

EXPOSURE DRAFT



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Corporations Amendment (Design and Distribution Obligations) Regulations 2019

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2019

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg [DRAFT ONLY—NOT FOR SIGNATURE]
Treasurer

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
	Schedule 1—Amendments	2
	<i>Corporations Regulations 2001</i>	<i>2</i>

EXPOSURE DRAFT

1 Name

This instrument is the *Corporations Amendment (Design and Distribution Obligations) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day on which Schedule 1 to the <i>Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

EXPOSURE DRAFT

Schedule 1—Amendments

Corporations Regulations 2001

1 After Part 7.8

Insert:

Part 7.8A—Design and distribution requirements relating to financial products for retail clients

7.8A.01 Definitions

In this Part:

credit has the same meaning as in subregulation 2B(3) of the *Australian Securities and Investments Commission Regulations 2001*.

credit facility has the same meaning as in the *Australian Securities and Investments Commission Regulations 2001*.

extended operation financial product means a financial product covered by paragraph 994AA(1)(b) of the Act (about the extended operation of Part 7.8A of the Act in relation to ASIC Act financial products).

7.8A.02 Definitions—regulated person

- (1) This regulation is made for the purposes of paragraph (c) of the definition of *regulated person* in subsection 994A(1) of the Act.

Sale amounting to indirect issue

- (2) A person (the *offeror*) is prescribed in relation to a financial product if:
- (a) a person (the *issuer*) issues the product; and
 - (b) a Product Disclosure Statement, or a document purporting to be a Product Disclosure Statement, was prepared in relation to the product; and
 - (c) the offeror offers the product to a retail client within 12 months after the product was issued; and
 - (d) either:
 - (i) the issuer issued the product with the purpose mentioned in subparagraph 1012C(6)(c)(i) of the Act; or
 - (ii) the offeror acquired the product with the purpose mentioned in subparagraph 1012C(6)(c)(ii) of the Act.

Note: Subsection 1012C(7) of the Act affects whether the issuer or offeror is taken to have a particular purpose.

Sale amounting to indirect off-market sale by controller

- (3) A person is prescribed in relation to a financial product if:

EXPOSURE DRAFT

Amendments **Schedule 1**

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- (a) the person offers the product to a retail client within 12 months after the sale of the product by a person (the *controller*) who controlled the issuer of the product at the time of the sale; and
 - (b) either:
 - (i) at the time of the sale by the controller, the product was not able to be traded on any licensed market; or
 - (ii) although the product was able to be traded on a licensed market at that time, the sale by the controller did not occur in the ordinary course of trading on a licensed market; and
 - (c) a Product Disclosure Statement, or a document purporting to be a Product Disclosure Statement, was prepared in relation to the product by, or on behalf of, the controller before the sale of the product by the controller; and
 - (d) either:
 - (i) the controller sold the product with the purpose mentioned in subparagraph 1012C(8)(d)(i) of the Act; or
 - (ii) the person to whom the controller sold the product acquired the product with the purpose mentioned in subparagraph 1012C(8)(d)(ii) of the Act.

Note: Subsection 1012C(9) of the Act affects whether the controller or the person to whom the controller sold the product is taken to have a particular purpose.

Product distributors

- (4) A product distributor within the meaning of section 910A of the Act (as modified by the *ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682*) is prescribed in relation to the following financial products:
 - (a) a basic deposit product;
 - (b) a general insurance product;
 - (c) a bundled consumer credit insurance product (within the meaning of that instrument).

Credit licensees

- (5) Each of the following persons is prescribed in relation to a financial product that is a credit facility:
 - (a) a person who is a licensee within the meaning of the *National Consumer Credit Protection Act 2009* (the *Credit Act*);
 - (b) a person who is a credit representative (within the meaning of the Credit Act) of such a licensee;
 - (c) a person who is exempt from the operation of section 29 of the Credit Act (which is about the requirement to hold a credit licence) under any of the following provisions of that Act:
 - (i) paragraph 109(1)(a);
 - (ii) paragraph 109(3)(a);
 - (iii) paragraph 110(a);
 - (d) a person who engages in a credit activity (within the meaning of section 6 of the Credit Act) on the person's own behalf;
 - (e) a person who contravenes section 29 of the Credit Act.

EXPOSURE DRAFT

Schedule 1 Amendments

Issuers and sellers of extended operation financial products

- (6) Each of the following persons is prescribed in relation to an extended operation financial product:
- (a) a person who issues the product;
 - (b) a person who sells the product under a regulated sale.

7.8A.03 Target market determinations for financial products

- (1) This regulation is made for the purposes of paragraphs 994B(1)(c) and 994B(2)(b) of the Act.
- (2) For a financial product specified in column 1 of an item of the following table:
- (a) the person specified in column 2 of the item is required to make a target market determination for the product; and
 - (b) the determination must be made before the time or event (if any) specified in column 3 of the item.

Item	Column 1 Financial product	Column 2 Person required to make a target market determination	Column 3 Time or event
1	A simple corporate bonds depository interest where the bonds are to be issued under a 2-part simple corporate bonds prospectus	The person required to prepare a disclosure document for the bonds	N/A
2	A debenture of a body that is: (a) an ADI (short for authorised deposit-taking institution) within the meaning of the <i>Banking Act 1959</i> ; or (b) registered under section 21 of the <i>Life Insurance Act 1995</i> ; where, but for subsection 708(19) of the Act, disclosure to investors under Part 6D.2 of the Act would be needed	The person who, but for subsection 708(19) of the Act, would be required to prepare a disclosure document for the debenture	N/A
3	A basic banking product within the meaning of section 961F of the Act	The issuer of the product	N/A
4	Rights of a retail client in connection with an IDPS to which, but for this regulation, Part 7.8A of the Act would not apply	The operator of the IDPS	N/A

EXPOSURE DRAFT

Amendments **Schedule 1**

Item	Column 1 Financial product	Column 2 Person required to make a target market determination	Column 3 Time or event
5	A financial product that includes a custodial or depository service, if: (a) but for this regulation, Part 7.8A of the Act would not apply in relation to the financial product; and (b) the custodial or depository service is to be provided to a retail client	The issuer of the product	N/A
6	A financial product that is issued or acquired as described in subregulation 7.8A.02(2)	The issuer of the product (within the meaning of paragraph 7.8A.02(2)(a))	The product is acquired by the offeror (within the meaning of subregulation 7.8A.02(2))
7	A financial product to which subregulation 7.8A.02(3) applies	The issuer of the product	The offer mentioned in paragraph 7.8A.02(3)(a) is made

Note: Subparagraph 994B(2)(b)(ii) of the Act has the effect that, if there is no time or event specified in column 3 of the table for a particular financial product, the target market determination must be made before any person engages in retail product distribution conduct (as defined in subsection 994A(1) of the Act) in relation to the product.

- (3) Subregulation (2) does not apply to:
- (a) securities offered under a recognised offer in relation to a recognised jurisdiction; or
 - (b) a financial product that is not available for acquisition by issue, or by regulated sale, in this jurisdiction.

- (4) In this regulation:

IDPS has the meaning given by Part 7.6 of the Act as modified by ASIC Class Order [CO 13/763].

operator, in relation to an IDPS, has the meaning given by Part 7.6 of the Act as modified by ASIC Class Order [CO 13/763].

Note: ASIC Class Order [CO 13/763] modifies the application of Part 7.6 of the Act (other than Divisions 4 and 8) in relation to an operator of an IDPS by the insertion of section 912AD. The definitions of **IDPS** and **operator** are in subsection 912AD(42).

recognised jurisdiction has the meaning given by subsection 1200A(1) of the Act.

recognised offer has the meaning given by subsection 1200A(1) of the Act.

securities has the meaning given by subsection 1200A(1) of the Act.

EXPOSURE DRAFT

Schedule 1 Amendments

7.8A.04 Financial products for which target market determinations are not required

For the purposes of paragraph 994B(3)(f) of the Act, each kind of financial product mentioned in column 2 of an item of the following table is prescribed.

Financial products for which target market determinations are not required		
Item	Column 1 Topic	Column 2 Kind of financial product
1	Interests in an eligible rollover fund	An interest in an eligible rollover fund (within the meaning of the <i>Superannuation Industry (Supervision) Act 1993</i>)
2	Defined benefit interests	A defined benefit interest (within the meaning of the <i>Superannuation Industry (Supervision) Regulations 1994</i>)
3	Medical indemnity insurance	A medical indemnity insurance product
4	Depository interests	A depository interest in fully paid ordinary shares in a foreign company, being shares in relation to which, if they were offered directly to retail clients, Part 7.8A of the Act would not apply
5	Bank drafts	A bank draft, including (but not limited to): (a) a cheque drawn by a financial institution on itself; or (b) a cheque drawn by a financial institution on a financial institution other than itself
6	Money orders	A money order issued as a money order by, or for, Australia Post
7	Credit facilities not issued in the course of a business of providing credit	A credit facility that is not or was not issued, or that will not be issued, in the course of a business that is wholly or partly a business of providing credit
8	Credit provided for business purposes	A credit facility under the terms of which the credit is, or must be, applied wholly or predominantly for business purposes
9	Credit facilities that do not involve the provision of credit	A credit facility that: (a) involves a matter referred to in paragraph 2B(3)(b) of the <i>Australian Securities and Investments Commission Regulations 2001</i> ; but (b) does not involve credit of a kind referred to in paragraph 2B(3)(a) those regulations
10	Credit provided by pawnbrokers	The provision of credit by a pawnbroker in the ordinary course of a pawnbroker's business (being a business which is being lawfully conducted by the pawnbroker)
11	Mortgages	A credit facility that is the provision of a mortgage that secures obligations under a credit contract (but not the credit contract)
12	Extended operation financial products not received in this jurisdiction	An extended operation financial product, if the offer to issue or sell the product is not received in this jurisdiction