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Corporations Amendment Regulations 2004 (No. 2)¹

Statutory Rules 2004 No. 2²

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Corporations Act 2001*.

Dated 19 FEB 2004 2004

PM Jeffery
Governor-General

By His Excellency's Command

ROSS CAMERON
Parliamentary Secretary to the Treasurer

1 Name of Regulations

These Regulations are the *Corporations Amendment Regulations 2004 (No. 2)*.

2 Commencement

These Regulations commence on the date of their notification in the *Gazette*.

3 Amendment of *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

Schedule 1 Amendments

(regulation 3)

[1] After regulation 7.1.04D

insert

7.1.04E Meaning of *class of financial services* (subsections 917A (3), 917C (2) and 917C (3) of the Act)

- (1) For section 761CA of the Act, this regulation applies for subsections 917A (3), 917C (2) and 917C (3) of the Act.
- (2) Each of the following is a class of financial services:
 - (a) the provision of financial product advice relating to a general insurance product;
 - (b) the provision of financial product advice relating to an investment life insurance product;
 - (c) the provision of financial product advice relating to a life risk insurance product;
 - (d) dealing in a financial product that is a general insurance product;

- (e) dealing in a financial product that is an investment life insurance product;
- (f) dealing in a financial product that is a life risk insurance product.

[2] After regulation 7.1.07G

insert

7.1.07H Specific things that are not financial products: ACT insurance

For paragraph 765A (1) (y) of the Act, Australian Capital Territory insurance, including insurance entered into by the Australian Capital Territory and another insurer as joint insurers, is not a financial product.

[3] Paragraph 7.1.29 (3) (b)

omit

the risk associated with carrying on a business

insert

a risk that another person might be subject to

[4] After regulation 7.1.29

insert

7.1.29A Self-managed superannuation funds

- (1) Subparagraph 7.1.29 (5) (c) (ii) does not apply to a recommendation by a recognised accountant in relation to a self-managed superannuation fund.
- (2) In this regulation:
recognised accountant means:
 - (a) a member of CPA Australia who:
 - (i) is entitled to use the letters 'CPA' or 'FCPA'; and

- (ii) is subject to, and complies with, CPA Australia's continuing professional education requirements; or
- (b) a member of The Institute of Chartered Accountants in Australia (*ICAA*) who:
 - (i) is entitled to use the letters 'ACA', 'CA' or 'FCA'; and
 - (ii) is subject to, and complies with, ICAA's continuing professional education requirements; or
- (c) a member of the National Institute of Accountants (*NIA*) who:
 - (i) is entitled to use the letters 'FNIA', 'FPNA', 'MNIA' or 'PNA'; and
 - (ii) is subject to, and complies with, NIA's continuing professional education requirements.

[5] After paragraph 7.6.01 (1) (m)

insert

- (ma) the financial service is dealing in a financial product by a person (*person 1*) in the following circumstances:
 - (i) the financial product is a derivative that is issued, acquired or disposed of under an agreement that sets out the terms and conditions for future dealing in a derivative between the 2 parties to the agreement;
 - (ii) the other party to the agreement:
 - (A) is a wholesale client in this jurisdiction; and
 - (B) initiated the agreement; and
 - (C) holds an Australian Financial Services Licence which permits it to make a market or to deal in the financial product;
 - (iii) person 1 is not in this jurisdiction;
 - (iv) each party is dealing in the financial product on its own behalf.

[6] After regulation 7.6.04A

insert

7.6.04B Notification of authorised representatives — basic deposit products

For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies as if paragraph 916F (1AA) (d) of the Act were modified by:

- (a) substituting the words ‘one or more of’ for the words ‘either or both’; and
- (b) omitting ‘paragraph.’ in subparagraph (ii) and inserting ‘paragraph;’ and
- (c) inserting after subparagraph 916F (1AA) (d) (ii):
 - ‘(iii) personal advice about a basic deposit product or a facility for making non-cash payments that relates to a basic deposit product.’.

[7] After subregulation 7.7.02 (5A)

insert

- (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.

[8] Regulation 7.7.05B*substitute***7.7.05B Personalised Financial Services Guide**

- (1) This regulation applies if a body corporate:
 - (a) is:
 - (i) a financial services licensee; or
 - (ii) an authorised representative of a financial services licensee; and
 - (b) 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.
- (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 a body corporate that is an authorised representative, if:
 - (a) the financial service is dealing in a financial product or the provision of general advice or both; and

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- (b) the body corporate authorised representative 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 body corporate authorised representative 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 body corporate authorised representative'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.
- (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.

[9] After regulation 7.7.06

insert

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.

[10] After regulation 7.7.11

insert

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.

[11] Regulation 7.8.17

omit

For paragraph 991B (3) (b)

insert

(1) For paragraph 991B (3) (b)

[12] Regulation 7.8.17*insert*

- (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.

[13] After subregulation 7.8.20 (1)*insert*

- (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.
- (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.

[14] After subregulation 7.8.21 (4)*insert*

- (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.

[15] Paragraphs 7.9.63B (6) (a) and (b)*omit*

market;

insert

market in which the responsible person is a participant;

Notes

1. These Regulations amend Statutory Rules 2001 No. 193, as amended by 2001 Nos. 208, 318 and 319 (rr 7.9.10 and 7.9.11 were disallowed by the Senate on 16 September 2002); 2002 Nos. 15, 16 (rr 7.9.10, 7.9.11 (1), 7.9.11 (1) (a), 7.9.11 (1) (b) and 7.9.11 (2) were disallowed by the Senate on 16 September 2002), 41, 53, 126, 145, 182, 265 and 282; 2003 Nos. 31, 48, 85, 126, 127, 194, 202, 282, 367, 368 and 369.
2. Notified in the *Commonwealth of Australia Gazette* on

2004. *26 February*
2004 No. 10