



Banking Act 1959

BANKING (EXEMPTION) ORDER No 96

REGISTERED ENTITIES UNDER THE *FINANCIAL SECTOR (COLLECTION OF DATA) ACT 2001*

I, Darryl Milburn Roberts, a delegate of APRA, make this order under subsection 11(1) of the Banking Act.

ORDER

1. Section 8 of the Banking Act does not apply to a registered entity if the following conditions are complied with.

NOTE: Section 8 of the Banking Act prohibits a body corporate from carrying on any banking business in Australia unless it is an authorised deposit-taking institution or meets certain other conditions. "Banking business" is defined in subsection 5(1) of the Banking Act.

CONDITIONS

Obligation to give a warning where the registered entity offers securities and must make disclosure under Part 6D.2 of the Corporations Act

2. Where:
 - (a) the registered entity takes money on deposit by offering, and issuing or selling, securities; and
 - (b) the offer of the securities needs disclosure to investors under Part 6D.2 of the Corporations Act;a prudential supervision warning must be clearly and prominently set out in every disclosure document relating to the securities.

Obligation to give a warning where the registered entity issues or sells a financial product and must make disclosure under Part 7.9 of the Corporations Act

3. Where:
 - (a) the registered entity takes money on deposit by issuing or selling a financial product; and

- (b) the issue or sale of the financial product needs a Product Disclosure Statement to be or to have been given to the investor under Part 7.9 of the Corporations Act;

a prudential supervision warning must be clearly and prominently set out in the Product Disclosure Statement.

Obligation to give a warning in other cases

- 4. Where the registered entity takes money on deposit in circumstances that are not covered by clause 2 or 3, a prudential supervision warning must be given to the investor in the following manner:
 - (a) if, before the deposit product is issued or sold to the investor, information relating to the deposit product is given to the investor in one or more paper documents (whether or not such information is also given to the investor in another form) – the warning must be clearly and prominently set out in one of those documents;
 - (b) if, before the deposit product is issued or sold to the investor, information relating to the deposit product is given to the investor in one or more electronic communications (whether or not such information is also given to the investor in another form) – the warning must be clearly and prominently set out in one of those electronic communications;
 - (c) in any other case – the warning must be clearly and prominently set out in a paper document or electronic communication that is given to the investor before the deposit product is issued or sold to the investor.

Exceptions to the obligation to give a warning

- 5. Despite clauses 2 to 4, a prudential supervision warning does not have to be given in any of the following circumstances:
 - (a) where the investor is a related body corporate of the registered entity;
 - (b) where the investor is a professional investor;
 - (c) where the deposit product is provided for use in connection with a business that is not a small business;
 - (d) where the deposit product is issued or sold to an investor who already holds a deposit product of the same kind;
 - (e) where the deposit product is issued or sold by an exempt public authority;
 - (f) where the deposit product is not issued or sold in the course of carrying on a business of issuing or selling deposit products;
 - (g) where:
 - (i) the registered entity takes money on deposit by offering, and issuing or selling, securities; and

- (ii) the offer of the securities does not need disclosure to investors under Part 6D.2 of the Corporations Act because of the application of subsection 708(11), (12), (13), (14), (15), (16), (17), (18), (19), (20) or (21) of the Corporations Act;
- (h) where:
- (i) the registered entity takes money on deposit by issuing or selling a financial product; and
 - (ii) the issue or sale of the financial product does not need a Product Disclosure Statement to be or to have been given to the investor under Part 7.9 of the Corporations Act because of the application of subsection 1012D(2), (3), (5), (6), (7), (8) or (9A) of the Corporations Act;
- (i) if the deposit product is not an option – where no consideration is provided for the issue or sale of the deposit product;
- (j) if the deposit product is an option – where:
- (i) no consideration is provided for the option; and
 - (ii) no consideration is provided for the underlying rights or interests on the exercise of the option;
- (k) where the following conditions are satisfied:
- (i) the investor has previously been given a paper document or electronic communication containing a statement that:
 - the registered entity is not authorised under the Banking Act and is not supervised by APRA; and
 - an investment in a particular kind of deposit product, or in all deposit products, issued or sold by the registered entity will not be covered by the depositor protection provisions in section 13A of the Banking Act;
 - (ii) the statement was displayed clearly and prominently so as to make it reasonably likely to be read by the investor;
 - (iii) since being given the statement the investor has not received any information from the registered entity or a representative of the registered entity suggesting that the warning is no longer operative;
 - (iv) the deposit product meets the description of the deposit products that, according to the statement, will not be covered by the depositor protection provisions in section 13A of the Banking Act;
- (l) where APRA tells the registered entity in writing that APRA is satisfied that the protection of investors' interests does not require a prudential supervision warning to be given:
- (i) to the investor; or
 - (ii) to a specified class of investors to which the investor belongs; or
 - (iii) in respect of the deposit product; or
 - (iv) in respect of a specified class of deposit products to which the deposit product belongs;
- (m) where an application for the deposit product was received by the registered entity before 1 June 2003;

- (n) where the following conditions are satisfied:
 - (i) the deposit product is securities;
 - (ii) the offer of the securities needs disclosure to investors under Part 6D.2 of the Corporations Act;
 - (iii) the securities are issued or sold in response to an application that complies with subsection 723(1) of the Corporations Act;
 - (iv) the disclosure document which included or accompanied the application form was dated before 1 June 2003;
 - (v) the application was received by the registered entity on or before the expiry date of the disclosure document;
 - (o) where the following conditions are satisfied:
 - (i) the deposit product is a financial product;
 - (ii) the issue or sale of the financial product needs a Product Disclosure Statement to be or to have been given to the investor under Part 7.9 of the Corporations Act;
 - (iii) the financial product is issued or sold pursuant to an eligible application;
 - (iv) the Product Disclosure Statement which included or accompanied the application form was dated before 1 June 2003;
 - (v) the eligible application was received by the registered entity within one year after 1 June 2003.
6. The exception in paragraph 5(b), (c), (d) or (k) is taken to apply where the registered entity believes, on reasonable grounds, that the facts and matters mentioned in the paragraph exist.

APPLICATION

7. This order applies to a deposit product that is issued or sold on or after 1 June 2003.

INTERPRETATION

8. In this order:
- application***, in relation to a deposit product, means a paper or electronic application to acquire the product.
- APRA*** means the Australian Prudential Regulation Authority.
- authorised representative*** has the meaning given in section 761A of the Corporations Act.
- Banking Act*** means the *Banking Act 1959*.
- Corporations Act*** means the *Corporations Act 2001*.
- debenture*** has the meaning given in section 9 of the Corporations Act.

deposit product means:

- (a) securities; or
- (b) a financial product; or
- (c) any other arrangement;

that involves the taking of money on deposit.

disclosure document has the same meaning as in Part 6D.2 of the Corporations Act.

eligible application has the meaning given in section 1016A of the Corporations Act.

exempt public authority has the meaning given in section 9 of the Corporations Act.

financial product has the meaning given in Division 3 of Part 7.1 of the Corporations Act, but does not include securities.

given, in paragraphs 4(a), (b) and (c) and subparagraph 5(k)(i), means given or sent in a way that would satisfy the requirements of section 1015C of the Corporations Act if the paper documents or electronic communications mentioned in those paragraphs or that subparagraph were Statements to which that section applies.

investor means the person to whom the deposit product is issued or sold.

issue:

- (a) in relation to securities – has the same meaning as in Part 6D.2 of the Corporations Act;
- (b) in relation to any other deposit product – has the same meaning as in Part 7.9 of the Corporations Act.

offer has the same meaning as in Part 6D.2 of the Corporations Act.

Product Disclosure Statement has the meaning given in section 761A of the Corporations Act.

professional investor has the meaning given in section 9 of the Corporations Act.

prudential supervision warning means a statement that:

- the registered entity is not authorised under the Banking Act and is not supervised by APRA; and
- the investment will not be covered by the depositor protection provisions in section 13A of the Banking Act.

registered entity has the same meaning as in the *Financial Sector (Collection of Data) Act 2001*.

representative, in relation to a registered entity, means:

- (a) an authorised representative of the entity; or
- (b) an employee or director of the entity; or
- (c) an employee or director of a related body corporate of the entity; or
- (d) any other person acting on behalf of the entity.

sale:

- (a) in relation to securities – has the same meaning as in Part 6D.2 of the Corporations Act;
- (b) in relation to any other deposit product – has the same meaning as in Part 7.9 of the Corporations Act.

securities has the same meaning as in Part 6D.2 of the Corporations Act.

small business has the meaning given in subsection 761G(12) of the Corporations Act.

9. Whether a body corporate is ***related*** to another body corporate for the purposes of paragraph 5(a) is to be determined in the same way as under the Corporations Act.
10. Whether a body corporate is ***carrying on a business*** for the purposes of paragraph 5(f) is to be determined in the same way as under the Corporations Act.
11. A deposit product is taken to be ***of the same kind*** as another deposit product if:
 - (a) both of the deposit products are debentures issued by the same person; or
 - (b) both of the deposit products are issued by the same person on the same terms and conditions (other than price); or
 - (c) both of the deposit products are a financial product and are taken to be the same kind of financial product under the test in subsection 1012D(10) of the Corporations Act.
12. A reference to ***taking money on deposit*** does not include a reference to taking money on deposit as part-payment for identified goods or services.
13. A reference to ***an Act or provision of an Act*** is a reference to that Act or provision as in force from time to time.

Dated 22 May 2003



Darryl Roberts
General Manager, Enforcement