefit is not conflicted remuneration if the benefit is given in relation to a general insurance product.

Note: If a benefit is given in relation to a financial product that consists of both general insurance and life risk insurance, the benefit is to be treated as relating to a general insurance product and a life risk insurance product.

### **7.7A.12H Basic banking and general insurance products**

A benefit is not conflicted remuneration if:

- (a) to the extent that the benefit is given in relation to financial product advice, the benefit only relates to the following financial products:
  - (i) a basic banking product;

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- (ii) a general insurance product;
  - (iii) a combination of those financial products; and
- (b) the provider does not, at the same time, provide advice about any other financial products; and
- (c) the provider is:
  - (i) an agent or an employee of an Australian ADI; or
  - (ii) otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI.

**7.7A.12I Mixed benefits**

- (1) A benefit that is given in one or more of the circumstances set out in the prescribed provisions is not conflicted remuneration even if:
  - (a) the benefit also relates to other activities, but only to the extent that the part of the benefit that relates to the other activities is not conflicted remuneration; or
  - (b) the provider, at the same time, provides other services (whether or not financial services).
- (2) However, subregulation (1) does not apply to the extent that the prescribed provisions under which the benefit is given provide that:
  - (a) the benefit may only relate to particular financial products or services; or
  - (b) the provider must not receive the benefit if the provider is, at the same time, providing other specified financial services.
- (3) In this regulation:

***prescribed provision*** means:

- (a) paragraph 963B(1)(a), (b), (c) or (d) of the Act, or a regulation made under paragraph 963B(1)(e) of the Act; or
- (b) paragraph 963C(a), (b), (c), (d) or (e) of the Act, or a regulation made under paragraph 963C(f) of the Act.

**7.7A.13 Non-monetary benefit given in certain circumstances not conflicted remuneration: prescribed amount**

For subparagraph 963C(b)(i) of the Act, the amount is \$300 for each financial services licensee, or each representative of a

financial services licensee, who is the final recipient of a non-monetary benefit.

Note: Under paragraph 963C(b) of the Act, if a non-monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

**7.7A.14 Non-monetary benefit given in certain circumstances not conflicted remuneration: education or training course**

- (1) This regulation is made for subparagraph 963C(c)(iii) of the Act.
- (2) This regulation sets out requirements if a non-monetary benefit to which subparagraphs 963C(c)(i) and (ii) of the Act apply is the provision of an education or training course to a financial services licensee, or a representative of a financial services licensee.

Note: Under paragraph 963C(c) of the Act, if certain non-monetary benefits have a genuine education or training purpose, are relevant to the provision of financial product advice to retail clients and comply with the regulations, the benefits are not conflicted remuneration.
- (3) Education or training activities for the professional development of the participants in the course must take up at least:
  - (a) 75% of the time spent on the course; or
  - (b) 6 hours a day;whichever is the lesser.
- (4) The participant, or the participant's employer or licensee, must pay for the costs of:
  - (a) travel and accommodation relating to the course; and
  - (b) events and functions held in conjunction with the course.

Example: The cost of day trips or dinners.

- (5) In this regulation:

***education or training course*** includes a conference or seminar.

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**7.7A.15 Non-monetary benefit given in certain circumstances not conflicted remuneration: other education and training benefit**

- (1) This regulation is made for subparagraph 963C(c)(iii) of the Act.
- (2) This regulation sets out a requirement if a non-monetary benefit to which subparagraphs 963C(c)(i) and (ii) of the Act apply is not the provision of an education or training course to which regulation 7.7A.13 applies.

Note: Under paragraph 963C(c) of the Act, if certain non-monetary benefits have a genuine education or training purpose, are relevant to the provision of financial product advice to retail clients and comply with the regulations, the benefits are not conflicted remuneration.
- (3) The dominant purpose of the non-monetary benefit must be education and training.

**7.7A.16 Application of ban on conflicted remuneration—platform operator (Division 4 of Part 7.7A of Chapter 7 of the Act does not apply)**

- (1) This regulation:
  - (a) is made for subsection 1528(2) of the Act; and
  - (b) prescribes a circumstance in which Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit.

Note: Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.
- (2) The circumstance is that the benefit is given:
  - (a) by a platform operator; and
  - (b) under an arrangement that was entered into before the application day, within the meaning of subsection 1528(4) of the Act.



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- (3) For subregulation (2), if a party to an arrangement changes, the arrangement is taken to have continued in effect, after the change, as the same arrangement.
- (4) If this regulation and regulation 7.7A.16A or 7.7A.16B are able to apply in relation to the benefit, disregard this regulation.

**7.7A.16A Application of ban on conflicted remuneration—platform operator (Division 4 of Part 7.7A of Chapter 7 of the Act applies)**

- (1) This regulation:
  - (a) is made for subsection 1528(2) of the Act; and
  - (b) prescribes circumstances in which Division 4 of Part 7.7A of Chapter 7 of the Act applies to a benefit; and
  - (c) does not apply in relation to a benefit to which regulation 7.7A.16C applies.

Note: Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.

- (2) The circumstance is that:
  - (a) the benefit is given by a person acting in the capacity as a platform operator; and
  - (b) the benefit is given under an arrangement that was entered into before the application day, within the meaning of subsection 1528(4) of the Act; and
  - (c) the benefit:
    - (i) relates to an acquisition (including a regulated acquisition, within the meaning of subsection 1012IA(1) of the Act) of a financial product on the instructions of a person who had not given an instruction to the person acting in the capacity of a platform operator to open an account on the platform before 1 July 2014; or
    - (ii) does not relate to a person who opened an account on the platform before 1 July 2014.

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- (3) For subregulation (2), treat a benefit as having been given by a person acting in the capacity as a platform operator if it:
  - (a) is given by a platform operator; and
  - (b) relates to activities undertaken in connection with the platform as a result of instructions to the platform operator from a client who has set up, or is setting up, an account on the platform.
- (4) For subregulation (2), if a retail client has an interest in a financial product before 1 July 2014, treat a benefit as relating to an acquisition of the financial product whether it is paid in relation to the initial acquisition of the financial product or the subsequent holding of the financial product.
- (5) For subregulation (2), if a party to an arrangement changes, the arrangement is taken to have continued in effect, after the change, as the same arrangement.
- (6) If this regulation and regulation 7.7A.16 are able to apply in relation to the benefit, disregard regulation 7.7A.16.

**7.7A.16B Application of ban on conflicted remuneration—person other than platform operator (Division 4 of Part 7.7A of Chapter 7 of the Act applies)**

- (1) This regulation:
  - (a) is made for subsection 1528(2) of the Act; and
  - (b) prescribes a circumstance in which Division 4 of Part 7.7A of Chapter 7 of the Act applies to a benefit; and
  - (c) does not apply in relation to a benefit to which regulation 7.7A.16C applies.

**Note:** Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.

- (2) The circumstance is that:
  - (a) the benefit is given by a person who is not acting in the capacity of a platform operator; and

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- (b) the benefit is given under an arrangement that was entered into before the application day, within the meaning of subsection 1528(4) of the Act; and
- (c) the benefit:
  - (i) is given in relation to the acquisition, on or after 1 July 2014, of a financial product, for the benefit of a retail client; or
  - (ii) does not relate to a financial service provided, before 1 July 2014, for the benefit of a retail client; and
- (d) the client did not have an interest in the product before 1 July 2014.

Note: For the definition of *platform operator*, see subsection 1526(1) of the Act.

- (3) For subregulation (2), treat a benefit as having been given by a person acting in the capacity as a platform operator if it:
  - (a) is given by a platform operator; and
  - (b) relates to activities undertaken in connection with the platform as a result of instructions to the platform operator from a client who has set up, or is setting up, an account on the platform.

*Continuity of arrangement*

- (4) For subregulation (2):
  - (a) if a party to an arrangement changes, treat the arrangement as having continued in effect, after the change, as the same arrangement; and
  - (b) if a retail client has an interest in a financial product before 1 July 2014, treat a benefit as relating to an acquisition of the financial product whether it is paid in relation to the initial acquisition of the financial product or the subsequent holding of the financial product.

*Managed investment schemes*

- (5) For subregulation (2), if a retail client:
  - (a) had an interest in a managed investment scheme before 1 July 2014; and

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- (b) acquires a further interest in the managed investment scheme on or after 1 July 2014;
- do not treat the acquisition of the further interest as having occurred on or after 1 July 2014.

*Multi product offerings*

- (6) For subregulation (2), if:
    - (a) more than one financial product is marketed and offered together under one product disclosure statement (a **multi-product offering**) in a way in which:
      - (i) a retail client receives a consolidated report on a periodic basis listing the client's holdings in all of those financial products; and
      - (ii) there is a facility which allows a retail client to choose between, acquire, switch or transfer an interest in one or more of those financial products; and
    - (b) the benefit is to be paid by the issuer of the product disclosure statement; and
    - (c) a retail client opened an account on the multi-product offering before 1 July 2014; and
    - (d) the retail client acquires an interest or a further interest in any one or more of the financial products available in the multi-product offering on or after 1 July 2014;
- do not treat the acquisition of the interest, or further interest, mentioned in paragraph (d) as having occurred on or after 1 July 2014.

*Relationship with regulation 7.7A.16*

- (7) If this regulation and regulation 7.7A.16 are able to apply in relation to the benefit, disregard regulation 7.7A.16.

**7.7A.16C Application of ban on conflicted remuneration—employer and employee (Division 4 of Part 7.7A of Chapter 7 of the Act does not apply)**

- (1) This regulation:
  - (a) is made for subsection 1528(2) of the Act; and

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- (b) prescribes circumstances in which Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit.

Note: Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.

*Remuneration arrangement relating to enterprise agreement or collective agreement-based transitional instrument*

- (2) A circumstance is that:
- (a) the benefit is paid under a remuneration arrangement between an employer and an employee; and
  - (b) the benefit is paid in accordance with an enterprise agreement (including its associated documents), or a collective agreement-based transitional instrument (including its associated documents), that was entered into before the application day, within the meaning of subsection 1528(4) of the Act.

*When subregulation (2) ceases to apply*

- (3) If:
- (a) an enterprise agreement referred to in paragraph (2)(b) was in force immediately before the application day; and
  - (b) the nominal expiry date of the agreement had not passed immediately before the application day;
- the circumstance in subregulation (2) ceases to apply at the end of 6 months after the nominal expiry date of the agreement.
- (4) If:
- (a) an enterprise agreement referred to in paragraph (2)(b) was in force immediately before the application day; and
  - (b) the nominal expiry date of the agreement passed before the application day;
- the circumstance in subregulation (2) ceases to apply on 1 July 2014.

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*Remuneration arrangement not relating to enterprise agreement or collective agreement-based transitional instrument*

- (5) A circumstance is that:
- (a) the benefit is paid under a remuneration arrangement between an employer and an employee; and
  - (b) the benefit is not paid in accordance with an enterprise agreement (including its associated documents) or a collective agreement-based transitional instrument (including its associated documents); and
  - (c) the benefit is payable in relation to a period that ends before 1 July 2014.

*Definitions*

- (6) In this regulation:

***collective agreement-based transitional instrument*** has the meaning given by subitem 2(5) of Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

***enterprise agreement*** has the same meaning as in the *Fair Work Act 2009*.

**7.7A.16D Application of ban on conflicted remuneration—new arrangement entered into on or after application day (Division 4 of Part 7.7A of Chapter 7 of the Act does not apply)**

- (1) This regulation:
- (a) is made for subsection 1528(2) of the Act; and
  - (b) prescribes a circumstance in which Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit.

Note: Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.

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- (2) The circumstance is that:
- (a) the benefit is paid under an arrangement (the *new arrangement*) that was entered into on or after the application day, within the meaning of subsection 1528(4) of the Act; and
  - (b) the new arrangement is on the same terms as an arrangement (the *previous arrangement*) that was in place immediately before the application day, except that the new arrangement does not provide for the giving of remuneration that would not be permissible under section 1528 of the Act or regulations made for that section; and
  - (c) the previous arrangement was terminated as a result of the application of Division 4 of Part 7.7A of Chapter 7 of the Act.

**7.7A.16E Application of ban on conflicted remuneration—change of party to an arrangement (Division 4 of Part 7.7A of Chapter 7 of the Act does not apply)**

- (1) This regulation:
- (a) is made for subsection 1528(2) of the Act; and
  - (b) prescribes a circumstance in which Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit.

Note: Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.

- (2) The circumstance is that:
- (a) the benefit is given under an arrangement that was entered into before the application day, within the meaning of subsection 1528(4) of the Act; and
  - (b) a party to the arrangement changes.

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**7.7A.16F Application of ban on conflicted remuneration—benefit is a pass through of a grandfathered benefit (benefit is not conflicted remuneration)**

A benefit is not conflicted remuneration to the extent that:

- (a) the benefit is a pass through of a benefit (a *grandfathered benefit*) to which Division 4 of Part 7.7A of Chapter 7 of the Act does not apply because of subsection 1528(1) or (3) of the Act or a regulation made for subsection 1528(2) of the Act; and
- (b) the benefit, as passed through, was given under an arrangement that was entered into before the application day, within the meaning of subsection 1528(4) of the Act; and
- (c) the benefit, as passed through, is consistent with purposes of the arrangement under which the grandfathered benefit was paid; and
- (d) the total amount of the benefit, as passed through, does not exceed 100 per cent of the grandfathered benefit.

**Subdivision 3—Asset-based fees on borrowed amounts**

**7.7A.17 Financial services licensees**

For subsection 964D(4) of the Act, a circumstance in which subsections 964D(1) and (2) of the Act do not apply is that the asset-based fee being charged is a brokerage fee within the meaning of regulation 7.7A.12D.

**7.7A.18 Authorised representatives**

For subsection 964E(3) of the Act, a circumstance in which subsection 964E(1) of the Act does not apply is that the asset-based fee being charged is a brokerage fee within the meaning of regulation 7.7A.12D.



## **Division 6—Exemptions from application of Part 7.7A of the Act**

### **7.7A.40 Exemption from application of Part 7.7A of the Act**

For paragraph 1368(d) of the Act, Part 7.7A of the Act does not have effect in relation to a financial services licensee or an authorised representative in respect of financial services provided to retail clients who are not in this jurisdiction.

**Part 7.8—Other provisions relating to conduct etc connected with financial products and financial services, other than financial product disclosure**

**7.8.01 Obligation to pay money into an account**

- (1) For subparagraph 981B(1)(a)(i) of the Act, the reference in that subparagraph to an account with an Australian ADI does not prevent a financial services licensee that is an ADI from paying money into an account held by itself.
- (2) For subparagraph 981B(1)(a)(ii) of the Act, the following accounts are prescribed:
  - (a) an account with an approved foreign bank;
  - (b) a cash management trust.
- (3) For subparagraph 981B(1)(b)(iv) of the Act, if, in accordance with an agreement mentioned in paragraph 7.8.02(3)(a), a financial services licensee is required to pay an amount mentioned in subparagraph 7.8.02(3)(a)(iv), that amount is money which must be paid into an account to which that subparagraph applies.
- (4) For subparagraph 981B(1)(b)(iv) of the Act:
  - (a) money paid to a financial services licensee:
    - (i) from or on behalf of an insured or intending insured for or on account of an insurer; and
    - (ii) in connection with a contract of insurance or proposed contract of insurance;is money which may be paid into an account to which that subparagraph applies; and
  - (b) money paid to a financial services licensee from or on behalf of an insurer for or on account of an insured or intending insured is money which may be paid into an account to which that subparagraph applies.

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- (4A) For subparagraph 981B(1)(b)(iv) of the Act, if a financial services licensee is required, by the market integrity rules or the operating rules of a licensed market, to pay an amount into an account to which section 981B relates, the amount is money which may be paid into that account.
- (5) For paragraph 981B(1)(c) of the Act, a financial services licensee must:
- (a) operate an account to which that paragraph applies as a trust account; and
  - (b) designate the account to be a trust account; and
  - (c) hold all moneys paid into the account (other than moneys paid to the financial services licensee under the financial services licensee's obligation to call margins from clients under the market integrity rules, the operating rules of a licensed market or the operating rules of a licensed CS facility) on trust for the benefit of the person who is entitled to the moneys.
- (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 market integrity rules, the operating rules of a licensed market or the operating rules of a licensed CS facility:
- (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;

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in accordance with the operating rules or market integrity rules; 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 or market integrity rules may require client moneys, including moneys used for margining, to be held in either a clients' segregated account or a trust account.

- (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.
- (11) For subparagraph 981B(1)(b)(iv) of the Act, each of the following is money that may be paid into an account:
  - (a) mixed money;
  - (b) unidentified money.
- (12) For paragraph 981B(1)(c) of the Act, if mixed money is paid into an account under subregulation (11), the licensee must, as soon as practicable, but within 1 month after the mixed money is paid into the account, remove from the account the part of the money that is not section 981B money.
- (13) For paragraph 981B(1)(c) of the Act, if unidentified money is paid into an account under subregulation (11), the licensee must, as soon as practicable after the unidentified money is paid into the account:
  - (a) identify any part of the money that is section 981B money;
  - and

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- (b) remove from the account any part of the money that is not section 981B money.
- (14) For subregulations (11) to (13):
  - mixed money*** means money that:
    - (a) is received by the licensee as a single payment; and
    - (b) is not wholly section 981B money, but includes section 981B money.
  - section 981B money*** means:
    - (a) money to which Subdivision A of Division 2 of Part 7.8 of the Act applies; or
    - (b) money that is allowed to remain in the account because of the operation of subparagraphs 981B(1)(b)(ii) and (iii) of the Act; or
    - (c) money mentioned in subregulation (4).
  - unidentified money*** means money that:
    - (a) is received by the licensee as a single payment; and
    - (b) at the time of receipt, is unable to be identified as section 981B money or mixed money; and
    - (c) might include section 981B money.

**7.8.02 Accounts maintained for section 981B of the Act**

*Withdrawals from account*

- (1) For paragraph 981C(a) of the Act, payments may be made out of an account maintained for section 981B of the Act in any of the following circumstances:
  - (a) making a payment to, or in accordance with the written direction of, a person entitled to the money;
  - (b) defraying brokerage and other proper charges;
  - (c) paying to the financial services licensee money to which the financial services licensee is entitled;
  - (d) making a payment of moneys due to an insurer in connection with a contract of insurance;
  - (e) making a payment that is otherwise authorised by law;

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

*Permissible investments*

- (2) For paragraph 981C(a) of the Act, and subject to subregulations (3), (4) and (5), the following kinds of investment may be made in relation to an account maintained for section 981B of the Act:
  - (a) investment in any manner in which trustees are for the time being authorised by law to invest trust funds;
  - (b) investment on deposit with an eligible money market dealer;
  - (c) investment on deposit at interest with an Australian ADI;
  - (d) the acquisition of cash management trust interests;
  - (e) investment in a security issued or guaranteed by the Commonwealth or a State or Territory;
  - (f) investment on deposit with a licensed CS facility.
- (3) A financial services licensee must not invest an amount in a way permitted by subregulation (2) unless:
  - (a) the financial services licensee has obtained the client's written agreement to the following matters:

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- (i) the making of the investment;
- (ii) how earnings on the investment are to be dealt with (including whether or not the earnings are to be shared, and whether or not the earnings are to be paid into the account);
- (iii) how the realisation of the investment is to be dealt with (including whether or not the capital invested, and the proceeds of the investment, are to be deposited into the account);
- (iv) how any losses made on the investment are to be dealt with (including the circumstances in which the financial services licensee is required to pay an amount equal to the difference between the amount invested and the amount received, into the account or otherwise);
- (v) the fee (if any) that the financial services licensee proposes to charge for the investment; and
- (b) the money is money to which the client is entitled.

Note: The investment arrangement may be a managed investment scheme.

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

- (5) In subregulation (2):

**investment** does not include the making of an investment in accordance with the specific direction of a client.

Note: Paragraph (1)(a) deals with the withdrawal of money from an account in accordance with the written direction of a person entitled to the money.

- (6) For paragraph 981C(b) of the Act, in relation to moneys received in relation to insurance products, the financial services licensee must ensure that:
- (a) the balance of moneys in an account maintained by the financial services licensee under section 981B of the Act; and
  - (b) the total amount previously withdrawn from the account and currently invested under subregulation (2);
- is at least the sum of:

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- (c) any amounts that an insurer is entitled to receive from the account; and
  - (d) any amounts that an insured or intending insured is entitled to receive from the account.
- (6A) For paragraph (6)(c), if, at a particular time, money received by a financial services licensee for or on account of an insurer as mentioned in paragraph 7.8.01(4)(a) is paid into the account, the insurer is taken to be entitled to receive payment of:
  - (a) the amount; or
  - (b) if any deductions from the amount are authorised by a written agreement between the insurer and the broker—the amount less the deductions;throughout the period:
  - (c) beginning at that time; and
  - (d) ending when the payment is actually made to the insurer;whether or not the amount has been invested under subregulation (2).
- (6B) For paragraph (6)(d), if, at a particular time, money received by a financial services licensee for or on account of an insured or intending insured as mentioned in paragraph 7.8.01(4)(b) is paid into an account, the insured or intending insured is taken to be entitled to receive payment of the amount throughout the period:
  - (a) beginning at that time; and
  - (b) ending when the payment is actually made to the insured or intending insured;whether or not the amount has been invested under subregulation (2).
- (6C) On application by a financial services licensee in the prescribed form, ASIC may consent in writing to the minimum balance of monies received in relation to insurance products being less than the level specified in subregulation (6).
- (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



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- (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.

*Interest and other earnings on investments*

- (8) For paragraph 981C(d) of the Act, interest or other earnings on:
  - (a) an investment of money withdrawn from an account maintained for section 981B of the Act; or
  - (b) the proceeds of the realisation of such an investment;must be dealt with in accordance with the written agreement between the financial services licensee and the client under subregulation (3).

**7.8.03 How money to be dealt with if licensee ceases to be licensed etc**

- (1) For paragraph 981F(a) of the Act, this regulation applies if a financial services licensee ceases to be licensed (including a cessation because the financial services licensee's licence has been suspended or cancelled).
- (2) For paragraph 981F(b) of the Act, this regulation applies if a financial services licensee:
  - (a) becomes insolvent under an administration; or
  - (b) is the subject of any of the following arrangements:
    - (i) the appointment of an administrator under section 436A, 436B or 436C of the Act;
    - (ii) the commencement of winding up;
    - (iii) the appointment of a receiver of property of the financial services licensee, whether by a court or otherwise;
    - (iv) the appointment of a receiver and manager of property of the financial services licensee, whether by a court or otherwise;
    - (v) entry into a compromise or arrangement with creditors of the financial services licensee, or a class of creditors;

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- (vi) if the financial services licensee is deceased—  
administration of the estate of the financial services licensee under Part XI of the *Bankruptcy Act 1966*;
  - (vii) if the financial services licensee is deceased—  
administration of the estate of the financial services licensee under the law of an external Territory that provides for the administration of the insolvent estate of a deceased person;
  - (viii) an arrangement under the law of a foreign country that provides for a matter mentioned in subparagraphs (i) to (vii).
- (3) For paragraph 981F(d) of the Act, this regulation applies if:
  - (a) a financial services licensee ceases to carry on a particular activity authorised by the financial services licence; and
  - (b) money is paid in connection with that activity.
- (4) For each person who is entitled to be paid money from an account of the financial services licensee maintained for section 981B of the Act, the account is taken to be subject to a trust in favour of the person.
- (5) If money in an account of the financial services licensee maintained for section 981B of the Act has been invested, for each person who is entitled to be paid money from the account, the investment is taken to be subject to a trust in favour of the person.
- (6) Money in the account of the financial services licensee maintained for section 981B of the Act is to be paid as follows:
  - (a) the first payment is of money that has been paid into the account in error;
  - (b) if money has been received on behalf of insureds in accordance with a contract of insurance, the second payment is payment to each insured person who is entitled to be paid money from the account, in the following order:
    - (i) the amounts that the insured persons are entitled to receive from the moneys in the account in respect of claims that have been made;

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- (ii) the amounts that the insured persons are entitled to receive from the moneys in the account in respect of other matters;
  - (c) if:
    - (i) paragraph (b) has been complied with; or
    - (ii) paragraph (b) does not apply;the next payment is payment to each person who is entitled to be paid money from the account;
  - (d) if the money in the account is not sufficient to be paid in accordance with paragraph (a), (b) or (c), the money in the account must be paid in proportion to the amount of each person's entitlement;
  - (e) if there is money remaining in the account after payments made in accordance with paragraphs (a), (b) and (c), the remaining money is taken to be money payable to the financial services licensee.
- (7) This regulation applies despite anything to the contrary in the *Bankruptcy Act 1966* or a law relating to companies.

**7.8.04 Money to which Subdivision A of Division 2 of Part 7.8 of the Act applies taken to be held in trust: breach of financial services law**

For paragraph 981H(3)(b) of the Act, if client money is held by an investment mentioned in subregulation 7.8.02(5) following a breach of a financial services law:

- (a) the money is subject to a trust in favour of the client to the extent that the client is entitled to the money; and
- (b) any investment of the money is subject to a trust in favour of the client to the extent that the client is entitled to the investment; and
- (c) the proceeds of a realisation of an investment of the money are subject to a trust in favour of the client to the extent that the client is entitled to the proceeds.

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**7.8.05 Money to which Subdivision A of Division 2 of Part 7.8 of the Act applies taken to be held in trust: risk accepted by insurer**

- (1) For paragraph 981H(3)(b) of the Act, this regulation applies if, in relation to an insurance product:
  - (a) a financial services licensee is holding money to which Subdivision A of Division 2 of Part 7.8 of the Act applies; and
  - (b) the risk in relation to the insurance product has been accepted by an insurer.
- (2) The financial services licensee holds the money on trust for the insurer in accordance with Division 2 of Part 7.8 of the Act, subject to the agreement of the insurer.
- (3) This regulation does not affect the operation of regulations 7.8.03 and 7.8.08.
- (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.

**7.8.06 Statement setting out terms of loan etc**

For subsection 982C(1) of the Act, the financial services licensee must give a client a disclosure document that contains, as far as practicable, the matters required for Division 2 of Part 7.9 of the Act.

**7.8.06A Property exempt from Division 3 of Part 7.8 of the Act**

For paragraph 984A(2)(a) of the Act, property given as security for a standard margin lending facility is exempt from Division 3 of Part 7.8 of the Act.

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Note: Paragraph 984A(2)(a) of the Act provides that the regulations may exempt property given in specified circumstances from some or all of the provisions of Division 3 of Part 7.8 of the Act.

**7.8.07 How property to which Division 3 of Part 7.8 of the Act to be dealt with**

- (1) For paragraph 984B(1)(a) of the Act, this regulation sets out requirements in relation to property to which Division 3 of Part 7.8 of the Act applies.
- (2) The financial services licensee must hold the property on trust for the benefit of the person who is entitled to it.
- (3) If the client requests the financial services licensee, in writing, to deposit the property in safe custody with an ADI:
  - (a) the licensee must deposit the property; or
  - (b) if the licensee does not comply with the request for any reason, the licensee must notify the client, as soon as practicable, of the failure to comply with the request.
- (4) If the client requests the financial services licensee, in writing, to deposit the property in safe custody with a financial services licensee that provides a custodial or depositary service for section 766E of the Act:
  - (a) the licensee must deposit the property; or
  - (b) if the licensee does not comply with the request for any reason, the licensee must notify the client, as soon as practicable, of the failure to comply with the request.
- (5) If the client requests the financial services licensee, in writing, to deposit the property in safe custody in the place where the property was deposited with, or received by, the licensee:
  - (a) the licensee must deposit the property in accordance with the request; and
  - (b) if the licensee does not comply with the request for any reason, the licensee must notify the client, as soon as practicable, of the failure to comply with the request.
- (6) If the client requests that the body corporate that issued or made available the securities or managed investment products underlying

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the property register the property in the name of a nominee controlled by the financial services licensee, the financial services licensee must arrange for the body corporate to register the securities or managed investment products in that way.

- (7) If:
- (a) none of subsections (3) to (6) applies; and
  - (b) the property is not registered in the client's name by the body corporate that issued or made available the securities or managed investment products underlying the property;
- the financial services licensee must arrange to have the property registered in the client's name.
- (8) A financial services licensee must not deposit property as security for a loan or advance to the financial services licensee unless:
- (a) the client owes the financial services licensee an amount in connection with a transaction entered into by the financial services licensee on the client's behalf; and
  - (b) the financial services licensee gives the client a written notice that identifies the property and states that the dealer proposes to deposit it as security for a loan or advance to the financial services licensee; and
  - (c) the amount, or total of the amounts, that the client owes on the day of the deposit is at least the amount of the loan or advance.
- (9) If a financial services licensee deposits property as security for a loan or advance to the financial services licensee, in accordance with subregulation (8):
- (a) the financial services licensee must, not later than 1 business day after the amount, or total of the amounts, that the client owes on the day of the deposit are repaid, withdraw the property from that deposit; and
  - (b) if, at the end of 3 months after the day of that deposit, or at the end of any subsequent interval of 3 months, the property has not been withdrawn from that deposit—the financial services licensee must give the client written notice of that fact.

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(10) In this regulation:

*property* includes scrip, but does not include money.

**7.8.08 Debts of financial services licensee in relation to premiums etc**

- (1) Subregulations (2) to (4) apply if:
  - (a) money is received by a financial services licensee:
    - (i) from, or on behalf of, an insured or intending insured, or from another financial services licensee on behalf of an insured or intending insured; and
    - (ii) as a premium or an instalment of a premium in connection with a contract of insurance or a proposed contract of insurance; and
  - (b) the risk, or a part of the risk, to which the contract or proposed contract relates is accepted by or on behalf of an insurer; and
  - (c) the financial services licensee who so received the money is informed of, or otherwise ascertains, the amount of the premium or instalment to be paid.
- (2) The financial services licensee who received the money must pay to the insurer an amount equal to the amount of the premium or instalment to be paid:
  - (a) in the period of 90 days (the *relevant period*) after:
    - (i) the day on which the cover provided by the insurer under the contract starts to have effect; or
    - (ii) the first day of the period to which the instalment relates; or
  - (b) if it is not practicable for the financial services licensee to pay the amount in the relevant period—as soon as practicable after the end of that period.
- (3) If the financial services licensee has not received the amount of the premium, or of an instalment of the premium, payable in respect of a contract of insurance at the end of the relevant period, the financial services licensee must notify the insurer in writing, not later than 7 days after the end of the relevant period, that the financial services licensee has not received the amount.

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- (4) Subregulation (3) does not apply if the financial services licensee receives the amount:
  - (a) in the period of 7 days mentioned in subregulation (3); and
  - (b) before notifying the insurer in accordance with subregulation (3).
- (5) Subregulations (6) and (7) apply if:
  - (a) a financial services licensee receives money from, or on behalf of:
    - (i) an insured or intending insured; or
    - (ii) another financial services licensee on behalf of an insured or intending insured;as a premium or an instalment of a premium in connection with a contract of insurance or a proposed contract of insurance; and
  - (b) the risk, or a part of the risk, to which the contract or proposed contract relates is accepted by or on behalf of an insurer; and
  - (c) the financial services licensee who received the money has not been informed of, and has not otherwise ascertained, the amount of the premium or instalment to be paid.
- (6) The financial services licensee who received the money must pay the amount mentioned in subregulation (7) to the insurer:
  - (a) in the period of 90 days (the *relevant period*) after:
    - (i) the day on which the cover provided by the insurer under the contract starts to have effect; or
    - (ii) the first day of the period to which the instalment relates; or
  - (b) if it is not practicable for the financial services licensee to pay the amount in the relevant period—as soon as practicable after the end of that period.
- (7) For subregulation (6), the amount is:
  - (a) for a new contract of insurance, an amount not less than the lesser of:
    - (i) the amount of the money received; or



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- (ii) 75% of the amount fairly estimated by the financial services licensee to be the premium or instalment that is to be paid; and
- (b) for a renewal of a contract of insurance, an amount not less than the lesser of:
  - (i) the amount of the money so received; or
  - (ii) 75% of the previous year's premium for the risk, or of the last instalment of that years premium.
- (8) Subregulation (9) applies if:
  - (a) the risk, or a part of the risk, to which a contract of insurance or a proposed contract of insurance relates is accepted by or on behalf of an insurer; and
  - (b) the contract of insurance or proposed contract of insurance has been, or is being, arranged or effected by a financial services licensee (*licensee 1*), either directly or through another financial services licensee; and
  - (c) licensee 1 has not been informed of, and has not otherwise ascertained, the amount of a premium or of an instalment of a premium to be paid in connection with the contract or proposed contract.
- (9) Licensee 1 must, notify the insurer in writing, within 10 days after the day on which the risk, or that part of the risk, was accepted, that:
  - (a) the risk, or that part of the risk, has been accepted; and
  - (b) licensee 1 does not know the amount of the premium or instalment to be paid;unless licensee 1 is informed of, or otherwise ascertains, the amount of the premium or instalment to be paid before notifying the insurer.
- (10) Nothing in this regulation prevents:
  - (a) an insurer from making a contract or arrangement with a financial services licensee providing for the financial services licensee to pay an amount to the insurer before the time by which the financial services licensee is required by the provision concerned to pay that amount to the insurer; or

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- (b) an insurer from authorising a financial services licensee in writing to pay on behalf of the insurer, out of the money received by the financial services licensee as a premium or instalment of a premium in respect of a contract of insurance arranged with the insurer, any charges required by law to be paid by the insurer in respect of the contract; or
  - (c) a financial services licensee from exercising any legal right available to the financial services licensee to deduct from any moneys payable by the financial services licensee to the insurer any remuneration payable by the insurer to the financial services licensee in relation to a contract of insurance.
- (11) For subregulation (1) or (5), if the risk, or a part of the risk, to which a contract or proposed contract mentioned in that subregulation is accepted on behalf of an insurer by an insurance intermediary other than the insurance financial services licensee who received the moneys from or on behalf of the insured or intending insured, the payment of the premium, or part of the premium, by the financial services licensee to the intermediary is taken to be a payment of the premium or part of the premium by the financial services licensee to the insurer.
- (12) For subregulation (3) or (8), if:
  - (a) a financial services licensee is required to notify an insurer in accordance with that subregulation; and
  - (b) an insurance intermediary other than the financial services licensee has accepted the risk, or a part of the risk, to which the contract or proposed contract relates on behalf of the insurer;a notification by the financial services licensee to the intermediary is taken to be a notification by the financial services licensee to the insurer.
- (13) Subregulations (14) and (15) apply if:
  - (a) a financial services licensee receives money from, or on behalf of, an insured or intending insured in connection with a contract of insurance or proposed contract of insurance; and

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- (b) at the end of 30 days after the day on which the money was received, the risk, or a part of the risk, to which the contract or proposed contract relates has not been accepted.
- (14) If the risk has not been accepted, the financial services licensee must, within 7 days after the end of the 30 day period:
  - (a) give notice to the insured or intending insured, in a form (if any) approved by ASIC for this paragraph, that the risk has not been accepted; and
  - (b) return the money to the insured or intending insured.
- (15) If a part of the risk to which the contract or proposed contract relates has not been accepted, the financial services licensee must, within 7 days after the end of the 30 day period:
  - (a) give notice to the insured or intending insured, in a form (if any) approved by ASIC for this paragraph, of the extent to which the risk has not been accepted; and
  - (b) return that part of the money that relates to the part of the risk that has not been accepted to the insured or intending insured.
- (16) If a financial services licensee receives money from, or on behalf of, an insurer for payment to, or on behalf of, an insured, the financial services licensee must pay an amount equal to the money to, or on behalf of, the insured:
  - (a) within 7 days after the day on which the financial services licensee received the money; or
  - (b) if it is not practicable for the financial services licensee to pay the amount in that period—as soon as practicable after the end of the period.
- (17) Nothing in subregulation (16) prevents:
  - (a) an insured from making a contract or arrangement with a financial services licensee providing for the financial services licensee to pay an amount mentioned in that subregulation to or on behalf of the insured before the time by which the financial services licensee is required by that subregulation to pay that amount to or on behalf of the insured; or

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- (b) a financial services licensee from exercising any legal right available to the financial services licensee to deduct from an amount payable by the financial services licensee to the insured any money payable by the insured to the financial services licensee in connection with a contract of insurance.
- (18) A person is guilty of an offence if the person contravenes subregulation (2), (3), (6), (9), (14) or (16), whether or not it was done with the consent of the insurer or of the insured or intending insured.  
  
Penalty: 10 penalty units.
- (19) Subregulation (18) does not apply if the person has a reasonable excuse.  
  
Note: A defendant bears an evidential burden in relation to the matter in subregulation (18) (see subsection 13.3(3) of the *Criminal Code*).
- (20) Strict liability applies to subregulation (18).  
  
Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (21) If:
  - (a) under subregulation (2), (3), (6) or (9), a financial services licensee is required to pay an amount to, or to notify, an insurer; and
  - (b) under the contract or proposed contract of insurance concerned the insurer is an underwriting member of Lloyd's;it is sufficient compliance with the subregulation if the financial services licensee pays the amount to, or notifies, as the case may be, the Lloyd's broker concerned.

**7.8.08A Limit of margin lending facility taken to be increased**

- (1) For paragraph 985E(3)(a) of the Act, the limit of a margin lending facility is taken to be increased, despite subsection 985E(2) of the Act, if:
  - (a) the increase is a result of a contribution of further secured property or transferred securities that occurs without the prior knowledge or agreement of the provider; and
  - (b) the provider permits the increase to continue; and

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- (c) the increase is no more than 5% of the current limit of the margin lending facility (within the meaning given by subsection 761EA(11) of the Act).
- (2) If the limit of a margin lending facility is taken to be increased in the circumstances mentioned in subregulation (1), subsection 985E(1) of the Act is modified by omitting ‘before the critical day:’ and inserting ‘after the critical day:’.
- Note: Paragraph 992C(1)(c) of the Act provides that the regulations may provide that Part 7.8 of the Act applies as if specified provisions were omitted, modified or varied as specified in the regulations.
- (3) For subregulation (1), if:
  - (a) more than one contribution of further secured property or transferred securities under the margin lending facility occurs on a day; and
  - (b) each of the contributions is taken to increase the limit of the facility; and
  - (c) either:
    - (i) the cumulative increase is no more than 5% of the current limit of the margin lending facility; or
    - (ii) if the cumulative increase is more than 5% of the current limit of the margin lending facility, the provider ensures that the increases are reduced so that the cumulative increase becomes no more than 5% of the current limit of the margin lending facility;the increases are taken to be one increase for this regulation.

*Increase prior to assessment only to occur once*

- (4) Subregulation (5) applies if:
  - (a) the limit of a margin lending facility is taken to be increased in the circumstances mentioned in subregulation (1); and
  - (b) an assessment has not yet been made in accordance with section 985F of the Act.
- (5) If the limit of the margin lending facility would be taken to increase further in accordance with subregulation (1):
  - (a) the limit is taken not to be further increased until:

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- (i) an assessment has been made in accordance with section 985F of the Act; and
- (ii) it is assessed that the facility will not be unsuitable for the client if the limit is increased; and
- (b) the provider must ensure that the increase does not continue unless paragraph (a) permits it.

*If facility assessed as unsuitable*

- (6) If:
  - (a) the limit of a margin lending facility is taken to be increased in the circumstances mentioned in subregulation (1); and
  - (b) the assessment made in accordance with section 985F of the Act assesses that the facility is unsuitable for the client because of the increased limit;the limit is taken to be reduced to the limit of the margin lending facility before the increase, and the provider must ensure that the limit is reduced within 90 days of the day the assessment is made.

*Facility not unsuitable for subsection 985K(4) of the Act*

- (7) For subsection 985K(4) of the Act, a margin lending facility is taken not to be unsuitable if:
  - (a) the limit of the margin lending facility is taken to be increased in the circumstances mentioned in subregulation (1); and
  - (b) the assessment made in accordance with section 985F of the Act assesses that the facility:
    - (i) is not unsuitable for the client; or
    - (ii) is unsuitable for the client because of the increased limit; and
  - (c) in the case of subparagraph (b)(ii), the provider ensures that the limit is reduced, within 90 days of the day the assessment is made, to the limit of the margin lending facility before the increase.

**7.8.08B Exemption from requirement to make unsuitability  
assessment**

- (1) For paragraph 992C(1)(a) of the Act, a person is exempt from the requirement in paragraph 985E(1)(c) of the Act to make an assessment if the margin lending facility mentioned in paragraph 985E(1)(a) or (b) of the Act is a facility mentioned in subregulation (2):
  - (a) in respect of the full amount of the loan, including any interest, fees and charges; and
  - (b) in relation to which the client has not taken out a loan to fund the secured property contributed by the client for establishing the margin lending facility.
- (2) For subregulation (1), the facility is a standard margin lending facility (within the meaning given by subsection 761EA(2) of the Act) under the terms of which:
  - (a) the credit provided must be applied wholly:
    - (i) to acquire one or more marketable securities, or a beneficial interest in one or more marketable securities; or
    - (ii) to repay another credit facility, under the terms of which the credit provided was applied wholly to acquire one or more marketable securities, or a beneficial interest in one or more marketable securities; and
  - (b) the secured property mentioned in paragraphs (c) and (d) of that subsection:
    - (i) consists wholly of one or more marketable securities, or a beneficial interest in one or more marketable securities; or
    - (ii) consists:
      - (A) partly of one or more marketable securities, or a beneficial interest in one or more marketable securities; and
      - (B) partly of cash given to the provider and held in trust for the client for the sole purpose of servicing obligations under the facility; and

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- (c) the liability of the client to the provider is limited to the rights relating to the secured property.

**7.8.09 Reasonable inquiries etc about retail client: inquiries**

- (1) For paragraph 985G(1)(c) of the Act, the following inquiries about a client are prescribed in relation to a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA(1) of the Act:

- (a) reasonable inquiries as to whether the client has taken out a loan to fund the secured property or transferred securities contributed by the client for establishing the margin lending facility;

Note: This is sometimes referred to as ‘double gearing’.

- (b) if a loan to fund the secured property or transferred securities contributed by the client for establishing the margin lending facility has been taken out—reasonable inquiries as to whether the security for the loan includes the primary residential property of the client;
    - (c) if there is a guarantor for the margin lending facility—reasonable inquiries as to whether the guarantor has been appropriately informed of, and warned about, the risks and possible consequences of providing the guarantee;
    - (d) reasonable inquiries as to the amount of any other debt incurred by the client;
    - (e) any other matter that ASIC has specified in a legislative instrument for subregulation (2).
- (2) ASIC may specify in a legislative instrument any matter ASIC considers to be relevant for the purpose of establishing whether the margin lending facility, or the margin lending facility with the increased limit, is unsuitable for the client.

**7.8.09A Modification of section 985G of the Act**

For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if section 985G of the Act were modified by inserting after subsection (2) the following subsection:



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‘(2A) The regulations may provide that ASIC may specify in a legislative instrument matters ASIC considers to be relevant for the purposes of paragraph 985G(1)(c) of the Act.’

**7.8.10 Circumstances in which margin lending facility is unsuitable**

For paragraph 985H(2)(b) of the Act, a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA(1) of the Act is unsuitable for a retail client if the client:

- (a) is, on an ongoing basis, unable to be contacted by any of the usual means of communication; and
- (b) has not appointed an agent to act on the client’s behalf.

**7.8.10A Margin lending facility taken not to be unsuitable**

For subsection 985K(4) of the Act, a margin lending facility is taken not to be unsuitable:

- (a) if:
  - (i) an assessment of unsuitability was undertaken in accordance with the Act; and
  - (ii) the assessment reasonably concluded that the margin lending facility is not unsuitable; or
- (b) if a person is exempt under regulation 7.8.08B from the requirement to make an assessment of unsuitability in relation to the margin lending facility.

**7.8.11 Particular categories of information to be shown in records**

For paragraph 988E(g) of the Act, the following matters are specified:

- (a) all underwriting transactions entered into by the financial services licensee;
- (b) all financial products dealt with by the licensee under instructions from another person;
- (c) each person who gave instructions to deal with financial products;

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- (d) all property:
  - (i) that is not the property of the financial services licensee; and
  - (ii) for which the financial services licensee, or a nominee controlled by the financial services licensee, is accountable;
- (e) each person by whom, or for whom, property mentioned in paragraph (d) is held;
- (f) the extent to which property mentioned in paragraph (d) is:
  - (i) held in safe custody; or
  - (ii) deposited with a third party as security for a loan or advance made to the financial services licensee;
- (g) all transactions in relation to insurance products entered into with, or on behalf of, foreign insurers.

**7.8.11A Particular categories of information to be shown in records: records of non-monetary benefit that is not conflicted remuneration**

- (1) This regulation is made for paragraph 988E(g) and section 988F of the Act.
- (2) The following table sets out matters in relation to a non-monetary benefit that:
  - (a) is given to a financial services licensee or a representative of a financial services licensee; and
  - (b) either:
    - (i) is not conflicted remuneration in accordance with paragraph 963C(b) of the Act, and is over \$100; or
    - (ii) is not conflicted remuneration in accordance with paragraph 963C(c) or (d) of the Act; or

Note: Particulars of the matters must be shown in the records kept by the financial services licensee.

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Item	Matter
1	A description of the benefit
2	Either: (a) the value of the benefit; or (b) if the value is not known, the estimated value of the benefit; expressed as a dollar amount or as a range of dollars
3	The date on which the benefit was given
4	The name of the person who gave the benefit and, if relevant, the number of the person's financial services licence
5	Whether the benefit was given to the licensee or to a representative of the licensee
6	If the benefit was given to an authorised representative of the licensee, the name and contact details of the authorised representative
7	If the benefit was given to another representative of the licensee, the name and contact details of the other representative

- (3) At the request of a person, a financial services licensee must give the person the particulars in its records relating to the matters in items 1 to 4 of the table for the last financial year.
- (4) The licensee may require the person making the request to pay a charge for obtaining the particulars.
- (5) The amount of the charge must not exceed the reasonable costs that the licensee incurs that are reasonably related to giving the particulars (including any costs incurred in photocopying the document containing the particulars).

Note: This would include the costs of collating the information.

- (6) The licensee must give the particulars to the person as soon as practicable, and no later than one month after the person makes the request to the licensee.

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**7.8.12 Requirements in relation to financial records of financial services licensees**

- (1) For section 988F of the Act, the financial records of a financial services licensee must be kept in sufficient detail as to show or include, for basic deposit products:
  - (a) separate particulars of every transaction by the financial services licensee; and
  - (b) the day on which, or the period during which, each transaction by the financial services licensee took place.
- (2) For section 988F of the Act, the financial records of a financial services licensee must be kept in sufficient detail as to show or include, for all financial products other than basic deposit products:
  - (a) the information mentioned in subregulation (1); and
  - (b) if the financial services licensee is not a partner in a firm—separate particulars of each transaction by the financial services licensee with, or for the account of:
    - (i) clients of the financial services licensee; or
    - (ii) the financial services licensee's own account; or
    - (iii) other financial services licensees; or
    - (iv) representatives of the financial services licensee; or
    - (v) employees of the financial services licensee; and
  - (c) if the financial services licensee is a partner in a firm—separate particulars of each transaction by the financial services licensee with, or for the account of:
    - (i) clients of the financial services licensee other than the partners in the firm; or
    - (ii) the partners in the firm; or
    - (iii) the financial services licensee's own account; or
    - (iv) other financial services licensees; or
    - (v) representatives of the financial services licensee; or
    - (vi) employees of the financial services licensee; and
  - (d) copies of acknowledgments of the receipt of financial products or documents of title to financial products.

**7.8.12A Modification of section 989B of the Act**

- (1) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if subsection 989B(3) were modified to read as follows:

- “(3) The licensee must, with the statement and balance sheet, lodge with ASIC:
- (a) for a licensee who is a limited licensee for the whole of a financial year—a compliance certificate containing the information and matters required by the regulations; or
  - (b) for a licensee who is a limited licensee for part of a financial year:
    - (i) a compliance certificate containing the information and matters required by the regulations for the part of the financial year that the licensee was a limited licensee; and
    - (ii) an auditor’s reporting containing the information and matters required by the regulations for the part of the financial year that the licensee was not a limited licensee; or
  - (c) for all other licensees—an auditor’s report containing the information and matters required by the regulations.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).”.

- (2) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if section 989B of the Act were modified by inserting after subsection 989B(3) the following subsection:

- “(4) In this section:

***class of product advice*** means financial product advice about a class of products but does not include a recommendation about a specific product in the class.

Example: A financial services licensee may give a recommendation about term deposit products but must not make a specific recommendation that a person deposit their money into a term deposit product offered by a particular bank or building society.

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**limited financial service** means the following financial services:

- (a) financial product advice on self-managed superannuation funds;
- (b) financial product advice on superannuation products in relation to a person's existing holding in a superannuation product but only to the extent required for:
  - (i) making a recommendation that the person establish a self-managed superannuation fund; or
  - (ii) providing advice to the person on contributions or pensions under a superannuation product;
- (c) class of product advice on the following:
  - (i) superannuation products;
  - (ii) securities;
  - (iii) simple managed investment schemes;
  - (iv) general insurance products;
  - (v) life risk insurance products;
  - (vi) basic deposit products;
- (d) arrange to deal in an interest in a self-managed superannuation fund.

Note 1: See section 761A for the meaning of *basic deposit product*, *financial product advice*, *general insurance product*, *life risk insurance product*, *self-managed superannuation fund* and *superannuation product*.

Note 2: Financial product advice on self-managed superannuation funds includes advice about acquiring or disposing of an interest in a self-managed superannuation fund.

**limited licensee** means a financial services licensee that:

- (a) does not deal with money to which Division 2 of Part 7.8 of the Act applies; and
- (b) is only licensed to provide one or more limited financial services.

**simple managed investment scheme** has the same meaning as in the regulations.”.

**7.8.13 Auditor's report with annual profit and loss statement and balance sheet**

- (1) For subparagraph 989B(3)(b)(ii) or paragraph 989B(3)(c) of the Act, an auditor's report lodged with a true and fair profit and loss statement and balance sheet in respect of a financial year must be lodged with ASIC in the prescribed form.
- (2) For subparagraph 989B(3)(b)(ii) or paragraph 989B(3)(c) of the Act, an auditor's report lodged with a true and fair profit and loss statement and balance sheet in respect of a financial year must contain a statement of the auditor's opinion on the following matters:
  - (a) the effectiveness of internal controls used by a financial services licensee to comply with:
    - (i) Divisions 2, 3, 4, 5 and 6 of Part 7.8 of the Act; and
    - (ii) Division 7 of Part 7.8 of the Act other than section 991A;
  - (b) whether each account required by sections 981B and 982B of the Act to be maintained by the financial services licensee has been operated and controlled in accordance with those sections;
  - (c) whether all necessary records, information and explanations were received from the financial services licensee.

**7.8.13A Compliance certificate with profit and loss statement and balance sheet**

For paragraph 989B(3)(a) and subparagraph 989B(3)(b)(i) of the Act, a compliance certificate lodged by a licensee with a true and fair profit and loss statement and balance sheet in respect of a financial year must:

- (a) be lodged with ASIC in the prescribed form; and
- (b) be signed by:
  - (i) if the licensee is an individual—the licensee; or
  - (ii) if the licensee is a corporation—an officer of the corporation; or

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- (iii) if the licensee is a partnership or the trustees of a trust—a partner or trustee who performs duties in relation to financial services.

**7.8.14 Contents of annual profit and loss statement and balance sheet and applicable accounting procedures**

For paragraph 989C(a) of the Act, a true and fair profit and loss statement and balance sheet in respect of a financial year must contain a declaration by the financial services licensee that:

- (a) the profit and loss statement and balance sheet give a true and fair view of the matters stated in it; and
- (b) if the licensee is required to lodge an auditor's report under subparagraph 989B(3)(b)(ii) or paragraph 989B(3)(c) of the Act—the auditor's report lodged with the profit and loss statement and balance sheet is a true copy of the report on the profit and loss statement and balance sheet of the financial services licensee; and
- (c) if the licensee is required to lodge a compliance certificate under paragraph 989B(3)(a) or subparagraph 989B(3)(b)(i) of the Act—the information in the compliance certificate lodged with the profit and loss statement and balance sheet is complete and accurate.

**7.8.14A Lodgement of annual profit and loss statement and balance sheet**

For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if paragraph 989D(1)(b) were modified to read as follows:

- '(b) if the licensee is:
  - (i) a body corporate that is a disclosing entity or a registered scheme—the day that is 3 months after the end of that financial year; or
  - (ii) a body corporate that is not a disclosing entity or a registered scheme—the day that is 4 months after the end of that financial year.'



**7.8.14B Modification of section 990B of the Act**

- (1) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if subsection 990B(1) of the Act were modified by:
  - (a) omitting “must, within 1 month after beginning to hold the licence,” and substituting “who is not a limited licensee must”; and
  - (b) omitting “(4) and (5)” and substituting “(4), (5) and (5A)”.
- (2) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if section 990B of the Act were modified by inserting after subsection 990B(5) the following subsection:

“(5A) The licensee must appoint an auditor or auditors within:

  - (a) if the licensee was a limited licensee—one month after the licensee ceased to be a limited licensee; or
  - (b) for all other licensees—one month after beginning to hold the licence.”.
- (3) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if subsection 990B(9) of the Act were modified to read as follows:

“(9) In this section:

***class of product advice*** means financial product advice about a class of products but does not include a recommendation about a specific product in the class.

Example: A financial services licensee may give a recommendation about term deposit products but must not make a specific recommendation that a person deposit their money into a term deposit product offered by a particular bank or building society.

***limited financial services*** means the following financial services:

  - (a) financial product advice on self-managed superannuation funds;
  - (b) financial product advice on superannuation products in relation to a person’s existing holding in a superannuation product but only to the extent required for:
    - (i) making a recommendation that the person establish a self-managed superannuation fund; or

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- (ii) providing advice to the person on contributions or pensions under a superannuation product;
- (c) class of product advice on the following:
  - (i) superannuation products;
  - (ii) securities;
  - (iii) simple managed investment schemes;
  - (iv) general insurance products;
  - (v) life risk insurance products;
  - (vi) basic deposit products;
- (d) arrange to deal in an interest in a self-managed superannuation fund.

Note 1: See section 761A for the meaning of *basic deposit product*, *financial product advice*, *general insurance product*, *life risk insurance product*, *self-managed superannuation fund* and *superannuation product*.

Note 2: Financial product advice on self-managed superannuation funds includes advice about acquiring or disposing of an interest in a self-managed superannuation fund.

**limited licensee** means a financial services licensee that:

- (a) does not deal with money to which Division 2 of Part 7.8 of the Act applies; and
- (b) is only licensed to provide one or more limited financial services.

**person** means:

- (a) an individual auditor; or
- (b) an authorised audit company.

**simple managed investment scheme** has the same meaning as in the regulations.”.

### 7.8.15 Appointment of auditor by financial services licensee

- (1) For subsections 990B(7) and (8) of the Act, this regulation:
  - (a) sets out matters related to the appointment of a firm as auditor of the financial statements of a financial service licensee; and
  - (b) modifies the effect of section 990E of the Act.

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- (1A) If an applicant for a financial services licence:
- (a) specifies, in the application for the licence, the name of a person or firm that is to be, or has been, appointed to audit the applicant's financial statements; and
  - (b) the auditor or auditors specified are appointed before the end of 1 month after the licence takes effect;
- the applicant is taken to have lodged a notice under subsection 990B(6) of the Act.
- (2) The appointment is taken to be an appointment of each person who is:
- (a) a member of the firm; and
  - (b) a registered company auditor;
- whether the person is resident in Australia or not at the date of the appointment.
- (3) Unless subregulation (4) applies, the appointment of the members of a firm as auditors that is taken by subregulation (2) to have been made because of the appointment of the firm as auditor of the holder is not affected by the dissolution of the firm.
- (4) If a firm that has been appointed as auditor is reconstituted because of the death, retirement or withdrawal of a member or members, or because of the admission of a new member or new members, or both:
- (a) a person who:
    - (i) was taken under subregulation (2) to be an auditor of the financial services licensee; and
    - (ii) has retired or withdrawn from the firm as previously constituted;is taken to have resigned as auditor as from the day of the retirement or withdrawal; and
  - (b) a person who:
    - (i) is a registered company auditor; and
    - (ii) is admitted to the firm;is taken to have been appointed as an auditor of the holder as from the date of the admission; and

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- (c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors; and
  - (d) nothing in paragraphs (a) to (c) affects the operation of section 990C of the Act.
- (5) Sections 990F to 990H of the Act do not apply to a resignation mentioned in paragraph (4)(a) unless:
  - (a) the person who is taken to have resigned was the only member of the firm who was a registered company auditor; and
  - (b) there is no member of the firm who is a registered company auditor after the retirement or withdrawal of that person.
- (6) A report or notice that purports to be made or given by a firm appointed as auditor is taken not to have been duly made or given unless it is signed by a member of the firm who is a registered company auditor:
  - (a) in the firm's name; and
  - (b) in his or her own name.
- (7) If a vacancy in the office of an auditor continues, the surviving or continuing auditor or auditors (if any) may act as auditor while the vacancy continues.
- (8) If a vacancy occurs in the office of an auditor, and there is no surviving or continuing auditor of the financial services licensee, the financial services licensee must, within 14 days after the vacancy occurs appoint as auditor:
  - (a) a person who is eligible to act as auditor; or
  - (b) 2 or more persons each of whom is eligible to act as auditor; or
  - (c) a firm that is eligible to act as auditor; or
  - (d) 2 or more firms each of which is eligible to act as auditor; or
  - (e) a combination of persons and firms each of which is eligible to act as auditor.
- (9) If an auditor ceases to hold office in accordance with paragraph 990E(a) or (d) of the Act, the financial services licensee

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for which the auditor acted must lodge with ASIC a notice in the prescribed form stating that the auditor has ceased to hold the office.

**7.8.16 When person is ineligible to act as auditor of financial services licensee**

- (1) For section 990C of the Act, a person is ineligible to act as auditor of a financial services licensee in any of the following circumstances:
  - (a) the person is not a registered company auditor;
  - (b) the person is indebted in an amount exceeding \$5 000 to:
    - (i) the financial services licensee; or
    - (ii) if the financial services licensee is a body corporate—to a body corporate related to the financial services licensee;
  - (c) a body corporate in which the person has a substantial holding is indebted in an amount exceeding \$5 000 to:
    - (i) the financial services licensee; or
    - (ii) if the financial services licensee is a body corporate—to a body corporate related to the financial services licensee;
  - (d) the person is a partner or employee of the financial services licensee;
  - (e) if the financial services licensee is a body corporate—the person is:
    - (i) an officer of the body; or
    - (ii) a partner, employer or employee of an officer of the body; or
    - (iii) a partner or employee of an employee of an officer of the body.
- (2) For section 990C of the Act, a firm is ineligible to act as auditor of a financial services licensee at a particular time unless:
  - (a) at least 1 member of the firm is a registered company auditor who is ordinarily resident in Australia; and
  - (b) if the business name under which the firm is carrying on business is not registered under a law of a State or

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Territory—a return has been lodged in the prescribed form showing, in relation to each member of the firm:

- (i) the member's full name; and
  - (ii) the member's address at that time; and
- (c) no member of the firm is indebted in an amount exceeding \$5 000 to:
- (i) the financial services licensee; or
  - (ii) if the financial services licensee is a body corporate—to a body corporate related to the financial services licensee; and
- (d) no body corporate in which any member of the firm has a substantial holding is indebted in an amount exceeding \$5 000 to:
- (i) the financial services licensee; or
  - (ii) if the financial services licensee is a body corporate—to a body corporate related to the financial services licensee; and
- (e) no member of the firm is a partner or employee of the financial services licensee; and
- (f) if the financial services licensee is a body corporate—no member of the firm is:
- (i) an officer of the body; or
  - (ii) a partner, employer or employee of an officer of the body; or
  - (iii) a partner or employee of an employee of an officer of the body; and
- (g) if the financial services licensee is a body corporate—no officer of the financial services licensee receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.
- (3) For paragraphs (1)(b), (1)(c), (2)(c) and (2)(d), a debt owed by a natural person to a body corporate is to be disregarded if:
- (a) the body corporate is:
    - (i) an Australian ADI; or
    - (ii) a body corporate registered under the *Life Insurance Act 1995*; and

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- (b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and
  - (c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.
- (4) For subregulations (1) and (2), a person is taken to be an officer of a body corporate if:
  - (a) the person is an officer of a related body corporate; or
  - (b) unless ASIC directs that this paragraph not apply in relation to the person—the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the body corporate or of a related body corporate.
- (5) For this regulation, a person is not taken to be an officer of a body corporate by reason only of being or having been the liquidator of the body corporate or of a related body corporate.
- (6) For this regulation, a person is not taken to be an officer of a body corporate:
  - (a) by reason only of having been appointed as an auditor of that body corporate or of a related body corporate; or
  - (b) for any purpose relating to taxation, a public officer of a body corporate; or
  - (c) by reason only of being or having been authorised to accept on behalf of the body corporate or a related body corporate:
    - (i) service of process; or
    - (ii) any notices required to be served on the body corporate or related body corporate.

**7.8.17 Priority to clients' orders**

- (1) For paragraph 991B(3)(b) of the Act, if a participant in a licensed market:
  - (a) enters into a transaction; and

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- (b) complies with all of the participant's obligations in relation to the transaction under the market integrity rules and the operating rules of the licensed market;

subsection 991B(2) of the Act does not apply in relation to the transaction.
- (2) Subject to subregulation (3), for paragraph 991B(3)(b) of the Act, subsection 991B(2) of the Act does not apply to a transaction if, at the time that the instruction is issued, the financial services licensee is not a participant in the licensed market on which the particular financial product is being traded.
- (3) Subregulation (2) does not apply if:
  - (a) the financial services licensee deals, or has dealt, in a financial product traded on that market:
    - (i) on the licensee's own behalf (whether directly or through an agent or other representative); or
    - (ii) on behalf of a client; or
  - (b) an associate of the financial services licensee is a participant in the market mentioned in that subregulation.

**7.8.18 Instructions to deal through licensed markets**

- (1) For section 991C of the Act, this regulation applies in relation to all instructions received by a financial services licensee to deal in financial products through licensed markets, except to the extent that the market integrity rules, or the operating rules of a licensed market in relation to which the financial services licensee is a participant, otherwise provide.
- (2) Subject to subregulation (3), the financial services licensee must transmit, in the sequence in which they are received, all instructions to deal in a class of financial products at or near the market price for financial products of that class prevailing immediately before execution of the instructions.
- (3) If:
  - (a) a financial services licensee proposes to deal in a class of financial products on the financial services licensee's own account; and



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- (b) the person by whom or on whose instructions the instructions for the dealing are to be transmitted is aware of instructions of a client of the financial services licensee to deal in that class of financial products at or near the market price for a financial product of that class prevailing at that time (being instructions that have not been transmitted);  
that person must not transmit, and must not give instructions to any other person to transmit, the instructions to give effect to the proposal of the financial services licensee to deal in that class of financial products before the instructions of the client are transmitted.
- (4) If:
  - (a) during a particular period, a financial services licensee transmits instructions (whether or not those instructions consist of, or include, instructions giving effect to a proposal of the financial services licensee to deal in the class of financial products concerned on the financial services licensee's own account) to deal in a class of financial products at or near the market price for a financial product of that class prevailing immediately before execution of the instructions; and
  - (b) dealings in that class of financial products are effected pursuant to those instructions;  
the financial services licensee must allocate the dealings to those instructions:
  - (c) in the sequence in which the dealings were effected; and
  - (d) in the sequence in which the financial services licensee transmitted the instructions.
- (5) A financial services licensee (*licensee 1*), or a director, partner, officer or employee of a financial services licensee, must not disclose to any other financial services licensee, or to a person engaged or employed in the business of licensee 1 or any other financial services licensee, instructions of a client to deal in a class of financial products, except:
  - (a) to the extent necessary to execute the instructions; or
  - (b) as required by this Act or any other law.

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- (6) In this regulation, a reference to the transmission by a financial services licensee of instructions to deal in a class of financial products is a reference:
- (a) if the financial services licensee has direct access to the licensed market on which the instructions are to be executed—to the transmission of the instructions to that licensed market; or
  - (b) if the financial services licensee has access to the licensed market on which the instructions are to be executed only through another financial services licensee—to the transmission of the instructions to that other financial services licensee.

### **7.8.19 Records of instructions to deal on licensed markets and foreign markets**

- (1) For section 991D of the Act, this regulation applies in relation to:
- (a) instructions received by a financial services licensee to deal in financial products, on behalf of a client, through licensed markets or through other financial markets (whether inside or outside Australia); and
  - (b) instructions received by a financial services licensee to deal in financial products, on the financial service licensee's own account, through licensed markets or through other financial markets (whether inside or outside Australia).
- (2) The financial services licensee must keep records setting out brief particulars of the following matters:
- (a) the instructions;
  - (b) if the instructions were received on behalf of a client—the client;
  - (c) the person who gave the instructions to the financial services licensee;
  - (d) the date and time of receipt of the instructions, and the person who received the instructions;
  - (e) the date and time of transmission of the instructions, and the person who transmitted the instructions;
  - (f) the date and time of execution of the instructions.

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- (3) For subregulation (2), if:
  - (a) a financial services licensee transmits for execution on a financial market outside Australia and the external Territories instructions to deal in financial products; and
  - (b) it is not reasonably practicable for the financial services licensee to set out the date and time of execution of those instructions in its records;the financial services licensee must set out the date and time as precisely as is reasonably practicable.
- (4) The financial services licensee must keep records relating to instructions given by a client to deal in financial products in a manner that makes the records identifiable separately from records relating to instructions to deal in financial products on the financial services licensee's own account.
- (5) The financial services licensee must keep the records mentioned in subregulation (2) for at least 5 years after the particulars are created.

**7.8.20 Dealings with non-licensees**

- (1) For subsection 991E(1) of the Act:
  - (a) section 991E does not apply in relation to the sale or purchase of financial products mentioned in paragraph 764A(1)(a) of the Act by the body corporate by which the financial products were made available if the financial products are made available in accordance with Chapters 5C and 6D of the Act; and
  - (b) section 991E does not apply to the sale or purchase of financial products mentioned in paragraph 764A(1)(b) of the Act by the body corporate by which the financial products were made available if the financial products are made available in accordance with Chapters 5C and 7 of the Act.
- (1A) Subject to subregulation (1B), for subsection 991E(1) of the Act, the subsection does not apply to a transaction if, at the time of the transaction, the financial services licensee is not a participant in the licensed market on which the particular financial product is being traded.

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- (1B) Subregulation (1A) does not apply if:
- (a) the financial services licensee deals, or has dealt, in a financial product traded on that market:
    - (i) on the licensee's own behalf (whether directly or through an agent or other representative); or
    - (ii) on behalf of a client; or
  - (b) an associate of the financial services licensee is a participant in the market mentioned in that subregulation.
- (2) For subsection 991E(2) of the Act:
- (a) a disclosure referred to in paragraph 991E(1)(c) of the Act must be given by the financial services licensee to the non-licensee:
    - (i) in writing; and
    - (ii) if the transaction is an on-market transaction—in relation to the particular transaction, a class of on-market transactions which includes the transaction, or all on-market transactions; and
  - (b) a consent referred to in paragraph 991E(1)(d) of the Act:
    - (i) may be given orally, or in writing, by the non-licensee; and
    - (ii) is effective until it is revoked, either orally or in writing, by the non-licensee; and
  - (c) if the non-licensee gives an oral consent to the financial services licensee, or revokes a consent orally, the financial services licensee must:
    - (i) make a written record of the consent or revocation; and
    - (ii) provide a copy of the written record to the non-licensee within 10 business days after the day on which the consent is given or revoked.
- (3) For subsection 991E(3) of the Act, a brokerage, commission or other fee is permitted in respect of a transaction between a financial services licensee and a non-licensee only if:
- (a) the financial services licensee is a participant in a licensed market; and
  - (b) the financial services licensee has complied with all of the financial services licensee's obligations in relation to the

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- transaction under the market integrity rules and the operating rules of the relevant licensed market; and
- (c) the market integrity rules or the operating rules permit a brokerage, commission or fee to be charged to non-licensees of the same kind as the non-licensee; and
  - (d) the non-licensee has authorised the financial services licensee to charge the non-licensee in respect of the transaction; and
  - (e) the financial services licensee discloses to the non-licensee the amount of the brokerage, commission or fee, or the basis on which it will be calculated, before the non- licensee gives the authorisation mentioned in paragraph (d); and
  - (f) the amount of the brokerage, commission or fee is reasonable having regard to the amount that would have been charged by the financial services licensee to the non- licensee if the financial services licensee had entered the transaction with the non-licensee as agent and not on its own behalf.
- (4) For subregulation (3):
- (a) an authorisation given to the financial services licensee by the non-licensee:
    - (i) may be given orally, or in writing, by the non- licensee; and
    - (ii) is effective until it is revoked, either orally or in writing, by the non-licensee; and
  - (b) if the non-licensee gives an oral authorisation to the financial services licensee, or revokes an authorisation orally, the financial services licensee must:
    - (i) make a written record of the authorisation or revocation; and
    - (ii) provide a copy of the written record to the non- licensee within 10 business days after the day on which the authorisation is given or revoked; and
  - (c) a disclosure of the amount of the brokerage, commission or fee, or the basis on which it will be calculated must be given by the financial services licensee to the non- licensee:
    - (i) in writing; and
    - (ii) if the transaction is an on-market transaction—in relation to the particular transaction, a class of
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on- market transactions that includes the transaction, or all on-market transactions.

- (5) For subsection 991E(7) of the Act, a financial services licensee must:
- (a) keep records of the following matters relating to each financial products transaction entered into by the financial services licensee on the financial service licensee's own behalf:
    - (i) a description of the financial products transaction;
    - (ii) the date and time of receipt of the instructions for the financial products transaction;
    - (iii) the date and time of transmission of the instructions to the licensed market concerned;
    - (iv) the date and time of execution of the instructions;
    - (v) the source of the funds, or financial products, used to effect the financial products transaction; and
  - (b) keep the records in a manner that makes the records identifiable separately from records of the financial services licensee.

Note: Other requirements for record-keeping are in Division 6 of Part 7.8 of the Act.

### **7.8.20A Dealings involving employees of financial service licensees— risk insurance products**

For subsection 991F(1) of the Act, a financial services licensee and one or more employees of the financial services licensee may, on their own behalves, jointly acquire a financial product if it is a **risk insurance product** as defined in section 761A of the Act.

### **7.8.21 Dealings involving employees of financial services licensees**

- (1) For subsection 991F(2) of the Act, that subsection does not have effect in relation to:
- (a) a bank; or
  - (b) a body corporate that gives credit in good faith to a person (not being a director of the body corporate) employed by the

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body corporate, or by another body corporate that is related to the first body corporate, to enable the person to acquire financial products that are:

- (i) fully paid shares in the body corporate; and
- (ii) to be held in beneficial ownership by the person.

(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.

(2) For subsection 991F(3) of the Act, a body corporate that is related to a financial services licensee may act as the agent of an employee of the financial services licensee, in respect of the acquisition mentioned in that subsection, only if:

(a) before the acquisition, the employee has informed the related body corporate that the employee is acquiring, or agreeing to acquire, the financial product on the employee's own behalf; and

(b) the financial services licensee has in place arrangements with the related body corporate to allow the licensee to be informed of, and to gain access to records relating to, the acquisition.

(3) For subsection 991F(3) of the Act, a body corporate may act as the agent of a person who is an employee of a financial services licensee that is a participant in a licensed market and is so employed in connection with a business of dealing in financial products, in respect of an acquisition mentioned in that subsection, if:

(a) the body corporate holds an Australian financial services licence; and

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- (b) the body corporate is a participant in the same licensed market as the licensee; and
  - (c) the employer has given consent in writing to the particular acquisition before the acquisition takes place; and
  - (d) the employee gives the employer a copy of the confirmation of the transaction.
- (4) For subsection 991F(3) of the Act, a person who is:
  - (a) an employee of a financial services licensee that is a participant in a licensed market; and
  - (b) employed in connection with a business of dealing in financial products;may, on the person's own behalf, acquire, or agree to acquire, a financial product that is able to be traded on that licensed market, without the licensee's acting as an agent in respect of the transaction, if the person's employment is not directly connected with the licensee's business of dealing in financial products on that licensed market.
- (5) Subject to subregulation (6), for subsection 991F(3) of the Act, the subsection does not apply unless:
  - (a) the particular financial product that is acquired or proposed to be acquired is a financial product traded on a market in which the financial services licensee is not a participant at the time of the acquisition or the proposed acquisition; or
  - (b) the particular financial product is a derivative the value of which is derived from a financial product mentioned in paragraph (a).
- (6) Subregulation (5) does not apply if:
  - (a) the financial services licensee deals, or has dealt, in a financial product traded on that market:
    - (i) on the licensee's own behalf (whether directly or through an agent or other representative); or
    - (ii) on behalf of a client; or
  - (b) an associate of the financial services licensee is a participant in the market mentioned in that subregulation.



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**7.8.21A Anti-hawking provisions if no Product Disclosure Statement is required**

For paragraph 992C(1)(c), Part 7.8 of the Act applies as if the following subsection was inserted after subsection 992A(3):

- “(3AA) Paragraphs 992A(3)(c), (d) and (e) do not apply to a person that offers a financial product mentioned in paragraph 1012D(7A)(a) if the regulated person complies with the requirements of paragraphs 1012D(7A)(b) to (e) in respect of the product.”

**7.8.21B Anti-hawking provisions if no Product Disclosure Statement is required—carbon units, Australian carbon credit units and eligible international emissions units**

For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit as if paragraphs 992A(3)(c), (d) and (e) (including the note) read as follows:

“(c) informed that:

- “(i) for a carbon unit, the person should consider all information about the financial product that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011* before becoming bound to acquire a financial product; and
- (ii) for an Australian carbon credit unit, the person should consider all information about the financial product that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* before becoming bound to acquire a financial product; and
- (iii) for an eligible international emissions unit, the person should consider all information about the financial product that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011* before becoming bound to acquire a financial product; and

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- (d) clearly informed of the importance of using that information when making a decision to acquire a financial product; and
- (e) given the option of having the information on that website read out to that person.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).”.

**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) any Sunday; and
- (b) New Year’s Day; and
- (c) Australia Day; and
- (d) Good Friday; and
- (e) the Monday following Good Friday (Easter Monday); and
- (f) Anzac Day; and
- (g) Christmas Day; and
- (h) 26 December (Boxing Day).

**7.8.22A Modification of Part 7.8**

- (1) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if paragraph 992A(3)(e) of the Act were modified so as to read:

‘(e) given:

- (i) the name and contact details of the product issuer; and
- (ii) an indication of the nature of the information contained in the Product Disclosure Statement relating to the product; and
- (iii) the option of receiving, by way of oral communication, any information that is required to be included in a Product Disclosure Statement for the product.’.

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- (2) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if the following subsection were added after subsection 992A(3A) of the Act:
- ‘(3B) A regulated person must not influence a client’s decision to elect not to receive the information mentioned in paragraph (3)(e) (other than by asking the client if he or she wishes to do so).’.

**7.8.22B Return of financial product: first home saver accounts**

- (1) For paragraph 992A(4)(b) of the Act, this regulation applies in relation to an FHSA.
- (2) If the FHSA holder has never held another FHSA, it is a requirement of the exercise of the right to return the FHSA in circumstances in which the moneys paid to acquire the FHSA are subject to payment restrictions that:
- (a) the FHSA holder must:
- (i) notify the FHSA provider, in writing or electronically, that the FHSA holder wishes to exercise the right to return the FHSA; and
  - (ii) ask the FHSA provider to pay the entire balance of the FHSA to the FHSA holder; and
  - (iii) give the FHSA provider a written declaration that the FHSA holder has never previously held an FHSA; or
- (b) the FHSA holder must:
- (i) notify the FHSA provider, in writing or electronically, that the FHSA holder wishes to exercise the right to return the FHSA; and
  - (ii) no later than 1 month after notifying the FHSA provider, ask the FHSA provider to pay the entire balance of the FHSA to another FHSA nominated in the request.
- (3) If the FHSA holder has held another FHSA, it is a requirement of the exercise of the right to return the FHSA in circumstances in which the moneys paid to acquire the FHSA are subject to payment restrictions that the FHSA holder must:

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- (a) notify the FHSA provider, in writing or electronically, that the FHSA holder wishes to exercise the right to return the FHSA; and
- (b) no later than 1 month after notifying the FHSA provider, ask the FHSA provider to pay the entire balance of the FHSA to another FHSA nominated in the request.

### **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;

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- (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.

**7.8.26 Exemption from application of section 992A of the Act**

For paragraph 992C(1)(a) of the Act, section 992A of the Act does not apply to a person to the extent that the person is offering a financial product for issue or sale in relation to:

- (a) a litigation funding scheme mentioned in regulation 5C.11.01; or
- (b) a litigation funding arrangement mentioned in regulation 5C.11.01.

## Part 7.9—Financial product disclosure and other provisions relating to issue and sale of financial products

### Division 1—Preliminary

#### 7.9.01 Interpretation

- (1) In this Part:

**amount** includes a nil amount.

**annuity** has the same meaning as in regulation 1.05 of the SIS Regulations.

**contact details**, in relation to a superannuation entity, means:

- (a) the name of the superannuation entity and, if relevant, of the sub-plan; and
- (b) a contact address for the superannuation entity; and
- (c) a contact person and telephone number for the contact person.

**contact person**, in relation to a superannuation entity, means a named individual, or a person holding a designated office or position, who is available to receive and deal with inquiries or complaints by product holders (as the case may be).

**contribution** includes a benefit that is rolled over or transferred to a fund.

**exit charge** means a charge that:

- (a) is made against:
  - (i) a product holder's benefits in a fund or financial product; or
  - (ii) a product holder or another person on the product holder's behalf; and
- (b) is only made when a payment is:

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- (i) made in respect of a product holder; or
- (ii) transferred.

***fund information:***

- (a) in relation to a superannuation product, means information:
  - (i) relating to the management, financial condition and investment performance of either or both of a superannuation entity and any relevant sub-plan (within the meaning of section 1017DA of the Act); and
  - (ii) required to be given under this Division; and
- (b) in relation to an RSA product, means information:
  - (i) relating to the management, financial condition and investment performance of an RSA; and
  - (ii) required to be given under this Division.

***fund reporting period*** means a reporting period for fund information.

***Government co-contribution*** means a Government co-contribution payable under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

***legal personal representative*** has the meaning given by section 10 of the SIS Act.

***lost member*** has the meaning given by the SIS regulations.

***lost RSA holder*** has the meaning given by the RSA regulations.

***net amount of Government co-contribution received*** means all amounts of Government co-contributions credited to the member of a superannuation fund (other than a self-managed superannuation fund) or an RSA holder, less any amounts deducted by the superannuation provider or providers to reimburse it or them for repaying a co-contribution amount to the Commissioner of Taxation, during the reporting period.

***net earnings*** means the investment return on the assets of a fund after payment of transaction costs, government charges, taxes and duties and charges relating to the management of investment of fund assets.

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***prescribed net earnings rate***, in relation to a fixed-rate option offered by a capital guaranteed fund for a period, means the net earnings rate declared, in advance, by the fund.

***remuneration***, for an Australian financial services licensee or an authorised representative, means a payment that:

- (a) is made to the Australian financial services licensee or authorised representative because a superannuation interest is issued to a member; and
- (b) is not made under an agreement by which the member, or another person on the member's behalf, has retained the Australian financial services licensee or authorised representative on a fee-for-service basis.

Note: Also see subregulation (5).

***RSA*** has the meaning given by section 8 of the *Retirement Savings Accounts Act 1997*.

***sub-fund***, in relation to a capital guaranteed fund, means a segment of a public offer superannuation fund that has the following characteristics:

- (a) the sub-fund has separately identifiable assets and separately identifiable beneficiaries;
- (b) the interest of each beneficiary of the sub-fund is determined by reference only to the conditions governing that sub-fund;
- (c) there is no transfer of assets, benefits or money between the sub-fund and another sub-fund without a transfer of a corresponding beneficial interest;
- (d) the insurance and administration costs of the sub-fund are attributable only to that sub-fund.

***superannuation provider*** means any of the following:

- (a) the trustee of a complying superannuation fund, within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*;
- (b) the provider of an RSA, within the meaning of section 12 of the *Retirement Savings Accounts Act 1997*;



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- (c) the trustee of a constitutionally protected fund, within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**transaction cost** means:

- (a) brokerage paid because of an investment transaction; or
- (b) a cost arising from maintenance of a property investment; or
- (c) stamp duty on an investment transaction.

**unfunded defined benefits fund** means a defined benefits fund under which all or some of the amounts that will be required for the payment of a benefit are not paid into the fund until the member concerned becomes entitled to receive the benefit.

**withdrawal benefit** has the same meaning as in the SIS Regulations.

- (2) In this Part, unless the contrary intention appears, a reference to a **member** is taken to mean:
- (a) in relation to a superannuation entity—a person who:
    - (i) is a member of the entity; or
    - (ii) receives a pension from the entity; or
    - (iii) has deferred his or her entitlement to receive a benefit from the entity; and
  - (b) in relation to an approved deposit fund—a depositor in the fund; and
  - (c) in relation to a pooled superannuation trust—a unit-holder.
- (3) In a Division of this Part, a reference to a fund is a reference to a fund of the kind to which the Division applies.
- (5) For the definition of **remuneration**, payment is taken to have been given to an Australian financial services licensee or an authorised representative for issuing an interest to a member if:
- (a) issuing the interest is taken into account to increase the payment given to the Australian financial services licensee or authorised representative for other matters (for example, bonus commission); or

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- (b) the payment is given after the interest is issued and only if the member remains a member of the fund (for example, trailing commission).

**7.9.02 Sub-plans**

- (1) This regulation applies if the trustee of a regulated superannuation fund proposes to make a determination as to whether a sub-plan should be made.
- (2) In making a determination, the trustee must have regard to all relevant matters, including each of the following:
  - (a) whether there is a common factor in a segment of the fund (for example, whether a group of members of the fund have the same employer);
  - (b) whether the governing rules of the fund provide for a particular segment to be a sub-plan.
- (3) For subsection 1017C(9) of the Act, the sub-plan is a relevant sub-plan.
- (4) For paragraph 761E(7)(a) of the Act, if:
  - (a) a person is a member of a superannuation fund in relation to a sub-plan; and
  - (b) either:
    - (i) the person's membership changes to membership in relation to another sub-plan; or
    - (ii) the person holds interests in 2 or more sub-plans at the same time;the change to membership in relation to the other sub-plan is taken to be the issue of a new interest in the superannuation fund.
- (5) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to the fund (including a sub-plan) as set out in Part 1 of Schedule 10A.

**7.9.02A Alternative ways of giving Statement**

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

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- (a) making the Statement available to the person in any way that:
    - (i) is agreed to by the person; and
    - (ii) allows the regulated person to be satisfied, on reasonable grounds, that the person has received the Statement;
  - (b) making the Statement available to the person's agent in any way that:
    - (i) is agreed to by the agent; and
    - (ii) allows the regulated person to be satisfied, on reasonable grounds, that the agent has received the Statement.
- (2) If a provision of the Act or these Regulations imposes additional requirements in relation to a matter in subregulation (1), the alternative way of giving a Statement is subject to the requirements.

Note: Regulation 7.9.02B is an example of an additional requirement.

**7.9.02B Product Disclosure Statement in electronic form**

- (1) For paragraph 1015C(5)(b) of the Act, a statement that is to be given in electronic form must, as far as practicable, be presented in a way that will allow the person to whom it is given to keep a copy of it so that the person can have ready access to it in the future.
- (2) A statement that is to be given in electronic form must be presented in a way that clearly identifies the information that is part of the statement.

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**Division 2—Arrangements for Product Disclosure  
Statements in relation to superannuation  
products and RSA products**

**Subdivision 2.1—Preliminary**

**7.9.03 Application of Division 2**

This Division applies in relation to superannuation products and RSA products.

Note: See paragraphs 764A(1)(g) and (h) of the Act.

**Subdivision 2.2—Late provision of Product Disclosure  
Statement for certain members of regulated  
superannuation fund, public offer superannuation  
fund or successor fund**

**7.9.04 Product Disclosure Statement to be provided later**

- (1) For section 1012F of the Act, the following superannuation products are specified:
  - (a) a superannuation interest issued by the trustee of a regulated superannuation fund that is not a public offer superannuation fund, other than:
    - (ii) a financial product taken to be issued because of regulation 7.1.04E; or
    - (iii) an annuity or pension taken to be issued because of subregulation 7.9.02(4); or
    - (iv) an interest in a self-managed superannuation fund that is not acquired at the time that the fund is established;
  - (b) a pension issued by a superannuation fund the rules of which do not allow a member to receive accumulated benefits in a form other than a pension from that fund;
  - (c) a superannuation interest issued by the trustee of a successor fund in relation to the transfer of benefits in the fund.

- (2) For paragraph 1020G(1)(c) of the Act:
- (a) section 1012B of the Act is modified in its application in relation to the specified superannuation product as set out in Part 17 of Schedule 10A; and
  - (b) section 1012I of the Act is modified in its application in relation to the specified superannuation product as set out in Part 17 of Schedule 10A.

### **Subdivision 2.3—Product Disclosure Statement for retirement savings account**

#### **7.9.05 Situation in which Product Disclosure Statement is not required**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to an RSA product as set out in Part 2 of Schedule 10A.

### **Subdivision 2.4—Additional obligations for eligible rollover funds**

#### **7.9.06A Relevant superannuation entities**

For the definition of *relevant superannuation entity* in subsection 1016A(1) of the Act, a public offer superannuation entity is specified.

#### **7.9.06B Application forms**

- (1) For paragraph 1016A(2)(f) of the Act, the following situation in which a restricted issue occurs is prescribed:
- (a) the financial product is a superannuation product;
  - (b) the interest is issued by the trustee of a public offer superannuation entity in relation to the payment of benefits to the entity:
    - (i) from an EPSSS; and

**Chapter 7** Financial services and markets

**Part 7.9** Financial product disclosure and other provisions relating to issue and sale of financial products

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- (ii) in accordance with an application made under the provisions of section 243 of the SIS Act, as applied by subregulation (2) (the *applied provisions*);
  - (c) if the application is the first application under the applied provisions made to the trustee of the public offer superannuation entity by the trustee of the EPSSS on behalf of any person—the application is an eligible application.
- (2) For paragraph (1)(b), section 243 of the SIS Act applies in relation to the payment of benefits from the EPSSS to a public offer superannuation entity as if:
  - (a) a reference in that section to a transferor fund were a reference to the EPSSS; and
  - (b) a reference in that section to an eligible rollover fund were a reference to the public offer superannuation entity.

**Subdivision 2.5—Product Disclosure Statement for insurance options**

**7.9.07 Modification of Act: Product Disclosure Statement in relation to insurance options**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to a superannuation entity or an RSA as set out in Part 3 of Schedule 10A.

## **Division 2A—Product Disclosure Statement for warrants**

### **7.9.07A Warrants**

- (1) This regulation applies in relation to warrants.
- (2) For paragraph 1020G(2)(a) of the Act, section 1010A of the Act is modified by adding after subsection 1010A(1):  
‘(1A) Despite subsection (1), this Part applies in relation to a financial product to which regulation 7.9.07A of the *Corporations Regulations 2001* applies.’.
- (3) For paragraph 761E(7)(a) of the Act, if the financial product is entered into, or acquired, on a financial market through an arrangement made by a financial services licensee acting on behalf of another person:
  - (a) the financial services licensee is not taken to be the issuer of the financial product; and
  - (b) the warrant issuer is taken to be the issuer of the financial product.
- (4) For paragraph 761E(7)(a) of the Act, if the financial product is entered into, or acquired, on a financial market through an arrangement made by an authorised representative of a financial services licensee acting on behalf of another person (not being the licensee):
  - (a) the financial services licensee is not taken to be the issuer of the financial product; and
  - (b) the warrant issuer is taken to be the issuer of the financial product.
- (5) For paragraph 1013F(2)(f) of the Act:
  - (a) information that is, or is required to be, disclosed to the market in relation to the underlying thing from which a warrant derives its value, including information published by a market operator in relation to financial products (including warrants and types of warrants) in the form of market data or educational material which is generally made available to the

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- public by the market operator is a matter that may be taken into account for section 1013F of the Act; and
- (b) other information that a market operator is required to disclose to the market, in accordance with the Act, including:
- (i) information that was required to be disclosed to the market operator; and
  - (ii) information that the operator was required to disclose in order to meet its obligations under the Act;
- is a matter that may be taken into account for section 1013F of the Act; and
- (c) information that is generally made available to the public by a market operator in relation to financial products, including information published about a warrant that is entered into or acquired on a financial market in the form of market data or educational material, is a matter that may be taken into account for section 1013F of the Act.
- (6) For paragraph 1017B(3)(c) of the Act, a way in which the warrant issuer may notify a holder of a matter to which that paragraph applies is by giving the relevant information to the operator of the financial market on which the warrant was entered into or acquired.
- (7) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies in relation to a warrant as if the words ‘but not more than 3 months after, the change or event occurs’ in item 1 of the table in subsection 1017B(5) of the Act were omitted.
- (8) In this regulation:
- warrant issuer**, in relation to a warrant, means the person who:
- (a) determines the terms of the warrant, including the rights and conditions of the warrant; and
  - (b) is responsible for obligations owed under the terms of the warrant.



## **Division 2B—Product Disclosure Statement for market-traded derivatives**

### **7.9.07B Product Disclosure Statements for certain market-traded derivatives**

- (1) For paragraph 1020G(1)(c) of the Act, subregulations (2) and (3) apply if:
  - (a) the standard terms and conditions relating to a type of derivative are:
    - (i) specified by the market operator; and
    - (ii) made generally available to the public; and
  - (b) the financial services licensee in relation to the derivative is taken to be the issuer of the derivative under subsection 761E(6) of the Act; and
  - (c) a retail client for the derivative has agreed to the terms and conditions as applicable to the financial product or products that are the subject of the transaction.
- (2) Subsection 1013D(1) of the Act is modified in its application to the derivative as if the information required by paragraphs 1013D(1)(b), (c), (d) and (f) were required to be included as general information about the type of derivative, including, for example:
  - (a) general information about exercise prices for the type of derivative; and
  - (b) general information about expiry dates for the type of derivative; and
  - (c) general information about exercise styles for the type of derivative.
- (3) For paragraph 1013F(2)(f) of the Act:
  - (a) information that is, or is required to be, disclosed to the market in relation to the underlying thing from which a derivative derives its value, including information published by a market operator in relation to financial products (including derivatives and types of derivatives) in the form of

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market data or educational material which is generally made available to the public by the market operator is a matter that may be taken into account for section 1013F of the Act; and

- (b) other information that a market operator is required to disclose to the market, in accordance with the Act, including:

- (i) information that was required to be disclosed to the market operator; and
- (ii) information that the operator was required to disclose in order to meet its obligations under the Act;

is a matter that may be taken into account for section 1013F of the Act; and

- (c) information that is generally made available to the public by a market operator in relation to financial products, including information published about derivatives and types of derivatives in the form of market data or educational material, is a matter that may be taken into account for section 1013F of the Act.

**7.9.07C Remedies for Product Disclosure Statements for certain market-traded derivatives**

For paragraph 1016F(7)(a) of the Act, financial products that are derivatives are excluded from section 1016F if the operating rules of a licensed market or a licensed CS facility permit the closing out of the derivatives by the matching up of the arrangement with another arrangement of the same kind under which a person has assumed an offsetting position.

## **Division 2BA—Product Disclosure Statement for discretionary mutual funds**

### **7.9.07CA Extension of Product Disclosure Statement requirements to wholesale clients**

- (1) For paragraph 949B(1)(e) of the Act, a regulated person must give a wholesale client a Product Disclosure Statement or a Supplementary Product Disclosure Statement for a financial product if:
  - (a) the financial product is offered or issued by a discretionary mutual fund (within the meaning given by subsections 5(5) and (6) of the *Financial Sector (Collection of Data) Act 2001*); and
  - (b) the regulated person would be required to give the Statement if the product were offered or issued to a retail client.
- (2) The Product Disclosure Statement or Supplementary Product Disclosure Statement required to be given under this regulation must be the same as that which would be given to a retail client.

Note: Failure to comply with this regulation is an offence punishable by a fine of up to 50 penalty units or imprisonment for 1 year, or both—see section 1311 and item 272A of Schedule 3 to the *Corporations Act 2001*.

**Division 2C—Situations where a Product Disclosure Statement is not required**

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

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

- ‘(9G) In an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement for a financial product if:
- (a) the financial product is a general insurance product; and
  - (b) the product would be provided to the person as a retail client; and
  - (c) the financial product would be provided as part of a contract of insurance that offers more than one kind of insurance cover; and
  - (d) the regulated person reasonably believes that the client does not intend to acquire the product.

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

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

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

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- (9K) For paragraph (9J)(c), the client must inform the regulated person explicitly but may inform the regulated person orally or in any other way.’

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

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

- ‘(9L) In an issue situation, the regulated person does not have to give the client a Product Disclosure Statement, if:
- (a) the regulated person has not given the client a Product Disclosure Statement because the regulated person did not need to give a Product Disclosure Statement at or before the time when it would otherwise be required to be given because of the operation of section 1012F or 1012G of the Act, regulation 7.9.04 or Part 17 of Schedule 10A; and
  - (b) either:
    - (i) the regulated person:
      - (A) has an address for the client; and
      - (B) is satisfied, on reasonable grounds that the address is incorrect; and
      - (C) has taken reasonable steps to locate the client but is unable to do so; or
    - (ii) the regulated person:
      - (A) does not have an address for the client; and
      - (B) is unable to obtain an address for the client; and
      - (C) has taken reasonable steps to locate the client but has been unable to do so.
- (9M) If a regulated person does not give a client a Product Disclosure Statement in reliance on subsection (9L), and the regulated person becomes aware of the address or location of the client, the regulated person must give the client a Product Disclosure Statement as soon as practicable.’

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**7.9.07FA Product Disclosure Statement not required for certain specified products**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1012D of the Act were modified by inserting the following subsection after subsection 1012D(7):

*'Recommendation, issue or sale situation—when Product Disclosure Statement not required*

- (7A) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement for the financial product if:
- (a) the product is:
    - (i) a basic deposit product; or
    - (ii) a facility for making non-cash payments (see section 763D) that is related to a basic deposit product; or
    - (iii) a traveller's cheque; and
  - (b) the regulated person has provided information about the cost of the product (if any) to the client; and
  - (c) the regulated person has informed the client as to whether or not any amounts will or may be payable by the holder of the product, in respect of the product, after its acquisition; and
  - (ca) if the product is a protected account under the *Banking Act 1959*—the regulated person has informed the client that:
    - (i) the account-holder may be entitled to payment under the financial claims scheme; and
    - (ii) payments under the scheme are subject to a limit for each depositor; and
    - (iii) information about the financial claims scheme can be obtained from the APRA website at <http://www.apra.gov.au> and the APRA hotline on 1300 13 10 60; and
  - (d) the regulated person has asked the client whether or not the client would like further information about the amounts mentioned in paragraph (c); and

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- (e) if the client indicates that the client would like the further information about the amounts mentioned in paragraph (c)—the regulated person has provided that information.’.

**7.9.07FB Product Disclosure Statement not required if client not in this jurisdiction**

For paragraph 1020G(1)(c) of the Act, section 1012D of the Act is modified by inserting after subsection 1012D(8):

- “(8A) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement for the financial product if the client is not in this jurisdiction.”

**7.9.07FC Product Disclosure Statement not required general insurance situation**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified by adding after section 1014E of the Act the following section:

**“1014EA General insurance product situation in which only a supplementary product disclosure statement need be given**

- (1) This section applies if:
- (a) a person (the *client*) acquires a general insurance product (the *original product*) from another person (the *regulated person*); and
  - (b) the client received a Product Disclosure Statement (the *original PDS*) relating to the product as required by the Act; and
  - (c) the contract of insurance provides a renewable insurance cover (within the meaning of subsection 58(1) of the *Insurance Contracts Act 1984*); and
  - (d) the regulated person offers to renew the client’s contract of insurance (the *new product*); and

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- (e) the regulated person is required to give the client a Product Disclosure Statement (the ***new PDS***) relating to the new product; and
  - (f) the original PDS contains some but not all of the information that the new PDS is required to contain.
- (2) The regulated person may give the client a new PDS.
- (3) If the regulated person does not give the client a new PDS, the regulated person must give the client a supplementary Product Disclosure Statement that contains the additional information.
- (4) If the regulated person gives the client a supplementary Product Disclosure Statement under subsection (3), for the purposes of this Act:
  - (a) the original PDS is taken to be the new PDS; and
  - (b) the new PDS is taken to have been given to the client as required by this Act.”



## **Division 2D—Preparation and content of Product Disclosure Statements**

### **7.9.07J Only 1 responsible person for a Product Disclosure Statement**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1013A of the Act were modified by adding after subsection 1013A(3):

- ‘(3A) A Product Disclosure Statement for a product that is not a jointly issued product may be prepared by, or on behalf of, only 1 responsible person.’.

### **7.9.07K Definition of *defective*: Product Disclosure Statement, Short-Form PDS or Replacement Product Disclosure Statement**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1022A of the Act were varied by omitting paragraph (b) of the definition of *defective* in subsection (1) and the following paragraph were inserted:

- ‘(b) if it is a Product Disclosure Statement, a Short-Form PDS or a Replacement Product Disclosure Statement—either:
- (i) it is not prepared in accordance with section 1013A; or
  - (ii) there is an omission from the Product Disclosure Statement, Short-Form PDS or Replacement Product Disclosure Statement of material required by section 1013C, other than material required by section 1013B or 1013G; or’.

**Division 2E—Obligation to make information publicly available: registrable superannuation entities**

**Subdivision 2E.1—Obligation to make product dashboard publicly available**

**7.9.07L Modification of Act**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1017BA of the Act were modified as set out in Part 6A of Schedule 10A.

**7.9.07M Source of power for this Subdivision**

This Subdivision is made for paragraphs 1017BA(1)(c) and (e) and subsection 1017BA(2) of the Act.

**7.9.07N Definitions**

In this Subdivision:

***lifecycle exception*** has the meaning given by subsection 29TC(2) of the SIS Act.

***lifecycle MySuper product*** means a MySuper product to which a lifecycle exception applies.

***lifecycle stage***, of a MySuper product offered by a regulated superannuation fund, means a subclass of members of the fund who hold the MySuper product, determined on the basis of:

- (a) age; or
- (b) age and the factors mentioned in regulation 9.47 of the SIS Regulations.

***offering period*** means:

- (a) for a MySuper product other than a lifecycle MySuper product:

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- (i) if the MySuper product has been offered for less than 10 financial years and there is no predecessor product—the number of whole financial years for which the product has been offered; or
- (ii) if the MySuper product and a predecessor product have been offered for a total of less than 10 financial years—the number of whole financial years for which the products have been offered; or
- (b) for a lifecycle stage of a lifecycle MySuper product:
  - (i) if the lifecycle stage of the MySuper product has been offered for less than 10 financial years and there is no equivalent lifecycle stage of a predecessor product—the number of whole financial years for which the lifecycle stage has been offered; or
  - (ii) if the lifecycle stage of the MySuper product and an equivalent lifecycle stage of a predecessor product have been offered for a total of less than 10 financial years—the number of whole financial years for which the lifecycle stage of the MySuper product and the predecessor product have been offered.

***predecessor product***, in relation to a MySuper product, means a default investment option in existence on 30 June 2013 in relation to which, if a member's accrued default amount were attributed to the MySuper product, the RSE licensee would be exempted from disclosure requirements under subregulation 9.46(2) of the SIS Regulations.

***reporting standard*** means a reporting standard determined by APRA under subsection 13(1) of the *Financial Sector (Collection of Data) Act 2001*, as in force from time to time.

**7.9.07P Meaning of MySuper product dashboard reporting standards**

For this Subdivision, a reporting standard is a ***MySuper product dashboard reporting standard*** if the reporting standard contains a clause stating that it relates to information that will be included in a product dashboard for a MySuper product.

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**7.9.07Q Product dashboard—how information must be set out**

- (1) Information for a MySuper product must be set out in a product dashboard as follows (including the headings):

<b>PRODUCT DASHBOARD</b>	
<b>Return target</b>	
<b>Return</b>	
<b>Comparison between return target and return</b>	
<b>Level of investment risk</b>	
<b>Statement of fees and other costs</b>	

- (2) For a lifecycle MySuper product, the information mentioned in each item of the table must be set out in relation to each lifecycle stage of the product.

**7.9.07R Product dashboard—return target**

- (1) The return target for a MySuper product other than a lifecycle MySuper product must be worked out in accordance with the MySuper product dashboard reporting standards.
- (2) The return target for a lifecycle MySuper product must be worked out in relation to each lifecycle stage of the product in accordance with the MySuper product dashboard reporting standards.
- (3) The period in relation to which the return target must be worked out is the period of 10 years starting at the beginning of the current financial year.

**7.9.07S Product dashboard—return**

*MySuper product other than lifecycle MySuper product*

- (1) The return for a MySuper product other than a lifecycle MySuper product must be worked out in accordance with the MySuper product dashboard reporting standards.
- (2) The period in relation to which the return must be worked out is:
  - (a) the last 10 whole financial years, if:
    - (i) the MySuper product has been offered for at least 10 financial years; or
    - (ii) the MySuper product and a predecessor product have been offered for a total of at least 10 financial years; or
  - (b) the offering period.

*Lifecycle MySuper product*

- (3) The return for a lifecycle MySuper product must be worked out in relation to each lifecycle stage of the product in accordance with the MySuper product dashboard reporting standards.
- (4) The period in relation to which the return in relation to a lifecycle stage of a lifecycle MySuper product must be worked out is:
  - (a) the last 10 whole financial years, if:
    - (i) the lifecycle stage of the MySuper product has been offered for at least 10 financial years; or
    - (ii) the lifecycle stage of the MySuper product and an equivalent stage of a predecessor product have been offered for a total of at least 10 financial years; or
  - (b) the offering period.

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**7.9.07T Product dashboard—comparison between return target and return**

*MySuper product other than lifecycle MySuper product*

- (1) The comparison between the return target and the return for a MySuper product other than a lifecycle MySuper product must be worked out in accordance with the MySuper product dashboard reporting standards.
- (2) The period in relation to which the comparison must be worked out is:
  - (a) the last 10 whole financial years, if:
    - (i) the MySuper product has been offered for at least 10 financial years; or
    - (ii) the MySuper product and a predecessor product, or a lifecycle stage have been offered for a total of at least 10 financial years; or
  - (b) the offering period.

*Lifecycle MySuper product*

- (3) The comparison between the return target and the return for a lifecycle MySuper product must be worked out in relation to each lifecycle stage of the product in accordance with the MySuper product dashboard reporting standards.
- (4) The period in relation to which the comparison in relation to a lifecycle stage of a MySuper product must be worked out is:
  - (a) the last 10 whole financial years, if:
    - (i) the lifecycle stage of the MySuper product has been offered for at least 10 financial years; or
    - (ii) the lifecycle stage of the MySuper product and an equivalent stage of a predecessor product have been offered for a total of at least 10 financial years; or
  - (b) the offering period.

**7.9.07U Comparison to be set out as a graph**

- (1) A product dashboard must set out a comparison mentioned in regulation 7.9.07T as a graph.
- (2) The graph must contain:
  - (a) a column representing the return for each year in the comparison period; and
  - (b) a line representing the moving average return target for the comparison period; and
  - (c) a line representing the moving average return for the comparison period.
- (3) The column and the lines mentioned in subregulation (2) must be identified in accordance with the MySuper product dashboard reporting standards.
- (4) In this regulation:

*comparison period* means the period mentioned in subregulation 7.9.07S(3) that is applicable in the circumstances.

*moving average return* has the meaning given by the MySuper product dashboard reporting standards.

*moving average return target* has the meaning given by the MySuper product dashboard reporting standards.

**7.9.07V Product dashboard—level of investment risk**

- (1) The level of investment risk for a MySuper product other than a lifecycle MySuper product must be worked out in accordance with the MySuper product dashboard reporting standards.
- (2) The level of investment risk for a lifecycle MySuper product must be worked out in relation to each lifecycle stage of the product in accordance with the MySuper product dashboard reporting standards.

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- (3) The level of investment risk must be expressed using the relevant risk label set out in the MySuper product dashboard reporting standards.
- (4) The period in relation to which the level of investment risk must be worked out is the current financial year.

**7.9.07W Product dashboard—statement of fees and other costs**

- (1) The statement of fees and other costs for a MySuper product other than a lifecycle MySuper product must be worked out in accordance with the MySuper product dashboard reporting standards.
- (2) The statement of fees and other costs for a lifecycle MySuper product must be worked out in relation to each lifecycle stage of the product in accordance with the MySuper product dashboard reporting standards.
- (3) The period in relation to which the statement of fees and other costs must be worked out is the current financial year.
- (4) For paragraph 1017BA(1)(c) of the Act, the period is 14 days after a change to the fees or other costs.



## **Division 3—Dealing with money received for financial product before the product is issued**

### **7.9.08 Accounts**

- (1) For subparagraph 1017E(2)(a)(ii) of the Act, the following accounts are prescribed:
  - (a) an account with a foreign deposit taking institution that is regulated by a foreign regulatory body that ASIC has approved in writing for this paragraph;
  - (b) an account with a cash management trust;
  - (c) a statutory fund under section 29 of the *Life Insurance Act 1995*.
- (2) For paragraph 1017E(2)(c) of the Act, a product provider to which subsection 1017E(2) of the Act applies must:
  - (a) operate an account to which paragraph 1017E(2)(a) of the Act applies as a trust account; and
  - (b) designate the account to be a trust account; and
  - (c) hold all moneys paid into the account on trust for the benefit of the person who is entitled to the moneys.
- (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’.

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**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

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*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.

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

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

- (a) subsection 1017E(2A) of the Act does not apply in relation to the money; and
- (b) the money is taken to be held in trust by the product provider for the benefit of the person who is entitled to the money.

**7.9.08D Statutory funds under the *Life Insurance Act 1995***

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies in relation to an account mentioned in paragraph 7.9.08(1)(c) of these Regulations as if paragraph 1017E(2)(b) were omitted.

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**Division 3A—Rights and obligations related to Product Disclosure Statement—first home saver accounts**

**7.9.08E Application forms**

For paragraph 1016A(2)(f) of the Act, the following situation in which a restricted issue occurs is prescribed:

- (a) an FHSA has become inactive as described in subsection 22(1) of the *First Home Saver Accounts Act 2008*;
- (b) the FHSA provider has sought to pay the entire balance of the FHSA to the superannuation interest mentioned in subsection 22(3) of that Act.

## **Division 4—Content of Product Disclosure Statements**

### **Subdivision 4.1—Preliminary**

#### **7.9.09 Application of Division 4**

- (1) This Division applies in relation to:
  - (a) superannuation products; and
  - (b) RSA products; and
  - (c) annuity products; and
  - (d) FHSA products; and
  - (e) a margin loan; and
  - (f) a superannuation product to which Subdivision 4.2B of Division 4 of Part 7.9 applies; and
  - (g) a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 applies.
- (2) Each of the Subdivisions of this Division has an application provision:
  - (a) stating the types of entity in relation to which the Subdivision applies; and
  - (b) referring to any provisions that limit or restrict the application of the Subdivision or a particular provision.

Note: Information content requirements are set out in the main provisions of section 1013D of the Act. These Regulations set out a more detailed statement of the information required under subsection 1013D(1) that the retail clients of superannuation products and RSA products would reasonably require for the purpose of making a decision whether to acquire the financial product.

#### **Subdivision 4.1A—No Product Disclosure Statement for carbon units, Australian carbon credit units and eligible international emissions units**

#### **7.9.09A Application of Subdivision**

This Subdivision applies:

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- (a) to a person who, apart from this Subdivision, would be required to give a Product Disclosure Statement for a carbon unit, an Australian carbon credit unit or an eligible international emissions unit; and
- (b) in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit.

**7.9.09B Provisions of Part 7.9 of Act that do not apply in relation to carbon units, Australian carbon credit units and eligible international emissions units**

For paragraph 1020G(1)(b) of the Act, the following provisions of Part 7.9 of the Act do not apply in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit:

- (a) subparagraph 1012A(3)(b)(i);
- (b) subparagraph 1012A(3)(b)(ii);
- (c) subparagraph 1012B(3)(a)(ii);
- (d) paragraph 1012C(3)(b);
- (e) paragraph 1012C(4)(c);
- (f) subsection 1012C(6);
- (g) section 1013A;
- (h) section 1013B;
- (i) section 1013C;
- (j) section 1013D;
- (k) section 1013E;
- (l) section 1013F;
- (m) section 1013G.

**7.9.09C Modification of Act**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit as set out in Part 19 of Schedule 10A.

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**Subdivision 4.2—Content of Product Disclosure Statements for  
First Home Saver Accounts**

**7.9.10 Application of Subdivision**

- (1) This Subdivision applies to:
  - (a) a person required to give a Product Disclosure Statement for an FHSA product; and
  - (b) a Product Disclosure Statement for an FHSA product.
- (2) However, if a Product Disclosure Statement consists of 2 or more documents, this Subdivision (other than regulation 7.9.10C) applies only to the document describing the default investment option for the product.

**7.9.10A Definitions**

- (1) In this Subdivision and in Schedule 10B:

***default investment option***, for a multiple investment option FHSA product, is the investment option which is applied to the product if the person who acquires the product does not choose an investment option.

***multiple investment option FHSA product*** means an FHSA product that has 2 or more investment options.
- (2) If a term used in this Subdivision or in Schedule 10B is used in the *First Home Saver Accounts Act 2008*, the term has the same meaning in this Subdivision or in Schedule 10B as it does in that Act.

Note: The following terms used in this Subdivision or in Schedule 10B are defined in the *First Home Saver Accounts Act 2008*:

- contribution
- FHSA eligibility requirements
- FHSA holder
- FHSA mortgage payment
- FHSA payment conditions
- FHSA provider
- FHSA trust
- genuine mortgage

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- Government FHSA contribution
- personal FHSA contribution
- qualifying interest.

- (3) In this Subdivision and in Schedule 10B, a provision of the Act modified in accordance with regulation 7.9.10B is referred to as ***modified***.

Example: Subparagraph 1013C(1)(a)(i) of the Act as modified by item 5.4 of Part 5 of Schedule 10A is referred to in this Subdivision as ‘modified subparagraph 1013C(1)(a)(i)’.

**7.9.10B Modification of Act**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application to FHSA products as set out in Part 5 of Schedule 10A.

**7.9.10C Product Disclosure Statement consisting of 2 or more documents**

- (1) For modified subsection 1013L(7) of the Act, a Product Disclosure Statement for an FHSA product must not consist of 2 or more documents.
- (2) However, the Product Disclosure Statement for a multiple investment option FHSA product may consist of 2 or more documents if:
- (a) the document describing the default investment option complies with this Subdivision; and
  - (b) the other documents comply with the provisions of:
    - (i) the Act; and
    - (ii) regulations; and
    - (iii) any instruments made under the Act and the regulations; that would apply to those documents but for the operation of this Subdivision.

**7.9.10D Manner of giving Product Disclosure Statement for first home saver accounts**

- (1) For paragraph 1015C(5)(a) of the Act:



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- (a) if a Product Disclosure Statement:
    - (i) relates only to 1 or more FHSA products; and
    - (ii) is given to a person or the person's agent personally; the Statement for the FHSA product or products must be the first document about FHSA products that is given to the person or agent at that time, other than a covering letter of no more than 1 page; but
  - (b) paragraph (a) does not require the Statement for the FHSA product or products to be given to the person or agent at that time before other documents that do not relate to the FHSA product or products.
- (2) For paragraph 1015C(5)(a) of the Act:
- (a) if a Product Disclosure Statement:
    - (i) relates only to 1 or more FHSA products; and
    - (ii) is given by sending it to the address or fax number of a person or the person's agent; the Statement for the FHSA product or products must be the first document about FHSA products that is given to the person or agent at that time, other than a covering letter or fax coversheet of no more than 1 page; but
  - (b) paragraph (a) does not require the Statement for the FHSA product or products to be given to the person or agent at that time before other documents that do not relate to the FHSA product or products.

**7.9.10E Form and content of Product Disclosure Statement**

- (1) For modified subparagraphs 1013C(1)(a)(i) and (ii) of the Act, a Product Disclosure Statement must:
  - (a) include the information and statements mentioned in Schedule 10B; and
  - (b) be in the form mentioned in Schedule 10B.
- (2) However, if strict compliance with subregulation (1) would result in the Statement being misleading, the Statement must contain explanations or qualifications so as to make the Statement no longer misleading.

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- (3) Subregulation (2) does not require explanation or qualification of a statement the text of which is specified in subitem 4(1), 5(1) or 6(1) of Schedule 10B.
- (4) Also, ASIC may determine, in writing, that a provision of this Subdivision or of Schedule 10B:
  - (a) does not apply to a Product Disclosure Statement for an FHSA product; or
  - (b) applies to a Product Disclosure Statement for an FHSA product as if specified provisions were omitted or modified as set out in the determination.

**Subdivision 4.2A—Form and content of Product Disclosure Statement for margin loan**

**7.9.11 Application of Subdivision 4.2A**

This Subdivision applies to:

- (a) a person who is required to prepare a Product Disclosure Statement for a margin loan; and
- (b) a Product Disclosure Statement for a margin loan.

**7.9.11A Provisions of Part 7.7 of Act that do not apply in relation to margin loan**

For paragraph 951C(1)(b) of the Act, section 942DA of the Act does not apply in relation to a margin loan.

**7.9.11B Definitions for Subdivision 4.2A**

- (1) In this Subdivision and in Schedule 10C:

***Approved Securities List*** means the list of secured properties that are acceptable for the provider or potential provider of a margin loan as security for the margin loan and includes the amount of credit the provider will give for each of the properties.

- (2) In this Subdivision and in Schedule 10C, a provision of the Act that is modified in accordance with regulation 7.9.11C is referred to as ***modified***.

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Example: Paragraphs 1013C(1)(a) and (b) of the Act as modified by subitem 5A.2(1) of Part 5A of Schedule 10A are referred to in this Subdivision as ‘modified paragraphs 1013C(1)(a) and (b)’.

**7.9.11C Modification of Act—margin loan**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application to a margin loan as set out in Part 5A of Schedule 10A.

**7.9.11D Form and content of Product Disclosure Statement for margin loan**

- (1) For modified paragraph 1013C(1)(a) of the Act, a Product Disclosure Statement for a margin loan must include the information and statements mentioned in Schedule 10C.
- (2) For modified paragraph 1013C(1)(b) of the Act, a Product Disclosure Statement for a margin loan must be in the form mentioned in Schedule 10C.

**7.9.11E Requirements for references to incorporated information for margin loan**

- (1) For subsection 1013C(1D) of the Act, as modified by Part 5A of Schedule 10A, this regulation prescribes requirements for applying, adopting or incorporating, in a Product Disclosure Statement for a margin loan, a matter contained in writing.
- (2) A Product Disclosure Statement may apply, adopt or incorporate a matter only if a provision of these Regulations requires or permits the matter to be applied, adopted or incorporated by the Statement.
- (3) If a Product Disclosure Statement applies, adopts or incorporates a matter:
  - (a) the matter must be:
    - (i) in writing; and
    - (ii) clearly distinguishable from any other matters that are not applied, adopted or incorporated; and

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- (iii) publicly available in a document other than the Statement; and
- (b) the responsible person for the Statement must identify the matter by:
  - (i) including in the Statement a concise description of the matter; and
  - (ii) ensuring that the reference to the matter is clearly distinguishable from the other contents of the Statement; and
- (c) the responsible person for the Statement must:
  - (i) identify each version of the matter (by including the date on which the version was prepared) so that a person who, at a particular time, is considering a margin loan can identify the version that is relevant to the margin loan at that time; and
  - (ii) state the date on which the version was prepared in a prominent position at or near the front of the version; and
- (d) the responsible person for the Statement must ensure that a person who is relying on the Statement is able to have access to:
  - (i) the matter; or
  - (ii) if there is more than 1 version of the matter—each version;reasonably easily and reasonably quickly.
- (4) The responsible person for the Product Disclosure Statement must also ensure that the Statement includes the statements in the following table relating to the matter, and sets them out in each place at which the matter has been applied, adopted or incorporated.

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Item	Statement
1	You should read the important information about <i>[the subject]</i> before making a decision. Go to <i>[location of the matter that has been applied, adopted or incorporated]</i>

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- 2      The material relating to *[matter]* may change between the time when you read this Statement and the day when you sign the application form
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- (5) The responsible person for the Product Disclosure Statement must also ensure that each document mentioned in subregulation (3) includes the statement in the following table relating to the matter.

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<b>Item</b>	<b>Statement</b>
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- |   |   |
|---|---|
| 1 | The information in this document forms part of the Product Disclosure Statement <i>[identification by name, date and version (if applicable) of each Statement]</i> |
|---|---|
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- (6) For the avoidance of doubt:
- (a) the giving of a Product Disclosure Statement to which this Subdivision applies is taken to be the giving of every matter that is applied, adopted or incorporated in accordance with subregulations (1) to (5); and
  - (b) if a document mentioned in subparagraph (3)(a)(iii) refers to more than one PDS, the document:
    - (i) must include a statement to the effect that the information in the document forms part of the Product Disclosure Statement offered by the responsible entity; but
    - (ii) is not required to name each Product Disclosure Statement of which it forms part.
- (7) If the Product Disclosure Statement applies, adopts or incorporates a matter, the information dealing with the matter is taken to have been given to a person on the day on which the person signs the application form accompanying the Statement.

### **7.9.11F Retention of copies of Product Disclosure Statement for margin loan**

- (1) The responsible person for a Product Disclosure Statement for a margin loan must retain a copy of each version of the Statement that the responsible person issues for a period of 7 years starting on the day on which the version is prepared.

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- (2) The responsible person for the Product Disclosure Statement must retain a copy of the document from which a matter is applied, adopted or incorporated by the Statement as mentioned in paragraph 7.9.11E(3)(c) for a period of 7 years commencing on the day on which the Statement is prepared.
- (3) If a document from which a matter is adopted, applied or incorporated by the Product Disclosure Statement as mentioned in paragraph 7.9.11E(3)(c) is changed in a way that changes the description of, or reference to, the matter, the responsible person for the Statement must retain a copy of the document for a period of 7 years commencing on the day on which the document is changed.

**7.9.11G Requirement to provide copy of Product Disclosure Statement for margin loan free of charge**

- (1) For paragraph 1015C(5)(a) of the Act, this regulation specifies requirements as to the manner in which a Product Disclosure Statement for a margin loan must be given to a person if the person requests a copy of the Statement.
- (2) The responsible person for the Product Disclosure Statement must give the person, free of charge:
  - (a) a copy of the Statement within 8 business days; and
  - (b) a copy of a matter in writing that is applied, adopted or incorporated by the Statement within 8 business days.

**7.9.11H Notification about change to Approved Securities List or current interest rate for margin loan**

- (1) For paragraph 1017B(1A)(b) of the Act, a change to the Approved Securities List or current interest rate for a margin loan is specified.
- (2) For paragraph 1017B(3)(c) of the Act, the issuer of the margin loan must notify the holder of the change by:
  - (a) sending notice of the change to the holder:
    - (i) by pre-paid post to a postal address nominated by the holder; or
    - (ii) to an email address nominated by the holder; or

- (b) placing a notice on a webpage that is likely to come to the holder's attention if the holder is monitoring the holder's margin loan.

### **Subdivision 4.2B—Content of Product Disclosure Statement for superannuation product**

#### **7.9.11K Application of Subdivision 4.2B**

- (1) This Subdivision applies to:
  - (a) a superannuation trustee that is required to prepare a Product Disclosure Statement for a superannuation product; and
  - (b) a Product Disclosure Statement for a superannuation product.
- (2) However, this Subdivision does not apply to the following financial products:
  - (a) an interest in a superannuation product that is solely a defined benefit interest;
  - (b) a superannuation product that is solely a pension product;
  - (c) a superannuation product that has no investment component (also known as a risk-only superannuation product).

#### **7.9.11L Provisions of Part 7.7 of Act that do not apply in relation to superannuation product**

For paragraph 951C(1)(b) of the Act, section 942DA of the Act does not apply in relation to a superannuation product.

#### **7.9.11LA Attribution of accrued default amount to MySuper product—exemption from significant event notice requirements**

For paragraph 1020G(1)(a) of the Act, a person is exempt from section 1017B of the Act in relation to the attribution or transfer of an accrued default amount if the person:

- (a) is an RSE licensee within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and

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- (b) must comply with a requirement under regulation 9.46 of the *Superannuation Industry (Supervision) Regulations 1994* in relation to the attribution or transfer.

**7.9.11LB Attribution of accrued default amount to MySuper product—modification of significant event notice requirements**

If a person:

- (a) is an RSE licensee within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and
- (b) is exempted under subregulation 9.46(2) of the *Superannuation Industry (Supervision) Regulations 1994* from notice requirements in relation to the attribution or transfer of an accrued default amount;

then, for paragraph 1020G(1)(c) of the Act, section 1017B of the Act applies to the person as if subsection 1017B(4) were omitted and the following subsection were substituted:

- (4) The notice must mention the following:
  - (a) the accrued default amount that was attributed or transferred;
  - (b) the name of the MySuper product to which the amount was attributed or transferred;
  - (c) how the member may obtain a product disclosure statement for the MySuper product;
  - (d) any other information that the member needs to understand the attribution or transfer.

**7.9.11M Provisions of Part 7.9 of Act that do not apply in relation to superannuation product**

- (1) For paragraph 1020G(1)(b) of the Act, Subdivision D of Division 2 of Part 7.9 of the Act does not apply in relation to a superannuation product.
- (2) If a person:
  - (a) proposes to prepare a Product Disclosure Statement or a supplementary Product Disclosure Statement for a superannuation product during the period commencing on the



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day on which this subregulation commences and ending on 22 June 2012; and

- (b) is permitted to decide, in accordance with regulation 4 of the *Corporations Amendment Regulations 2010 (No. 5)*, to prepare the Product Disclosure Statement or supplementary Product Disclosure Statement in accordance with Subdivision D of Division 2 of Part 7.9 of the Act; and

- (c) prepares the Product Disclosure Statement or supplementary Product Disclosure Statement in accordance with that Subdivision;

the preparation of the Product Disclosure Statement or supplementary Product Disclosure Statement is taken to be full compliance with all requirements of Part 7.9 of the Act and these Regulations relating to how the Product Disclosure Statement or supplementary Product Disclosure Statement is to be prepared.

Note: The *Corporations Amendment Regulations 2010 (No. 5)* amended these Regulations to make new arrangements for the preparation of Product Disclosure Statements for superannuation products, including identifying that Subdivision D of Division 2 of Part 7.9 of the Act would no longer apply. However, the transitional arrangements in subregulations 4(1) to (7) of the Amendment Regulations allowed certain persons to decide to rely on Subdivision D of Division 2 of Part 7.9 of the Act for the purpose of preparing the Product Disclosure Statement.

**7.9.11N Modification of Act—superannuation product**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application to a superannuation product to which this Subdivision applies as set out in Part 5B of Schedule 10A.

**7.9.11O Form and content of Product Disclosure Statement for superannuation product**

- (1) For modified paragraph 1013C(1)(a) of the Act, a Product Disclosure Statement for a superannuation product to which this Subdivision applies must include the information and statements mentioned in Schedule 10D.
- (2) For modified paragraph 1013C(1)(b) of the Act, a Product Disclosure Statement for a superannuation product to which this

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Subdivision applies must be in the form mentioned in Schedule 10D.

**7.9.11P Requirements for references to incorporated information for superannuation product**

- (1) For subsection 1013C(1D) of the Act, as modified by Part 5B of Schedule 10A, this regulation prescribes requirements for applying, adopting or incorporating, in a Product Disclosure Statement for a superannuation product to which this Subdivision applies, a matter contained in writing.
- (2) A Product Disclosure Statement may apply, adopt or incorporate a matter only if a provision of these Regulations requires or permits the matter to be applied, adopted or incorporated by the Statement.
- (3) If a Product Disclosure Statement applies, adopts or incorporates a matter:
  - (a) the matter must be:
    - (i) in writing; and
    - (ii) clearly distinguishable from any other matters that are not to be applied, adopted or incorporated; and
    - (iii) if the superannuation product is not issued to a standard employer-sponsored member within the meaning of the *Superannuation Industry (Supervision) Act 1993*—publicly available in a document other than the Statement; and
  - (b) the responsible person for the Statement must identify the matter by:
    - (i) including in the Statement a concise description of the matter; and
    - (ii) ensuring that the reference to the matter is clearly distinguishable from the other contents of the Statement; and
  - (c) the responsible person for the Statement must:
    - (i) identify each version of the matter (by including the date on which the version was prepared) so that a person who, at a particular time, is considering a

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- superannuation product can identify the version that is relevant to the superannuation product at that time; and
- (ii) state the date on which a version was prepared in a prominent position at or near the front of the version; and
- (d) the responsible person for the Statement must ensure that a person who is relying on the Statement is able to have access to:
- (i) the document containing the matter; or
- (ii) if there is more than 1 version of the document containing the matter—each version; reasonably easily and reasonably quickly.
- (4) The responsible person for the Product Disclosure Statement must also ensure that the Statement includes the statements in the following table relating to the matter, and sets them out in each place at which the matter has been applied, adopted or incorporated.

Item	Statement
1	You should read the important information about <i>[the subject]</i> before making a decision. Go to <i>[location of the matter that has been applied, adopted or incorporated]</i>
2	The material relating to <i>[matter]</i> may change between the time when you read this Statement and the day when you acquire the product

- (5) The responsible person for the Product Disclosure Statement must also ensure that each document mentioned in subregulation (3) includes the statement in the following table relating to the matter.

Item	Statement
1	The information in this document forms part of the Product Disclosure Statement <i>[identification by name, date and version (if applicable) of each Statement]</i>

- (6) For the avoidance of doubt, the giving of a Product Disclosure Statement to which this Subdivision applies is taken to be the

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giving of every matter that is applied, adopted or incorporated in accordance with subregulations (1) to (5).

- (7) If the Product Disclosure Statement applies, adopts or incorporates a matter, the information dealing with the matter is taken to have been given to a person on the day on which the product is acquired.

**7.9.11Q Retention of copies of Product Disclosure Statement for superannuation product**

- (1) This regulation applies if:
- (a) section 1015B of the Act does not apply to require a Product Disclosure Statement to be lodged with ASIC; and
  - (b) the Statement is for a superannuation product to which this Subdivision applies.
- (2) The responsible person for the Product Disclosure Statement must retain a copy of each version of the Statement that the responsible person issues for a period of 7 years starting on the day on which the version is prepared.
- (3) The responsible person for the Product Disclosure Statement must retain a copy of the document from which a matter is applied, adopted or incorporated by the Statement as mentioned in paragraph 7.9.11P(3)(c) for a period of 7 years commencing on the day on which the Statement is prepared.
- (4) If a document from which a matter is adopted, applied or incorporated by the Product Disclosure Statement as mentioned in paragraph 7.9.11P(3)(c) is changed in a way that changes the description of, or reference to, the matter, the responsible person for the Statement must retain a copy of the document for a period of 7 years commencing on the day on which the document is changed.

**7.9.11R Requirement to provide copy of Product Disclosure Statement for superannuation product free of charge**

- (1) For paragraph 1015C(5)(a) of the Act, this regulation specifies requirements as to the manner in which a Product Disclosure

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Statement for a superannuation product to which this Subdivision applies must be given to a person if the person requests a copy of the Statement.

- (2) The responsible person for the Product Disclosure Statement must give the person, free of charge:
  - (a) a copy of the Statement within 8 business days; and
  - (b) a copy of a matter in writing that is applied, adopted or incorporated by the Statement within 8 business days.

**Subdivision 4.2C—Content of Product Disclosure Statement for simple managed investment scheme**

**7.9.11S Application of Subdivision 4.2C**

- (1) This Subdivision applies to:
  - (a) a person that is required to prepare a Product Disclosure Statement for a simple managed investment scheme; and
  - (b) a Product Disclosure Statement for a simple managed investment scheme.
- (2) This Subdivision does not apply to the extent that the simple managed investment scheme relates to a financial product (known as a “quoted product”) which is, or is intended to be, traded on a prescribed financial market.
- (3) This Subdivision does not apply to the extent that the simple managed investment scheme relates to a financial product (known as a “stapled security”) to which the following requirements apply:
  - (a) the product consists of interests in 2 or more financial products;
  - (b) the interests include at least 1 interest in a registered managed investment scheme;
  - (c) under the terms on which each of the interests is to be traded, the interests must be transferred together;
  - (d) there are no financial products in the same class as the interests which may be transferred separately.

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- (4) This Subdivision does not apply to the extent that the simple managed investment scheme is a managed investment scheme that has a constitution that provides that:
- (a) a member may direct that an amount of money corresponding to part or all of the amount invested by the member in the scheme be invested in accessible investments; and
  - (b) the distributions of capital and income from the scheme to the member in relation to the member's interests in the scheme will be determined by reference to amounts received by the responsible entity or a custodian in relation to the accessible investments acquired in accordance with the direction.

**7.9.11T Provisions of Part 7.7 of Act that do not apply in relation to simple managed investment scheme**

For paragraph 951C(1)(b) of the Act, section 942DA of the Act does not apply in relation to a simple managed investment scheme to which this Subdivision applies.

**7.9.11U Provisions of Part 7.9 of Act that do not apply in relation to simple managed investment scheme**

- (1) For paragraph 1020G(1)(b) of the Act, Subdivision D of Division 2 of Part 7.9 of the Act does not apply in relation to a simple managed investment scheme to which this Subdivision applies.
- (2) If a person:
- (a) proposes to prepare a Product Disclosure Statement or a supplementary Product Disclosure Statement for a simple managed investment scheme to which this Subdivision applies during the period commencing on the day on which this subregulation commences and ending on 22 June 2012; and
  - (b) is permitted to decide, in accordance with regulation 4 of the *Corporations Amendment Regulations 2010 (No. 5)*, to prepare the Product Disclosure Statement or supplementary Product Disclosure Statement in accordance with Subdivision D of Division 2 of Part 7.9 of the Act; and

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- (c) prepares the Product Disclosure Statement or supplementary Product Disclosure Statement in accordance with that Subdivision;

the preparation of the Product Disclosure Statement or supplementary Product Disclosure Statement is taken to be full compliance with all requirements of Part 7.9 of the Act and these Regulations relating to how the Product Disclosure Statement or supplementary Product Disclosure Statement is to be prepared.

Note: The *Corporations Amendment Regulations 2010 (No. 5)* amended these Regulations to make new arrangements for the preparation of Product Disclosure Statements for simple managed investment schemes, including identifying that Subdivision D of Division 2 of Part 7.9 of the Act would no longer apply. However, the transitional arrangements in subregulations 4(1) to (7) of the Amendment Regulations allowed certain persons to decide to rely on Subdivision D of Division 2 of Part 7.9 of the Act for the purpose of preparing the Product Disclosure Statement.

**7.9.11V Modification of Act—simple managed investment scheme**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application to a simple managed investment scheme to which this Subdivision applies as set out in Part 5C of Schedule 10A.

**7.9.11W Form and content of Product Disclosure Statement for simple managed investment scheme**

- (1) For modified paragraph 1013C(1)(a) of the Act, a Product Disclosure Statement for a simple managed investment scheme to which this Subdivision applies must include the information and statements mentioned in Schedule 10E.
- (2) For modified paragraph 1013C(1)(b) of the Act, a Product Disclosure Statement for a simple managed investment scheme to which this Subdivision applies must be in the form mentioned in Schedule 10E.

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**7.9.11X Requirements for references to incorporated information for simple managed investment scheme**

- (1) For subsection 1013C(1D) of the Act, as modified by Part 5C of Schedule 10A, this regulation prescribes requirements for applying, adopting or incorporating, in a Product Disclosure Statement for a simple managed investment scheme to which this Subdivision applies, a matter contained in writing.
- (2) A Statement may apply, adopt or incorporate a matter only if a provision of these Regulations requires or permits the matter to be applied, adopted or incorporated by the Statement.
- (3) If a Product Disclosure Statement applies, adopts or incorporates a matter:
  - (a) the matter must be:
    - (i) in writing; and
    - (ii) clearly distinguishable from any other matters that are not applied, adopted or incorporated; and
    - (iii) publicly available in a document other than the Statement; and
  - (b) the responsible person for the Statement must identify the matter by:
    - (i) including in the Statement a concise description of the matter; and
    - (ii) ensuring that the reference to the matter is clearly distinguishable from the other contents of the Statement; and
  - (c) the responsible person for the Statement must:
    - (i) identify each version of the matter (by including the date on which the version was prepared) so that a person who, at a particular time, is considering a simple managed investment scheme to which this Subdivision applies can identify the version that is relevant to the simple managed investment scheme at that time; and
    - (ii) state the date on which the version was prepared in a prominent position at or near the front of the version; and



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- (d) the responsible person for the Statement must ensure that a person who is relying on the Statement is able to have access to:
- (i) the matter; or
  - (ii) if there is more than 1 version of the matter—each version;
- reasonably easily and reasonably quickly.

- (4) The responsible person for the Product Disclosure Statement must also ensure that the Statement includes the statements in the following table relating to the matter, and sets them out in each place at which the matter has been applied, adopted or incorporated.

Item	Statement
1	You should read the important information about <i>[the subject]</i> before making a decision. Go to <i>[location of the matter that has been applied, adopted or incorporated]</i>
2	The material relating to <i>[matter]</i> may change between the time when you read this Statement and the day when you acquire the product

- (5) The responsible person for the Product Disclosure Statement must also ensure that each document mentioned in subregulation (3) includes the statement in the following table relating to the matter.

Item	Statement
1	<b>The information in this document forms part of the Product Disclosure Statement <i>[identification by name, date and version (if applicable) of each Statement]</i></b>

- (6) For the avoidance of doubt:
- (a) the giving of a Product Disclosure Statement to which this Subdivision applies is taken to be the giving of every matter that is applied, adopted or incorporated in accordance with subregulations (1) to (5); and
  - (b) if a document mentioned in subparagraph (3)(a)(iii) refers to more than one PDS, the document:
    - (i) must include a statement to the effect that the information in the document forms part of the Product

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Disclosure Statement offered by the responsible entity;  
but

- (ii) is not required to name each Product Disclosure Statement of which it forms part.

- (7) If the Product Disclosure Statement applies, adopts or incorporates a matter, the information dealing with the matter is taken to have been given to a person on the day on which the product is acquired.

**7.9.11Y Retention of copies of Product Disclosure Statement for simple managed investment scheme**

- (1) The responsible person for a Product Disclosure Statement for a simple managed investment scheme to which this Subdivision applies must retain a copy of each version of the Statement that the responsible person issues for a period of 7 years starting on the day on which the version is prepared.
- (2) The responsible person for the Product Disclosure Statement must retain a copy of the document from which a matter is applied, adopted or incorporated by the Statement as mentioned in paragraph 7.9.11X(3)(c) for a period of 7 years commencing on the day on which the Statement is prepared.
- (3) If a document from which a matter is adopted, applied or incorporated by the Product Disclosure Statement as mentioned in paragraph 7.9.11X(3)(c) is changed in a way that changes the description of, or reference to, the matter, the responsible person for the Statement must retain a copy of the document for a period of 7 years commencing on the day on which the document is changed.

**7.9.11Z Requirement to provide copy of Product Disclosure Statement for simple managed investment scheme free of charge**

- (1) For paragraph 1015C(5)(a) of the Act, this regulation specifies requirements as to the manner in which a Product Disclosure Statement for a simple managed investment scheme to which this

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Subdivision applies must be given to a person if the person requests a copy of the Statement.

- (2) The responsible person for the Product Disclosure Statement must give the person, free of charge:
  - (a) a copy of the Statement within 8 business days; and
  - (b) a copy of a matter in writing that is applied, adopted or incorporated by the Statement within 8 business days.

**Subdivision 4.3—Other arrangements for Product Disclosure Statements and application forms**

**7.9.12 Modification of Act: Product Disclosure Statements and application forms for standard employer-sponsors and successor funds**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to superannuation products and RSA products as set out in Part 6 of Schedule 10A.

**7.9.13 Offer of superannuation interest without application or eligible application**

- (1) For paragraph 1016A(4)(a) of the Act, if a trustee of a public offer entity issues a superannuation interest in the entity to a person without first receiving an application, or an eligible application, the trustee is taken not to have contravened section 1016A of the Act if:
  - (a) the entity is a standard employer-sponsored fund; and
  - (b) the person holds the interest as a standard employer-sponsored member of the entity; and
  - (c) after issuing the interest, the trustee makes reasonable efforts:
    - (i) to obtain an application or eligible application (as the case requires under paragraph 1016A(2)(b) or (c) of the Act) from the person's standard employer-sponsor; or
    - (ii) to obtain an eligible application mentioned in paragraph 1016A(2)(a) of the Act from the person; and

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- (d) if the trustee has not obtained the application or eligible application within 90 days after issuing the interest, the trustee does not accept any more contributions from the standard employer-sponsor in respect of the person until the trustee receives the application or eligible application.
- (2) For paragraph 1016A(4)(b) of the Act, if a trustee has not obtained the application or eligible application under subregulation (1) within 90 days after issuing the interest, the trustee must not intentionally or recklessly accept any more contributions from the standard employer-sponsor in respect of the person until the trustee receives the application or eligible application.

Penalty: 50 penalty units.

- (3) Subregulation (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subregulation (2) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Strict liability applies to subregulation (2).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**7.9.13A Remedies for person acquiring financial product under defective Product Disclosure Statement: first home saver accounts**

- (1) For subsection 1016F(3) of the Act, this regulation applies in relation to an FHSA.
- (2) If the FHSA holder has never held another FHSA, to exercise a right of return for the financial product in circumstances in which the moneys paid to acquire the FHSA are subject to payment restrictions:
  - (a) the FHSA holder must:
    - (i) notify the FHSA provider, in writing, that the FHSA holder wishes to exercise the right to return the FHSA; and
    - (ii) ask the FHSA provider to pay the entire balance of the FHSA to the FHSA holder; and

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- (iii) give the FHSA provider a written declaration that the FHSA holder has never previously held an FHSA; or
- (b) the FHSA holder must:
  - (i) notify the FHSA provider, in writing, that the FHSA holder wishes to exercise the right to return the FHSA; and
  - (ii) no later than 1 month after notifying the FHSA provider, ask the FHSA provider to pay the entire balance of the FHSA to another FHSA nominated in the request.
- (3) If the FHSA holder has held another FHSA, to exercise a right of return for the financial product in circumstances in which the moneys paid to acquire the FHSA are subject to payment restrictions, the FHSA holder must:
  - (a) notify the FHSA provider, in writing, that the FHSA holder wishes to exercise the right to return the FHSA; and
  - (b) no later than 1 month after notifying the FHSA provider, ask the FHSA provider to pay the entire balance of the FHSA to another FHSA nominated in the request.

**7.9.14 Remedies for person acquiring financial product under defective Product Disclosure Statement: superannuation and RSAs**

- (1) This regulation applies to a financial product:
  - (a) that is:
    - (i) a superannuation product to which requirements of the SIS Act relating to preservation rules and cashing restrictions apply; or
    - (ii) an RSA product to which requirements of the RSA Regulations relating to preservation rules and cashing restrictions apply; and
  - (b) that has been issued or sold in contravention of section 1016E of the Act.
- (2) For subsection 1016F(3) of the Act, to exercise a right of return for the financial product in circumstances in which the moneys paid to

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acquire the financial product are subject to the preservation rules and cashing restrictions, the client must:

- (a) nominate a superannuation entity or RSA into which the monies subject to the preservation rules and cashing restrictions, and to which preservation conditions apply, are to be repaid; and
  - (b) make the nomination not later than 1 month after notifying the responsible person of the right to exercise the right of return.
- (2A) The right of return is taken to have been exercised only on receipt by the responsible person of the nomination.
- (3) The client must notify the responsible person in writing or by electronic means.
- (4) For subsection 1016F(6) of the Act, the responsible person must repay the monies as directed.
- (5) For subsection 1019B(7) of the Act, if:
- (a) a financial product mentioned in this regulation is subject to the nomination of a further superannuation entity or RSA; and
  - (b) the application in relation to the financial product is not accepted by the nominated superannuation entity or RSA;
- the responsible person may rollover or transfer the client's benefits to an eligible rollover fund.

**7.9.14A Treatment of arrangements under which a person can instruct another person to acquire a financial product**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if the definition of *instruction* in subsection 1012IA(1) of the Act were modified by adding at the end ‘, including a direction to follow an investment strategy mentioned in paragraph 52(4)(a) of the *Superannuation Industry (Supervision) Act 1993*’.

**Subdivision 4.4—Product information for certain insurance products**

**7.9.14B Product information**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to financial products as if:

- (a) that Part applied to a financial product mentioned in paragraph 7.1.14(2)(d); and
- (b) the following section were inserted after section 1019B of the Act:

**‘1019C Information about certain vehicle insurance**

- (1) This section applies in relation to the issue of a financial product mentioned in paragraph 7.1.14(2)(d) of the *Corporations Regulations 2001*.
- (2) The product issuer of the financial product must, as soon as practicable after issuing the financial product, give the holder of the financial product a statement that contains the information mentioned in paragraphs 1013D(1)(a) and (b) unless:
  - (a) the product holder already has a statement containing that information; or
  - (b) the product issuer believes on reasonable grounds that the product holder has already received a statement containing that information.
- (3) The product issuer must give the statement in the same way as a Product Disclosure Statement is to be given under subsection 1015C.
- (4) The product issuer is not required to comply with any other requirements in Divisions 2 to 6 (inclusive) in relation to the issue of the financial product.
- (5) The product issuer must not refuse, or intentionally or recklessly fail, to comply with subsections (2) and (3).

Penalty: 50 penalty units.

- (6) Subsection (5) does not apply to the extent that the product issuer has a reasonable excuse.

**Chapter 7** Financial services and markets

**Part 7.9** Financial product disclosure and other provisions relating to issue and sale of financial products

**Division 4** Content of Product Disclosure Statements

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Note: A defendant bears an evidential burden in relation to the matter in subsection (6A), see subsection 13.3(3) of the Criminal Code.

- (7) Divisions 1 and 7 do not apply in relation to the product issuer in relation to the financial product mentioned in paragraph 7.1.14(2)(d) of the *Corporations Regulations 2001*.



## **Division 4A—General**

### **7.9.14C Labour standards and environmental, social and ethical considerations**

For paragraph 1013D(4)(c) of the Act, the more detailed information to be included in a Product Disclosure Statement about the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of an investment is:

- (a) a statement that the product issuer does, or does not, take into account labour standards for the purpose of selecting, retaining or realising the investment; and
- (b) a statement that the product issuer does, or does not, take into account environmental, social or ethical considerations for the purpose of selecting, retaining or realising the investment; and
- (c) if the Product Disclosure Statement includes a statement that the product issuer does take into account labour standards for the purpose of selecting, retaining or realising the investment—a statement outlining:
  - (i) the standards that the product issuer considers to be labour standards for that purpose; and
  - (ii) the extent to which the product issuer takes those standards into account in the selection, retention or realisation of the investment; and
- (d) if the Product Disclosure Statement includes a statement that the product issuer does take into account environmental, social or ethical considerations for the purpose of selecting, retaining or realising the investment—a statement outlining:
  - (i) the considerations that the product issuer regards as environmental, social or ethical considerations for that purpose; and
  - (ii) the extent to which the product issuer takes those considerations into account in the selection, retention or realisation of the investment.

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**7.9.14D Further statements required in Product Disclosure Statement—financial claims scheme**

- (1) For paragraph 1013D(1)(k) of the Act, the following further statements must be included in a Product Disclosure Statement that relates to a protected policy issued by a general insurer or a protected account issued by an authorised deposit-taking institution:
  - (a) if the Product Disclosure Statement relates to a protected policy—a statement that:
    - (i) the person entitled to claim under insurance cover under a protected policy may be entitled to payment under the financial claims scheme; and
    - (ii) access to the scheme is subject to eligibility criteria;
  - (b) if the Product Disclosure Statement relates to a protected account—a statement that:
    - (i) the account-holder may be entitled to payment under the financial claims scheme; and
    - (ii) payments under the scheme are subject to a limit for each depositor;
  - (c) a statement that information about the scheme can be obtained from the APRA website at <http://www.apra.gov.au> and the APRA hotline on 1300 13 10 60.
- (2) In this regulation:

***authorised deposit-taking institution*** has the meaning given by subsection 5(1) of the *Banking Act 1959*.

***financial claims scheme*** means:

- (a) the scheme provided for in Division 2AA of Part II of the *Banking Act 1959*; and
- (b) the scheme provided for in Part VC of the *Insurance Act 1973*.

***general insurer*** has the meaning given by section 11 of the *Insurance Act 1973*.

***protected account*** has the meaning given by subsections 5(4) to (7) of the *Banking Act 1959*.

*protected policy* has the meaning given by subsection 3(1) of the *Insurance Act 1973*.

**7.9.15 More detailed information in Product Disclosure Statement:  
unauthorised foreign insurer**

- (1) For paragraph 1013D(4)(c) of the Act, the more detailed information that must be included in a Product Disclosure Statement that relates to a financial product issued by an unauthorised foreign insurer is:
  - (a) a statement that the product issuer is:
    - (i) an unauthorised foreign insurer; and
    - (ii) not authorised under the *Insurance Act 1973* to conduct insurance business in Australia; and
  - (b) a statement that an insurer of that kind is not subject to the provisions of the *Insurance Act 1973*, which establishes a system of financial supervision of general insurers in Australia; and
  - (c) a statement that the person should consider whether to obtain further information, including:
    - (i) the country in which the product issuer is incorporated, and whether the country has a system of financial supervision of insurers; and
    - (ii) the paid up capital of the product issuer; and
    - (iii) which country's laws will determine disputes in relation to the financial product; and
  - (d) a statement that an insurer of that kind cannot be a declared general insurer for the purpose of Part VC of the *Insurance Act 1973*, and, if the insurer becomes insolvent, the person will not be covered by the financial claims scheme provided under Part VC of that Act.
- (2) In this regulation:

***unauthorised foreign insurer*** means:

- (a) an insurer that:
  - (i) does not have an authority under the *Insurance Act 1973* to carry on insurance business; and

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- (ii) is not a person who, because of section 5 of that Act, is not required to have such an authority; and
  - (iii) carries on insurance business outside Australia and the external Territories to which the *Insurance Act 1973* extends; or
- (b) if a direction is in force under section 74 of the *Insurance Act 1973*—a Lloyd’s underwriter.

**7.9.15A Product Disclosure Statements—requirement to state information as amounts in dollars**

- (1) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if paragraph 1013D(1)(m) of the Act were modified to read as follows:
- ‘(m) unless, in accordance with the regulations and a determination by ASIC, information to be disclosed in accordance with paragraphs (b), (d) and (e) must be stated as amounts in dollars.’.
- (2) For paragraph 1020G(1)(a) of the Act, an issuer of a financial product does not have to provide the information mentioned in paragraph 1013D(1)(m) of the Act in the form required by that paragraph, in a Product Disclosure Statement prepared before 1 January 2005.

**7.9.15B Product Disclosure Statements—disclosure of dollar amounts**

- (1) For paragraph 1013D(1)(m) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 1013D(1)(b), (d) or (e) as an amount in dollars, the information may be set out as a description of the benefit, cost, amount or payment as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (2) For paragraph 1013D(1)(m) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 1013D(1)(b), (d) or (e) as an amount in dollars, or to describe the amount as a percentage, the

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information may be set out as a description of the method of calculating the benefit, cost, amount or payment (including worked dollar examples, unless that is inappropriate).

- (3) A determination under subregulation (1) or (2) must be:
  - (a) in writing; and
  - (b) published in the *Gazette*.

**7.9.15C Product Disclosure Statements—disclosure of dollar amounts**

- (1) For paragraph 1013D(1)(m) of the Act, if ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars:
  - (a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or
  - (b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or
  - (c) would not be in the interests of a client, or a class of clients; the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (2) For paragraph 1013D(1)(m) of the Act, if ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars, or to describe the amount as a percentage:
  - (a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or
  - (b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or
  - (c) would not be in the interests of a client, or a class of clients; the information may be set out as a description of the method of calculating the charge or benefit (including worked dollar examples, unless that is inappropriate).

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- (3) A determination under subregulation (1) or (2) must be:
  - (a) in writing; and
  - (b) published in the *Gazette*.
- (4) For paragraph 1013D(1)(m) of the Act, for a Product Disclosure Statement that is required in relation to a general insurance product, if:
  - (a) information is required to be stated in dollars; and
  - (b) the amount can only be determined:
    - (i) after the responsible person assesses the risk of the insured; or
    - (ii) after the insured has nominated desired levels of insurance cover;the responsible person may comply with the requirement to state the information by either of the ways mentioned in subregulation (5).
- (5) For subregulation (4), the responsible person may state the information by:
  - (a) stating an amount in dollars in the Product Disclosure Statement; or
  - (b) giving to the insured:
    - (i) a document containing the information, as soon as practicable (but in any case, not later than 5 business days after the responsible person issues the general insurance product); and
    - (ii) a statement in the Product Disclosure Statement that sets out the information in at least 1 of the following formats:
      - (A) as a range of amounts in dollars;
      - (B) as a percentage of a matter that is mentioned in the statement;
      - (C) as a description.

**7.9.15CA Less information in Product Disclosure Statement—  
financial claims scheme**

- (1) This regulation applies from 18 April 2010 to 11 October 2011.

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- (2) For paragraph 1013D(4)(b) of the Act, paragraphs 1013D(1)(b) and (f) of the Act do not require a Product Disclosure Statement to contain information relating to Division 2AA of Part II of the *Banking Act 1959* or Part VC of the *Insurance Act 1973*.

**7.9.15D Less information in product disclosure statement: general insurance product**

For paragraph 1013D(4)(a) of the Act, the following provisions do not apply to a Product Disclosure Statement that relates to a general insurance product:

- (a) paragraph 1013D(1)(c);
- (b) subparagraph 1013D(1)(d)(iii);
- (c) paragraph 1013D(1)(e);
- (d) paragraph 1013D(1)(h);
- (e) paragraph 1013D(1)(j);
- (f) paragraph 1013D(1)(l).

**7.9.15DA Statement or information not included in a Product Disclosure Statement**

- (1) For paragraph 1020G(1)(c) of the Act, and subject to subregulation (1A) and (4), a responsible person is not required to include a statement or information mentioned in Part 7.9 of the Act in a Product Disclosure Statement if:
- (a) the statement or information is in writing and is publicly available in a document other than the Product Disclosure Statement; and
  - (b) the Product Disclosure Statement:
    - (i) refers to the statement or information; and
    - (ii) provides sufficient details about the statement or information to enable a person:
      - (A) to identify by a unique identifier the document, or part of the document, that contains the statement or information; and
      - (B) to locate the statement or information; and

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- (C) to decide whether or not to read the statement or information or obtain a copy of the statement or information; and
    - (iii) states that a copy of the statement or information may be obtained from the responsible person on request, at no charge; and
    - (c) the statement or information is not a statement or information that is in a Short-Form Product Disclosure Statement.
- (1A) This regulation does not apply if the Product Disclosure Statement is for:
  - (a) a margin loan; or
  - (b) a superannuation product to which Subdivision 4.2B of Division 4 of Part 7.9 applies; or
  - (c) a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 applies.
- (2) If the client requests a copy of the statement or information that the responsible person is not required to include in accordance with subregulation (1), the responsible person must provide the copy as soon as practicable, at no charge.
- (3) If a statement or information is not included in a Product Disclosure Statement because of subregulation (1), the statement or information is taken to be included in the Product Disclosure Statement.
- (4) Despite subregulation (3), if a responsible person does not include a statement or information in a Product Disclosure Statement in accordance with subregulation (1), the responsible person must include the following information in the Product Disclosure Statement:
  - (a) for information required by paragraph 1013D(1)(b) or (f) of the Act—a description, in summary, of the purpose and key features of the product;
  - (b) for information required by paragraph 1013D(1)(c) of the Act—a description, in summary, of the key risks of the product;
  - (c) the information required by:



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- (i) paragraphs 1013D(1)(a), (g) and (i) of the Act; and
- (ii) Divisions 1 and 2 of Part 2 of Schedule 10; and
- (iii) paragraphs 209(e) and (h) of Division 4 of Part 2 of Schedule 10; and
- (iv) Divisions 5 and 6 of Part 2 of Schedule 10;
- (d) the Consumer Advisory Warning in Division 7 of Part 2 of Schedule 10.

**7.9.15DB Requirement to keep record of Product Disclosure Statement and other documents**

- (1) If section 1015B of the Act does not require a copy of a Product Disclosure Statement to be lodged with ASIC, the Statement and a document, or part of a document, mentioned in the Statement must be retained by the responsible person for that Statement for 7 years after the date of the Statement.

Note: *Responsible person* has the same meaning as in section 1011B of the Act.

- (2) This regulation does not apply if the Product Disclosure Statement is for:
  - (a) a margin loan; or
  - (b) a superannuation product to which Subdivision 4.2B of Division 4 of Part 7.9 applies; or
  - (c) a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 applies.

**7.9.15DC Requirement to lodge documents mentioned in a Product Disclosure Statement with ASIC**

- (1) A document, or part of a document, mentioned in a Product Disclosure Statement that was required to be lodged with ASIC under section 1015B of the Act must be lodged with ASIC as if the document, or part of the document, were a Statement within the meaning of section 1015B of the Act.
- (2) This regulation does not apply if the Product Disclosure Statement is for:
  - (a) a margin loan; or

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- (b) a superannuation product to which Subdivision 4.2B of Division 4 of Part 7.9 applies; or
- (c) a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 applies.

**7.9.15E More detailed information in product disclosure statement: general insurance product**

For paragraph 1013D(4)(c) of the Act, the more detailed statement of the information, for paragraph 1013D(1)(f), that must be included in a Product Disclosure Statement that relates to a general insurance product is:

- (a) the terms and conditions of the policy document (within the meaning of the *Insurance Contracts Act 1984*) being terms and conditions that are not provided in a Schedule to the policy document; and
- (b) information that, if the issuer were seeking to rely on subsection 35(2) and section 37 of the *Insurance Contracts Act 1984*, the issuer would have had to provide to the insured before the contract of insurance was entered into.

**7.9.15F Product disclosure statement: general insurance product**

For paragraph 1020G(1)(b) of the Act, Part 7.9 of the Act applies to general insurance products as if subparagraph 1013C(1)(a)(ii) and section 1013E were omitted.

**7.9.15FA Transitional arrangements for regulations 7.9.15D, 7.9.15E and 7.9.15F**

- (1) If, at any time during the transition period, a Product Disclosure Statement for a general insurance product complies with the requirements of old sections 1013C and 1013D, the Product Disclosure Statement is taken to comply with the requirements of:
  - (a) sections 1013C and 1013D of the Act; and
  - (b) the provisions of any regulations made for the purposes of, or modifying, sections 1013C and 1013D of the Act;as in force at that time.

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(2) In this regulation:

***commencing day*** means the day on which this regulation commences.

***old sections 1013C and 1013D*** means:

- (a) sections 1013C and 1013D of the Act; and
- (b) the provisions of any regulations made for the purposes of, or modifying, those sections;

as in force immediately before the commencing day.

***transition period*** means the period starting on the commencing day and ending at the end of 30 June 2008.

Note: Before the commencement of this regulation, transitional arrangements in similar terms were provided for regulations 7.9.15D, 7.9.15E and 7.9.15F by item 2 of Schedule 5 to the *Corporations Amendment Regulations 2005 (No. 5)* (SLI 2005 No. 324).

### **7.9.15G Business days**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if paragraph 1019B(3)(b) were modified by omitting “5th day” and substituting “fifth business day”.

### **7.9.15H New section 1012G: product disclosure statement may sometimes be provided later**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1012G were omitted and the following section were substituted:

**“1012G Product disclosure statement may sometimes be provided later: financial products subject to a cooling off period**

*Application of section*

- (1) The regulated person may deal with a financial product under this section only if the financial product is one for which an application form is not required under section 1016A and section 1019B (cooling off period) will apply if the client enters into a legal

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obligation to acquire the product pursuant to the recommendation or offer that constitutes the relevant conduct.

*No need to give Product Disclosure Statement in certain circumstances*

- (2) In a recommendation situation or an issue situation, the regulated person need not give the client a Product Disclosure Statement for the financial product at or before the time when it would otherwise be required to be given if:
- (a) the client expressly instructs the regulated person that they require:
    - (i) in a recommendation situation—the advice constituting the recommendation; or
    - (ii) in an issue situation—the financial product;to be provided or issued immediately, or by a specified time; and
  - (b) it is not reasonably practicable, while complying with the client's instructions, to give the client the Product Disclosure Statement at or before the time when it would otherwise be required to be given.

The regulated person must comply instead with subsection (3).

*Requirements to be complied with to be able to give Product Disclosure statement later*

- (3) The regulated person must:
- (a) at or before the time referred to in paragraph (2)(b), orally communicate the following information to the client:
    - (i) the name and contact details of the issuer of the financial product;
    - (ii) information about the cooling off regime that applies in respect of acquisitions of the product (whether this regime is provided for by law or otherwise);
    - (iii) that the client should consider the information in the Product Disclosure Statement that will be provided to the client;
    - (iv) the further information (if any) requested by the client in response to a question under paragraph (b); and

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- (b) at or before the time referred to in paragraph (2)(b), ask the client whether the client would like further information about the financial product; and
- (c) give the client the Product Disclosure Statement as soon as practicable after that time, and in any event not later than:
  - (i) the time when the confirmation requirement (if applicable) is complied with; or
  - (ii) the end of the fifth business day after the day on which the financial product was issued or sold to the client.

*How information to be communicated*

- (4) The information referred to in paragraph (3)(a) must be communicated in a clear, concise and effective manner.

*How confirmation requirement to be complied with*

- (5) For the purposes of subparagraph (3)(c)(i), the confirmation requirement is complied with when:
  - (a) the client receives confirmation, as mentioned in paragraph 1017F(5)(a), of the transaction by which they acquired the financial product; or
  - (b) confirmation of that transaction is available to the client by a facility as mentioned in paragraph 1017F(5)(b)."

**7.9.15I Modification of section 1012IA**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if subparagraph 1012IA(4)(b)(ii) were omitted and the following subparagraph was inserted:

- "(ii) subsection 1012G(3) applies in relation to the provider, the client and the regulated acquisition as if the reference to the regulated person were instead a reference to the provider, as if subparagraph 1012G(3)(c)(i) were omitted and as if the reference in subparagraph 1012G(3)(c)(ii) to the day on which the financial product was issued or sold to the client were instead a reference to the day on which the regulated acquisition occurs."

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**7.9.16 More detailed information in Product Disclosure Statement:  
consumer credit insurance product**

- (1) For paragraph 1013D(4)(c) of the Act, the more detailed information that must be included in a Product Disclosure Statement that relates to a consumer credit insurance product is:
  - (a) a brief explanation of the purposes of consumer credit insurance; and
  - (b) an outline statement of general areas covered by the consumer credit insurance product, or the kind of consumer credit insurance product; and
  - (c) a statement that it is important that the insured read the Product Disclosure Statement carefully to understand the extent of cover provided by the consumer credit insurance product, and its limitations; and
  - (d) if all of the following matters apply under the consumer credit insurance product:
    - (i) a person who applies for, or obtains, consumer credit insurance is not obliged to buy the consumer credit insurance;
    - (ii) cover is provided under the consumer credit insurance product in respect of losses caused by certain contingencies;
    - (iii) the extent of loss to the consumer credit insurance product applies is measured by reference to the liability of the insured under the credit agreement to which the consumer credit insurance applies;a statement to that effect, accompanied by examples of the contingencies; and
  - (e) a table of the benefit limits applicable under the consumer credit insurance product; and
  - (f) a statement that the insured:
    - (i) is required to be truthful; and
    - (ii) is able to arrange consumer credit insurance through a different insurer; and
  - (g) a statement of the commission paid or payable in relation to the provision of the consumer credit insurance product.

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(2) In this regulation:

***consumer credit insurance product*** means a general insurance product provided by a class of contracts of insurance that is:

- (a) declared, in accordance with the *Insurance Contracts Act 1984* to be a class of contracts to which Division 1 of Part V of that Act applies; and
- (b) identified as consumer credit insurance as part of that declaration.

**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.

## **Division 4B—Ongoing disclosure**

### **7.9.16G Ongoing disclosure of material changes and significant events**

- (1) For paragraph 1017B(1)(d) of the Act, the circumstances in subregulation (2) are specified.
- (2) The circumstances are that the product issuer issued a financial product that was acquired by a holder as a retail client:
  - (a) in a sale situation in which the issuer is not required to give a Product Disclosure Statement for the product under section 1012C of the Act; or
  - (b) in a situation in which a Product Disclosure Statement is not required because of the operation of section 1012D of the Act other than subsection (1), (2), (2A) or (2B) of that section; or
  - (c) in an offer situation in which a Product Disclosure Statement is not required under section 1012E of the Act.
- (3) For paragraph 1017B(1A)(c) of the Act, the attribution, on the recommendation of the trustee, of an amount in relation to a member in a MySuper product to another class of beneficial interest in the fund is specified.



## **Division 4C—Fee Disclosure for certain financial products**

### **Subdivision 4C.1—Application**

#### **7.9.16J Application of Division 4C to financial products**

This Division applies to:

- (a) superannuation products other than:
  - (i) self-managed superannuation funds; and
  - (ii) superannuation products that have no investment component (also known as risk-only superannuation products); and
  - (iii) annuities (except market-linked annuities); and
  - (iv) non-investment or accumulation life insurance policies offered through a superannuation fund; and
- (b) managed investment products.

#### **7.9.16JA Application of Division 4C to financial products—temporary arrangements**

For paragraph 1020G(1)(a) of the Act:

- (a) an issuer of a superannuation product to which this Division applies does not have to provide the information mentioned in subparagraph 1013D(1)(d)(iii) of the Act in a Product Disclosure Statement issued before 1 July 2005; and
- (b) an issuer of a financial product, other than a superannuation product to which this Division applies, does not have to provide the information mentioned in subparagraph 1013D(1)(d)(iii) of the Act in a Product Disclosure Statement issued before 1 July 2006.

#### **7.9.16K Application of Division 4C to periodic statements and Product Disclosure Statements**

This Division applies:

- (a) in relation to superannuation products:

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- (i) to periodic statements (other than exit statements) in relation to a reporting period commencing on or after 1 July 2005; and
- (ii) to periodic statements that are exit statements issued on or after 1 July 2006; and
- (iii) to Product Disclosure Statements issued on or after 1 July 2005; and
- (b) in relation to managed investment products:
  - (i) to periodic statements (other than exit statements) in relation to a reporting period commencing on or after 1 July 2006; and
  - (ii) to periodic statements that are exit statements issued on or after 1 July 2007; and
  - (iii) to Product Disclosure Statements issued on or after 1 July 2006.

**Subdivision 4C.2—Product Disclosure Statements**

**7.9.16L More detailed information about fees and costs**

- (1) For paragraph 1013D(4)(c) of the Act, a Product Disclosure Statement must include the details of fees and costs set out in Part 2 of Schedule 10.
- (2) This regulation does not apply if the Product Disclosure Statement is for:
  - (a) a margin loan; or
  - (b) a superannuation product to which Subdivision 4.2B of Division 4 of Part 7.9 applies; or
  - (c) a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 applies.

**7.9.16M Modification of section 1015C of the Act**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies in relation to a product mentioned in regulation 7.9.16J as if paragraph 1015C(5)(b) of the Act were modified to omit the words ‘that is to be given in electronic form’.

**7.9.16N Presentation, structure and format of fees and costs in  
Product Disclosure Statements**

- (1) For paragraph 1015C(5)(b) of the Act, the information required by paragraphs 1013D(1)(d) and (e) of the Act must be set out in a single section of the Product Disclosure Statement (*fees section*) with the heading ‘Fees and other costs’.
- (2) The fees section of a Product Disclosure Statement must include:
  - (a) the Fees and Costs Template, comprising the template and the additional explanation of fees and costs set out in Part 2 of Schedule 10; and
  - (b) an example of annual fees and costs and associated notes as set out in Part 2 of Schedule 10; and
  - (c) the boxed Consumer Advisory Warning Statement set out in Part 2 of Schedule 10.

**Subdivision 4C.3—Periodic statements**

**7.9.16O Presentation, structure and format of fees and charges in  
periodic statements**

- (1) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies in relation to a product mentioned in regulation 7.9.16J as if section 1017D of the Act were modified to add, after subsection (7):

‘(8) The regulations may specify requirements as to the presentation, structure and format of a periodic statement.’.
- (2) For subsection 1017D(8) of the Act, the information required by paragraph 1017D(5)(c) of the Act must be set out in the periodic statement:
  - (a) in the manner specified in Part 3 of Schedule 10; and
  - (b) using the terminology used in Part 3 of Schedule 10.

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**Division 4D—Other requirements relating to Product Disclosure Statements and Supplementary Product Disclosure Statements**

**Subdivision 4D.1—Requirement to lodge a notice with ASIC**

**7.9.16T Variation of paragraph 1015D(2)(b) of the Act**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if paragraph 1015D(2)(b) of the Act were omitted and the following paragraph and note were inserted:

‘(b) a change is made to the fees and charges set out in the enhanced fee disclosure table in the Statement;

Note: The templates for the enhanced fee disclosure table are set out in items 201 and 202 of Schedule 10 to the *Corporations Regulations 2001*.’.

## **Division 5—Ongoing requirements for product disclosure after person becomes a member**

### **Subdivision 5.1—Preliminary**

#### **7.9.17 Application of Division 5**

This Division applies in relation to the following entities:

- (a) a regulated superannuation fund;
- (b) an approved deposit fund;
- (c) a pooled superannuation trust;
- (d) an RSA.

#### **Subdivision 5.2—Periodic statements for retail clients for financial products that have an investment component: regulated superannuation funds, ADFs and RSAs**

#### **7.9.18 Application of Subdivision 5.2**

This Subdivision applies in relation to:

- (a) a regulated superannuation fund; and
- (b) an approved deposit fund; and
- (c) an RSA.

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

For paragraph 1017D(5)(g) of the Act, a periodic statement for a superannuation product, given to a member of a superannuation fund (other than a self-managed superannuation fund) or an RSA product given to an RSA holder must include the following details:

- (a) the contact details of the fund or the RSA provider;

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

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**7.9.19A Withdrawal benefit—fees, charges or expenses**

- (1) For subsection 1017D(5A) of the Act, in providing details of a deduction for fees, charges or expenses in accordance with paragraph 7.9.19(g), the amount must be stated in dollars.
- (2) If ASIC determines that, for a compelling reason, it is not possible to state the amount of a deduction in dollars the amount of the deduction may be set out as a description of the fees, charges or expenses as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (3) If ASIC determines that, for a compelling reason, it is not possible to state the amount of a deduction in dollars, or to set out the amount as a percentage, the product issuer may provide:
  - (a) a statement informing the holder of the product that amounts for fees, charges or expenses are applicable; and
  - (b) if information about access to the information about the amount of the deduction is not provided in the statement mentioned in paragraph 7.9.19(h)—details of the means by which a product holder can gain access to information relating to the amount of the deduction.
- (4) A determination under subregulation (2) or (3) must be:
  - (a) in writing; and
  - (b) published in the *Gazette*.

**7.9.19B Withdrawal benefit—fees, charges and expenses**

- (1) For subsection 1017D(5A) of the Act, this regulation applies to details of a deduction for fees, charges or expenses in accordance with paragraph 7.9.19(g).
- (2) If ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars:
  - (a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or

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- (b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or
  - (c) would not be in the interests of a product holder, or a class of product holders;

the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (3) If ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars, or to describe the amount as a percentage:
  - (a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or
  - (b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or
  - (c) would not be in the interests of a product holder, or a class of product holders;

the product issuer must provide the information in subregulation (4).
- (4) If subregulation (3) applies, the product issuer must provide:
  - (a) a statement informing the product holder that amounts for fees, charges or expenses are applicable; and
  - (b) if information about access to the information is not provided in the statement mentioned in paragraph 7.9.19(i)—details of the means by which a product holder can gain access to information relating to the amount of the deduction.
- (5) A determination under subregulation (2) or (3) must be:
  - (a) in writing; and
  - (b) published in the *Gazette*.



**7.9.20 Specific requirements for certain periodic statements:  
superannuation funds (other than self managed  
superannuation funds)**

- (1) For paragraph 1017D(5)(g) of the Act, a periodic statement for a member of a fund (other than a self managed superannuation fund) must include the following details:
- (a) the amount of the member's contributions during the reporting period;
  - (b) the amount of benefits rolled-over or otherwise transferred into the fund during the reporting period;
  - (c) the amount of withdrawals during the reporting period;
  - (d) the information about costs of transactions mentioned in regulation 7.9.75;
  - (e) the amount of any allotment of employer contributions during the reporting period;
  - (f) the amount of any allotment of net earnings during the reporting period (including, for a unitised product, the presentation of changes in price as amounts in dollars);
  - (g) the rate of any allotment of net earnings during the reporting period;
  - (h) the amount of bonuses that have accrued at the end of the reporting period;
  - (i) the amount of the sum assured;
  - (j) the amount payable in the event of the member's death:
    - (i) at the end of the reporting period; or
    - (ii) on the first day of the next reporting period;or the method by which that amount is worked out;
  - (k) for a reporting period (within the meaning of subsection 1017D(2) of the Act) commencing before 1 July 2004—details, including the amount or method of working out, of other significant benefits, including, in particular, disability benefits;
  - (ka) for a reporting period (within the meaning of subsection 1017D(2) of the Act) commencing on or after 1 July 2004:

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- (i) details of other significant benefits, including disability benefits, and the amount of the benefits at the end of the reporting period, or the method of working out the amount of the benefits; and
  - (ii) if the periodic statement includes an amount mentioned in subparagraph (i)—a statement informing the holder of the product that:
    - (A) the details of the significant benefit reflects the situation for the member on the date shown in the statement and the amount might change; and
    - (B) the issuer is obliged to provide product holders with any information they reasonably require for the purpose of understanding their benefit entitlements; and
  - (iii) details of the means by which a product holder is able to gain access to information relating to the amount of a significant benefit;
- (kb) if, in providing details of other significant benefits for a reporting period, a deduction for fees, charges or expenses has been made or might be made—details of the deduction;
- (l) if the trustee is aware, or ought reasonably to be aware, of contributions that are due and payable during the reporting period but have not been paid to the fund at, or shortly before, the date of issue of the report, details of the amount of those contributions and of action that the trustee has taken, or proposes to take, to have the contributions paid;
- (m) the net amount of Government co-contribution received during the reporting period;
- (n) for a regulated superannuation fund—a statement of long-term returns, in accordance with regulation 7.9.20AA, of:
  - (i) the MySuper product or investment option within a choice product in which a member is invested; or
  - (ii) the sub-plan, or, if none, the fund in which the member holds an interest;

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- (o) for a regulated superannuation fund, if the trustee is required to make publicly available a product dashboard for the investment option, under section 1017BA of the Act—the latest product dashboard for the investment option.
  - (2) For paragraph (1)(g), if the earnings rate for members of the fund is reflected in the price of units of the fund, rather than being credited or debited against the accounts of members, an earnings rate allotted to members in respect of a period is taken to be a change in the value of the members' units being determined by the trustee in respect of that period.
  - (2A) For paragraph (1)(m), the periodic statement must state separately:
    - (a) the amount of Government co-contributions received; and
    - (b) the amount of low income superannuation contributions received.
- Note: See section 12B of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* for the way in which a law that applies in relation to a Government co-contribution applies in relation to a low income superannuation contribution.
- (3) A nil amount need not be disclosed.

**7.9.20AA Specific requirements for certain periodic statements:  
superannuation funds (other than self managed  
superannuation funds)—long-term returns**

- (1) For paragraph 7.9.20(1)(n), this regulation sets out requirements that apply to a trustee of a regulated superannuation fund (other than a self managed fund).

*Requirements from 1 July 2009 until 30 June 2010*

- (2) The trustee must provide to each member of the regulated superannuation fund, in or with the periodic statement for a reporting period that is provided during the period starting on 1 July 2009 and ending at the end of 30 June 2010:

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- (a) a statement of the long-term returns of the investment option in which the member is invested at the end of the reporting period, if the member is invested in an investment option; or
  - (b) a statement of the long-term returns of the sub-plan, or, if none, the fund in which the member holds an interest at the end of the reporting period.
- (3) For paragraph (2)(a), the long-term returns must be stated as the compound average effective rate of net earnings of the investment option for the period of 5 years ending at the end of the last financial year or reporting period before the provision of the periodic statement.
- (4) For paragraph (2)(b), the long-term returns must be stated as the compound average effective rate of net earnings of the sub-plan or fund for the period of 5 years ending at the end of the last financial year or reporting period before the provision of the periodic statement.
- (5) If:
  - (a) the trustee provides the statement of long-term returns on an insert to the periodic statement; and
  - (b) the insert includes the long-term returns of investment options in which the member is not invested, as well as the long term returns of the investment option in which the member is invested;the periodic statement must include a statement of which investment option the member is invested in.
- (6) If the trustee provides the long-term returns in the periodic statement, the trustee must include in the periodic statement, near to the statement of long-term returns, a statement to the effect that the returns are not the returns of the member's investment in the investment option, sub-plan or fund.
- (7) If the trustee provides the long-term returns on an insert to the periodic statement, the trustee must include in the periodic statement, and on the insert near to the statement of long-term returns, a statement to the effect that the returns are not the returns

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of the member's investment in the investment option, sub-plan or fund.

*Requirements from 1 July 2010*

- (8) The trustee must provide the following, in the periodic statement for a reporting period that is provided from 1 July 2010, to each member of the regulated superannuation fund:
  - (a) if the member is invested in an investment option at the end of the reporting period—a statement of the long-term returns of the investment option;
  - (b) if the member is not invested in an investment option at the end of the reporting period—a statement of the long term returns of the sub-plan, or, if none, the fund in which the member holds an interest at the end of the reporting period.
- (9) For paragraph (8)(a), the long-term returns must be stated as:
  - (a) the compound average effective rate of net earnings of the investment option for the period of 5 years ending at the end of the last financial year or reporting period before the provision of the periodic statement; and
  - (b) the compound average effective rate of net earnings of the investment option for the period of 10 years ending at the end of that financial year or reporting period.
- (10) For paragraph (8)(b), the long-term returns must be stated as:
  - (a) the compound average effective rate of net earnings of the sub-plan or fund for the period of 5 years ending at the end of the last financial year or reporting period before the provision of the periodic statement; and
  - (b) the compound average effective rate of net earnings of the sub-plan or fund for the period of 10 years ending at the end of that financial year or reporting period.
- (11) The trustee must include in the periodic statement, near to the statement of long-term returns, a statement to the effect that the returns are not the returns of the member's investment in the investment option, sub-plan or fund.

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*General requirements*

- (12) For subregulations (3), (4), (9) and (10), if the investment option, sub-plan or fund has been in operation for less than the 5-year or 10-year period to be reported on, the trustee must provide:
  - (a) the long-term return for the period in which the investment option, sub-plan or fund has been in operation; and
  - (b) the date on which the investment option, sub-plan or fund came into operation.
- (13) If the long-term returns are provided in the periodic statement, they must be positioned near to the statement of the rate of any allotment of earnings during the reporting period.
- (14) The long-term returns must be presented in a clear, concise and effective manner.

**7.9.20A Details of other significant benefits—disclosure of fees, charges or expenses**

- (1) For subsection 1017D(5A) of the Act, in providing details of a deduction for fees, charges or expenses in accordance with paragraph 7.9.20(1)(kb):
  - (a) the amount must be stated in dollars; or
  - (b) if ASIC determines that, for a compelling reason, it is not possible to state the amount of a deduction in dollars the amount of the deduction may be set out as a description of the fees, charges or expenses as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate); or
  - (c) if ASIC determines that, for a compelling reason, it is not possible to state the amount of a deduction in dollars, or to set out the amount as a percentage, the product issuer may provide:
    - (i) a statement informing the holder of the product that amounts for fees, charges or expenses are applicable; and

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- (ii) if information about the deduction is not provided in the statement mentioned in sub-subparagraph 7.9.20(1)(ka)(ii)(B)—details of the means by which a product holder can gain access to information relating to the amount.
- (2) A determination under paragraph (1)(b) or (c) must be:
  - (a) in writing; and
  - (b) published in the *Gazette*.

**7.9.20B Other significant benefits—disclosure of fees, charges or expenses**

- (1) For subsection 1017D(5A) of the Act, this regulation applies to details of a deduction for fees, charges or expenses mentioned in paragraph 7.9.20(1)(kb).
- (2) If ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the amount of the deduction in dollars:
  - (a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or
  - (b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or
  - (c) would not be in the interests of a product holder, or a class of product holders;the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (3) If ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the amount of a deduction in dollars, or, to describe the amount as a percentage:
  - (a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or

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- (b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or
  - (c) would not be in the interests of a product holder, or a class of product holders;
- the product issuer must provide the information in subregulation (4).
- (4) If subregulation (3) applies, the product issuer must provide:
  - (a) a statement informing the product holder that amounts for fees, charges or expenses are applicable; and
  - (b) if information about the deduction is not provided in the statement mentioned in sub-subparagraph 7.9.20(1)(ka)(ii)(B)—details of the means by which a product holder can gain access to information relating to the amount of the deduction.
- (5) A determination under subregulation (2) or (3) must be:
  - (a) in writing; and
  - (b) published in the *Gazette*.

**7.9.21 Specific requirements in particular cases: member (other than capital guaranteed member) of fund other than a self managed superannuation fund**

- (1) For paragraph 1017D(5)(g) of the Act, and in addition to regulations 7.9.19 and 7.9.20, a periodic statement for a member (other than a capital guaranteed member) of a fund (other than a self managed superannuation fund) must include the following details:
  - (a) if the fund is an unfunded defined benefits fund—details of the surcharge debt account kept by the trustee, under subsection 16(2) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, for the member, including:
    - (i) the balance of the account at the start of the reporting period; and



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- (ii) the amount debited to the account for superannuation contributions surcharge assessed, by the Commissioner of Taxation, to be payable on the member's surchargeable contributions; and
    - (iii) the amount of interest debited, under subsection 16(4) of that Act, to the account during the reporting period; and
    - (iv) the balance of the account at the end of the reporting period;
  - (b) if the trustee reduced the member's benefits in connection with payment of a superannuation contributions surcharge or an advance instalment of surcharge:
    - (i) the amount deducted; and
    - (ii) if there is a difference between the amount deducted and the amount assessed under subsection 15(1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15(2) of that Act—a statement explaining the difference;
  - (c) a description of the nature, effect and significant features of surcharge debt accounts.
- (2) A nil amount need not be disclosed.

**7.9.22 Specific requirements: capital guaranteed funds and RSAs**

- (1) For paragraph 1017D(5)(g) of the Act, and in addition to regulations 7.9.19 and 7.9.20, a periodic statement for a member of a capital guaranteed fund must include the following details:
- (a) a statement that outlines the means by which the fund is to be maintained as a capital guaranteed fund and sets out the name of the institution providing the investments that back the fund;
  - (b) a statement that outlines the effect of the lower-risk/lower- return nature of the product on possible benefits in the long term;
  - (c) a statement that the member may wish to consider:

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- (i) other superannuation arrangements that may provide a greater return over the long term; and
  - (ii) seeking advice on alternative investment arrangements that may be more suitable.
- (2) For paragraph 1017D(5)(g) of the Act, and in addition to regulation 7.9.19, a periodic statement for an RSA holder must include the following details:
  - (a) a statement that outlines the effect of the lower-risk/lower- return nature of the product on possible benefits in the long term;
  - (b) a suggestion that the RSA holder may wish to consider:
    - (i) other superannuation arrangements that may provide a greater return over the long term; and
    - (ii) seeking advice on alternative investment strategies that may be more suitable.

### **7.9.23 Information for capital guaranteed fund: benefits reach \$10 000**

For paragraph 1017D(5)(g) of the Act, and in addition to regulations 7.9.19 and 7.9.22, if the amount of the benefits of a member in a capital guaranteed fund at the end of a reporting period is at least \$10 000, the periodic statement for that reporting period must include the following details:

- (a) a statement of that fact;
- (b) a statement that the information contained in the periodic statement is important and that the notice must be read carefully;
- (c) a statement that outlines the effect of the lower- risk/lower-return nature of the product on possible benefits in the long term;
- (d) a statement that the member may wish to consider:
  - (i) other superannuation arrangements that may provide a greater return over the long term; and
  - (ii) seeking advice on alternative investment arrangements that may be more suitable.

**7.9.24 Modification of Act: pensioners, members subject to  
compulsory protection of small amounts and members  
with small amounts that are expected to grow quickly**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to a superannuation entity or an RSA to which this Subdivision applies as set out in Part 7 of Schedule 10A.

**Subdivision 5.3—Periodic statements for retail clients for  
financial products that have an investment  
component: information for RSAs**

**7.9.25 Application of Subdivision 5.3**

This Subdivision applies in relation to an RSA provider.

**7.9.26 Specific requirements where applicable: RSAs**

- (1) For paragraph 1017D(5)(g) of the Act, and in addition to regulation 7.9.19, a periodic statement for an RSA holder must include details of the following matters in respect of the RSA holder so far as they are applicable:
  - (a) the amount of the RSA holder's contributions during the reporting period;
  - (b) the amount of employer contributions during the reporting period;
  - (c) the amount of benefits rolled-over or transferred into the RSA during the reporting period;
  - (d) the amount of withdrawals during the reporting period;
  - (e) information about the cost of transactions mentioned in Division 8;
  - (f) the amount of interest credited to the RSA during the reporting period;
  - (g) the annual effective rate of net interest applied to the RSA during the reporting period;
  - (h) a statement of:

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- (i) the annual effective rate of net earnings in each of the most recent reporting periods that, in total, constitute a period of at least 5 years; and
    - (ii) the compound average effective rate of net earnings for the period of 5 years ending at the end of the reporting period;
  - (i) the effect of the RSA holder-protection standards under the RSA Regulations;
  - (j) the amount of bonuses that have accrued at the end of the reporting period;
  - (k) if a risk insurance product is held by the RSA provider—the amount of the sum assured;
  - (l) the circumstances when benefits may be paid to an eligible rollover fund, the effect of that payment and the contact details of the eligible rollover fund;
  - (m) the amount payable in the event of the RSA holder's death:
    - (i) at the end of the reporting period; or
    - (ii) on the first day of the next reporting period;or the method by which that amount is worked out;
  - (n) the amount, or method of working out, of other benefits including, in particular, disability benefits;
  - (o) if the RSA provider reduced the RSA holder's benefits in connection with payment of a superannuation contributions surcharge or an advance instalment of surcharge:
    - (i) the amount deducted; and
    - (ii) if there is a difference between the amount deducted and the amount assessed under subsection 15(1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15(2) of that Act—a statement explaining the difference;
  - (p) the net amount of Government co-contribution received during the reporting period.
- (2) A nil amount need not be disclosed.

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- (3) If, at the end of a reporting period, an RSA has not been in existence for 5 years, the references in paragraph (1)(h) to 5 years are taken to be references to the whole period of existence of the RSA.

**7.9.27 Modification of Act: periodic statements for RSA holders**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to an RSA to which this Subdivision applies as set out in Part 8 of Schedule 10A.

**7.9.28 Information for RSA: amount reaches \$10 000**

For paragraph 1017D(5)(g) of the Act, if the amount of an RSA at the end of a reporting period is at least \$10 000, the periodic statement for that reporting period must include the following, in addition to the details mentioned in regulations 7.9.19 and 7.9.22:

- (a) a statement of that fact;
- (b) a statement that the information contained in the periodic statement is important and that the notice must be read carefully;
- (c) a statement that outlines the effect of the lower-risk/lower-return nature of the RSA on possible benefits in the long term;
- (d) a suggestion that the RSA holder may wish to consider:
  - (i) other superannuation arrangements that may provide a greater return over the long term; and
  - (ii) seeking advice on alternative investment strategies that may be more suitable.

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**Subdivision 5.4—Periodic statements for retail clients for financial products that have an investment component: additional information for superannuation entities and RSA providers**

**7.9.29 Application of Subdivision 5.4**

This Subdivision applies in relation to a superannuation entity and an RSA provider.

**7.9.30 Additional information for change to choices**

- (1) For paragraph 1017D(5)(g) of the Act, a periodic statement for a holder of a financial product must include, if relevant, either of the following details (in addition to the details mentioned in regulation 7.9.20 or 7.9.26, as appropriate):
  - (a) details of:
    - (i) other investment strategies available to the holder (if applicable); and
    - (ii) other contribution levels available to the holder; and
    - (iii) other insurance coverage available to the holder in relation to the financial product;
  - (b) a statement:
    - (i) that the details in paragraph (a) are available on request from the responsible person; and
    - (ii) about how to ask for the details.
- (2) The details or statement must relate to:
  - (a) an interest in the same sub-plan; or
  - (b) if there is no sub-plan—an interest in the same superannuation entity or an RSA.
- (3) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to a superannuation entity and an RSA provider as set out in Part 9 of Schedule 10A.

**Subdivision 5.4A—Periodic statements for retail clients for  
financial products that have an investment  
component: additional information for margin  
lending facilities**

**7.9.30A Application of Subdivision 5.4A**

- (1) This Subdivision applies in relation to the provider of a margin lending facility within the meaning of subsection 761EA(1) of the Act.
- (2) For the purposes of this Subdivision, subsection 1017D(5) of the Act is modified to omit paragraphs (a) to (f).

Note: Paragraph 1020G(1)(c) of the Act provides that the regulations may provide that Part 7.9 of the Act applies as if specified provisions were omitted, modified or varied as specified in the regulations.

**7.9.30B Details to be included in periodic statements for margin  
lending facilities**

For paragraph 1017D(5)(g) of the Act, a periodic statement for a holder of a financial product must include the following details about the margin lending facility:

- (a) the outstanding loan amount;
- (b) the loan credit limit;
- (c) the current interest rate, and any changes to the interest rate since the last statement was provided;
- (d) an itemised list of the property by which the credit is secured, including:
  - (i) the value of each item used for calculating the current LVR; and
  - (ii) the loan to value ratio (if any) of each property item listed;
- (e) a summary of the loan to security ratios, showing separately:
  - (i) the allowable loan to security ratio; and
  - (ii) the maximum loan to security ratio, including any buffer allowed under the terms of the facility; and

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- (iii) the current LVR;
- (f) a summary of all transactions affecting the margin lending facility during the reporting period.

**Subdivision 5.5—Fund information for retail clients for financial products that have an investment component: superannuation**

**7.9.31 Application of Subdivision 5.5**

This Subdivision applies in relation to:

- (a) a regulated superannuation fund; and
- (b) an approved deposit fund; and
- (c) a pooled superannuation trust.

**7.9.32 Reporting periods: general**

- (1) For subsection 1017DA(2) of the Act, fund information as mentioned in Subdivisions 5.6 and 5.7 must be provided, in accordance with this regulation, to the product holder in a periodic statement for each fund reporting period during which the holder holds the product.
- (2) The following provisions apply in relation to fund reporting periods:
  - (a) each reporting period lasts for:
    - (i) a period not exceeding 1 year, fixed by the issuer; or
    - (ii) a longer period fixed by ASIC on the application of the issuer to which the period relates;
  - (b) the first reporting period starts when the holder acquired the product;
  - (c) each subsequent reporting period starts at the end of the preceding reporting period.
- (3) The periodic fund statement must be given as soon as practicable after, and in any event within 6 months after the end of the reporting period to which it relates.



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- (4) In relation to a fund reporting period, information required to be given under Subdivisions 5.5 to 5.7 need only be given to persons who are product holders on the day on which the fund report containing the information is completed.
- (5) For subsection 1017DA(2) of the Act, fund information in relation to a particular product holder that is provided in accordance with an obligation under section 1017DA of the Act to provide fund information in accordance with Subdivisions 5.5 to 5.7 need not be given in respect of the same fund reporting period.

Example: A superannuation fund may choose to report:

- (a) some fund information in respect of a 6-month period; and
- (b) further fund information, and a periodic report, in respect of a 9-month period; and
- (c) the remaining fund information in respect of a 12-month period.

### **7.9.33 Use of more than 1 document**

For subsection 1017DA(2) of the Act, a reference in Subdivisions 5.5 to 5.7 to a periodic fund report, or fund information:

- (a) includes 2 or more documents that include all of the information required by those Subdivisions; and
- (b) is to be read as if subsections 1013L(1), (2), (3), (5) and (7) of the Act were included in those Subdivisions, and referred to a periodic statement instead of a Product Disclosure Statement.

### **Subdivision 5.6—Fund information for retail clients for financial products that have an investment component: fund information for regulated superannuation funds and ADFs**

#### **7.9.34 Application of Subdivision 5.6**

This Subdivision applies in relation to:

- (a) a regulated superannuation fund; and

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- (b) an approved deposit fund.

**7.9.35 General requirement**

For paragraph 1017DA(1)(a) of the Act, fund information must include all information that the responsible person reasonably believes a product holder would reasonably need for the purpose of:

- (a) understanding the management and financial condition of the fund and of the relevant sub-plan (if any); and
- (b) understanding the investment performance of the relevant sub-plan or, if none, of the fund.

**7.9.36 Specific requirements in all cases**

For paragraph 1017DA(1)(a) of the Act, fund information must include all of the following items of information:

- (a) the contact details of the fund;
- (b) in respect of the relevant sub-plan or, if none, of the fund—a description of:
  - (i) the investment strategy of the fund trustee, having regard to the requirements of paragraph 52(2)(f) of the SIS Act; and
  - (ii) the investment objectives.

**7.9.37 Specific requirements in particular cases**

- (1) For paragraph 1017DA(1)(a) of the Act, fund information must include all of the following, so far as they are applicable:
  - (a) in respect of the relevant sub-plan or, if none, of the fund—the names of investment managers appointed by the trustee;
  - (b) in the case of a standard employer-sponsored fund that is not a public offer superannuation fund and does not have a trustee approved under subsection 92(10) of the SIS Act:
    - (i) if the trustee of the fund is a body corporate, the name of that body corporate and the names of all its directors during the whole or any part of the reporting period and,

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- in respect of each of those directors, details of how and by whom they were appointed;
- (ii) if the trustees of the fund are individuals, the names of the trustees of the fund during the whole or any part of the relevant reporting period and, in respect of each of those trustees, details of how and by whom they were appointed;
- (c) in the case of a fund other than a fund mentioned in paragraph (b):
- (i) the name of each corporate trustee of the fund during the relevant reporting period; and
- (ii) in respect of the relevant policy committee (if any), details of the committee (including the names of the committee members as at the end of that reporting period and, in respect of each of the members, details of how and by whom they were appointed);
- (d) a statement as to whether or not any indemnity insurance has been taken out by the trustee;
- (e) either:
- (i) the audited fund accounts, the auditor's report and, if there is a relevant sub-plan, abridged financial information relating to that sub-plan; or
- (ii) each of the following:
- (A) abridged financial information relating to the relevant sub-plan or, if none, to the fund;
- (B) information as to when the audited fund accounts and the auditor's report will be sent to members or will be available to members on request, as the case may be;
- (f) in respect of the relevant sub-plan or, if none, of the fund—a statement of assets as at the end of:
- (i) the relevant reporting period; and
- (ii) the immediately preceding reporting period;
- that includes all information that the responsible person reasonably believes a member would reasonably need to understand the asset allocation at those times;

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- (g) details of:
  - (i) each investment that has a value in excess of 5% of the total assets of the relevant sub-plan or, if none, of the fund; and
  - (ii) each combination of investments that the trustee knows or ought reasonably to know are invested in, directly or indirectly, a single enterprise or single group of associated enterprises and that have a combined value in excess of 5% of the total assets of the relevant sub-plan or, if none, of the fund;
- (h) a statement regarding the funds policy toward the use of derivative securities;
- (i) if the derivatives charge ratio of the fund (as defined in the SIS Regulations) exceeded 5% at any time during the reporting period:
  - (i) the derivatives charge ratio as at the end of the reporting period; and
  - (ii) the highest derivatives charge ratio attained during the reporting period; and
  - (iii) an explanation of why the derivatives charge ratio exceeded 5%; and
  - (iv) an explanation of the meaning of derivatives charge ratio in, or to the effect of the following:

‘The derivatives charge ratio is the percentage of the total market value of the assets of the fund (other than cash) that the trustee has charged as security for derivatives investments made by the trustee.’;
- (k) if the fund maintains reserves—in respect of the relevant sub-plan or, if none, of the fund, details of movements of reserves during the most recent reporting periods that, in total, constitute at least 3 years;
- (l) if the net earnings of the fund are allotted to members’ accounts—in respect of the relevant sub-plan or, if none, of the fund, the manner in which the allotment is made;
- (m) if the fund maintains reserves—in respect of the relevant sub-plan or, if none, of the fund, a description of the management strategy of the fund trustee in relation to the

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- reserves, having regard to the requirements of paragraph 52(2)(g) of the SIS Act;
- (n) details of any penalties imposed on the responsible person under:
- (i) section 38A of the SIS Act; or
  - (ii) section 182 of the RSA Act;
- (o) if the fund is:
- (i) a defined benefit fund; and
  - (ii) the contributions paid by the employer-sponsor in the reporting period are less than the amount that an actuary has approved as sufficient contributions in that period; and
  - (iii) the difference is material;
- in respect of the relevant sub-plan or, if none, of the fund—a statement to the effect that the matters stated in subparagraphs (ii) and (iii) apply, and statements of:
- (iv) the consequences for the fund of the shortfall; and
  - (v) any action that the trustee has taken, or proposes to take, in relation to the matter;
- (p) the ultimate source (including, for example, the fund's reserves, the members' accounts or the employer) from which payments in connection with superannuation contributions surcharges or advance instalments of surcharge will be drawn;
- (q) if there are circumstances in which the trustee would pay the member's benefit to an eligible rollover fund:
- (i) details of those circumstances; and
  - (ii) the contact details of the eligible rollover fund; and
  - (iii) a statement of the effect of the payment of benefits to the eligible rollover fund.
- (2) A nil amount need not be disclosed.
- (3) For subparagraph (1)(g)(ii), investments in a trust are taken not to be invested in the trustee of the trust.
- (5) In this regulation:
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***abridged financial information***, in relation to a reporting period of a fund or a sub-plan, means information derived from the fund's accounts or records that gives a reasonable summary of either:

- (a) both:
  - (i) changes in the financial position of the fund or sub-plan during the reporting period; and
  - (ii) the financial position of the fund or sub-plan at the end of the reporting period; or
- (b) both:
  - (i) changes in the net assets of the fund or sub-plan during the reporting period; and
  - (ii) the net assets of the fund or the sub-plan at the end of the reporting period.

**7.9.38 Specific information in particular case: self managed superannuation fund**

For subsection 1017DA(1) of the Act, fund information for a self managed superannuation fund must include only the information mentioned in paragraph 7.9.37(1)(p).

**7.9.39 Benefits determined by life insurance products**

- (1) Paragraphs 7.9.37(1)(e), (f) and (g) do not apply to funds from which the benefits paid to each member are wholly determined by reference to life insurance products.
- (2) If:
  - (a) subregulation (1) does not apply only because shares in the life insurance company issuing the life insurance products were acquired because the company was demutualised; and
  - (b) the shares have been held for not more than 18 months after the date of acquisition;paragraphs 7.9.37(1)(e), (f) and (g) do not apply to funds from which the benefits paid to each individual member would otherwise be wholly determined by reference to life insurance products.

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- (3) If subregulation (1) or (2) applies, the fund information must include the reason why the information for paragraphs 7.9.37(1)(e), (f) and (g) has not been given.

**Subdivision 5.7—Fund information for retail clients for financial products that have an investment component: fund information for pooled superannuation trusts**

**7.9.40 Application of Subdivision 5.7**

This Subdivision applies in relation to a pooled superannuation trust.

**7.9.41 Specific requirements in all cases**

For subsection 1017DA(1) of the Act, fund information must include the following:

- (a) in respect of the pooled superannuation trust—a description of the investment strategy of the pooled superannuation trust trustee, having regard to:
  - (i) the requirements of paragraph 52(2)(f) of the SIS Act; and
  - (ii) the investment objectives of the pooled superannuation trust;
- (b) a statement to the effect that other information is available on request.

**7.9.42 Specific requirements in particular cases**

- (1) For subsection 1017DA(1) of the Act, and subject to subregulations (2) and (3), fund information must include the following, so far as they are applicable:
  - (a) in respect of the pooled superannuation trust—the names of investment managers appointed by the trustee;
  - (b) the name of each approved trustee of the pooled superannuation trust during the relevant reporting period;

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- (c) either:
  - (i) the audited accounts of the pooled superannuation trust and the auditor's report; or
  - (ii) each of the following:
    - (A) abridged financial information relating to the pooled superannuation trust;
    - (B) information as to when the audited accounts of the pooled superannuation trust and the auditor's report will be sent to unit-holders or will be available to unit-holders on request, as the case may be;
- (d) in respect of the pooled superannuation trust—a statement of assets as at the end of:
  - (i) the relevant reporting period; and
  - (ii) the immediately preceding reporting period;that includes sufficient information to enable unit-holders to understand the asset allocation at those times;
- (e) details of:
  - (i) each investment that has a value in excess of 5% of the total assets of the pooled superannuation trust; and
  - (ii) details of each combination of investments that the trustee knows or ought reasonably to know are invested, directly or indirectly, in a single enterprise or single group of associated enterprises and that have a combined value in excess of 5% of the total assets of the pooled superannuation trust;
- (f) in respect of the pooled superannuation trust—the effective rate of net earnings of the pooled superannuation trust in the most recent reporting periods that, in total, constitute a period of at least 3 years;
- (g) the information about costs of transactions mentioned in regulation 7.9.75;
- (h) details of any penalties imposed on the trustee under:
  - (i) section 38A of the SIS Act; or
  - (ii) section 182 of the RSA Act.



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- (2) A nil amount need not be disclosed.
- (3) For subparagraph (1)(e)(ii), investments in a trust are taken not to be invested in the trustee of the trust.
- (4) In this regulation:
  - abridged financial information*, in relation to a reporting period of a pooled superannuation trust, means information derived from the pooled superannuation trust's accounts that gives a reasonable summary of:
    - (a) changes in the pooled superannuation trust's financial position during the reporting period; and
    - (b) the pooled superannuation trust's financial position at the end of the reporting period.

**Subdivision 5.8—Ongoing disclosure of material changes and significant events**

**7.9.43 Modification of Act: disclosure of material changes and significant events in relation to superannuation products and RSA products**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to:

- (a) a regulated superannuation fund (other than a self managed superannuation fund); and
- (b) an approved deposit fund (other than an excluded approved deposit fund); and
- (c) a pooled superannuation trust; and
- (d) an RSA;

as set out in Part 10 of Schedule 10A.

**7.9.44 Benefits to be paid to eligible rollover fund**

- (1) For subsection 1017DA(1) of the Act, if the benefits of a superannuation product holder or RSA product holder will be paid (otherwise than under a payment split) to an eligible rollover fund

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unless the holder chooses, within a specified period, another superannuation entity, an EPSSS or an RSA to which those benefits will be paid, the responsible person must give a notice to the product holder within a reasonable period to allow a decision to be made.

- (2) The notice must include:
- (a) information about the payment to the eligible rollover fund that will assist the product holder to decide between having the benefits paid to that other superannuation entity, the EPSSS, the RSA or the eligible rollover fund; and
  - (b) so much of the following information as is relevant:
    - (i) an explanation why the product issuer (the *transferor*) intends to pay the product holder's benefits to the eligible rollover fund if the product holder does not make the choice within the period;
    - (ii) a statement of the effect of the payment of benefits to the eligible rollover fund;
    - (iii) the contact details of the eligible rollover fund;
    - (iv) subject to subregulation (3), the amount, of the product holder's benefits that will be paid from the transferor;
    - (v) a statement to the effect that, if the product holder chooses a superannuation entity, EPSSS or RSA that refuses to accept the payment of the product holder's benefit, or the product holder makes no choice within the specified period, the responsible person will pay the product holder's benefits to the eligible rollover fund.
- (3) For subparagraph (2)(b)(iv), the product issuer may inform a product holder of the approximate amount of the product holder's benefits if, at the time the information is to be given, the responsible person cannot determine the exact amount of the product holder's benefits that will be paid from the superannuation entity or RSA.
- (4) This regulation does not require the responsible person of the transferor to provide information about RSAs, EPSSSs or superannuation entities other than the eligible rollover fund.

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- (5) The notice may be given in writing or electronic form.
- (6) In this regulation:
  - responsible person* means:
    - (a) a trustee of a superannuation entity; or
    - (b) an RSA provider.

**Subdivision 5.9—Information on request: members**

**7.9.45 Regulated superannuation funds, ADFs and pooled superannuation trusts**

- (1) This regulation applies in relation to:
  - (a) a regulated superannuation fund (other than a self managed superannuation fund); and
  - (b) an approved deposit fund (other than an excluded approved deposit fund); and
  - (c) a pooled superannuation trust.
- (2) For paragraph 1017C(5)(a) of the Act, the following are prescribed documents:
  - (a) the governing rules of the fund or pooled superannuation trust;
  - (b) audited accounts of the fund or pooled superannuation trust, together with (whether or not specifically requested) the auditor's report in relation to the accounts;
  - (c) for a fund—the most recent actuarial report (as referred to in regulation 9.30 of the SIS Regulations) on the fund, and any subsequent written advice by an actuary to the trustee, to the extent that those documents are relevant to:
    - (i) the overall financial condition of the fund; or
    - (ii) the entitlements of a person;
  - (d) a copy of the fund information given under section 1017DA of the Act, or Subdivision 2.4.3 of the SIS Regulations, that was most recently given to the members;
  - (f) if, for a pooled superannuation trust:

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- (i) fund information prepared for Subdivision 5.7 of Division 5; or
  - (ii) information similar to fund information prepared for the SIS Regulations;  
is relevant to the pooled superannuation trust, the fund information.
- (3) If the person requesting the information is not a concerned person or an employer-sponsor, the documents mentioned in paragraphs (1)(a) and (c) are not prescribed documents.

**7.9.46 RSAs**

- (1) This regulation applies in relation to an RSA.
- (2) For paragraph 1017C(5)(a) of the Act, the terms and conditions of the RSA are a prescribed document.

**Subdivision 5.10—Information on request: payments**

**7.9.47 Modification of Act: charges for information requested**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to a superannuation entity or an RSA provider as set out in Part 11 of Schedule 10A.

**Subdivision 5.11—Information about complaints**

**7.9.48 Source of power for this Subdivision**

This Subdivision is made for section 1017DA of the Act.

**7.9.48A Definitions**

In this Subdivision:

*decision-maker* means:

- (a) the trustee of a regulated superannuation fund or approved deposit fund; or

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- (b) an RSA provider.

**eligible person** means any of the following:

- (a) a beneficiary of a relevant entity;
- (b) a former beneficiary of a relevant entity;
- (c) the executor or administrator of the estate of a former beneficiary of a relevant entity;
- (d) for a complaint that relates to the payment of a death benefit—a person who:
  - (i) has an interest in the death benefit; or
  - (ii) claims to be, or to be entitled to death benefits through, a person mentioned in subparagraph (i).

**relevant entity** means any of the following:

- (a) a regulated superannuation fund;
- (b) an approved deposit fund;
- (c) an RSA.

**7.9.48B Complaints—general**

- (1) This regulation applies to a decision-maker if:
  - (a) an eligible person makes a complaint; and
  - (b) the decision-maker makes a decision in relation to the complaint in accordance with the relevant entity's internal dispute resolution mechanism.
- (2) The decision-maker must, within 30 days of making the decision, inform the eligible person:
  - (a) of the date of the decision; and
  - (b) about the external dispute resolution system that covers complaints by eligible persons; and
  - (c) about how that system may be accessed.

Example: Information about the Superannuation Complaints Tribunal.

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**7.9.48C Complaints about benefits other than death benefits—  
decision made**

- (1) This regulation applies to a decision-maker if:
  - (a) an eligible person makes a complaint; and
  - (b) the complaint is not a complaint that relates to the payment of a death benefit; and
  - (c) the decision-maker makes a decision in relation to the complaint in accordance with the relevant entity's internal dispute resolution mechanism.
- (2) The decision-maker must, within 30 days of making the decision, inform the eligible person:
  - (a) that the eligible person may, in writing, request written reasons for the decision; and
  - (b) that the reasons mentioned in paragraph (a) must be given:
    - (i) within 28 days of the eligible person's request under paragraph (a); or
    - (ii) if the Regulator gives the decision-maker an extension—within the extended period.

**7.9.48D Complaints about benefits other than death benefits—no  
decision made**

- (1) This regulation applies to a decision-maker if:
  - (a) an eligible person makes a complaint; and
  - (b) the complaint is not a complaint that relates to the payment of a death benefit; and
  - (c) the decision-maker has not made a decision in relation to the complaint.
- (2) The decision-maker must, within 45 days of the complaint, inform the eligible person:
  - (a) that if the decision is not made within 90 days of the complaint, the eligible person may, in writing, request written reasons for the failure to make the decision; and
  - (b) that the reasons mentioned in paragraph (a) must be given:

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- (i) within 28 days of the eligible person's request under paragraph (a); or
- (ii) if the Regulator gives the decision-maker an extension—within the extended period.

**7.9.48A Definitions**

In this Subdivision:

***decision-maker*** means:

- (a) the trustee of a regulated superannuation fund or approved deposit fund; or
- (b) an RSA provider.

***eligible person*** means any of the following:

- (a) a beneficiary of a relevant entity;
- (b) a former beneficiary of a relevant entity;
- (c) the executor or administrator of the estate of a former beneficiary of a relevant entity;
- (d) for a complaint that relates to the payment of a death benefit—a person who:
  - (i) has an interest in the death benefit; or
  - (ii) claims to be, or to be entitled to death benefits through, a person mentioned in subparagraph (i).

***relevant entity*** means any of the following:

- (a) a regulated superannuation fund;
- (b) an approved deposit fund;
- (c) an RSA.

**7.9.48B Complaints—general**

- (1) This regulation applies to a decision-maker if:
  - (a) an eligible person makes a complaint; and
  - (b) the decision-maker makes a decision in relation to the complaint in accordance with the relevant entity's internal dispute resolution mechanism.

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- (2) The decision-maker must, within 30 days of making the decision, inform the eligible person:
- (a) of the date of the decision; and
  - (b) about the external dispute resolution system that covers complaints by eligible persons; and
  - (c) about how that system may be accessed.

Example: Information about the Superannuation Complaints Tribunal.

**Subdivision 5.12—Periodic report when product holder ceases to hold product: superannuation products and RSA products**

**7.9.49 Application of Subdivision 5.12**

For paragraph 1017D(5)(g) of the Act, this Subdivision applies in relation to:

- (a) superannuation products; and
- (b) RSA products.

**7.9.50 Exit reporting period**

In this Subdivision, *exit reporting period*, in relation to a person who ceases to hold a product to which this Subdivision applies, means the reporting period mentioned in paragraph 1017D(2)(d) of the Act.

**7.9.51 Time for compliance**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to a fund as set out in Part 12 of Schedule 10A.

**7.9.52 General requirement**

For paragraph 1020G(2)(b) of the Act, subsections 1017D(2) and (4) of the Act are modified, in its application in relation to a person who ceases to hold a superannuation product or an RSA product



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(other than a product issued by a capital guaranteed fund) by requiring the issuer of the product to give all information to:

- (a) if the person is alive—the person; or
- (b) if the person is deceased—each person receiving a benefit as a result of the person's death;

that the trustee reasonably believes such a person would reasonably need for the purpose of understanding his or her investment in the financial product.

### **7.9.53 Information on death of product holder**

For paragraph 1017D(5)(g) of the Act, if a person ceases by death to hold a superannuation product (other than an interest in a pooled superannuation trust) or an RSA product, the periodic report given to each person receiving a benefit from the issuer of the product as a result of the person's death must include:

- (a) a statement setting out details (in summary form) of arrangements that the issuer has made to deal with inquiries and information about the dispute resolution system that covers complaints; or
- (b) a statement that the details are available on request.

### **7.9.54 Specific requirements in all cases**

For paragraph 1017D(5)(g) of the Act, if a reporting period is the exit reporting period, the issuer of a superannuation product (other than the trustee of a self managed superannuation fund or pooled superannuation trust) must include in the periodic report given to a person who ceases, otherwise than by death to hold the product:

- (a) the information mentioned in regulation 7.9.19; and
- (b) in relation to a death or disability benefit that ceases or reduces, because the person has ceased to hold the product:
  - (i) either:
    - (A) the amount of the death or disability benefit immediately before the person ceased to hold the product or at the end of the last reporting period; or

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- (B) the method of working out the death or disability benefit; and
- (ii) whether a continuation option is available to the person and, if it is, details of the option, a contact person who is available to discuss the option and a telephone number for the contact person.

**7.9.55 Specific requirements in particular cases**

- (1) For paragraph 1017D(5)(g) of the Act, if a reporting period is the exit reporting period, the issuer of a superannuation product (other than the trustee of a self managed superannuation fund or pooled superannuation trust) must include in the periodic report given to a person who ceases, otherwise than by death to hold the product, the information mentioned in regulation 7.9.20.
- (2) A nil amount need not be disclosed.

**7.9.56 Exceptions to exit reporting period provisions:  
superannuation products and RSA products**

This Subdivision does not apply in relation to a superannuation product holder who has been provided with the relevant information in the circumstances described in Part 13 of Schedule 10A.

**7.9.57 Exception—members subject to compulsory protection of  
small amounts**

For paragraph 1017D(5)(g) of the Act, if a protected holder of a superannuation product or RSA product ceases to hold the product, a periodic statement must include the following information for the exit reporting period:

- (a) the contact details of the product provider;
- (b) the amount of the product holder's withdrawal benefit;
- (c) the amount of any deduction, from the product holder's benefits, in connection with payment of a superannuation

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- contributions surcharge, or an advance instalment of surcharge, during the exit reporting period;
- (d) if there is a difference between the amount deducted and the amount assessed under subsection 15(1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, or between the amount deducted and the amount determined under subsection 15(2) of that Act—a statement explaining the difference;
- (e) for a superannuation product provided by an unfunded defined benefits fund—details of the surcharge debt account kept by the issuer, under subsection 16(2) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, for the holder including:
- (i) the balance of the account at the start of the exit reporting period; and
  - (ii) the amount debited to the account during the exit reporting period for superannuation contributions surcharge that is assessed, by the Commissioner of Taxation, to be payable on the member's surchargeable contributions; and
  - (iii) the amount of interest debited to the account, under subsection 16(4) of that Act, during the exit reporting period; and
  - (iv) the balance of the account at the end of the exit reporting period.

**7.9.58 Information to be given in cases other than death of RSA holder**

- (1) For paragraph 1017D(5)(g) of the Act, if a reporting period for an RSA is the exit reporting period to which paragraph 1017D(2)(d) of the Act applies for an RSA holder who ceases to be an RSA holder, otherwise than by death:
- (a) the RSA provider must give the RSA holder the information mentioned in regulation 7.9.19; and
  - (b) regulation 7.9.22 does not apply.

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- (2) A nil amount need not be disclosed.

**7.9.59 Information to be given where applicable**

- (1) For paragraph 1017D(5)(g) of the Act, if a reporting period for an RSA is the exit reporting period to which paragraph 1017D(2)(d) of the Act applies for an RSA holder who ceases to be an RSA holder, otherwise than by death, the RSA provider must give the RSA holder:
- (a) the information mentioned in regulation 7.9.26 (other than paragraphs 7.9.26(1)(h), (i), (l) and (m); and
  - (b) in the case of a death benefit that ceases or reduces, or will cease or reduce, because the person has closed the RSA:
    - (i) either:
      - (A) the amount of the death benefit immediately before the person closed the RSA or at the end of the last RSA holder reporting period; or
      - (B) the method of working out the death benefit; and
    - (ii) whether a continuation option for insurance cover is available to the person and, if it is, details of the option, a contact person who is available to discuss the option and a telephone number for the contact person.
- (2) A nil amount need not be disclosed.

**7.9.60 Modification of Act: exceptions to exit reporting period provisions**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to an RSA as set out in Part 13 of Schedule 10A.

## **Division 5AA—General requirements for financial disclosure**

### **7.9.60A Modification of Act: disclosure**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to the obligation to give information about financial products as set out in Part 14 of Schedule 10A.

### **7.9.60B Disclosure of transactions in periodic statements**

- (1) This regulation applies to the following periodic statements:
  - (a) for a financial product other than a superannuation product, a managed investment product or an investment life insurance product—a periodic statement in relation to a reporting period commencing on or after 1 July 2005;
  - (b) for a superannuation product:
    - (i) if the periodic statement is not an exit statement—a periodic statement in relation to a reporting period commencing on or after 1 July 2005; and
    - (ii) if the periodic statement is an exit statement—a periodic statement issued on or after 1 July 2006;
  - (c) for a managed investment product:
    - (i) if the periodic statement is not an exit statement—a periodic statement in relation to a reporting period commencing on or after 1 July 2006; and
    - (ii) if the periodic statement is an exit statement—a periodic statement issued on or after 1 July 2007;
  - (d) for an investment life insurance product:
    - (i) if the periodic statement is not an exit statement—a periodic statement in relation to a reporting period commencing on or after 1 July 2005; and
    - (ii) if the periodic statement is an exit statement—a periodic statement issued on or after 1 July 2006.

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- (2) For paragraph 1017D(5)(c) of the Act, the periodic statement must include a brief description of each transaction in relation to the product during the reporting period.
- (3) The amount of a transaction must include, if applicable:
  - (a) GST; and
  - (b) stamp duty; and
  - (c) income tax, after deductions have been taken into account.
- (4) The description of a contribution paid into a superannuation account must be sufficient to identify the source of the contribution, if that information has been recorded by the fund.
- (5) A transaction (other than a contribution) of the same kind as another transaction may be described with the other transaction in a single item in the periodic statement if:
  - (a) it is practicable to do so; and
  - (b) the items are described together on a consistent basis in the periodic statement.

Example: If a member incurs a weekly management cost, the transactions may be grouped consistently on a monthly basis in the member's periodic statement.
- (6) For a superannuation product or a managed investment product, the only fees and costs that need to be itemised in a periodic statement are the fees and costs shown in the fees and costs template for a Product Disclosure Statement in Part 2 of Schedule 10.
- (7) The fees and costs mentioned in subsection (6) must be described using the terms used in the template.

## Division 5AB—Short-Form Product Disclosure Statements

### 7.9.61AA Modification of the Act: Short-Form Product Disclosure Statements

#### *Definition of Short-Form Product Disclosure Statement*

- (1) For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 761A of the Act were modified by inserting after the definition of *self-managed superannuation fund* the following definition:

“**Short-Form Product Disclosure Statement**, or **Short-Form PDS**, means a short-form Product Disclosure Statement that complies with the requirements of Division 3A of Part 7.9.”

Column 1	Column 2	Column 3
Item	Provisions of Act	
1	paragraph 951C(1)(c)	Part 7.7
2	paragraph 992C(1)(c)	Part 7.8
3	paragraph 1020G(1)(c)	Part 7.9

#### *Definition of Supplementary Short-Form Product Disclosure Statement*

- (2) For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 761A of the Act were modified by inserting after the definition of *Supplementary Product Disclosure Statement* the following definition:

“**Supplementary Short-Form Product Disclosure Statement**, or **Supplementary Short-Form PDS**, has the meaning given by section 1017L.”

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Column 1	Column 2	Column 3
Item	Provisions of Act	
1	paragraph 951C(1)(c)	Part 7.7
2	paragraph 992C(1)(c)	Part 7.8
3	paragraph 1020G(1)(c)	Part 7.9

*Further modifications in Schedule 10BA*

- (3) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act is modified in its application in relation to Short-Form Product Disclosure Statements as set out in Schedule 10BA.
- (4) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act is modified in its application to Short-Form Product Disclosure Statements as set out in Schedule 10BA.
- (5) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application to Short-Form Product Disclosure Statements as set out in Schedule 10BA.



## **Division 5A—Dealing with money received for financial product before the product is issued**

### **7.9.61A Lost application money**

- (1) This regulation applies if:
  - (a) a product provider is not able to return money in compliance with subsection 1017E(4) of the Act; and
  - (b) the product provider is not able to issue or transfer a financial product to, or in accordance with the instructions of, the person who paid that money in compliance with subsection 1017E(4); and
  - (c) the money is to be transferred to ASIC to be dealt with under Part 9.7 of the Act.
- (2) This regulation also applies if:
  - (a) money is taken out of an account mentioned in subsection 1017E(2) of the Act by a product provider for the purpose of returning it to the person by whom it was paid in compliance with paragraph 1017E(3)(a); and
  - (b) the product provider is not able to return the money in compliance with subsection 1017E(4).
- (3) For paragraph 1017E(3)(d) of the Act, the situations mentioned in subregulations (1) and (2) are situations in which money may be taken out of an account mentioned in section 1017E.
- (4) For paragraph 1017E(4)(c) of the Act, the product provider must, after taking the money out of the account:
  - (a) transfer the money to ASIC to be dealt with under Part 9.7 of the Act; and
  - (b) give ASIC any information in the possession of the product provider that could reasonably assist ASIC to assess a claim by a person that the person is entitled to the money.

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### **7.9.61B Issue of substitute insurance product**

- (1) This regulation applies if:
  - (a) money is paid to acquire an insurance product (the ***new product***); and
  - (b) the product provider issues another product (the ***other product***) which is the same as the new product except for the date on which it ceases to have effect; and
  - (c) the product provider has not issued the new product.
- (2) For paragraph 1017E(3)(d) of the Act, the situation mentioned in subregulation (1) is a situation in which money may be taken out of an account mentioned in section 1017E.
- (3) For paragraph 1017E(4)(c) of the Act, the product provider must, after taking the money out of the account:
  - (a) issue the new product before the date on which the other product ceases to have effect; or
  - (b) return the money to the person by whom it was paid before the date on which the other product ceases to have effect.

### **7.9.61C Cheques**

For paragraph 1020G(1)(c) of the Act, Part 7.9 applies as if section 1017E of the Act were modified by adding, after subsection 1017E(6):

- ‘(7) For this section, if a payment is made by cheque, the payment is taken to have been paid to, and received by, the product provider when the cheque is honoured.’

## **Division 5B—Confirming transactions**

### **7.9.61D Transactions involving superannuation products**

- (1) For paragraph 1020G(1)(c) of the Act, this regulation applies in relation to the following financial products:
  - (a) an interest in a regulated superannuation fund that is not a public offer superannuation fund;
  - (b) an RSA product that has been issued to the product holder because of the operation of subsection 52(4) of the RSA Act;
  - (c) an interest in an eligible rollover fund of which the product holder became a member under section 243 of the SIS Act;
  - (d) an interest in an eligible rollover fund of which the product holder became a member in the circumstances mentioned in section 89 of the RSA Act;
  - (e) an interest in a public offer superannuation fund that is not a successor fund if:
    - (i) the product holder is a standard employer-sponsored member of the fund; or
    - (ii) the product holder is a person who became a member of the fund in the circumstances mentioned in regulation 7.9.06B.
- (2) Part 7.9 of the Act applies in relation to the financial products as if the following subsection were inserted after subsection 1017F(5A) of the Act:
  - (5B) For a financial product mentioned in regulation 7.9.61D of the *Corporations Regulations 2001*:
    - (a) subsection (5A) does not apply if the responsible person in relation to a transaction involving the financial product provides the holder of the financial product with a facility that is able to be accessed by the holder:
      - (i) by phone; or
      - (ii) by writing; or
      - (iii) by another method that the responsible person knows, or reasonably believes, that the product holder is able to use; and

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- (b) confirmation may be provided by means of the facility mentioned in paragraph (a).’.
- (3) Part 7.9 of the Act applies in relation to the financial products as if paragraph 1017F(6)(a) of the Act were replaced by the following paragraph:
  - ‘(a) must be:
    - (i) by telephone; or
    - (ii) by writing; or
    - (iii) by another method that the responsible person knows, or reasonably believes, that the product holder is able to use; and’.

## **Division 5C—CGS depository interests**

### **7.9.61E CGS depository interest information website**

- (1) This regulation is made for section 1020AH of the Act.
- (2) The *CGS depository interest information website* is the website at [www.australiangovernmentbonds.gov.au](http://www.australiangovernmentbonds.gov.au).

## **Division 6—Confirmation of transactions**

### **7.9.62 Confirmation of transaction: superannuation products and RSAs**

- (1) For paragraph 1017F(4)(e) of the Act, a transaction is not required to be confirmed by the trustee of a superannuation fund, an ADF or pooled superannuation trust if:
  - (a) the transaction relates to the termination of a superannuation product; and
  - (b) the trustee has provided information in accordance with section 1017D of the Act and Subdivision 5.12 of these Regulations about having left the superannuation fund, ADF or pooled superannuation trust.
- (1A) For paragraph 1017F(4)(e) 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.
- (2) For paragraph 1017F(4)(e) of the Act, a transaction is not required to be confirmed to the product holder by an RSA provider if:
  - (a) the transaction relates to an RSA; and
  - (b) the trustee has provided information in accordance with section 1017D of the Act and Subdivision 5.12 of these Regulations about closing the RSA.
- (3) For paragraph 1017F(4)(e) of the Act, the following transactions in relation to a financial product are not required to be confirmed:
  - (a) debiting for fees, taxes or charges in respect of the financial product or other transactions involving the financial product;
  - (b) debiting for charges or duties on deposits into, or withdrawals from, the financial product that are payable under a law of the Commonwealth or of a State or Territory;
  - (c) debiting an amount from a basic deposit product or an FHSA product if:

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- (i) the holder of the product has been given a periodic statement under section 1017D of the Act not later than 6 months after the transaction occurs; and
    - (ii) the periodic statement contains the information about the transaction that is required by that section;
  - (d) crediting an amount to a basic deposit product or an FHSA product if:
    - (i) the holder of the product has been given a periodic statement under section 1017D of the Act not later than 6 months after the transaction occurs; and
    - (ii) the periodic statement contains the information about the transaction that is required by that section.
- (4) For paragraph 1017F(4)(e) of the Act, the following transactions in relation to a financial product are not required to be confirmed:
- (a) a transaction that is required or authorised by a law of the Commonwealth or of a State or Territory;
  - (b) a transaction:
    - (i) consisting solely of an additional contribution towards the financial product; and
    - (ii) in relation to which the holder has agreed to the timing and amount, or method of calculating the amount, of the additional contribution;
  - (c) a transaction:
    - (i) consisting solely of a withdrawal from the financial product; and
    - (ii) in relation to which the holder has agreed to the timing and amount, or method of calculating the amount, of the withdrawal;
  - (d) a transaction:
    - (i) consisting solely of the acquisition of managed investment products; and
    - (ii) in relation to which the holder has agreed to the timing and amount, or method of calculating the amount, of the acquisition; and
    - (iii) in relation to which the holder of the managed investment products, before agreeing to the acquisition,

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already held or had agreed to acquire managed investment products that were interests in the same registered managed investment scheme as the managed investment products that are to be acquired under the agreement;

- (e) a transaction that relates to:
    - (i) a superannuation product or an RSA product; and
    - (ii) a superannuation surcharge liability for a product holder arising under section 10 of the *Superannuation Contribution Tax (Assessment and Collections) Act 1997*;
  - (f) the acceptance or settlement of a claim relating to an insurance product;
  - (g) a transaction consisting of:
    - (i) the generating by a financial product of a financial return or other benefit for the holder of the product; or
    - (ii) the payment to that holder of that return or other benefit, if the holder has agreed to the method by which the payment will be made; or
    - (iii) crediting negative interest to a member's notional account in a superannuation fund, ADF or pooled superannuation trust account;
  - (h) a transaction that relates to:
    - (i) a superannuation product or an RSA product; and
    - (ii) a Government co-contribution arising under section 6 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.
- (5) For paragraph 1017F(4)(e) of the Act, a transaction in relation to a financial product is not required to be confirmed if:
- (a) the transaction is debiting an amount from a basic deposit product in the circumstances in paragraph (3)(c); and
  - (b) the transaction involves the use of a facility for making non-cash payments that is linked to the basic deposit product; and
  - (c) the amount is debited from the basic deposit product for the purpose of making a payment.



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- (6) For paragraph 1017F(4)(e) of the Act, a transaction in relation to a financial product is not required to be confirmed if:
- (a) the transaction is crediting an amount to a credit facility; and
  - (b) the transaction involves the use of a facility for making non-cash payments that is linked to the credit facility; and
  - (c) the amount is credited to the credit facility for the purpose of making a payment.

**7.9.63 Confirmation of transactions: precise costs of transaction not known**

- (1) For subparagraph 1017F(8)(c)(iii) of the Act, the confirmation of a transaction of a financial product is not required to include details of the amount payable by the holder of the financial product if the amount is not known at the time of the confirmation.
- (2) For subparagraph 1017F(8)(c)(iv) of the Act, the confirmation of a transaction of a financial product is not required to give details of the taxes and stamp duties payable in relation to the transaction if the amount of the taxes and stamp duties is not known at the time of the confirmation.
- (3) For paragraph 1017F(9)(c) of the Act, section 1017F of the Act is modified in relation to its application to a transaction of a financial product as set out in Part 15 of Schedule 10A.

**7.9.63A Persons who must confirm transactions**

- (1) For paragraph 1017F(9)(a) of the Act, this regulation modifies subsection 1017F(2) of the Act to change the person required to provide confirmation of a transaction.
- (2) A transaction:
  - (a) that is not the issue of a financial product (other than a derivative that is not a warrant); and
  - (b) in which a financial services licensee deals in the financial product on behalf of the holder of the financial product; and
  - (c) by which the holder acquires or disposes of all or part of the financial product;

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must be confirmed by the financial services licensee.

(3) A transaction:

- (a) to which subregulation (2) does not apply; and
  - (b) by which a financial product is issued to a holder;
- must be confirmed by the issuer of the financial product.

(4) A transaction:

- (a) that is a sale pursuant to an offer to which section 1012C of the Act applies; and
  - (b) to which subregulation (2) does not apply; and
  - (c) by which a holder acquires a financial product;
- must be confirmed by the seller of the financial product.

(5) A transaction:

- (a) to which subregulation (2) does not apply; and
  - (b) by which the holder of the financial product disposes of all or part of the financial product to the issuer of the financial product;
- must be confirmed by the issuer of the financial product.

(6) A transaction that:

- (a) relates to a financial product held by a particular holder; and
  - (b) occurs while that holder holds the financial product; and
  - (c) is not the acquisition or a disposal of all or part of the financial product;
- must be confirmed by the issuer of the financial product.

**7.9.63B Content of confirmation of transactions—general**

- (1) For paragraph 1017F(8)(d) of the Act, this regulation applies in relation to a transaction that is the acquisition or disposal of a financial product.
- (2) The confirmation of the transaction must identify:
  - (a) the financial product; and
  - (b) the number or amount of financial products that are the subject of the transaction.

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- (3) If the transaction takes place in the ordinary course of business on a licensed market, the confirmation of the transaction must also identify each licensed market of which the responsible person is a participant.
- (4) If the responsible person is dealing on their own behalf with a person who is not a financial services licensee, the confirmation of the transaction must also state that the responsible person is dealing in that way.
- (5) Subregulation (4) does not apply if:
  - (a) the transaction is the issue of a product; and
  - (b) the responsible person is the product issuer.
- (6) If:
  - (a) the financial product is able to be traded on a market in which the responsible person is a participant; and
  - (b) the transaction did not take place in the ordinary course of business on a licensed market in which the responsible person is a participant;the confirmation of the transaction must also include a statement to that effect.
- (7) If the transaction took place on-market, the confirmation of the transaction must also include the name by which that market is generally known.
- (8) If the transaction involves more than one financial product, the confirmation of the transaction must also include the price per unit of the financial products.
- (9) For paragraph 1017F(9)(c) of the Act, paragraph 1017F(8)(a) of the Act is modified in its application to a transaction involving a basic deposit product (other than an acquisition or disposal of the product) by omitting ‘and the holder’.

**7.9.63C Confirmation of transaction—multiple transactions**

- (1) For paragraph 1017F(9)(b) of the Act, subregulation (2) applies in relation to a transaction if:

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- (a) the responsible person is a participant of a licensed market; and
  - (b) the participant has complied with all of the participant's obligations in relation to the transaction under the market integrity rules and the operating rules of the licensed market; and
  - (c) the transaction forms part of a series of transactions made to complete an order placed with a financial services licensee; and
  - (d) the holder of the product has given to the financial services licensee, in relation to that order or all orders (or all orders included in a class in which that order is included) placed with the financial services licensee by the holder, prior authorisation to give to the client a single confirmation in respect of a series of transactions carried out under the order instead of an individual confirmation in respect of each transaction in the series.
- (2) Subsection 1017F(5) of the Act is taken to be satisfied if, in respect of the transaction:
  - (a) the financial services licensee gives to the holder a single confirmation in respect of the series of transactions in which the transaction is included that:
    - (i) is in accordance with the authorisation; and
    - (ii) subject to subregulation (4), complies with the Act; and
  - (b) the confirmation is given:
    - (i) as soon as practicable; or
    - (ii) otherwise as permitted by the market integrity rules or the operating rules of that licensed market.
- (3) For paragraph 1017F(9)(c) of the Act, subregulation (4) applies in relation to a transaction if:
  - (a) the responsible person is a participant of a licensed market; and
  - (b) the participant has complied with all of the participant's obligations in relation to the transaction under the market integrity rules and the operating rules of the licensed market; and

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- (c) the transaction forms part of a series of transactions made to complete an order placed with a financial services licensee; and
  - (d) the holder of the product has given to the financial services licensee, in relation to that order or all orders (or all orders included in a class in which that order is included) placed with the financial services licensee by the holder, prior authorisation to give to the client a single confirmation in respect of the series of transactions that specifies the average price per unit of financial products acquired or disposed of in the series of transactions, instead of an individual confirmation in respect of each transaction in the series, that specifies the price per unit of the financial products acquired or disposed of in the transaction to which each confirmation relates.
- (4) Subregulation 7.9.63B(7) is taken to be satisfied if, in respect of the transaction:
  - (a) the financial services licensee gives the confirmation to the holder in accordance with the authorisation; and
  - (b) unless otherwise provided by the market integrity rules or the operating rules of the licensed market, the financial services licensee, if requested to do so by the client, also gives to the holder a document that specifies the price per unit of the financial products sold or bought in each transaction in the series.
- (5) For this regulation, an authorisation given by a person to a financial services licensee:
  - (a) must be given orally, or in writing, by the person; and
  - (b) is effective until it is revoked, either orally or in writing, by the person.
- (6) If a person gives an oral authorisation to a financial services licensee, or revokes an authorisation orally, the financial services licensee must:
  - (a) make a written record of the authorisation or revocation; and
  - (b) send a copy of the written record to the person.
- (7) In this regulation:

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**order** means an instruction, or a series of instructions, to acquire or dispose of financial products.

**7.9.63D Confirmation of transaction—information about cooling-off period**

- (1) For paragraph 1017F(8)(d) of the Act, this regulation applies in relation to a transaction:
  - (a) that is the acquisition of a financial product to which:
    - (i) regulation 7.9.14, 7.9.66 or 7.9.68 applies; and
    - (ii) to which regulation 7.9.64 does not apply; or
  - (b) relating to an RSA product to which subsection 1012I(2) of the Act applies, other than:
    - (i) an acquisition to which subsection 52(5) of the RSA Act applies; or
    - (ii) a transaction in which the product holder disposes of the holder's interest in the product before the time that confirmation of the acquisition is required under section 1017F of the Act.
- (2) The confirmation of the transaction must identify information about any cooling-off regime that applies in respect of acquisitions of the product (whether the regime is provided for by a law or otherwise).

**7.9.63E Confirmation of transaction—facility that provides written confirmation**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies to all financial products and transactions as if subsection 1017F(5) of the Act were modified by omitting:

‘An arrangement under which the holder may request or require another person to provide a confirmation does not count as a facility that satisfies paragraph (b).’

and inserting:

‘An arrangement under which the holder may request or require another person (other than the responsible person or a person acting on behalf of the responsible person) to provide

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a confirmation does not count as a facility that satisfies paragraph (b).’.

**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.

**7.9.63I Confirmation of transaction in electronic form**

- (1) For subparagraph 1017F(6)(a)(ii) of the Act, a confirmation of a transaction that is to be given in electronic form must, as far as practicable, be presented in a way that will allow the person to whom it is given to keep a copy of it so that the person can have ready access to it in the future.

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- (2) A confirmation of a transaction that is to be given in electronic form must be presented in a way that clearly identifies the information that is part of the confirmation.



## **Division 7—Cooling-off periods**

### **7.9.64 Cooling-off periods not to apply**

- (1) For paragraph 1019A(2)(a) of the Act, the following subclasses of financial products are excluded from paragraph 1019A(1)(a) 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 made under 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 managed investment product that is not liquid in accordance with section 601KA of the Act at the time the managed investment product is issued;
  - (f) a superannuation product that is issued in relation to a superannuation entity that is not a public offer superannuation entity, other than;
    - (i) a superannuation product taken to be issued because of regulation 7.1.04E; or
    - (ii) an annuity or pension taken to be issued because of subregulation 7.9.02(4);
  - (fa) a superannuation product that is issued in relation to:
    - (i) a public offer superannuation entity mentioned in paragraph 7.6.01(1)(b), (c) or (d); or
    - (ii) a public offer superannuation entity that is a successor fund in relation to the transfer of benefits to that fund; or
    - (iii) a public offer superannuation entity that is an eligible rollover fund and in relation to which the superannuation product is issued pursuant to Part 24 of the SIS Act or Part 9 of the RSA Act;

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- (fb) a superannuation product that is a pension issued by a superannuation fund the rules of which do not allow a member to receive accumulated benefits in a form other than a pension from that fund;
  - (g) 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;
  - (h) a managed investment product in relation to which subsection 1016D(1) of the Act applies;
  - (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.
- (2) For paragraph 1020G(1)(a) of the Act, a reference in paragraph 1019A(3)(a) of the Act to a client does not include a person who holds a superannuation product as a standard employer-sponsor member.

**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.

**7.9.65 Return of financial product: general**

- (1) For subsection 1019B(5A) of the Act, the right to return the risk insurance product for an event that will start and end within the 14 day period mentioned in subsection 1019B(3) of the Act (and to have money paid to acquire the risk insurance product repaid) cannot be exercised at any time after the end of the period starting when the risk insurance product was provided and ending on the earlier of:
- (a) the 14-day period mentioned in subsection 1019B(3) of the Act; and

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(b) the start of the event.

Example: Short-term travel insurance.

(1A) For subsection 1019B(5A) of the Act, if:

- (a) a person acquires an interest in a managed investment scheme; and
- (b) the interest is a managed investment product; and
- (c) the person acquires one or more other interests in that managed investment scheme in the course of the same transaction;

the person cannot exercise a right to return the product otherwise than by returning all of those interests.

(2) In this regulation:

**event** means the commencement of the process in relation to which the risk insurance product was entered into.

Examples:

- 1 For insurance on household goods during removal, the commencement of loading a transportation vehicle is the event.
- 2 For travel insurance, the commencement of the journey is the event.

**7.9.65A Return of financial product: first home saver accounts**

(1) For subsection 1019B(2) of the Act, this regulation applies in relation to an FHSA.

(2) If the FHSA holder has never held another FHSA, it is a requirement of the exercise of the right to return the FHSA in circumstances in which the moneys paid to acquire the FHSA are subject to payment restrictions that:

- (a) the FHSA holder must:
  - (i) notify the FHSA provider, in writing, that the FHSA holder wishes to exercise the right to return the FHSA; and
  - (ii) ask the FHSA provider to pay the entire balance of the FHSA to the FHSA holder; and
  - (iii) give the FHSA provider a written declaration that the FHSA holder has never previously held an FHSA; or

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- (b) the FHSA holder must:
  - (i) notify the FHSA provider, in writing, that the FHSA holder wishes to exercise the right to return the FHSA; and
  - (ii) no later than 1 month after notifying the FHSA provider, ask the FHSA provider to pay the entire balance of the FHSA to another FHSA nominated in the request.
- (3) If the FHSA holder has held another FHSA, it is a requirement of the exercise of the right to return the FHSA in circumstances in which the moneys paid to acquire the FHSA are subject to payment restrictions that the FHSA holder must:
  - (a) notify the FHSA provider, in writing, that the FHSA holder wishes to exercise the right to return the FHSA; and
  - (b) no later than 1 month after notifying the FHSA provider, ask the FHSA provider to pay the entire balance of the FHSA to another FHSA nominated in the request.

**7.9.66 Return of financial product: superannuation and RSAs**

- (2) For subsection 1019B(2) of the Act, it is a requirement of the exercise of the right to return a superannuation product or RSA product that, if the money to be repaid includes:
  - (a) restricted non-preserved benefits within the meaning of the SIS Regulations; or
  - (b) preserved benefits within the meaning of the SIS Regulations;the holder of the product must nominate a superannuation entity or RSA into which the money representing restricted non-preserved benefits or preserved benefits is to be repaid.
- (3) The right of return is taken to have been exercised only on receipt by the responsible person of the nomination.
- (4) The holder must make the nomination not later than 1 month after notifying the responsible person of the right to exercise the right of return.

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- (5) The holder must notify the responsible person in writing or by electronic means.
- (6) For subsection 1019B(7) of the Act, if:
  - (a) a holder nominates a superannuation entity or RSA; and
  - (b) the superannuation entity or RSA does not accept the nomination;the responsible person may rollover or transfer the holder's benefits to an eligible rollover fund.
- (7) For subsection 1019B(7) of the Act, if the right of return is exercised, the responsible person must return the money as directed.

**7.9.67 Variation of amount to be repaid**

- (1) For subsection 1019B(8) of the Act, the amount to be repaid on an exercise of the right to return a financial product is to be varied in accordance with this regulation.

*Investment-linked product*

- (2) If:
  - (a) the financial product is:
    - (i) an investment-linked product within the meaning of the *Insurance Contracts Act 1984*; or
    - (ii) a managed investment product; or
    - (iii) a superannuation product (subject to the governing rules of the issuer of the superannuation product relevant to the redemption of superannuation interests); and
  - (b) on the day on which the responsible person receives notification from the product holder exercising the holder's right to return, the amount that would have been the price at which the product was acquired (the **allocation price**) if the product had been acquired on that day is less than the allocation price on the day on which the product was acquired;the amount that would otherwise be repaid may be reduced by the adjustment amount.

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- (3) If:
- (a) the financial product is:
    - (i) an investment-linked product within the meaning given by the *Insurance Contracts Act 1984*; or
    - (ii) a managed investment product; or
    - (iii) a superannuation product; and
  - (b) on the day on which the responsible person receives notification from the product holder exercising the holder's right to return, the amount that would have been the price at which the product was acquired (the *allocation price*) if the product had been acquired on that day is greater than the allocation price on the day on which the product was acquired;
- the amount that would otherwise be repaid is increased by the adjustment amount.
- (4) For subregulations (2) and (3), the adjustment amount is the difference between:
- (a) the price at which the product was acquired; and
  - (b) the price at which the product could be acquired on the day on which the responsible person receives notification from the product holder exercising the holder's right to return.
- (5) If the price referred to in paragraph (4)(b) is not determined under the relevant contract or legal relationship on the day on which the responsible person receives notification from the product holder exercising the holder's right to return, the amount to be repaid and the adjustment amount is to be determined:
- (a) on the basis of the most recent day on which a price was calculated under the contract or legal relationship; or
  - (b) if there is no day of that kind, as soon as practicable after the product issuer receives the notification.

*Tax*

- (6) If:
- (a) tax or duty of any kind has been paid, or is payable, by the responsible person because of the issue of the financial product; and

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(b) either:

- (i) if the tax or duty has been paid, the responsible person is unable to obtain a refund of the tax or duty; or
- (ii) if the tax or duty has not been paid, the tax or duty does not cease to be payable as a result of the exercise of the right to return the financial product;

the amount that would otherwise be repaid is reduced by the amount of the tax or duty.

*Certain financial products*

- (7) The amount that would otherwise be repaid in relation to the return of a financial product (other than an RSA product) may be reduced to account for reasonable administrative and transaction costs (other than the payment of commissions or similar benefits) incurred by the responsible person that:
- (a) are reasonably related to the acquisition of the financial product and the subsequent termination of the contract or legal relationship; and
  - (b) do not exceed the true cost of an arms' length transaction.

*Financial product issued for specific period*

- (8) If:
- (a) the financial product is:
    - (i) a risk insurance product; or
    - (ii) that part of a financial product that is a risk insurance product; and
  - (b) either:
    - (i) the financial product has been issued for a specific period; or
    - (ii) the premium for the financial product has been paid in relation to cover for a specific period; and
  - (c) a proportion of that period has already passed when the right to return the risk insurance product is exercised;
- the amount that would otherwise be repaid may be reduced by a proportion equal to the proportion of the period that has passed.

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*General*

- (9) If the financial product is subject to a distribution to which subregulation 7.9.70(2) applies, the amount that would otherwise be repaid may be reduced by the amount of that distribution.

**7.9.68 Modification of section 1019B of the Act: client includes standard employer-sponsor**

- (1) For paragraph 1020G(1)(c) of the Act, subsection 1019A(1) and paragraph 1019A(3)(a) of the Act are modified so that a reference in those provisions to a client includes a standard employer-sponsor in respect of the issue of a superannuation product to an employee of the standard employer-sponsor as a standard employer-sponsored member in accordance with subparagraph 1016A(2)(b)(iii) of the Act.
- (2) For paragraph 1020G(1)(c) of the Act, subsection 1019B(1) of the Act is modified in its application to the issue of a superannuation product mentioned in subregulation (1) as if a reference in subsection 1019B(1) to money paid to acquire a financial product were a reference to all monies paid in relation to the superannuation product.
- (3) For subsection 1019B(2) of the Act, it is a requirement of the exercise of the right to return a superannuation product mentioned in subregulation (1) that, if the monies to be repaid include employer contributions (whether or not they are mandated employer contributions), the standard employer-sponsor must nominate a superannuation fund, approved deposit fund or RSA into which the employer contributions are to be repaid.
- (4) The right of return is taken to have been exercised only on receipt by the responsible person of the nomination.
- (5) The standard employer-sponsor must make the nomination not later than 1 month after notifying the responsible person of the right to exercise the right of return.
- (6) The standard employer-sponsor must notify the responsible person in writing or by electronic means.



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- (7) For subsection 1019B(7) of the Act, if the right of return is exercised by a standard employer-sponsor under this regulation, the responsible person must return the money as directed.
- (8) For subsection 1019B(7) of the Act, if the right of return is exercised by a standard employer-sponsor under this regulation, and if the monies to be repaid include 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) (the **relevant monies**) the relevant monies are to be paid by the responsible person:
  - (a) in respect of benefits defined under the SIS Regulations as a restricted non-preserved benefits or preserved benefits (**restricted monies**)—to a superannuation entity or RSA as directed by the standard employer-sponsored member; or
  - (b) in respect of any other relevant monies paid by the standard employer-sponsored member—as directed by the standard employer-sponsored member.
- (9) For subsection 1019B(7) of the Act, if:
  - (a) a financial product mentioned in this regulation is subject to the nomination of a further superannuation entity or RSA; and
  - (b) the application in relation to the issue of a financial product is not accepted by the nominated superannuation entity or RSA;the responsible person may rollover or transfer the holder's benefits to an eligible rollover fund.

**7.9.69 Modification of provisions of Division 5 of Part 7.9 of the Act: terms of contract**

- (1) For paragraph 1020G(2)(a) of the Act, this regulation applies in relation to the following financial products:
  - (a) an investment-linked product within the meaning of the *Insurance Contracts Act 1984*;
  - (b) a managed investment product;
  - (c) a superannuation product.

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- (2) Division 5 of Part 7.9 of the Act is modified to the extent necessary to provide that a contract or legal relationship governing the issue and redemption of the financial product is taken to include a provision that:
  - (a) a product holder may have the right to return a financial product under the Act; and
  - (b) the product issuer does not contravene any terms of the contract or legal relationship by complying with a request to return a financial product made in accordance with the Act; and
  - (c) the amount to be repaid following the exercise of the right to return a financial product is the amount calculated in accordance with the Act.
- (3) Division 5 of Part 7.9 of the Act, and the regulations made for, or relating to, provisions of that Division, are also modified to the extent necessary to give effect to the modification set out in subregulation (2).

**7.9.70 Modification of provisions of Division 5 of Part 7.9 of the Act: distributions**

- (1) For paragraph 1020G(2)(a) of the Act, this regulation applies in relation to the holder of:
  - (a) an investment-linked product within the meaning of the *Insurance Contracts Act 1984*; or
  - (b) a managed investment product; or
  - (c) a superannuation product.
- (2) A reference in paragraph 1019B(5)(a) of the Act to a right or power does not include the making of a distribution to the holder.

## **Division 8—Other requirements**

### **7.9.71 Modification of section 1017D of the Act: use of more than 1 document**

For paragraph 1020G(1)(c) of the Act, section 1017D of the Act is modified:

- (a) so that a reference in those sections to a periodic statement includes 2 or more documents that include all of the information required by those sections; and
- (b) as if subsections 1013L(1), (2), (3), (5) and (7) of the Act were included in that section, and referred to a periodic statement instead of a Product Disclosure Statement.

### **7.9.71A Periodic statements—exemption for passbook accounts**

For paragraph 1020G(1)(b) of the Act, a basic deposit product (*an account*) for which the holder of the product is provided with, and keeps, a document commonly referred to as a ‘passbook’ is exempt from section 1017D of the Act if, under the terms of the operation of the account:

- (a) the client has a right to a reasonable opportunity to present the passbook to the issuer; and
- (b) the issuer enters particulars of each transaction involving the account including the amount of the transaction and the current balance of the account; and
- (c) there is no fee associated with the passbook or the entry of particulars into the passbook.

### **7.9.72 Modification of section 1017D of the Act: information already given**

For paragraph 1020G(1)(c) of the Act section 1017D of the Act is modified so that if:

- (a) a financial product is a superannuation product or an RSA product; and

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- (b) the issuer has provided information in accordance with Subdivisions 5.2 and 5.3; and
  - (c) that information has also been provided in accordance with subsection 1017D(5A) of the Act;
- paragraphs 1017D(5)(a), (b), (d) and (e) are omitted.

**7.9.73 Reporting periods: general**

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to financial products as set out in Part 16 of Schedule 10A.

**7.9.74 Form of application**

- (1) For paragraph (c) of the definition of *eligible application* in subsection 1016A(1) of the Act, an application form for a financial product, for use by a client, that is attached to, accompanying or derived from a Product Disclosure Statement must require the following information:
  - (a) the applicant's name;
  - (b) the applicant's date of birth;
  - (c) the applicant's address.
- (2) An application form for a financial product, for use by an employer that is applying as a prospective standard employer-sponsor, that is attached to, accompanying or derived from a Product Disclosure Statement must require the employer's name and address.

**7.9.74A Periodic statements—requirement to state information as amounts in dollars**

- (1) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if subsection 1017D(5A) were modified to read as follows:
  - ‘(5A) Unless in accordance with the regulations and a determination by ASIC:
    - (a) information to be disclosed in accordance with paragraphs (5)(a), (b), (c), (d) and (e) must be stated as amounts in dollars; and

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- (b) any other information in relation to amounts paid by the holder of the financial product during the period must be stated as amounts in dollars.’.
- (2) For paragraph 1020G(1)(a) of the Act, the issuer of a financial product does not have to provide the information mentioned in subsection 1017D(5A) of the Act in the form required by that subsection, in a periodic statement prepared before 1 January 2005.
- (3) For subsection 1017D(5A) of the Act, as modified in accordance with subregulation (1), if ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state information to be disclosed in accordance with paragraphs 1017D(5)(a), (b), (c), (d) and (e) of the Act as an amount in dollars:
- (a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or
  - (b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or
  - (c) would not be in the interests of a client, or a class of clients; the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (4) For subsection 1017D(5A) of the Act, as modified in accordance with subregulation (1), if ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state information to be disclosed in accordance with paragraphs 1017D(5)(a), (b), (c), (d) and (e) of the Act as an amount in dollars, or to describe the amount as a percentage:
- (a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or
  - (b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or
  - (c) would not be in the interests of a client, or a class of clients;

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the information may be set out as a description of the method of calculating the charge or benefit (including worked dollar examples, unless that is inappropriate).

- (5) A determination under subregulation (3) or (4) must be:
- (a) in writing; and
  - (b) published in the *Gazette*.

**7.9.74B Periodic statements—additional details for First Home Saver Accounts**

- (1) For paragraph 1017D(5)(g) of the Act, a periodic statement for an FHSA product must include the following words:

The First Home Saver Account is an Australian Government initiative to help Australians save for their first home.

- (2) For paragraph 1017D(5)(g) of the Act, if the holder of an FHSA product has not acquired a qualifying interest in a dwelling at the time when a periodic statement is to be provided in relation to the FHSA product, the periodic statement must include:
- (a) the number of financial years after the end of the reporting period for the statement during which the holder of the product must make personal FHSA contributions as required by the *First Home Saver Accounts Act 2008* before payment may be made out of the FHSA product under section 32 of that Act; or
  - (b) if the number of financial years is 0—a statement that the holder may, subject to the *First Home Saver Accounts Act 2008*, apply for payment out of the FHSA product to acquire a qualifying interest in a dwelling under that Act.
- (3) For paragraph 1017D(5)(g) of the Act, if the holder of an FHSA product has acquired a qualifying interest in a dwelling at the time when a periodic statement is to be provided in relation to the FHSA product, the periodic statement must include the number of financial years after the end of the reporting period during which the holder of the FHSA product will be taken to be making personal FHSA contributions under the *First Home Saver Accounts Act 2008*.

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(4) In this regulation:

***personal FHSA contribution*** has the meaning given in section 11 of the *First Home Saver Accounts Act 2008*.

***qualifying interest***, in a dwelling, has the meaning given by section 12 of the *First Home Saver Accounts Act 2008*.

**7.9.75 Content of periodic statements: costs of transactions**

- (1) For paragraph 1017D(5)(g) of the Act, the prescribed details in relation to a financial product include:
- (a) the amounts paid by the holder of the financial product in respect of the financial product during the period; and
  - (b) if the amounts paid in respect of the financial product, and the amounts paid in respect of other financial products, are paid into a common fund, and amounts are deducted from the common fund by way of expenses, fees and charges:
    - (i) a proportion of the amount deducted that is actually or notionally attributable to the product holder's interest; and
    - (ii) if applicable—a statement informing the product holder that the notional proportion of the amount may not give an accurate estimate of the effect of the deduction on the product holder's interest; and
  - (c) a statement informing the product holder:
    - (i) that there is a dispute resolution mechanism that covers complaints by holders of the product; and
    - (ii) of the means by which a product holder is able to gain access to that mechanism; and
  - (d) a statement that further information in relation to the financial product is available on request, and the means by which the product holder can gain access to that information; and
  - (e) in relation to a superannuation product (other than a self-managed superannuation fund) or a managed investment product—the details set out in Part 3 of Schedule 10.

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- (1A) However, for a periodic statement mentioned in an item of the table that is issued for the financial product mentioned in the item, and issued at a time described in the item, the prescribed details set out in paragraph (1)(b) are not required to be included if the statement includes, or is accompanied by, statements to the effect that:
- (a) amounts for fees, expenses or charges have been deducted from a common fund to which the product relates in relation to the reporting period; and
  - (b) those deductions are borne indirectly by the holders of the product, and may affect the return to the holders; and
  - (c) further information about the deductions can be obtained by contacting the issuer of the product.

Item	Kind of statement	Product	Statement issued
1	Periodic statement other than exit statement	Superannuation product to which Division 4C of this Part applies	in relation to a reporting period commencing before 1 July 2005
2	Exit statement	Superannuation product to which Division 4C of this Part applies	before 1 July 2006
3	Periodic statement other than exit statement	Financial product other than superannuation product to which Division 4C of this Part applies	in relation to a reporting period commencing before 1 July 2006
4	Exit statement	Financial product other than superannuation product to which Division 4C of this Part applies	before 1 July 2007

- (2) For paragraph (1)(a), an amount has been paid in respect of a financial product if:
- (a) the product holder has paid an amount in respect of the product; or
  - (b) an amount has been deducted from:
    - (i) a payment made by the product holder; or
    - (ii) a payment made to the product holder; or



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- (c) the product holder has paid an amount or an amount has been deducted or debited as a fee, expense or charge in relation to the financial product; or
  - (d) an amount is held on the product holder's behalf under the financial product (excluding any amounts referred to in paragraph (1)(b) deducted from a common fund).
- (3) For paragraph 1017D(5A)(a) of the Act, subregulations (4) and (5) apply in relation to a financial product that has:
  - (a) an opening or closing balance mentioned in paragraph 1017D(5)(a) of the Act; or
  - (b) the termination value mentioned in paragraph 1017D(5)(b) of the Act; or
  - (c) an increase in contributions mentioned in paragraph 1017D(5)(d) of the Act; or
  - (d) a return on investment mentioned in paragraph 1017D(5)(e) of the Act.
- (4) If ASIC determines that, for a compelling reason, it is not possible to state the amount in dollars, the amount may be described as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (5) If ASIC determines that, for a compelling reason, it is not possible to state the amount in dollars, or to describe the amount as a percentage, the periodic statement must include:
  - (a) a statement informing the holder of the product that the amount is applicable; and
  - (b) details of the means by which a product holder is able to gain access to information relating to the amount.
- (6) A determination under subregulation (4) or (5) must be:
  - (a) in writing; and
  - (b) published in the *Gazette*.

**7.9.75A Ways of giving information**

- (1) For paragraph 1017B(3)(c) of the Act, the following are ways in which a responsible person may notify a holder:

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- (a) notifying the holder in any way agreed to by the holder;
  - (b) notifying the holder's agent in any way agreed to by the agent.
- (2) For paragraph 1017D(6)(c) of the Act, the following are ways of giving a periodic statement to a holder:
  - (a) making the periodic statement available to the holder in any way agreed to by the holder;
  - (b) making the periodic statement available to the holder's agent in any way agreed to by the agent.
- (3) For paragraph 1017DA(2)(c) of the Act, the following are ways in which information mentioned in subsection 1017DA(1) of the Act may be provided to a person:
  - (a) in writing;
  - (b) electronically;
  - (c) providing the information to the person in any way agreed to by the person;
  - (d) making the information available to the person's agent in any way agreed to by the agent.
- (4) If a provision of the Act or these Regulations imposes additional requirements in relation to a matter in subregulation (1), (2) or (3), the ways of notifying a holder, giving a periodic statement and providing information are subject to the requirements.

Note: Regulation 7.9.75B is an example of an additional requirement.
- (5) For this regulation, a notification, a periodic statement or information may be given or sent to a person's agent only if the agent is not acting as the person's agent in one of the capacities mentioned in subsection 1015C(3) of the Act.

**7.9.75B Information in electronic form**

- (1) For:
  - (a) paragraph 1017B(3)(b) of the Act; and
  - (b) paragraph 1017D(6)(b) of the Act; and
  - (c) paragraph 1017DA(2)(c) of the Act;

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a notification, statement or information that is to be given in electronic form must, as far as practicable, be presented in a way that will allow the person to whom it is given to keep a copy of it so that the person can have ready access to it in the future.

- (2) A notification or statement that is to be given in electronic form must be presented in a way that clearly identifies the information that is part of the notification or statement.

**7.9.75BA Fund information made available on a website**

- (1) For paragraph 1017DA(1)(a) of the Act, the trustee of a regulated superannuation fund (other than a self managed superannuation fund) may provide fund information for the fund, mentioned in Subdivision 5.6 of this Part, to a holder by making it available on a website that is maintained by or on behalf of the trustee.
- (2) The trustee must ensure that the fund information is readily accessible from the website.
- (3) For the first financial year or reporting period in which the trustee makes the fund information available on the website under this regulation, the trustee must:
  - (a) notify each holder that the fund information is available on the website; and
  - (b) explain how to access the website; and
  - (c) notify the holder that the holder may elect to have a hard copy, or electronic copy if it is available, of the fund information sent to him or her free of charge.
- (4) The information in subregulation (3) must be provided to the holder in one document.
- (5) If a holder elects to have a hard copy or electronic copy of the fund information sent to him or her, the trustee must, for each subsequent financial year or reporting period, send the fund information for the financial year or reporting period to the holder, in that form, until the holder notifies the trustee that a hard copy is no longer required.

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- (6) If a holder does not elect to have a hard copy or electronic copy sent to him or her, the trustee must comply with paragraphs (3)(a) and (b) each year.
- (7) The notification mentioned in subregulations (3) and (6) may be included in other information or materials sent to the holder.

**7.9.75C Periodic statements—disclosure of amounts**

- (1) For paragraph 1017D(5A)(b) of the Act, this regulation applies to a periodic statement prepared on or after 1 January 2005 in relation to an amount mentioned in paragraph 7.9.75(1)(a) or (b) of these Regulations.
- (2) If ASIC determines that, for a compelling reason, it is not possible to state the amount in dollars the amount may be described as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (3) If ASIC determines that, for a compelling reason, it is not possible to state the amount in dollars, or to describe the amount as a percentage, the periodic statement must include:
  - (a) a statement informing the holder of the product that the amount is applicable; and
  - (b) details of the means by which a product holder is able to gain access to information relating to the amount.
- (4) A determination under subregulation (2) or (3) must be:
  - (a) in writing; and
  - (b) published in the *Gazette*.

**7.9.75D Periodic statements—disclosure of amounts**

- (1) For paragraph 1017D(5A)(b) of the Act, this regulation applies to a periodic statement prepared on or after 1 January 2005 in relation to an amount mentioned in paragraph 7.9.75(1)(a) or (b) of these Regulations.

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- (2) If ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the amount of the deduction in dollars:
- (a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or
  - (b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or
  - (c) would not be in the interests of a product holder, or a class of product holders;
- the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).
- (3) If ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the amount of a deduction in dollars, or to describe the amount as a percentage:
- (a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or
  - (b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or
  - (c) would not be in the interests of a product holder, or a class of product holders;
- the periodic statement must include the information in subregulation (4).
- (4) If subregulation (3) applies, the periodic statement must include:
- (a) a statement informing the product holder that the amount is applicable; and
  - (b) details of the means by which a product holder is able to gain access to information relating to the amount.
- (5) A determination under subregulation (2) or (3) must be:
- (a) in writing; and
  - (b) published in the *Gazette*.

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**7.9.76 Consents to certain statements**

- (1) For subsection 1013K(2) of the Act, the period for which a person must keep a consent or a copy of a consent is 7 years from the date of the consent.
- (2) The copy of the consent may be kept:
  - (a) in its physical form; or
  - (b) in an electronic form that is capable of being reproduced in physical form.

**7.9.77 Alternative dispute resolution requirements—product issuer that is not a financial services licensee**

- (1) For subparagraph 1017G(2)(a)(i) of the Act, ASIC must take the following matters into account when considering whether to make or approve standards or requirements relating to internal dispute resolution:
  - (a) Australian Standard AS ISO 10002-2006 *Customer satisfaction—Guidelines for complaints handling in organizations (ISO 10002:2004 MOD)* published by SAI Global Limited on 5 April 2006;
  - (b) any other matter ASIC considers relevant.
- (2) ASIC may:
  - (a) vary or revoke a standard or requirement that it has made in relation to an internal dispute resolution procedure; and
  - (b) vary or revoke the operation of a standard or requirement that it has approved in its application to an internal dispute resolution procedure.
- (3) For subparagraph 1017G(2)(b)(i) of the Act, ASIC must take the following matters into account when considering whether to approve an external dispute resolution scheme:
  - (a) the accessibility of the dispute resolution scheme;
  - (b) the independence of the dispute resolution scheme;
  - (c) the fairness of the dispute resolution scheme;
  - (d) the accountability of the dispute resolution scheme;
  - (e) the efficiency of the dispute resolution scheme;

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- (f) the effectiveness of the dispute resolution scheme;
  - (g) any other matter ASIC considers relevant.
- (4) ASIC may:
- (a) specify a period for which an approval of an external dispute resolution scheme is in force; and
  - (b) make an approval of an external dispute resolution scheme subject to conditions specified in the approval, including conditions relating to the conduct of an independent review of the operation of the scheme; and
  - (c) vary or revoke:
    - (i) an approval of an external dispute resolution scheme; or
    - (ii) the specification of a period for which an approval is in force; or
    - (iii) a condition to which an approval of an external dispute resolution scheme is subject.

**7.9.78 Additional statement: trustee required to provide benefits**

- (1) For paragraph 1017D(5)(g) of the Act, the prescribed details in relation to a superannuation product for which there is in force a notice under subregulation 6.17A(4) of the SIS Regulations, are:
- (a) the person, persons or class, or classes, of persons mentioned in the notice; and
  - (b) the fact that, in accordance with the notice, the trustee will pay a benefit in respect of the member, on or after the death of the member, to the person, persons or class, or classes, of persons mentioned in the notice if:
    - (i) the person, or each person, mentioned in the notice is the legal personal representative or a dependant of the member; and
    - (ii) the proportion of the benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the notice or a statement under regulation 6.17B of the SIS Regulations; and
    - (iii) the notice is in effect; and
  - (c) the statement of the member about:

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- (i) the proportion of the benefit that will be paid to the person, or to each person, mentioned in the notice; or
    - (ii) how that proportion is to be determined; and
  - (d) the fact that the member may confirm, amend or revoke the notice in accordance with subregulation 6.17A(5) of the SIS Regulations; and
  - (e) the date when the notice ceases to have effect under paragraph 6.17A(7)(a) or (b) of the SIS Regulations.
- (2) The periodic statement must also include information that the member may use to confirm, amend or revoke the notice.
- (3) In this regulation, a reference to a notice includes a reference to the notice as confirmed, or amended, under subregulation 6.17A(5) of the SIS Regulations.

**7.9.80B Short selling of certain warrants**

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

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

is prescribed.

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



## **Division 9—Additional requirements for transfer of lost members and lost RSA holders**

### **7.9.81 Lost members**

- (1) For paragraph 1020G(1)(c) of the Act, this regulation applies in relation to a restricted issue of a relevant financial product if:
  - (a) the issue is mentioned in paragraph 1016A(2)(c) of the Act; and
  - (b) the recipient is a lost member.
- (2) Part 7.9 of the Act applies in relation to the restricted issue as if paragraph 1016A(2)(c) of the Act included an obligation on the trustee of the fund that is applying for the issue on behalf of the recipient to give to the trustee that is to issue the financial product:
  - (a) a statement that the recipient is a lost member; and
  - (b) if the recipient has specifically asked the trustee making the application not to disclose information of a specified kind—a statement to that effect; and
  - (c) all information in the possession of the trustee making the application that could reasonably help the other trustee to locate or identify the recipient, other than information of a kind that the recipient has specifically asked the trustee not to disclose.

### **7.9.82 Lost RSA holders**

- (1) For paragraph 1020G(1)(c) of the Act, this regulation applies in relation to a restricted issue of a relevant financial product if:
  - (a) the issue is mentioned in paragraph 1016A(2)(d) of the Act; and
  - (b) the recipient is a lost RSA holder.
- (2) Part 7.9 of the Act applies in relation to the restricted issue as if paragraph 1016A(2)(d) of the Act included an obligation on the RSA provider that is applying for the issue on behalf of the recipient to give to the trustee that is to issue the financial product:

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- (a) a statement that the recipient is a lost RSA holder; and
- (b) if the recipient has specifically asked the RSA holder not to disclose information of a specified kind—a statement to that effect; and
- (c) all information in the possession of the RSA holder that could reasonably help the trustee to locate or identify the recipient, other than information of a kind that the recipient has specifically asked the RSA holder not to disclose.

## **Division 11—Superannuation to which arrangements apply under the Family Law Act 1975**

### **7.9.84 Definitions for Division 11**

In this Division:

***adjusted base amount***, in relation to a non-member spouse on a day, means the adjusted base amount applicable to the non-member spouse on that day worked out under regulation 47 of the *Family Law (Superannuation) Regulations 2001*.

***base amount***, in relation to a non-member spouse means the amount mentioned in regulation 45 of the *Family Law (Superannuation) Regulations 2001*.

***base amount payment split***, in relation to a superannuation interest, means a payment split under which a base amount is allocated to the non-member spouse in relation to the superannuation interest under Part VIIIB of the *Family Law Act 1975*.

***flag lifting agreement*** means a flag lifting agreement under Part VIIIB of the *Family Law Act 1975*.

***member spouse***, in relation to a superannuation interest that is subject to a payment split, means the person who is the member spouse in relation to the interest under Part VIIIB of the *Family Law Act 1975*.

***non-member spouse***, in relation to a superannuation interest that is subject to a payment split, means the person who is the non-member spouse in relation to the interest under Part VIIIB of the *Family Law Act 1975*.

***payment split*** means a payment split under Part VIIIB of the *Family Law Act 1975*.

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**payment split notice** means a notice given by a product issuer under:

- (a) regulation 7A.03 of the SIS Regulations; or
- (b) regulation 4A.03 of the RSA Regulations.

**percentage-only interest** has the meaning given by Part VIIIB of the *Family Law Act 1975*.

**percentage payment split**, in relation to a superannuation interest, means a payment split under a superannuation agreement, flag lifting agreement or splitting order that specifies a percentage that is to apply to all splittable payments in respect of the superannuation interest.

**splitting order** means a splitting order under Part VIIIB of the *Family Law Act 1975*.

**superannuation agreement** means a superannuation agreement under Part VIIIB of the *Family Law Act 1975*.

**superannuation interest** means a superannuation interest to which Part VIIIB of the *Family Law Act 1975* applies.

**7.9.85 Application of Division 11**

This Division applies in relation to a superannuation interest.

**7.9.86 Acquisition of financial product**

For paragraph 761E(7)(a) of the Act, if:

- (a) a person is a non-member spouse; and
- (b) an entitlement to a benefit in relation to a superannuation interest under a payment split is first issued, granted or otherwise made available to that person;

the person is taken to have been issued with a superannuation product or an RSA product as appropriate.

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**7.9.87 Modification of Act: Product Disclosure Statement in relation to superannuation interest under Family Law Act**

- (1) Subject to subregulation (4), for paragraph 1020G(1)(c) of the Act, paragraph 1012F(b) of the Act is modified in its application in relation to:
  - (a) a superannuation interest; and
  - (b) the non-member spouse who acquires the superannuation interest;in accordance with subregulation (2).
- (2) Paragraph 1012F(b) is taken to require a regulated person to give the non-member spouse a Product Disclosure Statement when the regulated person gives a payment split notice to the non-member spouse.
- (3) If paragraph 1012F(b), as modified in accordance with subregulation (2), applies in relation to a superannuation interest, regulation 7.9.04 does not apply in relation to the interest and the non-member spouse.
- (4) For paragraph 1020G(1)(a) of the Act, if the governing rules of a superannuation entity do not provide for a non-member spouse to become a member of a superannuation fund in relation to the superannuation entity, section 1012B is modified by adding, after subsection 1012B(1):

‘(1A) This section does not apply in relation to:

  - (a) a superannuation interest; and
  - (b) the non-member spouse who acquires the superannuation interest;

if the governing rules of a superannuation entity do not provide for a non-member spouse to become a member of a superannuation fund in relation to the superannuation entity.’.

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**7.9.88 Statement content in relation to superannuation interest under Family Law Act: superannuation fund**

- (1) For subparagraphs 1017DA(1)(a)(ii) and (iii), and paragraph 1017DA(1)(b), of the Act, a trustee of a superannuation entity that is a product issuer must give to a non-member spouse in relation to a superannuation product issued under a payment split a statement providing the following information:
  - (a) the contact details for the product issuer;
  - (b) if the interest is not a percentage-only interest and the payment split is a base amount payment split:
    - (i) the base amount allocated to the non-member spouse under the relevant agreement, flag lifting agreement or splitting order; and
    - (ii) the method by which the base amount will be adjusted on an ongoing basis; and
    - (iii) whether the governing rules of the fund would allow the non-member spouse to become a member of the superannuation entity; and
    - (iv) information about the options available to the non-member spouse in relation to the interest under Part 7A of the SIS Regulations;
  - (c) if the interest is not a percentage-only interest and the payment split is a percentage payment split:
    - (i) the percentage that is to apply to all splittable payments in respect of the interest; and
    - (ii) whether the governing rules of the fund would allow the non-member spouse to become a member of the superannuation entity; and
    - (iii) information about the options available to the non-member spouse in relation to the interest under Part 7A of the SIS Regulations;
  - (d) if the interest is a percentage-only interest:
    - (i) the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order; and
    - (ii) if the payment is under a superannuation agreement or flag lifting agreement, whether the percentage is to

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- apply for the purposes of subparagraph 90MJ(1)(b)(i) of the *Family Law Act 1975*; and
- (iii) if the payment split is under a splitting order, whether the order is made under paragraph 90MT(1)(c) of the *Family law Act 1975*;
- (e) the circumstances in which the entitlement of the non-member spouse will become payable;
- (g) information about the dispute resolution system that covers complaints by holders of the product and about how that system may be accessed;
- (h) details of any amounts payable by the non-member spouse in respect of the payment split, and arrangements for the payment of any such amounts.
- (2) For paragraph 1017DA(2)(b) of the Act, the statement mentioned in subregulation (1) is to be provided by a regulated person when the regulated person gives a payment split notice to the non-member spouse.

**7.9.89 Statement content in relation to superannuation interest under Family Law Act: RSA**

- (1) For subparagraphs 1017DA(1)(a)(ii) and (iii), and paragraph 1017DA(1)(b), of the Act, an RSA provider that is a product issuer must give to a non-member spouse in relation to an RSA product issued under a payment split a statement providing the following information:
- (a) the contact details for the product issuer;
- (b) if the payment split is a base amount payment split:
- (i) the base amount allocated to the non-member spouse under the relevant superannuation agreement, flag lifting agreement or splitting order; and
- (ii) the method by which the base amount will be adjusted on an ongoing basis;
- (c) if the payment split is a percentage payment split, the percentage that is to apply to all splittable payments in respect of the interest;

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- (d) the circumstances in which the entitlement of the non-member spouse will become payable;
  - (e) the options available under Part 4A of the RSA Regulations in relation to the non-member spouse's entitlement in respect of the interest;
  - (g) information about the dispute resolution system that covers complaints by holders of the product and about how that system may be accessed;
  - (h) details of any amounts payable by the non-member spouse in respect of the payment split, and arrangements for the payment of any such amounts.
- (2) For paragraph 1017DA(2)(b) of the Act, the statement mentioned in subregulation (1) is to be provided by a regulated person when the regulated person gives a payment split notice to the non-member spouse.

**7.9.90 Information for existing holders of superannuation products and RSA products in relation to superannuation interest**

- (1) For paragraph 1020G(1)(c) of the Act, this regulation applies in relation to a non-member spouse.
- (2) The definition of *concerned person* in subsection 1017C(9) of the Act is modified by adding after paragraph (a) of the definition:
- ‘(aa) is a non-member spouse in relation to a superannuation product or an RSA product that is issued in relation to a payment split; or’.

**7.9.91 Periodic statements for retail clients for financial products that have an investment component—general**

- (1) For paragraph 1020G(1)(a) of the Act, this regulation applies in relation to a non-member spouse who holds a superannuation or RSA product by way of a payment split.
- (2) The product issuer in relation to the superannuation product or RSA product is not required to comply with:
- (a) paragraphs 1017D(5)(a) to (f) of the Act; and



(b) regulation 7.9.72 and subregulation 7.9.75(1).

**7.9.92 Periodic statements for retail clients for financial products  
that have an investment component—superannuation  
interest other than percentage-only interest**

- (1) For paragraph 1017D(5)(g) of the Act, this regulation applies if:
- (a) an interest in a superannuation product is subject to a base amount payment split; and
  - (b) the interest is not a percentage-only interest; and
  - (c) the interest is in the growth phase; and
  - (d) none of the following has occurred under Part 7A of the SIS Regulations:
    - (i) a new membership interest has been created for the non-member spouse in relation to the payment split;
    - (ii) the transferable benefits of the non-member spouse have been transferred or rolled out of the superannuation fund;
    - (iii) the amount to which the non-member spouse is entitled under the payment split has been paid, as a lump sum, to the non-member spouse.
- (2) This regulation also applies if:
- (a) an interest in an RSA product is subject to a base amount payment split; and
  - (b) the interest is in the growth phase; and
  - (c) none of the following has occurred under Part 4A of the RSA Regulations:
    - (i) a new RSA has been opened for the non-member spouse;
    - (ii) the transferable benefits of the non-member spouse have been transferred or rolled out of the RSA;
    - (iii) the amount to which the non-member spouse is entitled under the payment split has been paid, as a lump sum, to the non-member spouse.

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- (3) The periodic statement for the member spouse and the non-member spouse must include the following information:
- (a) the value of the adjusted base amount applicable to the non-member spouse at the end of the reporting period;
  - (b) the amount of the adjustment in the reporting period;
  - (c) the method used to calculate the adjustment, including the applicable interest rate required under regulation 48 of the *Family Law (Superannuation) Regulations 2001*.

**7.9.93 Trustees of superannuation entities—additional obligation to provide information in relation to superannuation interest**

- (1) For paragraph 1017DA(2)(a) of the Act, no information is to be provided to a non-member spouse under section 1017DA of the Act if the governing rules of a superannuation entity do not provide for the non-member spouse to become a member of a superannuation fund in relation to the superannuation entity.
- (2) For paragraph 1017DA(2)(b) of the Act, if the governing rules of a superannuation entity provide for a non-member spouse to become a member of a superannuation fund in relation to the superannuation entity:
- (a) information is to be provided to the non-member spouse under section 1017DA of the Act (and Subdivisions 5.5 to 5.7 of Part 7.9 of these Regulations) when the payment split notice is given to the non-member spouse; and
  - (b) the information is to be provided with the payment split notice.

**7.9.94 Division 5 of Part 7.9 of the Act not to apply in relation to non-member spouse**

For paragraph 1019A(2)(c) of the Act, Division 5 of Part 7.9 of the Act does not apply in relation to the issue of a superannuation product or RSA product to a non-member spouse who acquires the superannuation interest by means of a payment split.

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Note: The non-member spouse may also wish to acquire an interest in the superannuation fund, or become an RSA holder, by making an application. In that case, regulation 7.9.94 would not apply and Division 5 of Part 7.9 of the Act would apply to the extent that that Division provides.

## **Division 12—Medical indemnity insurance**

### **7.9.95 Medical indemnity insurance—exemption from product disclosure provisions**

For paragraph 1020G(1)(b) of the Act, a medical indemnity insurance product is exempt from the provisions of Part 7.9 of the Act, until the earlier of:

- (a) the date specified in a notice, lodged with ASIC by the issuer of the product, that indicates that the issuer of the product wants the provisions of Part 7.9 of the Act to apply in relation to the product from that date; and
- (b) 11 March 2004.

## **Division 13—Unsolicited offers to purchase financial products off market**

### **7.9.96 Percentage increase or decrease in the market value of a product**

For paragraph 1019J(1)(c) of the Act, 50% is specified.

### **7.9.97 Off-market trading by professional investors etc**

- (1) For subparagraph 1019D(1)(d) (viii) of the Act, the following circumstances are specified:
  - (a) the offer mentioned in subsection 1019D(1) of the Act is to:
    - (i) a professional investor; or
    - (ii) a person who has net assets of at least the amount specified in regulations made for the purposes of subparagraph 761G(7)(c)(i) of the Act; or
    - (iii) a person who has gross income for each of the last 2 financial years of at least the amount specified in regulations made for the purposes of subparagraph 761G(7)(c)(ii) of the Act; or
    - (iv) a business that is not a small business within the meaning of subsection 761G(12) of the Act;
  - (b) the minimum amount payable for securities on acceptance of the offer by the person to whom the offer is made is at least \$500 000;
  - (c) for a financial product other than securities, the offer for the financial product is for an amount that equals or exceeds the amount specified in regulations made for the purposes of paragraph 761G(7)(a) of the Act.
- (2) For paragraph (b), in calculating the amount payable for securities, disregard any amount payable or paid to the extent to which it is to be paid, or was paid, out of money lent by the person offering the securities or an associate of the person offering the securities.

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**7.9.97A Information in offer document if payment is to be made in instalments**

- (1) For paragraph 1019I(2)(f) of the Act, the following information is specified for an offer document if payment for the financial products mentioned in the document is to be made in instalments:
- (a) the amount of each instalment;
  - (b) when each instalment will be paid;
  - (c) how many instalments will be paid;
  - (d) how each instalment will be paid;
  - (e) the following text, replacing X with the total present value of the instalments and Y with the total current value of the financial products:

‘Money loses value over time. In this case, the value of the total instalment payments being offered to you is approximately the same as being paid a single amount of \$X today. \$X represents the ‘present day value’ of the instalment payments. Commonwealth legislation sets out a method for calculating the present value of the offer, using the rate of interest of 1.1% per month. You can assess this offer by comparing the present day value of the instalment payments (\$X) with the total market price of your shares or other financial products (\$Y).

‘In general, if the present day value of the instalment payments being offered is less than the market price of your shares or other financial products, then this offer may not be fair to you.’

- (2) For this regulation, the **total present value** of a series of instalment payments is the amount:

$$\sum_{p=1}^n \frac{R_p}{1.011^p}$$

where:

***n*** is the number of instalment payments to be made.

***R<sub>p</sub>*** is the amount of instalment payment number *p*, where each instalment payment is assigned a number from 1 to *n*.

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$t_p$  is the number of whole months between the date of offer and the date that the instalment number  $p$  is due.

- (3) For this regulation, the **total current value** of a financial product is the market value for the product on the date of offer as mentioned in paragraph 1019I(2)(b) of the Act or the fair estimate of the value of the product on the date of offer as mentioned in paragraph 1019I(2)(c) of the Act, as applicable.
- (4) For this regulation, all money amounts must be represented in Australian currency.

**Chapter 7** Financial services and markets

**Part 7.9** Financial product disclosure and other provisions relating to issue and sale of financial products

**Division 14** Exemptions from Parts 7.7, 7.8 and 7.9 of the Act

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**Division 14—Exemptions from Parts 7.7, 7.8 and 7.9 of the Act**

**7.9.98 Certain providers of financial services exempted from the requirements of Parts 7.7, 7.8 and 7.9 of the Act**

For the provisions of the Act set out in column 2 of the following table, a person who is providing a financial service in the circumstances set out subsections 911A(2A) to (2E) is exempt from the operation of the Parts of the Act specified in column 3 in relation to the provision of that service.

Column 1	Column 2	Column 3
Item	Provisions of Act	
1	paragraph 951C(1)(a)	Part 7.7
2	paragraph 992C(1)(a)	Part 7.8
3	paragraph 1020G(1)(a)	Part 7.9

**7.9.98A Exemption from application of Part 7.9 of the Act**

For paragraph 1020G(1)(a) of the Act, Part 7.9 of the Act does not apply to a person to the extent that the person is:

- (a) issuing or selling:
  - (i) a litigation funding scheme mentioned in regulation 5C.11.01; or
  - (ii) a litigation funding arrangement mentioned in regulation 5C.11.01; or
- (b) making a recommendation to acquire:
  - (i) a litigation funding scheme mentioned in regulation 5C.11.01; or
  - (ii) a litigation funding arrangement mentioned in regulation 5C.11.01; or
- (c) making an offer relating to the issue or sale of:
  - (i) a litigation funding scheme mentioned in regulation 5C.11.01; or



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- (ii) a litigation funding arrangement mentioned in regulation 5C.11.01; or
- (d) advertising:
  - (i) a litigation funding scheme mentioned in regulation 5C.11.01; or
  - (ii) a litigation funding arrangement mentioned in regulation 5C.11.01.

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**Division 15—Disclosure in relation to short sales covered  
by securities lending arrangement of listed  
section 1020B products**

**7.9.99 Interpretation**

- (1) In this Division:

*reporting day*, in relation to a short position, means a day on which the Sydney office of ASIC is open for business.

*Meaning of short position*

- (2) In this Division, a *short position* is a position in relation to a section 1020B product in a listed entity where the quantity of the product which a person has is less than the quantity of the product which the person has an obligation to deliver.
- (3) In subregulation (2), the person has the product if:
- (a) the person is holding the product on the person's own behalf; or
  - (b) another person is holding the product on the person's behalf; or
  - (c) the person has entered into an agreement to buy the product but has not received it; or
  - (d) the person has vested title in the product in a borrower, or in an entity nominated by the borrower, under a securities lending arrangement.
- (4) In subregulation (2), the product which the person has an obligation to deliver is the product which the person:
- (a) has an obligation to deliver under a sale agreement where the product has not been delivered; or
  - (b) has an obligation to vest title in a lender under a securities lending arrangement; or
  - (c) has any other non-contingent legal obligation to deliver.

*References to time*

- (5) A reference in this Division to a time is a reference to the legal time in Sydney, New South Wales.

**7.9.100 Seller disclosure**

- (1) For paragraph 1020AB(3)(a) of the Act, the particulars that a seller must give in relation to a sale of a listed section 1020B product where the seller has a presently exercisable and unconditional right to vest the product in a buyer under a securities lending arrangement are as follows:
- (a) the number of section 1020B products that the seller will vest in the buyer under the arrangement;
  - (b) a description of the product;
  - (c) the name of the entity that issued the product;
  - (d) the seller's short position as at the close of business 3 reporting days before the day the particulars must be given under subregulation (4).
- (2) For subparagraph 1020AB(3)(b)(i) of the Act, in relation to particulars mentioned in paragraphs (1)(a), (b), and (c):
- (a) the seller mentioned in subparagraph 1020AB(1)(a)(i) of the Act must give the particulars at the time of entering into an agreement to sell; and
  - (b) the seller mentioned in subparagraph 1020AB(1)(a)(ii) of the Act must give the particulars on or before 9 am:
    - (i) if the sale occurs after the start of the trading day but before 7 pm—on the next trading day after entering into an agreement to sell; and
    - (ii) if the sale occurs after 7 pm but before the start of the next trading day—on the second trading day after entering into an agreement to sell.
- (3) A reference to **trading day** in subregulation (2) is to a trading day of the market where the sale is executed or reported.

**Chapter 7** Financial services and markets

**Part 7.9** Financial product disclosure and other provisions relating to issue and sale of financial products

**Division 15** Disclosure in relation to short sales covered by securities lending arrangement of listed section 1020B products

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- (4) For subparagraph 1020AB(3)(b)(i) of the Act, in relation to particulars mentioned in paragraph (1)(d), the seller must give the particulars:
  - (a) on or before 9 am on the third reporting day after entering into the agreement to sell that causes the short position to occur; and
  - (b) on or before 9 am on each subsequent reporting day as long as the seller has a short position.
- (5) Paragraph (4)(b) applies whether or not the particulars about the short position have changed from that given on the previous day.
- (6) For subparagraph 1020AB(3)(b)(ii) of the Act, in relation to particulars mentioned in paragraph (1)(d), the seller must give the particulars in the form required by ASIC.
- (7) For subparagraphs 1020AB(4)(a)(ii) and (b)(ii) of the Act, in relation to the particulars mentioned in paragraph (1)(d), the entity is ASIC.
- (8) For subparagraph 1020AB(4)(b)(ii) of the Act, and in relation to the particulars other than the particulars mentioned in paragraph (1)(d), if the operator of the licensed market mentioned in subparagraph 1020AB(1)(a)(ii) of the Act (*operator 1*) appoints the operator of another licensed market (*operator 2*), in writing, as operator 1's agent for the purpose of receiving any of those particulars, operator 2 is the entity for those particulars.

**7.9.100A Seller disclosure of existing short position**

- (1) If a seller has a short position which arises from an agreement to sell, entered into before commencement of this regulation, the seller must give particulars about the short position as at the close of business on the day this regulation commences:
  - (a) on or before 9 am on the third reporting day after commencement of this regulation; and
  - (b) on or before 9 am on each subsequent reporting day as long as the seller has a short position.

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- (2) The particulars must be given to ASIC in the form required by ASIC.

**7.9.101 Licensee disclosure**

- (1) For paragraph 1020AC(2)(a) of the Act, the particulars that a financial services licensee must give in relation to information given to the licensee under section 1020AB of the Act in relation to a sale of a listed section 1020B product is the information specified in paragraphs 7.9.100(1)(a), (b) and (c).
- (2) For paragraph 1020AC(2)(b) of the Act:
- (a) the time for disclosure of the information is on or before 9 am:
- (i) if the information is given to the licensee after the start of the trading day but before 7 pm—on the next trading day after the licensee is given the information under section 1020AB of the Act; and
- (ii) if the information is given to the licensee after 7 pm but before the start of the next trading day—on the second trading day after the licensee is given the information under section 1020AB of the Act; and
- (b) the manner for disclosure of the information is by electronic transmission to the operator.
- (3) A reference to **trading day** in subregulation (2) is to a trading day of the market where the information is given.
- (4) For paragraph 1020AC(3)(b) of the Act, and in relation to the particulars mentioned in paragraph 1020AC(3)(a) of the Act, if the operator of the licensed market mentioned in paragraph 1020AC(1)(a) of the Act (**operator 1**) appoints the operator of another licensed market (**operator 2**), in writing, as operator 1's agent for the purpose of receiving any of those, operator 2 is the entity for those particulars.

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**7.9.102 Public disclosure of information**

- (1) For paragraph 1020AD(2)(a) of the Act, the particulars which the operator of a licensed market must publicly disclose in relation to information given to the operator under section 1020AB or 1020AC of the Act in relation to a sale of a listed section 1020B product are the total number of each kind of section 1020B product that has been sold on a particular day and disclosed to the operator under section 1020AB or 1020AC of the Act.
- (1A) For paragraph 1020AD(2)(a) of the Act, the particulars which ASIC must publicly disclose in relation to information given to it under section 1020AB of the Act in relation to a sale of a listed section 1020B product are the total of all short positions in a product issued by a listed entity that have been disclosed to ASIC under section 1020AB of the Act on the previous reporting day.
- (2) For subparagraph 1020AD(2)(b)(i) of the Act, the time for the disclosure of the information mentioned in subregulation (1) is:
  - (a) if the information is given to the licensee after the start of the trading day but before 7 pm—on the next trading day after the day the agreements to sell were entered into; and
  - (b) if the information is given to the licensee after 7 pm but before the start of the next trading day—on the second trading day after the day the agreements to sell were entered into.
- (3) A reference to **trading day** in subregulation (2) is to a trading day of the market in relation to which the operator is responsible for disclosure of the information.
- (3A) For subparagraph 1020AD(2)(b)(i) of the Act, the time for the disclosure of the information mentioned in subregulation (1A) is the first reporting day after the day the information is received.
- (4) For subparagraph 1020AD(2)(b)(ii) of the Act, the manner of public disclosure of the information mentioned in subregulation (1) is by publication:
  - (a) on the operator's website; or

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- (b) in any other form that is easily accessible by the public.
- (5) For subparagraph 1020AD(2)(b)(ii) of the Act, the manner of public disclosure of the information mentioned in subregulation (1A) is by publication:
  - (a) on ASIC's website; or
  - (b) in any other form that is readily accessible by the public.

## Part 7.10—Market misconduct and other prohibited conduct relating to financial products and financial services

### 7.10.01 Division 3 financial products

For paragraph (d) of the definition of *Division 3 financial products* in section 1042A of the Act, superannuation products provided by a superannuation entity that is not a public offer entity are prescribed.

### 7.10.02 Prescribed schemes (Act s 1044B(2)(a))

For paragraph 1044B(2)(a) of the Act, a scheme in the following table is prescribed:

Prescribed professional standards schemes	
Item	Scheme
1	The New South Wales Bar Association Scheme, published in the New South Wales Government Gazette No. 84, 25 June 2010
2	The Law Society of New South Wales Scheme, published in the New South Wales Government Gazette No. 78, 27 July 2012
3	The Law Institute of Victoria Limited Scheme: (a) published in the Victorian Government Gazette No. G 10, 11 March 2010; and (b) amended by instrument published in the Victorian Government Gazette No. S 164, 1 May 2013; and (c) amended by instrument published in the Victorian Government Gazette No. G 36, 5 September 2013
4	The Victorian Bar Professional Standards Scheme, published in the Victorian Government Gazette No. S 134, 24 April 2014
5	The Queensland Law Society Scheme, published in the Queensland Government Gazette No. 64, 25 June 2010



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<b>Prescribed professional standards schemes</b>	
<b>Item</b>	<b>Scheme</b>
6	The South Australian Bar Association Inc. Scheme, published in the South Australian Government Gazette No. 76, 3 November 2011
7	The Law Society of South Australia Professional Standards Scheme, published in the South Australian Government Gazette No. 76, 3 November 2011
8	The Bar Association of Queensland Scheme, published in the Queensland Government Gazette No. 40, 24 June 2013
9	The Law Society of Western Australia Scheme, published in the Western Australian Government Gazette No. 54, 11 April 2014
10	The Western Australian Bar Association Scheme, published in the Western Australian Government Gazette No. 57, 17 April 2014

**7.10.03 Exemption for market participants of qualifying gas trading exchange**

For paragraph 1045A(1)(a) of the Act, a person is exempt from Part 7.10 of the Act if the person:

- (a) is a participant in relation to a qualifying gas trading exchange; and
- (b) is engaging in trading activities in relation to qualifying gas exchange products on a qualifying gas trading exchange.

## Part 7.11—Title and transfer

### Division 1—Preliminary

#### 7.11.01 Definitions

In this Part:

***associate***, in relation to a broker or participant, means:

- (a) if the broker or participant:
  - (i) is a member of a firm of brokers or participants; and
  - (ii) is not a broker's agent or a participant's agent; any other member of the firm; or
- (b) if:
  - (i) the broker or participant is the agent or employee of another broker or participant; and
  - (ii) the other broker or participant is not a member of a firm of brokers or participants; the other broker or participant; or
- (c) if:
  - (i) the broker or participant is the agent or employee of another broker or participant; and
  - (ii) the other broker or participant is a member of a firm of brokers or participants; any member of that firm.

***ASTC subregister*** means a subregister of Division 4 financial products maintained in accordance with the ASTC operating rules.

***beneficial owner***, in relation to Division 3 securities, means a person for whom a licensed trustee company, within the meaning of Chapter 5D of the Act, a Public Trustee of a State or Territory, or a company listed in Schedule 9 holds (whether alone or together with any other person or persons) the Division 3 securities in trust in the ordinary course of its business.

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**broker** means an Australian financial services licensee who is a participant of a financial market.

**broker's agent** means:

- (a) the agent of a broker; or
- (b) the employee of a broker.

**company** includes a body mentioned in regulation 7.11.07.

**duly completed**, in relation to a transfer document, includes the requirements set out in regulation 7.11.05.

**duly completed Part 1** means a transfer document that has been duly completed in accordance with Part 1 of Form 1, 2, 3, 5, 6 or 7.

**execution time**, in relation to a transfer document, means:

- (a) for a sufficient transfer under regulation 7.11.11—the time when the transfer document was stamped with a stamp purporting to be that of the transferee's broker; and
- (b) for a sufficient transfer under regulation 7.11.12 or 7.11.13—the time when the transfer document was executed by the transferor.

**identification code**, in relation to a participant, means a code that, for the purposes of the ASTC operating rules, is:

- (a) the participant's identification code; or
- (b) one of its identification codes.

**in accordance with** includes to the effect of.

**issuer of a Division 4 financial product** means:

- (a) an issuer under section 761E of the Act; and
- (b) any other person identified as an issuer, or treated as an issuer, under the ASTC operating rules.

**market licensee**, in relation to securities specified in a transfer document, means the market licensee that operates the market for the securities.

**7.11.03 Arrangements about Division 4 financial products**

- (1) A financial product is a ***Division 4 financial product*** if the financial product is:
  - (a) a Division 3 security other than a security mentioned in paragraph 1073A(1)(e) of the Act; or
  - (b) declared by ASIC, under section 1075A of the Act, to be a financial product the transfer of which will be effected through ASTC under these Regulations.
- (2) Subregulations (3) to (8) apply in relation to a class of Division 4 financial products that is admitted to quotation.
- (3) A Division 4 financial product in the class of Division 4 financial products is not taken to have stopped being quoted merely because of a temporary suspension of quotation of the class.
- (4) If:
  - (a) there is a suspension of the quotation of a Division 4 financial product in the class; and
  - (b) during the suspension, the issuer in relation to the Division 4 financial product ceases to be included in the official list of the market licensee on which the Division 4 financial product is traded;the Division 4 financial product is taken to stop being quoted when the issuer ceases to be included in the official list.
- (5) Subregulation (4) does not limit the circumstances in which a Division 4 financial product in the class may be taken to have stopped being quoted on a financial market of a market licensee.
- (6) For the provisions mentioned in subregulation (8), if:
  - (a) a Division 4 financial product stops being quoted on a financial market of a market licensee; and
  - (b) the ASTC operating rules provide that the Division 4 financial product is to be taken to continue to be quoted for a specified period;the Division 4 financial product is taken to be quoted during the period.
- (7) For the provisions mentioned in subregulation (8), if:

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- (a) a Division 4 financial product has been issued; and
  - (b) the Division 4 financial product:
    - (i) is approved, by a market licensee, to be admitted to quotation on a financial market of the market licensee; and
    - (ii) has not yet been quoted; and
  - (c) the ASTC operating rules provide that the Division 4 financial product is taken to be quoted for a specified period; the Division 4 financial product is taken to be quoted during the period.
- (8) The provisions are:
- (a) the definitions of:
    - (i) ASTC certificate cancellation provisions; and
    - (ii) ASTC-regulated transfer; and
    - (iii) ASTC subregister; and
    - (iv) proper ASTC transfer; and
  - (b) section 653A of the Act; and
  - (c) Part 7.11 of the Act; and
  - (d) regulations made for the purposes of Part 7.11 of the Act.

**7.11.04 Arrangements for forms**

- (1) A reference in this Part to a form by number is a reference to:
  - (a) the form numbered in that way in Schedule 2A; or
  - (b) a form that has the same effect.
- (2) If a form in Schedule 2A refers to the full name of the transferor of Division 3 securities, the reference includes a reference to the name of the person shown in the records of the issuer in relation to those securities as the holder of those securities.

**7.11.05 Document duly completed in accordance with a particular form**

- (1) Subject to subregulation (2), a document is not *duly completed* in accordance with one of Forms 1, 2, 3, 4, 5, 6, 7 and 8, or a part of one of those forms, unless the following requirements are met:

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- (a) the document must purport to state the transferee's name and address where the form or part requires that information;
  - (b) the document must bear a stamp that purports to be the transferor's broker's stamp where the form or part requires that information;
  - (c) the document must bear a stamp that purports to be the transferee's broker's stamp where the form or part requires that information;
  - (d) the document must bear a stamp that purports to be a market licensee's stamp where the form or part requires that information.
- (2) If a document (the **first document**) relates to particular Division 3 securities, the following paragraphs apply for the purposes of determining whether the first document and another document (the **second document**) are, together or with 1 or more other documents, a sufficient transfer of the Division 3 securities:
  - (a) the first document is not duly completed in accordance with Part 3 of Form 1, 2, 3, 5, 6 or 7 unless it:
    - (i) bears a stamp that purports to be the transferee's broker's stamp where that part refers to the transferee's broker's stamp; and
    - (ii) sets out a string of characters that purports to be the transfer consolidation number of the first document where that part refers to the transferee's broker's stamp;
  - (b) the second document is not duly completed in accordance with Part 1 of Form 4 or 8 unless it sets out a string of characters that purports to be the transfer consolidation number of the first document where that part refers to a transfer consolidation number or transfer consolidation numbers (whether or not it sets out 1 or more strings of characters that do not purport to be the transfer consolidation number);
  - (c) the second document can be duly completed in accordance with Part 1 of Form 4 or 8 even if it does not set out correctly the number of Division 3 securities to which it relates.

Note: If the document mentioned in subregulation (1), or the documents mentioned in subregulation (2), are a sufficient transfer of the

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Division 3 securities, the document or documents become *transfer documents* for this Part.

**7.11.06 Stamping of documents**

- (1) In this Part (other than regulation 7.11.40):
  - (a) a reference to the stamping of a document is a reference to stamping in ink; and
  - (b) a reference to a stamp on a document, or to a stamp borne by a document, is a reference to a stamp stamped on the document in ink.
- (2) A reference in regulation 7.11.40 to the stamping of a document is a reference to stamping the document in any manner.

Examples:

- 1 Stamping in ink.
- 2 Affixing a stamp.
- 3 Impressing a stamp.

**7.11.07 Application of Division 3 of Part 7.11 of the Act to certain bodies**

- (1) For subparagraph 1073C(a)(ii) of the Act, the Westpac Banking Corporation is prescribed.
- (2) For subparagraph 1073C(b)(iii) of the Act, the Australian Gas Light Company is prescribed.

Note: The effect of section 1073C of the Act is that Division 3 of Part 7.11 of the Act applies to bodies prescribed for that section as if they were companies.

**7.11.08 Interests in registered schemes**

For paragraph 1073A(1)(c) of the Act, an interest in a registered scheme is an *interest in a registered scheme* if the interest:

- (a) is an interest in a managed investment scheme that is registered under section 601EB of the Act; and
- (b) is quoted on the financial market of the Australian Stock Exchange Limited.

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**Division 2—Application of Part 7.11**

**7.11.09 Application**

This Part applies to conduct engaged in in this jurisdiction or otherwise.



## **Division 3—Transfer of Division 3 securities effected otherwise than through a prescribed CS facility**

### **7.11.10 Application of Division 3**

This Division is made under section 1073D of the Act, and applies to transfers of Division 3 securities effected otherwise than through a prescribed CS facility.

### **7.11.11 Sufficient transfer: general**

- (1) A document is a *sufficient transfer* of Division 3 assets if it:
  - (a) relates to those assets; and
  - (b) is duly completed in accordance with the documentation in any of the following subparagraphs:
    - (i) Parts 1 and 2 of Form 1;
    - (ii) Part 1 of Form 1 and Parts 1 and 2 of Form 2 or Form 3;
    - (iii) Parts 1 and 3 of Form 1 and both parts of Form 4;
    - (iv) Part 1 of Form 1, Parts 1 and 3 of Form 2 or Form 3 and both parts of Form 4.
- (2) A document is a *sufficient transfer* of Division 3 rights if it:
  - (a) relates to those rights; and
  - (b) is duly completed in accordance with the documentation in any of the following subparagraphs:
    - (i) Parts 1 and 2 of Form 5;
    - (ii) Part 1 of Form 5 and Parts 1 and 2 of Form 6 or Form 7;
    - (iii) Parts 1 and 3 of Form 5 and both parts of Form 8;
    - (iv) Part 1 of Form 5, Parts 1 and 3 of Form 6 or Form 7 and both parts of Form 8.

### **7.11.12 Sufficient transfer of Division 3 assets: licensed trustee company or Public Trustee of a State or Territory**

- (1) This regulation applies to the transfer of Division 3 assets, otherwise than by way of sale, gift or exchange, by:

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- (a) a licensed trustee company, within the meaning of Chapter 5D of the Act; or
  - (b) a Public Trustee of a State or Territory; or
  - (c) a company mentioned in Schedule 9;whether alone or together with any other person or persons, to the beneficial owner of the Division 3 assets.
- (2) A document is a sufficient transfer of the Division 3 assets if it:
  - (a) relates to those assets; and
  - (b) is completed in accordance with Form 9.

**7.11.13 Sufficient transfer of Division 3 rights: licensed trustee company or Public Trustee of a State or Territory**

- (1) This regulation applies to the transfer of Division 3 rights, otherwise than by way of sale, gift or exchange, by:
  - (a) a licensed trustee company, within the meaning of Chapter 5D of the Act; or
  - (b) a Public Trustee of a State or Territory; or
  - (c) a company mentioned in Schedule 9;whether alone or together with any other person or persons, in favour of the beneficial owner of those rights.
- (2) A document is a sufficient transfer of the Division 3 rights if it:
  - (a) relates to those rights; and
  - (b) is completed in accordance with Form 10.

**7.11.14 Sufficient transfer**

- (1) A document that is a sufficient transfer of Division 3 assets may be used:
  - (a) as a proper instrument of transfer for section 1071B of the Act; and
  - (b) as an instrument of transfer for the purposes of any other law or instrument governing or relating to those assets.

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- (2) A document that is a sufficient transfer of Division 3 rights may be used as an instrument of transfer of those rights for the purposes of any law or instrument governing or relating to those rights.

**7.11.15 Transferee's execution of transfer of Division 3 assets**

- (1) If Division 3 assets are transferred by means of a sufficient transfer:
- (a) the transferee is taken to have agreed at the execution time to accept the Division 3 assets subject to the terms and conditions on which the transferor held them at that time; and
  - (b) the terms and conditions are the terms and conditions applicable as between:
    - (i) the issuer in relation to the Division 3 assets; and
    - (ii) the holder for the time being of the Division 3 assets.
- (2) If the Division 3 assets are shares, the transferee is also taken to have agreed, at the execution time:
- (a) to become a member of the issuer; and
  - (b) to be bound, on being registered as the holder of the shares, by the issuer's constitution.

**7.11.16 Transferee's execution of transfer of Division 3 rights**

- (1) If Division 3 rights relating to Division 3 assets are transferred by means of a sufficient transfer, the transferee is taken:
- (a) to have applied at the execution time to the issuer in relation to the Division 3 assets for the issue to the transferee of the Division 3 assets; and
  - (b) to have agreed at the execution time to accept the Division 3 assets subject to the terms and conditions on which the issuer offers them for subscription.
- (2) If the Division 3 assets are shares, the transferee is also taken to have agreed, at the execution time:
- (a) to become a member of the issuer; and
  - (b) to be bound, on being registered as the holder of the shares, by the issuer's constitution.

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**7.11.17 Transfer document that purports to bear stamp of transferor's broker**

- (1) This regulation applies if a transfer document relating to Division 3 assets or Division 3 rights:
  - (a) is a duly completed Part 1; and
  - (b) bears a stamp that purports to be a stamp of the transferor's broker (the *designated broker*).
- (2) Each associate (if any) of the designated broker is taken to have warranted:
  - (a) that the statements in the transfer document that purport to be certified by the designated broker are accurate; and
  - (b) that the transferor is:
    - (i) the registered holder of, or entitled to be registered as the holder of, the Division 3 assets; or
    - (ii) is entitled to the Division 3 rights;and is legally entitled or authorised to sell or dispose of the Division 3 assets or Division 3 rights.
- (3) If the designated broker is not a broker's agent, the designated broker is taken to have warranted:
  - (a) that the statements in the transfer document that purport to be certified by the designated broker are accurate; and
  - (b) that the transferor is:
    - (i) the registered holder of, or entitled to be registered as the holder of, the Division 3 assets; or
    - (ii) is entitled to the Division 3 rights;and is legally entitled or authorised to sell or dispose of the Division 3 assets or Division 3 rights.
- (4) The following additional arrangements apply if the transfer document has been duly completed in accordance with Part 1 of Form 1 or Form 5:
  - (a) if, when the transfer document was stamped with the stamp mentioned in paragraph (1)(b), the designated broker had authority to sell the Division 3 assets or Division 3 rights, on the transferor's behalf, to:

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- (i) the transferee; or
  - (ii) particular persons who include, or particular classes of persons at least one of which includes, the transferee; or
  - (iii) any person at all;
- the designated broker is taken to have been authorised to execute, and to have executed, the transfer document on the transferor's behalf;
- (b) each associate (if any) of the designated broker is liable to indemnify:
- (i) the issuer in relation to the Division 3 assets or Division 3 rights; and
  - (ii) the transferor; and
  - (iii) the transferee; and
  - (iv) the transferee's broker;
- against any loss or damage arising if:
- (v) the stamp mentioned in paragraph (1)(b) is not the designated broker's stamp; or
  - (vi) apart from paragraph (a), the designated broker was not authorised to execute the transfer document on the transferor's behalf;
- (c) if the designated broker is not a broker's agent, the designated broker is liable to indemnify:
- (i) the issuer in relation to the Division 3 assets or Division 3 rights; and
  - (ii) the transferor; and
  - (iii) the transferee; and
  - (iv) the transferee's broker;
- against any loss or damage arising if:
- (v) the stamp mentioned in paragraph (1)(b) is not the designated broker's stamp; or
  - (vi) apart from paragraph (a), the designated broker was not authorised to execute the transfer document on the transferor's behalf.

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**7.11.18 Warranties by market licensee if transfer document purports to bear its stamp**

- (1) This regulation applies if a transfer document:
  - (a) has been duly completed in accordance with Part 1 of Form 3 or Form 7; and
  - (b) bears a stamp that purports to be a stamp of a market licensee.
- (2) The market licensee is taken to have warranted that:
  - (a) the statements in the transfer document that purport to be certified by a market licensee are accurate; and
  - (b) the transferor is:
    - (i) the registered holder of, or entitled to be registered as the holder of, the Division 3 assets; or
    - (ii) entitled to the Division 3 rights;and is legally entitled or authorised to sell or dispose of the Division 3 assets or Division 3 rights.

**7.11.19 Indemnities by market licensee and broker if transfer document purports to bear their stamps**

- (1) This regulation applies if:
  - (a) a transfer document (the *first document*) relating to Division 3 assets or Division 3 rights:
    - (i) has been duly completed in accordance with Part 1 of Form 1 or Form 5; and
    - (ii) bears a stamp that purports to be the stamp of the transferor's broker; and
  - (b) another transfer document:
    - (i) relates to any or all of the Division 3 assets or Division 3 rights; and
    - (ii) has been duly completed in accordance with Part 1 of Form 3 or Form 7; and
    - (iii) bears a stamp that purports to be the stamp of a market licensee.
- (2) The market licensee is liable to indemnify:

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- (a) the issuer in relation to the Division 3 assets or Division 3 rights; and
  - (b) the transferor in relation to the other document; and
  - (c) the transferee in relation to the other document; and
  - (d) the broker of the transferee in relation to the other document;
- against any loss or damage arising if:
- (e) the stamp mentioned in subparagraph (1)(a)(ii) is not the stamp of the transferor's broker; or
  - (f) apart from paragraph 7.11.17(4)(a), the designated broker was not authorised to execute the first document on behalf of the transferor in relation to the first document.
- (3) Each associate (if any) of the transferor's broker is liable to indemnify the market licensee against any loss or damage arising as mentioned in subregulation (2).
  - (4) If the transferor's broker is not a broker's agent, the transferor's broker is liable to indemnify the market licensee against any loss or damage arising as mentioned in subregulation (2).
  - (5) Nothing in this regulation limits the operation of anything in regulation 7.11.17 or 7.11.18 or of anything else in this regulation.

**7.11.20 Joint and several warranties and liabilities**

- (1) If 2 or more persons are taken to have warranted in the terms mentioned in paragraphs 7.11.17(2)(a) and (b) or 7.11.17(3)(a) and (b), the persons are taken to have warranted jointly and severally.
- (2) If 2 or more persons are liable as mentioned in paragraph 7.11.17(4)(b) or (c), or subregulation 7.11.19(3) or (4), the persons are liable jointly and severally.

**7.11.21 Registration of certain instruments**

- (1) This regulation applies if a sufficient transfer under this Part is lodged with a company for the purpose of:
  - (a) registering a transfer of Division 3 assets; or
  - (b) obtaining the issue of Division 3 assets.

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- (2) If the sufficient transfer is a transfer under regulation 7.11.11, the company and its officers are, in the absence of knowledge to the contrary, entitled to assume without inquiry that:
  - (a) a stamp on the transfer document that purports to be the transferor's broker's stamp is the stamp of that broker; and
  - (b) a stamp on the transfer document that purports to be the transferee's broker's stamp is the stamp of that broker; and
  - (c) a stamp on the transfer document that purports to be the stamp of a market licensee is the stamp of that market licensee.
- (3) If the sufficient transfer is a transfer under regulation 7.11.12 or 7.11.13, the company and its officers are, in the absence of knowledge to the contrary, entitled to assume without inquiry that:
  - (a) at the execution time, the licensed trustee company, within the meaning of Chapter 5D of the Act, a Public Trustee of a State or Territory, or a company listed in Schedule 9 named in the instrument held (whether alone or together with any other person or persons) in the ordinary course of its business, in trust for or on behalf of the transferee, the Division 3 assets or Division 3 rights to which the sufficient transfer relates; and
  - (b) the transfer was not made by way of a sale, gift or exchange of the Division 3 assets or Division 3 rights.

**7.11.22 Details to be included in instrument of transfer**

- (1) For subsection 1071B(3) of the Act, for a transfer of unquoted securities, the State or Territory in this jurisdiction in which the company is taken to be registered is a prescribed detail.
- (2) In this regulation:

***unquoted securities*** means securities (within the meaning of subsection 1071A(1) of the Act) that are not admitted to quotation on any of the financial markets operated by the Australian Stock Exchange Limited, Bendigo Stock Exchange Limited or National Stock Exchange of Australia Limited.



## **Division 4—Transfer of Division 4 financial products effected through prescribed CS facility**

### **7.11.23 Application of Division 4**

This Division is made under sections 1074A and 1074E of the Act, and applies to transfers of Division 4 financial products effected through ASTC.

Note: ASTC—the ASX Settlement and Transfer Corporation Pty Limited—is a prescribed CS facility for the Act.

### **7.11.24 Application of ASTC operating rules**

If the ASTC operating rules include provisions determining:

- (a) which participant effected a proper ASTC transfer; or
- (b) when a proper ASTC transfer takes effect;

those provisions have effect for this Division.

### **7.11.25 Participant's authority to enter into transaction continues despite client's death**

- (1) This regulation applies if:
  - (a) a person authorises a participant to enter into a transaction involving the disposal of a Division 4 financial product (for example, a sale); and
  - (b) the person dies before the participant enters into the transaction; and
  - (c) the authority is still in force immediately before the person dies.
- (2) The authority continues, despite the person's death, as if the person were still alive.
- (3) If the participant enters into the transaction while the authority so continues, the transaction is binding on the person's legal representative.

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- (4) The authority can be revoked by the person's legal representative in any way that the person could have revoked it while the person was alive.

**7.11.26 Authority to enter into transaction gives authority to transfer**

- (1) This regulation applies if a person authorises a participant to enter into a transaction involving the disposal of a Division 4 financial product (for example, a sale).
- (2) The person is taken to have authorised the participant to effect any proper ASTC transfer of the Division 4 financial product that the participant effects, whether or not the transfer has any connection with the transaction.

Note: The transfer may have no connection with the transaction because of the operation of the provisions of the ASTC operating rules mentioned in subregulation 7.5.41(1).

- (3) The authority that the person is taken by subregulation (2) to have given:
  - (a) is revoked if, before the transaction is entered into, the authority to enter into the transaction is revoked or otherwise ceases to have effect; and
  - (b) cannot otherwise be revoked.
- (4) If the person dies after the transaction is entered into, the authority:
  - (a) continues in force, despite the person's death, as if the person were still alive; and
  - (b) cannot be revoked.
- (5) If:
  - (a) the authority mentioned in subregulations (1) and (2) is given to a participant mentioned in paragraph (b) of the definition of *participant* in section 761A of the Act (the *transacting participant*); and
  - (b) under the market licensee's operating rules, a participant mentioned in paragraph (a) of the definition of *participant* in section 761A of the Act (the *clearing participant*) has the function of completing the relevant transaction;

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the clearing participant has the same authority as the transacting participant has under subregulations (1) and (2).

**7.11.27 Effect of proper ASTC transfer on transferee: Division 4 financial products other than rights**

- (1) If a proper ASTC transfer of a Division 4 financial product (other than rights) takes effect at a particular time:
  - (a) the transferee is taken to have agreed at that time to accept the Division 4 financial product subject to the terms and conditions on which the transferor held them immediately before that time; and
  - (b) the terms and conditions are the terms and conditions applicable as between the issuer in relation to, and the holder for the time being of, the Division 4 financial product.
- (2) If the Division 4 financial product is shares, the transferee is also taken to have agreed at that time:
  - (a) to become a member of the issuer; and
  - (b) to be bound by the issuer's constitution.
- (3) If the Division 4 financial product is an interest in a managed investment scheme, the transferee is also taken to have agreed at that time:
  - (a) to become a member of the managed investment scheme; and
  - (b) to be bound by the constitution of the managed investment scheme to the extent that:
    - (i) the transferee will comply with any requirement imposed on the transferee by the constitution; and
    - (ii) the transferee will not impede compliance by another person with any requirement imposed on the other person by the constitution.
- (4) In this regulation:

**right** means a right, whether existing or future, and whether contingent or not, of a person to have any of the following issued to the person, whether or not on payment of any money or for any other consideration:

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- (a) a share in a company (including a body to which section 1073C of the Act applies);
- (b) a debenture of a company (including a body to which section 1073C of the Act applies);
- (c) an interest in a registered scheme mentioned in regulations made under paragraph 1073A(1)(c) of the Act.

**7.11.28 Effect of proper ASTC transfer on transferee: rights**

- (1) If a proper ASTC transfer of a Division 4 financial product that is rights (other than rights that relate to an interest in a managed investment scheme) takes effect at a particular time, the transferee is taken:
  - (a) to have applied at that time to the issuer in relation to the rights for the issue to the transferee of the Division 4 financial product to which the rights relate; and
  - (b) to have agreed at that time to accept the Division 4 financial product to which the rights relate subject to the terms and conditions on which the issuer offers them for subscription.
- (2) If the Division 4 financial product to which the rights (other than rights that relate to an interest in a managed investment scheme) relate is shares, the transferee is also taken to have agreed, at that time:
  - (a) to become a member of the issuer; and
  - (b) to be bound, on being registered as the holder of the shares, by the issuer's constitution.
- (3) If the Division 4 financial product is a right to an interest in a managed investment scheme, the transferee is also taken to have agreed at that time:
  - (a) to have applied at that time to the responsible entity in relation to the rights for the issue to the transferee of the interest in a managed investment scheme to which the rights relate; and
  - (b) to have agreed at that time to accept the interest in a managed investment scheme to which the rights relate subject to the terms and conditions on which they are offered by the responsible entity; and

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- (c) to become a member of the managed investment scheme; and
  - (d) to be bound by the constitution of the managed investment scheme to the extent that:
    - (i) the transferee will comply with any requirement imposed on the transferee by the constitution; and
    - (ii) the transferee will not impede compliance by another person with any requirement imposed on the other person by the constitution.
- (4) In this regulation:
- right** means a right, whether existing or future, and whether contingent or not, of a person to have any of the following issued to the person, whether or not on payment of any money or for any other consideration:
- (a) a share in a company (including a body to which section 1073C of the Act applies);
  - (b) a debenture of a company (including a body to which section 1073C of the Act applies);
  - (c) an interest in a registered scheme mentioned in regulations made under paragraph 1073A(1)(c) of the Act.

**7.11.29 Warranties by participant if identification code is included in transfer document**

- (1) This regulation applies if the transfer document for a proper ASTC transfer of a Division 4 financial product includes a participant's identification code as the identification code of the participant effecting the transfer.
- (2) If the participant is the transferor, the participant is taken to have warranted that:
  - (a) the transfer was effected by the participant; and
  - (b) the transferor was legally entitled or authorised to transfer the Division 4 financial product.
- (3) Subregulation (4) applies if:
  - (a) the participant is not the transferor; and

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- (b) the transfer is pursuant to a transaction in relation to which, or to transactions in relation to each of which, one of the following conditions is satisfied:
    - (i) the transaction was entered into in the ordinary course of trading on a financial market;
    - (ii) the transaction is, under the operating rules of a market licensee, described, or to be described, as ‘special’ when it is reported to the market licensee.
- (4) The participant is taken to have warranted that:
  - (a) the transferor was legally entitled or authorised to transfer the Division 4 financial product; and
  - (b) the transfer was effected by the participant; and
  - (c) the participant was authorised by the transferor to effect the transfer.
- (5) Subregulation (6) applies if:
  - (a) the participant is not the transferor; and
  - (b) the transfer is not pursuant to a transaction in relation to which, or to transactions in relation to each of which, one of the following conditions is satisfied:
    - (i) the transaction was entered into in the ordinary course of trading on a financial market;
    - (ii) the transaction is, under the operating rules of a market licensee, described, or to be described, as ‘special’ when it is reported to the market licensee.
- (6) The participant is taken to have warranted that:
  - (a) the transfer was effected by the participant; and
  - (b) the participant was authorised by the transferor to effect the transfer.

**7.11.30 Indemnities in respect of warranted matters: transfer not effected by the participant**

- (1) This regulation applies if:
  - (a) a participant is taken by regulation 7.11.29 to have warranted, in relation to a proper ASTC transfer of a

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- Division 4 financial product, that the transfer was effected by the participant; and
- (b) the transfer was not effected by the participant.
- (2) The participant is liable to indemnify each of the following against any loss or damage arising from the transfer not having been effected by the participant:
- (a) the issuer in relation to the Division 4 financial product;
  - (b) the transferor;
  - (c) the transferee;
  - (d) if a participant acted as the transferee's agent in the transfer—that participant;
  - (e) the prescribed CS facility operated by ASTC;
  - (f) if TNS Clearing Pty Limited is the counter-party in the transaction—TNS Clearing Pty Limited;
  - (g) if Options Clearing House Pty Limited is the counter-party in the transaction—Options Clearing House Pty Limited.
- (3) For this regulation, the effect of regulation 7.11.26 is to be disregarded in determining whether a person:
- (a) was legally entitled or authorised to transfer Division 4 financial products; or
  - (b) was authorised by another person to effect a transfer of Division 4 financial products.

**7.11.31 Indemnities in respect of warranted matters: transferor not legally entitled or authorised to transfer Division 4 financial products**

- (1) This regulation applies if:
- (a) a participant is taken by regulation 7.11.29 to have warranted, in relation to a proper ASTC transfer of a Division 4 financial product, that the transferor was legally entitled or authorised to transfer the Division 4 financial product; and
  - (b) the transferor was not legally entitled or authorised to transfer the Division 4 financial product.

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- (2) The participant is liable to indemnify each of the following against any loss or damage arising from the transferor not having been legally entitled or authorised to transfer the Division 4 financial product:
  - (a) the issuer in relation to the Division 4 financial product;
  - (b) the transferee;
  - (c) if a participant acted as the transferee's agent in the transfer—that participant;
  - (d) the prescribed CS facility operated by ASTC;
  - (e) if TNS Clearing Pty Limited is the counter-party in the transaction—TNS Clearing Pty Limited;
  - (f) if Options Clearing House Pty Limited is the counter-party in the transaction—Options Clearing House Pty Limited.
- (3) For this regulation, the effect of regulation 7.11.26 is to be disregarded in determining whether a person:
  - (a) was legally entitled or authorised to transfer Division 4 financial products; or
  - (b) was authorised by another person to effect a transfer of Division 4 financial products.

**7.11.32 Indemnities in respect of warranted matters: participant not authorised to effect transfer**

- (1) This regulation applies if:
  - (a) a participant is taken by regulation 7.11.29 to have warranted, in relation to a proper ASTC transfer of a Division 4 financial product, that the participant was authorised by the transferor to effect the transfer; and
  - (b) the participant was not authorised by the transferor to effect the transfer.
- (2) The participant is liable to indemnify each of the following against any loss or damage arising from the participant not having been authorised by the transferor to effect the transfer:
  - (a) the issuer in relation to the Division 4 financial product;
  - (b) the transferor;
  - (c) the transferee;



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- (d) if a participant acted as the transferee's agent in the transfer—that participant;
  - (e) the prescribed CS facility operated by ASTC;
  - (f) if TNS Clearing Pty Limited is the counter-party in the transaction—TNS Clearing Pty Limited;
  - (g) if Options Clearing House Pty Limited is the counter-party in the transaction—Options Clearing House Pty Limited.
- (3) For this regulation, the effect of regulation 7.11.26 is to be disregarded in determining whether a person:
- (a) was legally entitled or authorised to transfer Division 4 financial products; or
  - (b) was authorised by another person to effect a transfer of Division 4 financial products.

**7.11.33 Joint and several warranties and liabilities**

- (1) If 2 or more persons are taken to have warranted in the terms mentioned in subregulation 7.11.29(2), (4) or (6), the persons are taken to have warranted jointly and severally.
- (2) If 2 or more persons are liable as mentioned in regulation 7.11.30, 7.11.31 or 7.11.32, the persons are liable jointly and severally.

**7.11.34 ASTC entitled to assume its operating rules complied with**

- (1) This regulation applies if the prescribed CS facility operated by ASTC assumes without inquiry, in the absence of knowledge to the contrary, that anything purporting to be done under the ASTC operating rules in connection with a transfer of a Division 4 financial product has been done in accordance with those rules.
- (2) If the prescribed CS facility operated by ASTC assumes, in reliance on subregulation (1), that a thing was done in accordance with the ASTC operating rules, the thing is taken to have been done in accordance with those rules.
- (3) If the prescribed CS facility operated by ASTC:
  - (a) acts on behalf of the issuer in relation to a Division 4 financial product; and

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- (b) as part of that function assumes, in reliance on subregulation (1), that a thing was done in accordance with the ASTC operating rules;
- the issuer is also taken to assume, and to be entitled to assume, that the thing was done in accordance with the ASTC operating rules.

**7.11.35 ASTC-regulated transfer not to be registered unless proper ASTC transfer**

- (1) The issuer in relation to a Division 4 financial product must not register, or otherwise give effect to, an ASTC-regulated transfer of the Division 4 financial product unless the transfer is a proper ASTC transfer.
- (2) Subregulation (1) has effect despite anything in:
  - (a) the issuer's constitution; or
  - (b) a deed relating to debentures; or
  - (c) the constitution of a registered scheme; or
  - (d) a deed relating to interests.

**7.11.36 Issuer not to refuse to register proper ASTC transfer**

The issuer in relation to a Division 4 financial product must not:

- (a) refuse or fail to register a proper ASTC transfer of the Division 4 financial product; or
- (b) refuse or fail to give effect to a proper ASTC transfer of the Division 4 financial product.

**7.11.37 Determination of who holds Division 4 financial products for the purposes of meeting**

- (1) This regulation applies to a meeting of the holders of securities of a body corporate if some or all of the securities are Division 4 financial products.
- (2) The convener of the meeting may determine that all the securities of the body corporate that are Division 4 financial products at a specified time before the meeting are taken, for the purposes of the

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meeting, to be held by the persons who held them at the specified time.

- (3) The specified time:
  - (a) must satisfy any applicable requirements of the ASTC operating rules; but
  - (b) in any case, must not be more than 48 hours before the meeting.
- (4) The convenor must make a determination:
  - (a) in accordance with any applicable requirements of the ASTC operating rules as to the way in which it must be made; but
  - (b) in any case, before notice of the meeting is given.
- (5) The convenor must include particulars of the determination in the notice of the meeting.
- (6) However, a failure to include particulars of the determination in the notice of the meeting does not invalidate the determination.
- (7) The convenor's determination has effect accordingly despite anything in:
  - (a) the Act; and
  - (b) these Regulations; and
  - (c) any other law (written or unwritten) that applies to the meeting; and
  - (d) any document that applies to the meeting (for example, the body corporate's constitution or any relevant trust deed).

**7.11.38 Determination of who holds Division 4 financial products in class of Division 4 financial products for the purposes of meeting**

- (1) This regulation applies to a meeting of the holders of a class of securities of a body corporate if some or all of the securities in that class are Division 4 financial products.
- (2) The convener of the meeting may determine that all the securities of the body corporate in the relevant class that are Division 4 financial products at a specified time before the meeting are taken,

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for the purposes of the meeting, to be held by the persons who held them at the specified time.

- (3) The specified time:
  - (a) must satisfy any applicable requirements of the ASTC operating rules; but
  - (b) in any case, must not be more than 48 hours before the meeting.
- (4) The convenor must make a determination:
  - (a) in accordance with any applicable requirements of the ASTC operating rules as to the way in which it must be made; but
  - (b) in any case, before notice of the meeting is given.
- (5) The convenor must include particulars of the determination in the notice of the meeting.
- (6) However, a failure to include particulars of the determination in the notice of the meeting does not invalidate the determination.
- (7) The convenor's determination has effect accordingly despite anything in:
  - (a) the Act; and
  - (b) these Regulations; and
  - (c) any other law (written or unwritten) that applies to the meeting; and
  - (d) any document that applies to the meeting (for example, the body corporate's constitution or a relevant trust deed).

**7.11.39 Determination of who holds Division 4 financial products for the purposes of conferring security benefits**

- (1) If the ASTC operating rules include provisions relating to the determination, for the purposes of conferring security benefits, of who holds or is taken to hold Division 4 financial products at a particular time, those provisions have effect accordingly despite anything in:
  - (a) the Act; and
  - (b) these Regulations; and

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- (c) any other law (written or unwritten) that applies to the conferral; and
  - (d) any document that applies to the conferral (for example, the body corporate's constitution or a relevant trust deed).
- (2) In subregulation (1), ***conferring a security benefit*** means:
- (a) paying or transferring money or property to a person because the person holds or held a Division 4 financial product; or
  - (b) issuing securities to a person because the person holds or held a Division 4 financial product; or
  - (c) conferring a right on a person because the person holds or held a Division 4 financial product.

## Division 5—Offences

### 7.11.40 Stamping of broker's stamp on sufficient transfer

- (1) A broker must not stamp with a broker's stamp a document (a *transfer document*) that:
  - (a) relates to Division 3 securities; and
  - (b) may be used as a sufficient transfer under this Part;unless the transfer document relates to a sale or purchase of the Division 3 securities, in the ordinary course of the broker's business, for a consideration of not less than their unencumbered market value at the time of the sale or purchase.
- (2) A person must not stamp a transfer document with a stamp that purports to be that of the transferor's broker unless:
  - (a) the stamp is the stamp of the transferor's broker; and
  - (b) apart from paragraph 7.11.17(4)(a), the transferor's broker is authorised to execute the document on the transferor's behalf; and
  - (c) the person is:
    - (i) the transferor's broker; or
    - (ii) authorised to stamp the document on the transferor's broker's behalf.
- (3) A market licensee must not stamp with a stamp of the market licensee a document that may be used as a sufficient transfer under this Part of Division 3 securities unless:
  - (a) a duly completed Part 1, relating to the Division 3 securities, has been lodged with the issuer in relation to the Division 3 securities; or
  - (b) the market licensee holds a duly completed Part 1 that:
    - (i) bears a certificate that purports to be that of the transferor's broker; and
    - (ii) states that a duly completed Part 1, relating to the Division 3 securities, has been lodged or will be lodged with the issuer in relation to the Division 3 securities.
- (4) A person must not execute a document that:

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- (a) may be used as a sufficient transfer under regulation 7.11.12 or 7.11.13; and
  - (b) relates to a transfer of Division 3 securities:
    - (i) made by way of a sale, gift or exchange of the Division 3 securities; or
    - (ii) to or in favour of a person who is not the beneficial owner of the Division 3 securities.
- (5) A person who is not a licensed trustee company, within the meaning of Chapter 5D of the Act, a Public Trustee of a State or Territory, or a company listed in Schedule 9 must not knowingly cause, authorise or permit to be executed a document that:
- (a) relates to Division 3 securities; and
  - (b) may be used as a sufficient transfer under regulation 7.11.12 or 7.11.13;
- but is not a sufficient transfer under that regulation.
- (6) A person must not knowingly lodge or cause to be lodged with a company a document that has been:
- (a) stamped in contravention of subregulation (1), (2) or (3); or
  - (b) executed in contravention of subregulation (4);
- for the purpose of securing the registration of the transfer of, or the issue of, Division 3 securities to the transferee named in the document.

**7.11.41 Inclusion of identification codes in proper ASTC transfers**

A person must not include a participant's identification code in a document that may be used to effect a proper ASTC transfer unless:

- (a) the person:
  - (i) is the participant; or
  - (ii) is authorised so to include the identification code by the participant; and
- (b) if:
  - (i) the identification code is so included as the identification code of the participant effecting the transfer; and

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- (ii) the participant is not the transferor;  
the participant is, apart from the effect of regulation 7.11.26,  
authorised by the transferor to effect the transfer.

**7.11.42 Contravention by participant of the ASTC certificate  
cancellation provisions relating to use of cancellation  
stamps**

A participant must not, intentionally or recklessly, contravene the ASTC certificate cancellation provisions by affixing, or failing to affix, a cancellation stamp to a certificate or other document of title to a Division 4 financial product.



## **Division 6—Civil liability**

### **7.11.43 Contravention by participant of the ASTC certificate cancellation provisions**

- (1) This regulation applies to a person who suffers loss or damage because of conduct of a participant that was engaged in a contravention of the ASTC certificate cancellation provisions.
- (2) The person may, unless the person was involved in the contravention, recover the amount of the loss or damage by action against the participant, whether or not the participant has been convicted of an offence in respect of the contravention.
- (3) An action under subregulation (2) must be begun within 6 years after the day on which the cause of action arose.
- (4) This regulation does not affect a liability that a person has under any other law.
- (5) For section 1310B of the Act, an action under subregulation (2) is taken to be a proceeding in respect of loss or damage arising out of a contravention of the Act.

## **Part 7.12—Miscellaneous**

### **7.12.01 Destruction of records by ASIC**

For paragraph 1101D(b) of the Act, the period of possession is 7 years.

## **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 Securities Act 1978 (New Zealand) and the Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 (New Zealand);
  - (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 the Securities Regulations 2009 (New Zealand) 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

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- 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

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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.

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<b>Item</b>	<b>Authority</b>	<b>Matter(s) in relation to which the authority is to be regarded as the home regulator</b>
1	Registrar of Financial Service Providers of New Zealand	Each matter mentioned in: (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	Financial Markets Authority of New Zealand	Each matter mentioned in items 5 to 7 of the Table at subsection 1200G(9) of the Act

**Chapter 8** Mutual recognition of securities offers

**Part 8.2** Foreign offers that are recognised in this jurisdiction

**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)

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**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.