



ASIC

Australian Securities & Investments Commission

[CO 02/1071]

Clarification of Corporations Regulation 10.2.74

Issued 9/10/2002

Class Order [CO 02/1071] is intended to help remove uncertainty arising in relation to the operation of Corporations Regulation 10.2.74. This regulation identifies what is a “class of financial products” for the purposes of the product disclosure transitional provisions.

<i>Amending class order</i>	<i>Date of operation</i>
<i>[CO 02/1298]</i>	<i>22/11/2002</i>

Australian Securities and Investments Commission
Corporations Act 2001 – Subsection 1020F(1) – Declaration

Under subsection 1020F(1) of the *Corporations Act 2001* (the Act) and for the avoidance of doubt, the Australian Securities and Investments Commission hereby declares that Part 7.9 has effect in relation to the class of financial products referred to in the Schedule as if Division 6 of Part 7.9 were modified or varied by inserting at the end of that Division provisions in the terms of sections 1438 to 1441 modified or varied as follows:

1. in subsection 1438(2), omit “Part 7.9 of the amended Corporations Act” and substitute “this Part”;
2. omit the notes following subsections 1438(3) and (6);
3. omit paragraph 1438(7)(a);
4. after subsection 1438(8), add the following subsections:
“(9) For the purposes of this section:

- (a) a managed investment product is in the same class as another financial product if and only if:
 - (i) (A) the other financial product is a managed investment product;
 - (B) both products are interests in registered schemes that have the same responsible entity; and
 - (C) at the FSR commencement, the responsible entity's licence to operate registered schemes would have authorised the operation of both registered schemes; or
 - (ii) the other financial product is an interest in the same registered scheme;
- (b) subject to paragraph (k), a derivative is in the same class as another financial product if and only if:
 - (i) the other financial product is a derivative; and
 - (ii) both products are issued by the same person; and
 - (iii) either:
 - (A) each of the derivatives was entered into or acquired on a financial market; or
 - (B) none of the derivatives was entered into or acquired on a financial market;
- (c) a life risk insurance product is in the same class as another financial product if and only if the other financial product is a life risk insurance product and both products are issued by the same person;
- (d) an investment life insurance product is in the same class as another financial product if and only if the other financial product is an investment life insurance product and both products are issued by the same person;
- (e) an insurance product (other than a life risk insurance product or an investment life product) is in the same class as another financial product if and only if:
 - (i) the other financial product is an insurance

- product other than a life risk insurance product or an investment life product; and
- (ii) both products are issued by the same person and:
 - (A) provide the same kind of cover; or
 - (B) provide cover in relation to the same kind of asset (for example, a motor vehicle);
 - (f) a superannuation interest is in the same class as another financial product if and only if the other financial product is a superannuation interest and both products are issued by the same person;
 - (g) an RSA product is in the same class as another financial product if and only if the other financial product is an RSA product and both products are issued by the same person;
 - (h) a deposit product is in the same class as another financial product if and only if the other financial product is a deposit product and both products are issued by the same person;
 - (i) a facility for making non-cash payments that is related to a deposit product is in the same class as another financial product if and only if the other financial product is a facility for making non-cash payments that is related to a deposit product and both products are issued by the same person;
 - (j) a financial product mentioned in paragraph 764A(1)(k) is in the same class as another financial product if and only if the other financial product is a financial product mentioned in paragraph 764A(1)(k) and both products are issued by the same person; and
 - (k) a warrant is in the same class as another financial product if and only if the other financial product is a warrant and both products are issued by the same person.
- (10) A determination by ASIC (at any time after FSR commencement) for the purposes of subsection 1438(6) is, while it remains in force for that purpose, taken also to be a determination for the purposes of subsection (6) with such

modifications as are necessary.

- (11) A thing purported to be done (at any time after FSR commencement) for the purposes of, or in accordance with, section 1438 in relation to a product to which this section applies has the same significance for the purpose of this section as it would have had for the purposes of section 1438 if that section applied to the financial product.
- (12) A thing purported to be done (at any time after FSR commencement) for the purposes of, or in accordance with, a determination for the purposes of subsection 1438(6) (the **subsection 1438(6) determination**) in relation to a product to which this section applies has the same significance for the purpose of a determination made for the purposes of subsection (6) as it would have had for the purposes of the subsection 1438(6) determination if that determination applied to the financial product.
- (13) In this section:

deposit product means a deposit-taking facility made available by an ADI (within the meaning of the *Banking Act 1959*) in the course of its banking business (within the meaning of that Act), other than an RSA product;

FSR commencement has the same meaning as in subsection 1410(1); **superannuation interest** has the same meaning as in subsection 10(1) of the Superannuation Industry (Supervision) Act 1993.; and

warrant has the same meaning as in regulation 1.0.02 of the *Corporations Regulations 2001*.”

[*Historical note:* defn "warrant" inserted 22/11/2002 [CO 02/1298].]

5. in subparagraph 1439(1)(a)(ii), omit the reference to “1438(3)(b)” and substitute a reference to “1020H(3)(b)”;
6. in paragraph 1439(1)(d), omit the reference to “1440” and substitute a reference to “1020J”;
7. in subsection 1439(2), omit the text “affairs.” and substitute the following text:
- “affairs; and
- “**FSR commencement** has the same meaning as in subsection 1410(1).”;
8. convert section 1440 into subsection (1) of that section;

9. add at the end of section 1440 the following subsections:
- “(2) To the extent that this section provides for a provision of this or another Act (the *preserved provision*), as in force immediately before the FSR commencement, to continue to apply to or in relation to a person, thing or matter:
- (a) the preserved provision so continues to apply only to the extent (if any) to which it is expressed in terms that cover the person, thing or matter; and
- (b) this section is not taken to extend the scope of the preserved provision (otherwise than by giving it a continued operation).
- (3) In this section, *associated provisions*, *FSR commencement* and *old Corporations Act* have the same meanings as in subsection 1410(1).”;
10. in paragraph 1441(a), omit the text “principal;” and substitute the text “principal (within the meaning of section 1430);”;
11. renumber the 4 sections inserted at the end of Division 6 of Part 7.9 as sections 1020H to 1020K respectively; and
12. add, after section 1020K, the following section:
- “1020L Additional operation of regulations**
- (1) If a regulation made for the purposes of section 1444 (at any time after FSR commencement) affects the operation of any of sections 1438 to 1441 in relation to any financial products to which those sections apply, by force of this subsection the operation of sections 1020H to 1020K is affected to the same extent and in the same way in relation to any financial products to which sections 1020H to 1020K apply.
- (2) If a regulation made for the purposes of section 1444 (at any time after FSR commencement) otherwise affects when any of the new product disclosure provisions referred to in section 1438(2) start to apply, or when any of the provisions referred to in section 1440 cease to apply, to a financial product to which section 1438 applies, this subsection produces the same effect in relation to a financial product to which section 1020H applies.

- (3) A thing purported to be done (at any time after FSR commencement) for the purposes of, or in accordance with a regulation referred to in subsection (2) in relation to a financial product to which section 1020H applies has the same significance for the purposes of subsection (2) as it would have had for the regulation, if the regulation applied to the product.
- (4) If the purported lodgement of a notice with ASIC (at any time after FSR commencement) in accordance with paragraph 1438(3)(b) would have a significance for a regulation referred to in subsection (2) in relation to a financial product to which section 1020H applies, that lodgement has the same significance for the purpose of subsection (2) as it would have had for the purposes of the regulation if section 1438 applied to the product.
- (5) In this section ***FSR commencement*** has the same meaning as in subsection 1410(1).”.

SCHEDULE

All applicable financial products issued by a person other than financial products:

- (a) to which section 1438 applies (irrespective of whether the transition period for the product has ended); or
- (b) in respect of which both of the following applied immediately before the date of this instrument:
 - (i) a Product Disclosure Statement had been given to someone in a recommendation, issue or sale situation; and
 - (ii) no notice had been lodged with ASIC in accordance with paragraph 1438(3)(b).

Interpretation

In this instrument:

1. “applicable financial product” means a managed investment product, a derivative, an insurance product, a superannuation interest, an RSA product, a deposit product, a facility for making non-cash payments that is related to a deposit product, a financial product mentioned in paragraph 764A(1)(k) or a warrant;

2. “deposit product” means a deposit-taking facility made available by an ADI (within the meaning of the *Banking Act 1959*) in the course of its banking business (within the meaning of that Act), other than an RSA product;
3. “recommendation situation”, “issue situation” and “sale situation” have the meanings given in sections 1012A to 1012C;
4. “superannuation interest” has the same meaning as in subsection 10(1) of the Superannuation Industry (Supervision) Act 1993;
5. “transition period” has the meaning given in subsection 1438(3);
- 5A. “warrant” has the same meaning as in regulation 1.0.02 of the *Corporations Regulations 2001*; and
6. references to provisions are references to provisions of the Act.
[*Historical note:* Para 5A inserted 22/11/2002 [CO 02/1298].]

Dated this 9th day of October 2002

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments Commission