

Australian Securities and Investments Commission Amendment Regulations 2003 (No. 1) 2003 No. 107

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 107

Issued by the Parliamentary Secretary to the Treasurer

Australian Securities and Investments Commission Act 2001

Australian Securities and Investments Commission Amendment Regulations 2003 (No. 1)

Section 251 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed by regulations or necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Act.

A market practice has developed whereby persons approach shareholders off-market and make offers to purchase shares well below market value, essentially trading on the potential ignorance of those shareholders.

This market practice has been restricted by the creation of regulation 7.1.33C under the *Corporations Act 2001*. Corporations Regulation 7.1.33C expands the definition of a financial service under the Corporations Act to include the making of unsolicited off-market offers to purchase financial products from investors. Defining these offers as financial services ensures that persons involved in this practice would need to become licensed under the *Financial Services Reform Act 2001* (FSRA) licensing regime. A licensing exemption would, however, be available if the person discloses the current market value of the financial product they wish to purchase when making the offer.

The purpose of the Regulations is to expand the definition of a financial service under the ASIC Act to include the making of unsolicited off-market offers to purchase financial products from investors. The Regulations provide the same licensing exemption as exists under Corporations Regulation 7.1.33C, that is, if the person makes a disclosure as to the current market value of the financial product.

The Regulations support Corporations Regulation 7.1.33C by replicating the Corporations Act requirements under the definition of a 'financial service' in the ASIC Act. This allows the Australian Securities and Investments Commission greater certainty when enforcing the requirements under Corporations Regulation 7.1.33C. It also ensures that the definition of a 'financial service' is consistent between the ASIC Act and the Corporations Act.

The Regulations support the reforms to the regulation of the financial services industry, which were included in the FSRA and associated legislation, by promoting disclosure and protecting inexperienced financial product holders from businesses that offer to purchase financial products off-market at grossly undervalued prices.

The Regulations commence upon Gazettal.