

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 274

Issued by the authority of the Assistant Treasurer and Minister for Financial Services and Superannuation

Corporations Act 2001

Corporations Legislation Amendment Regulations 2011 (No. 2)

The *Corporations Act 2001* (the Corporations Act) and the *Corporations Regulations 2001* (the Principal Regulations) provide for the regulation of corporations, financial markets, products and services, including in relation to financial product licensing, conduct, advice and disclosure.

Subsection 1364(1) of the Corporations Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Corporations 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.

Section 1020G of the Corporations Act provides that the regulations may modify the effect of Part 7.9 of the Corporations Act.

In 2010 the *Corporations Amendment Regulations 2010 (No. 5)* (CAR5) introduced a shorter and simpler product disclosure statement (PDS) regime for certain financial products, including superannuation and simple managed investment schemes (SMIS).

For regulated superannuation and simple managed investment schemes, CAR5 requires providers to comply with the requirements for new products and amended PDSs from 22 June 2011, with full compliance for all regulated products from 22 June 2012. At the time of drafting these Regulations, ASIC relief (Class Order 11/576, varied through CO 11/617, effective 27 June 2011) applies, extending the 22 June 2011 deadline until these Regulations commence.

On 8 June 2011, the Assistant Treasurer and Minister for Financial Services and Superannuation announced proposed amendments to the Principal Regulations and CAR5 to better facilitate the transition to the new eight page PDS regime.

These Regulations implement the changes to provide increased flexibility to facilitate transitioning to the new regime, so that issuers can:

- remain in the existing regime until 22 June 2012 for a particular product and its PDS;
- opt in to the new shorter PDS regime for a particular product early if the issuer is ready to do so; or
- continue to issue supplementary PDSs until 22 June 2012 for a particular product where a shorter PDS has already been issued.

The Regulations also:

- confirm that pure risk products are excluded from the regime;

- confirm that combined defined benefit and accumulation products are included in the regime;
- address situations where applications for financial products are electronically lodged;
- provide for the inclusion of relevant information for a shorter PDS issued for a brand-new SMIS; and
- clarify wording in relation to incorporation by reference for the significant benefits and features and the taxation aspects of SMIS.

Details of the Regulations are set out in the Attachment. A Regulation Impact Statement was not required for these amendments.

The Government consulted before finalising these regulations, with an initial public consultation period of two weeks commencing in July 2011. Four submissions were received, with some minor technical issues raised but no major issues. Since then through ongoing discussions with stakeholders, additional provisions have been included, referred to in the last two dot points above, to clarify what sort of information needs to be provided in relation to a SPDS for a new SMIS and when addressing taxation issues.

A further short consultation was undertaken in November, with the regulations provided for feedback to the Financial Services Council, as the main representative body for industry stakeholders on these issues. As a result, further detail has been provided in this document to provide increased clarity on a number of issues.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument of the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Details of the Corporations Legislation Amendment Regulations 2011 (No. 2)

References to ‘Schedule 1’ in these Regulations refer to Schedule 1 of the *Corporations Amendment Regulations 2010 (No. 5)*, that is CAR5.

Regulation 1

Provides that the name of the Regulations is the *Corporations Legislation Amendment Regulations 2011 (No. 2)*

Regulation 2

Provides that the commencement date for the Regulations is the day after they are registered.

Regulation 3

Provides that Schedule 1 of the Regulations amends the *Corporations Amendment Regulations 2010 (No. 5) (CAR5)*.

Regulation 4

Provides that Schedule 2 of the Regulations amends the *Corporations Regulations 2001*.

SCHEDULE 1**Amendment of Corporations Amendment Regulations 2010 (No. 5)****Item [1], after subregulation 4 (1)**

This amends *regulation 4* of CAR5 by providing that:

- In subregulation 4(1A), where a person has issued a shorter PDS which existed prior to commencement of these amending regulations (that is, ASIC class order 11/576, which was amended by CO 11/617, permitted early entry into the regime prior to these regulations being made), the person can also issue a supplementary PDS to that shorter PDS, if needed, but only up until 22 June 2012 (after which time a supplementary PDS to the shorter PDS is not permitted); and
- In subregulation 4(1B), an issuer can choose to stay in the existing regime for a particular product and PDS, rather than move to the new shorter PDS regime, up until 22 June 2012 (after which time the shorter PDS regime then applies). This means the person can choose to issue a longer PDS after commencement of the regulations, but if so, they cannot then issue a shorter PDS for that same product before 22 June 2012 (that is they cannot change which regime the particular PDS is to comply with).
- Also, in this context, the phrase ‘of that kind’ relates to the specific product being issued. That is, during this transitional period, an issuer can utilise the shorter PDS for one product, and a longer PDS for another – that is, the issuer can make a decision about each particular product as to which regime to use.

Item [2], Subregulation 4(3)

Subregulation 4(3) in CAR5 presently provides that if changes are made to a regulated superannuation product PDS which existed prior to 22 June 2011, that after that date a new PDS under the shorter PDS regime needs to be issued.

This provision provides that this requirement does not now apply until on or after 22 June 2012.

Item [3], Subregulation 4(4)

Subregulation 4(4) in CAR5 presently provides that if changes are made to a simple managed investment scheme PDS which existed prior to 22 June 2011 that after that time a new PDS under the shorter PDS regime needs to be issued.

This revised provision provides that this requirement now applies from 22 June 2012.

Item [4], After subregulation 4(6)

This inserts new subregulation 4(7), which allows issuers to enter into the shorter PDS regime prior to 22 June 2012 if they choose to in relation to a particular product. Once the person elects to move to the shorter PDS regime for a particular product, they cannot revert back. A person can elect to move to the shorter PDS regime early on a product by product basis.

SCHEDULE 2:***Amendment of Corporations Regulations 2001*****Item [1] – Subregulation 7.9.11E(1)**

This provision makes a correction so that the reference in the subregulation now refers to subsection 1013C (1D).

Item [2] – Subregulation 7.9.11K (2)

In relation to superannuation products, this amendment substitutes the existing subregulation with a new 7.9.11K (2) to include the following changes:

- clarify that sole defined benefit interests are not included in the regime; and
- add an additional third excluded item to the list, being risk only superannuation products.

Item [3] - Regulation 7.9.11M

This minor amendment makes a numbering change to the regulations consequential to the amendment in Item [4] below.

Item [4] – Regulation 7.9.11M

This amendment adds a new subregulation to ensure that superannuation product providers who wish to remain outside of the shorter PDS regime for the transitional period are not caught by provisions they would otherwise be excluded from due to these Regulations (that is

CAR5, plus amendments). That is, it allows superannuation product providers to continue to be subject to the existing Part 7.9 regime until 22 June 2012.

Item [5] – subregulation 7.9.11P(1)

This provision makes a correction so that the reference in the subregulation now refers to subsection 1013C (1D).

Item [6] -subregulation 7.9.11P(4), table, item 2

The current wording in this provision in CAR5 requires that the PDS may include information that is applied, adopted or incorporated as set out by the Regulations, including that the material included in the PDS may have changed since ‘the day when you sign the application form’. This wording does not provide for the electronic lodgement of application forms and this amendment allows for situations where a application form is not signed, by changing the words to refer instead to ‘when you acquire the product’.

Item [7] -subregulation 7.9.11P(7)

Similar to the above provision, this provision changes the reference to refer to when ‘the product is acquired’ rather than ‘when you sign the application form’.

Item [8] – Regulation 7.9.11U

This minor amendment makes a numbering change to the regulations consequential to the amendment in Item [9] below.

Item [9] – Regulation 7.9.11U

This amendment adds a new subregulation to ensure that SMIS PDS providers who wish to remain outside of the shorter PDS regime for the transitional period are not caught by provisions they would otherwise be excluded from due to these Regulations (that is CAR5, plus amendments). That is, it allows product providers to continue to be subject to the existing Part 7.9 regime until 22 June 2012.

Item [10] – Subregulation 7.9.11X(1)

This amendment corrects an incorrect reference, to now read subsection 1013C (1D).

Item [11] -subregulation 7.9.11X(4), table, item 2

The current statement in the subregulations refers to ‘the day when you sign the application form’. However, this wording does not provide for the electronic lodgement of application forms. This amendment allows for that situation by referring instead to ‘when you acquire the product’.

Item [12] -subregulation 7.9.11X(7)

This amends the reference to when information dealing with the matter is taken to have been given to now apply when ‘the product is acquired’ rather than when ‘you sign the application form’.

Item [13] - Schedule 10E, subclause 5 (2)

This provision clarifies that additional information can be provided via incorporation by reference (referred to as 'applying, adopting or incorporating the matter in writing') for any feature or benefit already mentioned in the PDS, any additional features and benefits of the specific SMIS and any other general features and benefits of SMISs.

Item [14] - Schedule 10E, subclauses 7(3) to (5)

These provisions reword the current information requirements required for SMIS under Section 5 (How we invest your money) of CAR5 to provide for relevant information to be provided in a PDS for a new SMIS, as well as an existing SMIS.

Subclause 7(3) specifies the information required to be included for a new SMIS (that is one which has not previously been offered to investors), if an appropriate investment option is not offered as set out in subclauses (4) and (5). The information required is the investment option which has the least volatile underlying assets.

Subclause 7(4) sets out the information required where a balanced investment option exists for a SMIS.

Subclause 7(5) sets out the information required where no balanced investment option exists.

Item [15] - Schedule 10E, subclauses 7(6)(b)(i)

This provision provides for an amendment to the subclause reference in existing subparagraph (6)(b)(i), to also include subclauses (4) and (5).

Item [16] – Schedule 10E, subclause 9(3)

This clarifies that, in relation to the content of Section 7, relating to tax matters, under Schedule 10E in CAR5, that additional information can be provided for both the specific registered managed investment scheme to which the PDS applies, as well as for managed investment schemes in general.