



Corporations Amendment Regulations 2009 (No.)¹

Select Legislative Instrument 2009 No.

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]

Minister for Financial Services, Superannuation and Corporate
Law

CONSULTATION DRAFT

1 Name of Regulations

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

2 Commencement

(1) These Regulations commence as follows:

- (a) on the day after they are registered — regulations 1 to 3 and items [3] and [15] of Schedule 1; and
- (b) 12 months after the day on which the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009* commences — the following items of Schedule 1:
 - (i) items [1] and [2];
 - (ii) items [4] to [14];
 - (iii) items [16] to [18].

3 Amendment of *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 1.0.02 (1), after definition of *Lloyds*

insert

margin loan or *margin lending* means a standard margin lending facility.

[2] Subregulation 1.0.02 (1), after definition of *medical indemnity insurance product*

insert

minor fee, for a margin loan, means a fee or cost in relation to the margin loan that does not relate to the ordinary acquisition, operation or closure of the margin loan and which is less than \$10.

[3] Paragraph 7.6.02 (1) (a)

substitute

(a) Australian Standard ASO ISO 10002-2006 *Customer satisfaction — Guidelines for complaints handling in organizations (ISO 10002:2004 MOD)* published by SAI Global Limited on 5 April 2006.

[4] Subregulation 7.7.08A (1A)

substitute

(1A) This regulation does not apply if the Product Disclosure Statement is for an FHSA product or a margin loan.

[5] Paragraph 7.9.09 (1) (d)

substitute

(d) FHSA products; and
(e) a margin loan.

[6] Part 7.9, Division 4, after Subdivision 4.2

insert

Subdivision 4.2A Form and content of Product Disclosure Statement for margin loan

7.9.11 Application of Subdivision

This Subdivision applies to:

-
- (a) a person who is required to give a Product Disclosure Statement for a margin loan; and
 - (b) a Product Disclosure Statement for a margin loan.

7.9.11A Definitions

- (1) In this Subdivision and in Schedule 10C:

Approved Product List means the list of secured properties that are acceptable for the provider or potential provider for a margin loan as security for the margin loan and includes the amount of credit the provider will provide for each of the properties.

- (2) In this Subdivision and in Schedule 10C, a provision of the Act that is modified in accordance with regulation 7.9.11B is referred to as *modified*.

Example

Paragraphs 1013C (1) (a) and (b) of the Act as modified by item 5A.1 of Part 5A of Schedule 10A are referred to in this Subdivision as ‘modified paragraphs 1013C (1) (a) and (b).

7.9.11B Modification of Act

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application to a margin loan as set out in Part 5A of Schedule 10A.

7.9.11C Form and Content of Product Disclosure Statement for margin loan

- (1) For modified paragraph 1013C (1) (a) of the Act, a Product Disclosure Statement for a margin loan must include the information and statements mentioned in Schedule 10C.
- (2) For modified paragraph 1013C (1) (b) of the Act, a Product Disclosure Statement for a margin loan must be in the form mentioned in Schedule 10C.

7.9.11D Requirements for references to incorporated information for margin loan

- (1) For modified 1013C (2B) of the Act, this regulation prescribes requirements for applying, adopting or incorporating a matter contained in writing in a Product Disclosure Statement for a margin loan.
- (2) A Statement may apply, adopt or incorporate a matter only if an item in Schedule 10C permits the matter to be applied, adopted or incorporated by the Statement.
- (3) If a Statement applies, adopts or incorporates a matter, the responsible person for the Statement must:
 - (a) identify each version of the matter so that a person who, at a particular time, is considering a margin loan can identify the version of the matter that is relevant to the margin loan the person is considering at that time; and
 - (b) include a reference to the matter that is sufficiently clear to allow a reasonable person:
 - (i) to easily identify the matter; and
 - (ii) to make an informed choice about whether he or she needs to refer to the matter; and
 - (c) ensure that a person relying on the Statement is able to reasonably access the matter.

7.9.11E Retention of copies of Product Disclosure Statement for margin loan

- (1) This regulation applies if section 1015B of the Act does not apply to require a Product Disclosure Statement to be lodged with ASIC and the Statement is for a margin loan.
- (2) The responsible person for the Statement must retain a copy of:
 - (a) each version of the Statement that the responsible person issues; and
 - (b) each version of a matter contained in writing that is adopted, applied or incorporated by the Statement.

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- (3) The responsible person for the Statement must retain the copies mentioned in subregulation (2) for a period of 7 years commencing on:
- (a) for each version of the Statement — the day it is issued; and
 - (b) for a matter that is applied, adopted or incorporated by the Statement — the day the Statement is issued; and
 - (c) for each change to the applied, adopted or incorporated matter — the day the matter is changed.

7.9.11F Requirement to provide copy of Product Disclosure Statement for margin loan free of charge

- (1) For paragraph 1015C (5) (a) of the Act, this regulation specifies requirements as to the manner in which a Product Disclosure Statement for a margin loan may be given to a person if the person requests a copy of the Statement.
- (2) The responsible person for the Statement must give the person, free of charge:
 - (a) a copy of the Statement; and
 - (b) a copy of a matter in writing that is applied, adopted or incorporated by the Statement.

7.9.11G Notification about change to Approved Product List or current interest rate for margin loan

- (1) For paragraph 1017B (1A) (b) of the Act, a change to the Approved Product List or current interest rate for a margin loan, is specified.
- (2) For paragraph 1017B (3) (c) of the Act, the issuer of the margin loan must notify the holder of the change by:
 - (a) sending notice of the change to the holder:
 - (i) by pre-paid post to a postal address nominated by the holder; or
 - (ii) to an email address nominated by the holder; or
 - (b) placing a notice on a webpage that is likely to come to the holder's attention if the holder is monitoring the holder's margin loan.

[7] Subregulation 7.9.15DA (1)

omit

and subject to subregulation (4),

insert

and subject to subregulations (1A) and (4),

[8] After subregulation 7.9.15DA (1)

insert

- (1A) This regulation does not apply if the Product Disclosure Statement is for a margin loan.

[9] Regulation 7.9.15DB

omit

If section 1015B

insert

- (1) If section 1015B

[10] After subregulation 7.9.15DB

insert

- (2) This regulation does not apply if the Product Disclosure Statement is for a margin loan.

[11] Regulation 7.9.15DC

omit

A document,

insert

- (1) A document,

[12] Subregulation 7.9.15DC

insert

- (2) This regulation does not apply if the Product Disclosure Statement is for a margin loan.

[13] Regulation 7.9.16L

omit

For paragraph

insert

- (1) For paragraph

[14] Subregulation 7.9.16L

insert

- (2) This regulation does not apply if the Product Disclosure Statement is for a margin loan.

[15] Paragraph 7.9.77 (1) (a)

substitute

- (a) Australian Standard ASO ISO 10002-2006 *Customer satisfaction — Guidelines for complaints handling in organizations (ISO 10002:2004 MOD)* published by SAI Global Limited on 5 April 2006;

[16] **Schedule 10A, heading**

substitute

Schedule 10A Modifications of Part 7.9 of the Act

(regulations 7.9.02, 7.9.04, 7.9.05, 7.9.06, 7.9.10B, 7.9.11, 7.9.11B, 7.9.12, 7.9.24, 7.9.27, 7.9.30, 7.9.43, 7.9.47, 7.9.51, 7.9.56, 7.9.60, 7.9.61, 7.9.63, 7.9.73 and 8.4.02)

[17] **Schedule 10A, after Part 5**

insert

Part 5A Modifications for margin lending

5A.1 Section 1011B, after definition of *regulated person*

insert

Regulations means the *Corporations Regulations 2001*.

5A.2 Subsections 1013C (1) and (2)

substitute

- (1) A Product Disclosure Statement must:
 - (a) include the statements and information required by regulations made for this paragraph; and
 - (b) be in the form required by regulations made for this paragraph.
- (2) A Product Disclosure Statement may make provision for a matter contained in writing by applying, adopting or incorporating the matter as in force at a particular time or as in force from time to time.
- (2A) If a Product Disclosure Statement applies, adopts or incorporates a matter contained in writing, the applied, adopted or incorporated matter forms part of the Statement.

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- (2B) The regulations may prescribe requirements for applying, adopting, or incorporating a matter contained in writing in a Product Disclosure Statement.
 - (2C) A Product Disclosure Statement may refer to other information that is set out in another document.
 - (2D) If a Product Disclosure Statement refers to other information that is set out in another document, that information does not form part of the Statement.

5A.3 Section 1013D

omit

5A.4 Section 1013E

omit

5A.5 Section 1013L

substitute

1013L When Product Disclosure document may consist of 2 or more documents

A Product Disclosure Statement may consist of 2 or more documents, only if:

- (a) one of the documents is a document that complies with the requirements for a Product Disclosure Statement under this Act and the Regulations; and
- (b) the other document or documents contain a matter in writing that is applied, adopted or incorporated by the document mentioned in paragraph (a).

5A.6 Subdivision D, Division 2

omit

5A.7 Subsection 1015D (3)

omit

[18] After Schedule 10BA

insert

Schedule 10C Form and content of Product Disclosure Statement — margin loan

(regulation 7.9.11C)

1 Length and font size for Product Disclosure Statement for margin loan

- (1) The length of a Product Disclosure Statement for a margin loan (not including any title page, table of contents or matter contained in writing that is applied, adopted or incorporated by the Statement) must not exceed:
 - (a) if it is printed on A4 pages — 4 pages; or
 - (b) if it is printed on A5 pages — 8 pages; or
 - (c) if it is printed on DL pages — 12 pages; or
 - (d) otherwise — if the Statement was formatted to be printed on A4 pages, 4 A4 pages.
- (2) The minimum font size for text in the Statement is:
 - (a) for the name, address, ABN, ACN and AFSL of the person giving the Statement — 8 points; and
 - (b) for all other text — 9 points.

Note 1 The Product Disclosure Statement must be worded and presented in a clear, concise and effective manner — see subsection 1013C (3) of the Act.

Note 2 A person required to give a Product Disclosure Statement to a vision-impaired person must comply with its obligations under the *Disability Discrimination Act 1992*.

2 Content of Product Disclosure Statement for margin loan

- (1) The Product Disclosure Statement for a margin loan must include the following sections, which must be numbered and titled as follows:
 1. What is margin lending?
 2. How you can benefit from margin lending
 3. How margin lending works
 4. What is a margin call?
 5. The risk of losing money
 6. The costs
 7. How to apply
- (2) The Statement must include:
 - (a) a table of contents; and
 - (b) the telephone number of the provider for the margin loan to enable a borrower for the margin loan to request a copy of the following under regulation 7.9.11F:
 - (i) a copy of the Statement; and
 - (ii) a copy of a matter in writing that is applied, adopted or incorporated by the Statement.
- (3) The Statement may include other sections (for example, a glossary, index or information about the provider for a margin loan).

3 Contents of section 1 (What is margin lending?)

Section 1 of the Product Disclosure Statement for a margin loan must include:

- (a) a short summary of what margin lending is; and
- (b) a statement setting out the possible consequences of borrowing money to invest, including the effect of magnifying both gains and losses; and

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- (c) a statement that the borrower for a margin loan should regularly monitor the borrower's portfolio so that:
 - (i) the borrower can be aware of changes (if any) to the terms of the margin loan; and
 - (ii) the borrower can take timely action to prevent potential losses in relation to the borrower's portfolio; and
 - (d) a statement that the borrower for a margin loan may need, at short notice, to pay an additional amount into the margin loan or sell some of the investments for which the margin loan is made; and
 - (e) a statement that the provider for a margin loan has the right to sell all, or part, of the borrower's portfolio in certain circumstances; and
 - (f) a statement that if the value of the portfolio for a margin loan does not cover the cost of repayments for the margin loan:
 - (i) the borrower for the margin loan may need to access other funds to repay the margin loan; or
 - (ii) the provider for the margin loan may sell other assets provided as security for the margin loan, for example, the borrower's residential property; and
 - (g) a statement that the law requires the provider for a margin loan to:
 - (i) assess whether the margin loan is unsuitable for the potential borrower for the margin loan; and
 - (ii) if the potential borrower for the margin loan requests a copy of the assessment — to provide a copy of the assessment to the potential borrower for the margin loan.

Note The provider for a margin loan is not required to give the borrower or potential borrower for the margin loan a copy of the Statement if the margin loan is not issued.

4 Content of section 2 (How you can benefit from margin lending)

- (1) Section 2 of the Product Disclosure Statement for a margin loan must include a description of the key benefits available to the borrower or potential borrower for the margin loan.
- (2) Section 2 of the Statement may include a description about other benefits available to a borrower or potential borrower for the margin loan other than the benefits mentioned in sub-item (1).
- (3) Section 2 of the Statement may provide for the description mentioned in sub-item (2) by applying, adopting or incorporating a matter in writing.

5 Content of section 3 (How margin lending works)

- (1) Section 3 of the Product Disclosure Statement for a margin loan must include:
 - (a) an explanation of how margin lending works including information about the following:
 - (i) the maximum loan amount for the margin loan;
 - (ii) the loan-to-value ratios for the margin loan; and
 - (b) one or more examples that illustrate the matters mentioned in subparagraphs (a) (i) and (ii); and
 - (c) a description of the financial products that the borrower or potential borrower for the margin loan can purchase with the margin loan (including the Approved Product List for the provider or potential provider for the margin loan); and
 - (d) an explanation of who owns the investments purchased with the margin loan; and
 - (e) an explanation of any special features of the margin loan that:
 - (i) are not covered by the matters mentioned in paragraphs (a), (c) and (d); and
 - (ii) are sufficiently important to be material to a reasonable person's decision to take out the margin loan; and
 - (f) a reference to:

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- (i) the margin loan calculator on the ASIC website ‘FIDO’ and an explanation of the assistance the calculator can provide; or
 - (ii) if the provider or potential provider for the margin loan provides a calculator to borrowers or potential borrowers for the margin loan — that calculator and an explanation of the assistance the calculator can provide.
- (2) Section 3 of the Statement may provide for the Approved Product List by applying, adopting or incorporating an Approved Product List a matter contained in writing.

6 Content of section 4 (What is a margin call?)

Section 4 of the Product Disclosure Statement for a margin loan must include the following:

- (a) an explanation about what a margin call is;
- (b) an explanation of when there will be a margin call in response to changes in the market;
- (c) an explanation of when there will be a margin call at the discretion of the provider for the margin loan;
- (d) one or more examples of how a margin call works, including:
 - (i) the impact of breaching the loan-to-value ratio (**LVR**) for the margin loan; and
 - (ii) how to adjust the LVR back to the required level for the margin loan; and
 - (iii) how the buffer (if any) for the margin loan operates; and
- (e) a description of how a margin call can be dealt with by the borrower for the margin loan; and
- (f) a statement that if there is a margin call, the provider for the margin loan will notify the borrower for the margin loan, or the borrower’s financial advisor, that the margin call has occurred; and
- (g) a statement that the borrower for the margin loan must be contactable at all times in case of a margin call.

7 Content of section 5 (The risk of losing money)

- (1) Section 5 of the Product Disclosure Statement for a margin loan must include a description of the risks associated with margin lending to a borrower for the margin loan, including the following (if relevant):
 - (a) the risk that the value of the borrower's investment may fall and the possible consequences to the borrower if the value of the investment falls, in particular, the risk of a margin call occurring; and
 - (b) the risk that the provider for the margin loan may change the loan-to-value ratio of an investment at any time and the consequences to the borrower of the change, in particular, the risk of a margin call occurring; and
 - (c) the risk that the provider for the margin loan may remove an investment from the Approved Product List and the consequences for the investor if this occurs, in particular, the risk of a margin call occurring; and
 - (d) the risk that the interest rate (if applicable) for the margin loan may rise and the consequences for the borrower for the margin loan if this occurs, in particular, the possibility that interest payments owed by the borrower may exceed the returns available from the borrower's portfolio; and
 - (e) the risk of the loss of property of the borrower for the margin loan if the property has been mortgaged as security for, or in connection with, the margin loan; and
 - (f) the risk that the taxation laws may change and that this may have a negative effect on the tax position for the borrower for the margin loan; and
 - (g) any other significant risks that a reasonable person would consider to be relevantly associated with the margin loan.
- (2) Section 5 of the Statement must include a hyperlink to the page on ASIC's consumer website 'FIDO' that provides information about margin loans.
- (3) Section 5 of the Statement may include information about risks associated with margin lending other than the risks mentioned in sub-item (1).

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- (4) Section 5 of the Statement may provide for the information mentioned in sub-item (3) by applying, adopting or incorporating a matter contained in writing.

8 Content of section 6 (The costs)

- (1) Section 6 of the Product Disclosure Statement for a margin loan must include the following:
- (a) a description of the interest rate for the margin loan, including how the interest rate is calculated;
 - (b) a statement about whether a default interest rate will be charged for the margin loan;
 - (c) details of any fee or cost to be charged by the provider for the margin loan, unless the fee is a minor fee;
 - (d) a list of matters for which the provider for the margin loan will charge a minor fee for the margin loan.
 - (e) a statement about whether a commission or fee is payable to a financial advisor or other third party for the margin loan and, if a commission or fee is payable:
 - (i) the circumstances in which the commission or fee will be payable; and
 - (ii) where the borrower for the margin loan can obtain more detailed information about the commission or fee that will be payable.
- (2) Section 6 of the Statement may include:
- (a) a statement of the interest rate for the margin loan; and
 - (b) details of any minor fee the provider for the margin loan will charge for the margin loan.
- (3) Section 6 of the Statement may provide for the statement mentioned in paragraph (2) (a) or the details mentioned in paragraph (2) (b) by applying, adopting or incorporating a matter contained in writing

9 Content of section 7 (How to apply)

Section 7 of the Product Disclosure Statement for a margin loan must include:

- (a) information about how to apply for the margin loan; and

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- (b) a warning for borrowers and potential borrowers for the margin loan to seek financial advice about the suitability of the margin loan for the borrower.

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>.