



# Corporations Amendment Regulations 2009 (No. )<sup>1</sup>

**Select Legislative Instrument 2009 No.**

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Corporations Act 2001*.

Dated 2009

Governor-General

By Her Excellency's Command

**[DRAFT ONLY – NOT FOR SIGNATURE]**

Treasurer

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**EXPOSURE DRAFT**

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**1 Name of Regulations**

These Regulations are the *Corporations Amendment Regulations 2009* (No. ).

**2 Commencement**

These Regulations commence on [TBA].

**3 Amendment of *Corporations Regulations 2001***

Schedule 1 amends the *Corporations Regulations 2001*.

**Schedule 1 Amendments**

(regulation 3)

**[1] After subregulation 7.1.08 (3)**

*insert*

- (4) For paragraph (b) of the definition of *exempt document or statement* in subsection 766B (9) of the Act:
- (a) an assessment under subsection 985E (1) of the Act that a margin lending facility will not be unsuitable for the person to whom the margin lending facility is to be issued is prescribed (and so excluded from the definition); and
  - (b) an assessment under subsection 985E (1) of the Act that a margin lending facility whose limit is proposed to be increased will not be unsuitable for the person for whom the limit of the margin lending facility is to be increased is prescribed (and so excluded from the definition).

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**[2] After regulation 7.1.19**

*insert*

**7.1.19A Retail clients and wholesale clients: price of margin lending facilities**

- (1) This regulation makes arrangements about the price for the provision of a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA (1) of the Act.

*Note* Under paragraph 761G (7) (a) of the Act, if a financial product is not, or a financial service provided to a person does not relate to, a general insurance product, a superannuation product or an RSA product, the financial product or financial service is provided to the person as a retail client unless the price for the provision of the financial product, or the value of the financial product to which the financial service relates, equals or exceeds the amount specified in regulations made for the purposes of that paragraph as being applicable in the circumstances.

Under paragraph 761G (10) (a) of the Act, the regulations may also deal with how a price or value referred to in that paragraph is to be calculated, either generally or in relation to a specified class of financial products.

In general, the ‘price’ of a product will be the amount that is paid to acquire or be issued with the financial product. The test for the price of the product in paragraph 761G (7) (a) of the Act will be determined at or before the time the client acquires, or is issued with, the financial product. If a client pays over \$500 000 to acquire or be issued with the financial product, the client will be a wholesale client in respect of the product.

*Price*

- (2) For paragraph 761G (7) (a) of the Act, the amount applicable in relation to the margin lending facility is \$500 000.

*Working out price*

- (3) For paragraph 761G (10) (a) of the Act, the price of a margin lending facility is to be worked out having regard to the value of the equity contributed by the borrower for establishing the facility.
- (4) For paragraph 761G (10) (a) of the Act, the price of a margin lending facility whose limit is proposed to be increased is to be worked out having regard to the value of:

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- (a) any equity previously contributed by a borrower for establishing the facility or increasing the limit; and
  - (b) any additional equity contributed by the borrower in relation to the latest increase of the limit of the facility.

**[3] Regulation 7.1.34, after the heading**

*insert*

- (1) This regulation does not apply in relation to a margin lending facility.

**[4] Regulation 7.1.34**

*before*

For

*insert*

(2)

**[5] After regulation 7.7.09A**

*insert*

**7.7.09AA Statement of Advice from providing entity:  
unsuitability assessment for margin lending facility**

For paragraph 947B (2) (g) of the Act, a Statement of Advice given by a financial services licensee in relation to a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA (1) of the Act must include the following information:

- (a) whether the client has taken out a loan to fund the equity contribution made by the borrower for establishing the margin lending facility;

*Note* This is sometimes referred to as “double gearing”.

- (b) if a loan to fund the equity contribution made by the borrower for establishing the margin lending facility has been taken out — whether the security for the loan includes residential property;

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- (c) whether there is a guarantor for the margin lending facility, and, if so, whether the guarantor has been appropriately informed of, and warned about, the risks and possible consequences of providing the guarantee;
  - (d) the amount of any other debt incurred by the borrower;
  - (e) any other matter that ASIC considers to be relevant for the purpose of establishing whether the margin lending facility, or the margin lending facility with the increased limit, is unsuitable for the client.

**[6] After regulation 7.7.09B**

*insert*

**7.7.09BA Statement of Advice from authorised representative of providing entity: unsuitability assessment for margin lending facility**

For paragraph 947C (2) (h) of the Act, a Statement of Advice given by an authorised representative of a financial services licensee in relation to a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA (1) of the Act must include the following information:

- (a) whether the client has taken out a loan to fund the equity contribution made by the borrower for establishing the margin lending facility;

*Note* This is sometimes referred to as “double gearing”.

- (b) if a loan to fund the equity contribution made by the borrower for establishing the margin lending facility has been taken out — whether the security for the loan includes residential property;
- (c) whether there is a guarantor for the margin lending facility, and, if so, whether the guarantor has been appropriately informed of, and warned about, the risks and possible consequences of providing the guarantee;
- (d) the amount of any other debt incurred by the borrower;

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- (e) any other matter that ASIC considers to be relevant for the purpose of establishing whether the margin lending facility, or the margin lending facility with the increased limit, is unsuitable for the client.

**[7] After regulation 7.8.08**

*insert*

**7.8.08A Limit of margin lending facility taken to be increased**

- (1) For paragraph 985E (3) (a) of the Act, the limit of a margin lending facility is taken to be increased, despite subsection 985E (2) of the Act, if:
  - (a) the increase is a result of a contribution of further secured property or transferred securities that occurs without the knowledge or agreement of the provider; and
  - (b) the provider permits the increase to continue; and
  - (c) the increase is no more than 5% of the current limit of the margin lending facility (within the meaning given by subsection 761EA (11) of the Act).
- (2) For the purposes of this regulation, subsection 985E (1) is modified to omit ‘before the critical day’ and insert ‘after the critical day’.

*Note* Paragraph 992C (1) (c) of the Act provides that the regulations may provide that Part 7.8 of the Act applies as if specified provisions were omitted, modified or varied as specified in the regulations.

**7.8.09 Reasonable inquiries etc. about the retail client: inquiries**

For paragraph 985G (1) (c) of the Act, the following inquiries about a client are prescribed in relation to a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA (1) of the Act:

- (a) reasonable inquiries as to whether the client has taken out a loan to fund the equity contribution made by the borrower for establishing the margin lending facility;

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*Note* This is sometimes referred to as “double gearing”.

- (b) if a loan to fund the equity contribution made by the borrower for establishing the margin lending facility has been taken out — reasonable inquiries as to whether the security for the loan includes residential property;
- (c) reasonable inquiries as to whether there is a guarantor for the margin lending facility, and, if so, reasonable inquiries as to whether the guarantor has been appropriately informed of, and warned about, the risks and possible consequences of providing the guarantee;
- (d) reasonable inquiries as to the amount of any other debt incurred by the borrower;
- (e) any other matter that ASIC considers to be relevant for the purpose of establishing whether the margin lending facility, or the margin lending facility with the increased limit, is unsuitable for the client.

#### **7.8.10 Circumstances in which a margin lending facility is unsuitable**

For paragraph 985H (2) (b) of the Act, each of the following is a situation in which a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA (1) of the Act is unsuitable for a retail client:

- (a) the client:
  - (i) is, on an ongoing basis, unable to be contacted by any of the usual means of communication; and
  - (ii) has not appointed an agent to act on the client’s behalf;
- (b) the client is unable to enter into the contract (for example, because the client is bankrupt).

#### **7.8.10A Margin lending facility taken not to be unsuitable**

For subsection 985K (4) of the Act, a margin lending facility is taken not to be unsuitable if:

- (a) an assessment of unsuitability was undertaken in accordance with the Act; and

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- (b) the assessment concluded that the margin lending facility is not unsuitable.

**[8] Chapter 7, Part 7.9, Division 5, after Subdivision 5.4**

*insert*

**Subdivision 5.4A Periodic statements for retail clients for financial products that have an investment component: additional information for margin lending facilities**

**7.9.30A Application of Subdivision 5.4A**

This Subdivision applies in relation to the provider of a margin lending facility within the meaning of subsection 761EA (1) of the Act.

**7.9.30B Additional details to be included in periodic statements for margin lending facilities**

For paragraph 1017D (5) (g) of the Act, a periodic statement for a holder of a financial product must include the following details about the margin lending facility:

- (a) the outstanding loan amount;
- (b) the loan credit limit;
- (c) the current interest rate, and any changes to the interest rate since the last statement was provided;
- (d) an itemised list of the property by which the credit is secured, including:
  - (i) the value of each item used for calculating the current LVR; and
  - (ii) the borrowing limit (if any) of each property item listed;
- (e) a summary of the loan to security ratios, showing separately:
  - (i) the allowable loan to security ratio; and

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- (ii) the maximum loan to security ratio, including any buffer allowed under the terms of the facility; and
  - (iii) the current LVR;
  - (f) a summary of all transactions affecting the margin lending facility during the reporting period.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.