

Reference Guide: Corporate and Financial Services Review Proposals Paper and the Simpler Regulatory System Bill Package 2007

References in the table to proposal numbers are to the Corporate and Financial Services Review Proposals Paper, November 2006.

A. MEASURES TO BE IMPLEMENTED THROUGH SIMPLER REGULATORY SYSTEM BILL PACKAGE	
1. Financial Services Regulation	
1.2 Scope of financial services advice — Statement of Advice exemption — no product recommendation and no remuneration	<p>The requirement to provide a Statement of Advice when personal advice is provided that does not involve the recommendation of a product and no remuneration is received for, or in relation to, the advice will be removed. Instead, a Record of Advice will be required to be prepared by the adviser.</p> <p>This measure will be supported by changes to the relevant regulations.</p>
1.3 Scope of financial services advice — threshold for requiring a Statement of Advice	<p>A threshold will be introduced into the Statement of Advice requirements so that a full Statement of Advice will only be required if the advice given is in relation to an investment amount that is above a prescribed threshold. A Record of Advice would need to be given to the client for advice in relation to amounts less than this threshold.</p> <p>This measure will be supported by regulations and the threshold is expected to be set at \$15,000.</p>
1.4 Scope of financial services advice — Financial Services Guide exemption — public forum	<p>A Financial Services Guide will not need to be provided at a forum where 10 or more retail clients attend, whether or not it is open to any person to attend the forum.</p> <p>This measure will be supported by changes to the relevant regulations.</p>
1.6 Sophisticated investors	<p>In Chapter 7 of the <i>Corporations Act 2001</i> a mechanism will be adopted similar to provisions of Chapter 6D, which allows a financial services licensee to be satisfied that an investor is adequately equipped to be determined a wholesale investor.</p>
1.7 Cross-endorsement of authorised representatives	<p>The cross-endorsement arrangements will be amended so that licensees are only jointly and severally responsible for the conduct of their authorised representatives where those representatives provide financial services in relation to the same sub-class of financial product.</p> <p>This measure will be supported by changes to the relevant regulations.</p>
1.9 Product activity and data collection	<p>Amendments will replace the current mechanism for reporting the requirements of the in-use notice with a new mechanism which will require the responsible person for a Product Disclosure Statement (PDS) to provide information in a standardised online report when:</p> <ul style="list-style-type: none"> • a financial product for which a PDS must be prepared is first recommended, issued or sold; • a financial product for which a report previously had to be made ceases to be available to be recommended; • there is a change in the fees and charges set out in the enhanced fee disclosure table; or

	<ul style="list-style-type: none"> changes are made in a supplementary or new PDS. <p>This measure will be supported by changes to the relevant regulations.</p>
1.10 Self-listing and licensed market operators	Amendments will provide for ASIC to supervise listed entities which are related to the market licensee, and participants who are related to or in competition with the market licensee.
1.11 Pooled superannuation trusts and product disclosure	The current exemption from licensing for dealing services provided by trustees of pooled superannuation trusts under the retail/wholesale client test will be extended to the product disclosure framework.
1.12 Registered managed investment schemes investing in unregistered managed investment schemes	The prohibition on investments by managed investment schemes in unregistered managed investment schemes will be removed.
2. Company Reporting Obligations	
2.1 Executive remuneration	Amendments will be made to harmonise and remove duplication in the executive remuneration disclosure requirements between the Corporations Act and accounting standards, without dilution of disclosure requirements.
	This measure will be supported by changes to the relevant regulations.
2.2 Thresholds for financial reporting of large proprietary companies	The revenue and asset thresholds for financial reporting of large proprietary companies will be increased. The revenue and assets thresholds that determine a large proprietary company will be increased by 150 per cent from \$10 million in revenue to \$25 million in revenue and from \$5 million in assets to \$12.5 million in assets. The threshold regarding the number of employees will remain at 50 employees.
2.3 Change in office holders	The requirement for a company to notify ASIC of a change in officeholder, where the officeholder has already notified ASIC, will be removed.
2.4 Company addresses	A single process for notification of an update of all company addresses will be implemented.
	This measure will be supported by changes to the relevant regulations.
2.6 Reduce compliance burden associated with voluntary deregistration	Amendments will allow deregistration of a company to proceed where an annual review fee becomes payable or is incurred after the application for deregistration is approved.
2.7 Upfront payment of annual fees for companies	Amendments will allow companies to pay a single sum to cover review fees for an extended period.
	This measure will be supported by changes to the relevant regulations.
2.8 Electronic distribution of annual reports	The default option for receiving annual reports will be changed to be via the Internet. Members will continue to be able to choose to receive hard copy annual reports free of charge. .

3. Auditor Independence	
3.1 Anomalies arising from CLERP 9	The Bill will reduce complexity by incorporating earlier remedial measures made under the Corporations Regulations and ASIC Class Orders into the Corporations Act. The refinements will also reduce the compliance burden for auditors by making improvements to the regime without weakening the existing robust auditor independence framework.
4. Corporate Governance	
4.1 Related party approval thresholds	<p>Amendments will provide for a prescribed level for payments to related parties below which member approval is not required. This would avoid member approval of what could be considered minor transactions.</p> <p>This measure will be supported by changes to the relevant regulations.</p>
4.2 Director amounts threshold	The director amounts threshold will be repealed, as it will be subsumed into the threshold under Proposal 4.1.
5. Fundraising	
5.1 Quoted securities rights issue disclosure	Amendments will provide that rights issues for quoted securities and interests in managed investment schemes do not require the production of a prospectus or PDS. A cleansing notice will have to be provided before the rights issue offers are made, and the notice must include appropriate information on the consequences of any potential effect of the rights issue on the control of the entity.
5.2 Small scale offerings	<p>The definition of sophisticated and professional investors in Chapter 6D of the Corporations Act will be amended to align with that used for wholesale investors in Chapter 7.</p> <p>The maximum amount of money that may be raised using an Offer Information Statement when combined with funds previously raised will be increased to \$10 million or less.</p>
5.3 Secondary sale issues	<p>Amendments will allow controllers to arrange sales of securities they hold without disclosure subject to the existing section 708A conditions, but subject to the requirement that the controller and the company provide a cleansing notice in order to provide up to date price sensitive information to the market.</p> <p>The required period for quotation of the securities will be reduced to three months to provide such a track record and, therefore, provide some relief from the current requirement of 12 months.</p>
5.4 Employee unlisted share schemes disclosure	Relief will be provided from certain of the licensing and hawking restrictions of the Corporations Act for employee share schemes for unlisted companies. This relief will be subject to the condition that such employee share schemes must be accompanied by a disclosure document such as an Offer Information Statement or a prospectus. Listed entities may also take advantage of this relief if they wish, subject to the same condition.
5.5 Prospectus and PDS advertising rules	<p>Amendments will align the prospectus advertising provisions relating to quoted securities and advertising post lodgment of a prospectus for unquoted securities with those pertaining to financial products (other than securities).</p> <p>ASIC's stop-order powers will be extended to cover advertising of quoted and unquoted securities and other financial products.</p>

5.6 Stapled securities disclosure	<p>The application of the provisions regarding replacement prospectuses will be extended to cover combined prospectus/PDSs prepared for offers of stapled securities comprising one or more shares and one or more units in managed investment schemes.</p> <p>This measure will be supported by changes to the relevant regulations.</p>	
6. Takeovers		
6.1 Remove telephone monitoring during takeover bids	<p>Amendments will remove provisions of the Corporations Act that require the recording, storing etc of telephone conversations with retail shareholders during takeover bids.</p>	
6.2 85 per cent notices	<p>Amendments will remove provisions of the Corporations Act that require the disclosure of an 85 per cent holding.</p>	
7. Compliance		
7.3 Simplifying returns of company particulars	<p>Amendments will limit the need for return of particulars to be provided to ASIC to situations where ASIC suspects or believes that the details recorded are not correct and extend the notification period from 28 days to two months.</p>	
7.4 Electronic registration of charges	<p>Amendments will facilitate electronic registration of charges and associated documents, and reduce the associated paperwork.</p> <p>This measure will be supported by changes to the relevant regulations.</p>	
OTHER INITIATIVES IN THE SIMPLER REGULATORY SYSTEM BILL PACKAGE		
Auditor independence requirements	<p>Amendments will implement a range of measures arising from a discussion paper <i>Australian Auditor Independence Requirements: A Comparative Review</i> released on 15 November 2006, and make some technical amendments designed to improve the effectiveness of the auditor independence requirements.</p>	
Body corporate names	<p>Amendments will permit delegation to ASIC rather than Treasury of the power to approve the use of body corporate names that would otherwise be unacceptable.</p>	
Constitutions of non-profit companies	<p>Bodies corporate with licences to omit the word 'Limited' from their names will no longer need to obtain Ministerial approval for changes to their constitutions, but they will need to notify ASIC.</p>	
B. MEASURES TO BE IMPLEMENTED THROUGH OTHER BILLS		
7.1 Breach reporting period	<p>The period for reporting a breach to ASIC will be aligned with the time period for reporting a breach to APRA.</p>	<p>This will be implemented in the Financial Sector (Simplifying Regulation and Review) Bill 2007.</p>
C. MEASURES TO BE IMPLEMENTED THROUGH REGULATIONS		
1.5 Non-cash payment facilities	<p>Disclosure requirements that apply to all non-cash payment facilities that are not related to a basic deposit product will be streamlined by applying the same limited disclosure requirements to these facilities. The disclosure requirements that currently apply to non-cash payment facilities related to basic deposit products will</p>	

	be maintained.	
2.5 Share and member reporting requirements	Amendments will remove the obligation on public companies to notify ASIC each year of the top 20 shareholders.	
D. PROJECTS FOR FURTHER SEPARATE CONSULTATION		
1.1 Scope of financial services advice — sales recommendation	There are some situations where pure product sales activities are being captured by the personal advice definition. It was proposed that in some situations, financial service providers may provide sales recommendations that are not considered to be financial advice.	While there was general support for the need to address issues that arise as a result of the definition of financial advice, the proposal was not broadly supported. Treasury will continue consultations on this issue with stakeholders.
1.8 Policy Statement 146 — training requirements	It was proposed that ASIC would review PS146 to consider the concerns raised about the training framework and any consequential revisions that may arise from other proposals.	ASIC information release (IR 07-18) on 22 May 2007 indicates that ASIC will issue a consultation paper on this subject in July.
5.4 Employee share schemes (in relation to one aspect of the proposal on self-acquisition of shares)	It was proposed that provisions relating to the self-acquisition of shares by companies would not apply in the context of employee share schemes, subject to certain safeguards.	Further consultation is required, including consideration by the Ministerial Council for Corporations.
7.2 Australian Business Number Reference	It was proposed to remove the requirement in section 912F of the Corporations Act on a financial services licensee to cite the AFSL number in disclosure documents and other relevant documents and require the licensee to cite their ABN instead. The licensee would also be required to state that they hold an AFSL.	Further consultations are required, particularly with ASIC and the Australian Taxation Office, to ensure that all AFSL licensees are eligible to use an ABN.