



# 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]**

Minister for Financial Services, Superannuation and Corporate  
Law

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**DRAFT ONLY**

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**1 Name of Regulations**

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

**2 Commencement**

These Regulations commence on the commencement of sections 3 to 387 of the *Carbon Pollution Reduction Scheme Act 2009*.

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

Schedule 1 amends the *Corporations Regulations 2001*.

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## Schedule 1      Amendments

(regulation 3)

**[1]      After regulation 7.1.08**

*insert*

**7.1.08A Meaning of *makes a market* for a financial product —  
selling free Australian emissions units**

For subsection 926B (1) (c) of the Act, Part 7.1 of the Act applies as if section 766D of the Act were modified by inserting after subsection 766D (2) the following subsections:

- “(3) A person is taken not to be making a market for a financial product if the person sells a free Australian emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*) that has been issued to the person by the Australian Climate Change Regulatory Authority.”.

**[2]      After paragraph 7.1.09 (1) (f)**

*insert*

- (fa) each obligation arising from a contract to transfer a financial product mentioned in paragraph 764A (1) (l) or (la) of the Act;

**[3]      After regulation 7.1.35A**

*insert in Division 4 of Part 7.1 of Chapter 7*

**7.1.35B Conduct that does not constitute dealing in a  
financial product — issuing eligible emissions units**

For subsection 766C (7) of the Act, a financial service provided by a person is taken not to be dealing in a financial product if:

- 
- (a) the financial product is an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*); and
  - (b) the person is:
    - (i) the Australian Climate Change Regulatory Authority; or
    - (ii) the Clean Development Mechanism Executive Board; or
    - (iii) the government of a country other than Australia; and
  - (c) the financial service consists of issuing the eligible emissions unit.

**7.1.35C Conduct that does not constitute dealing in a financial product — dealing in eligible emissions units on behalf of liable entities in corporate group**

For subsection 766C (7) of the Act, a financial service provided by a person is taken not to be dealing in a financial product if:

- (a) the financial product is an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*); and
- (b) the financial service consists of dealing in the eligible emissions unit on behalf of:
  - (i) a related body corporate of the person; or
  - (ii) an associated entity of the person; and
- (c) the related body corporate or associated entity is a liable entity in accordance with section 262 of the *Carbon Pollution Reduction Scheme Act 2009*.

*Note* Related bodies corporate are explained in section 50 of the Act. Associated entities are explained in section 50AAA of the Act.

**[4] Paragraph 7.2.09 (a)**

*substitute*

- (a) the Australian Climate Change Regulatory Authority;
- (aa) the Australian Competition and Consumer Commission;

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**[5] Paragraph 7.3.07 (a)**

*substitute*

- (a) the Australian Climate Change Regulatory Authority;
- (aa) the Australian Competition and Consumer Commission;

**[6] Paragraph 7.3.08 (a)**

*substitute*

- (a) the Australian Climate Change Regulatory Authority;
- (aa) the Australian Competition and Consumer Commission;

**[7] After paragraph 7.6.01 (1) (m) (including the examples)**

*insert*

- (ma) a financial service provided by a person in the following circumstances:
  - (i) the service consists only of either or both of:
    - (A) dealing in derivatives over eligible emissions units (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*); and
    - (B) dealing in eligible emissions units (within the meaning of that Act);
  - (ii) the service does not involve the making of a market for those derivatives or eligible emissions units;
  - (iii) the dealing is entered into for the purpose of managing the risk of adverse variations in the cost of eligible emissions units that are expected to be surrendered to the Australian Climate Change Regulatory Authority, under the *Carbon Pollution Reduction Scheme Act 2009*, by:
    - (A) the person; or
    - (B) a related body corporate of the person; or
    - (C) an associated entity of the person; and
  - (iv) the person does not deal in those derivatives or eligible emissions units as the principal purpose of the person's business;

- 
- (v) the dealing is entered into:
    - (A) on the person's own behalf; or
    - (B) on behalf of a related body corporate of the person; or
    - (C) on behalf of an associated entity of the person;

**[8] After paragraph 7.6.02A (a)**

*insert*

(aa) *Carbon Pollution Reduction Scheme Act 2009*;

**[9] Paragraph 7.6.02AG (2E) (c)**

*substitute*

- (c) the service consists of any or all of the following:
- (i) dealing in derivatives, foreign exchange contracts or eligible emissions units (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*);
  - (ii) providing advice on derivatives, foreign exchange contracts or eligible emissions units;
  - (iii) making a market in derivatives, foreign exchange contracts or eligible emissions units.”

**[10] After regulation 7.6.02AH**

*insert*

**7.6.02AI Modification of section 911A of the Act: auction of Australian emissions units**

For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies as if section 911A of the Act were modified by inserting after subsection 911A (2) the following subsections:

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“(2A) A person is exempt from the requirement to hold an Australian financial services licence for a financial service in the following circumstances:

- (a) the financial service is an ascending clock auction of Australian emissions units to which section 103 of the *Carbon Pollution Reduction Scheme Act 2009* applies;
- (b) the person’s participation in the financial service consists of bidding in the auction:
  - (i) on the person’s own behalf; or
  - (ii) on behalf of a related body corporate of the person; or
  - (iii) on behalf of an associated entity of the person.

*Note* Related bodies corporate are explained in section 50. Associated entities are explained in section 50AAA.”.

**[11] After regulation 7.7.10AH**

*insert*

**7.7.10AI Obligation to warn client that advice does not take account of client’s objectives, financial situation or needs — emissions units**

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies in relation to an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*) as if paragraph 949A (2) (c) read as follows:

- “(c) if the advice relates to the acquisition, or possible acquisition, of an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*)—the client should obtain the statement mentioned in section 278 of that Act relating to the product and consider the statement before making any decision about whether to acquire the product.”.

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**[12] After regulation 7.8.21A**

*insert*

**7.8.21B Anti-hawking provisions if no Product Disclosure Statement is required — emissions units**

For paragraph 992C (1) (c) of the Act, Part 7.8 of the Act applies in relation to an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*) as if paragraphs 992A (3) (c), (d) and (e) read as follows:

- “(c) given the statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009* before becoming bound to acquire a financial product; and
- (d) clearly informed of the importance of using the information in the statement when making a decision to acquire a financial product; and
- (e) given the option of having the information in the statement read out to that person.”.

**[13] Part 7.9, Division 4, after Subdivision 4.2A**

*insert*

**Subdivision 4.2B No Product Disclosure Statement for eligible emissions unit**

**7.9.11H Application of Subdivision**

This Subdivision applies:

- (a) to a person who, apart from this Subdivision, would be required to give a Product Disclosure Statement for an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*); and
- (b) in relation to an eligible emissions unit.

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**7.9.11I Provisions of Part 7.9 of Act that do not apply in relation to eligible emissions unit**

For paragraph 1020G (1) (b) of the Act, the following provisions of Part 7.9 the Act do not apply in relation to an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*):

- (a) subparagraph 1012A (3) (b) (i);
- (b) subparagraph 1012A (3) (b) (ii);
- (c) subparagraph 1012B (3) (a) (ii);
- (d) paragraph 1012C (3) (b);
- (e) paragraph 1012C (4) (c);
- (f) subsection 1012C (6);
- (g) section 1013A;
- (h) section 1013B;
- (i) section 1013C;
- (j) section 1013D;
- (k) section 1013E;
- (l) section 1013F;
- (m) section 1013G.

**7.9.11J Modification of Act**

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application to an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*) as set out in Part 19 of Schedule 10A.

**[14] Paragraph 7.9.80B (c)**

*omit*

the Act;

*insert*

the Act; or

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**[15] After paragraph 7.9.80B (c)**

*insert*

- (d) an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*);

**[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, 7.9.11D, 7.9.11J, 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 18**

*insert*

**Part 19 Modifications for eligible emissions units**

**19.1 Subsections 1012D (1) to (3), including the subheadings**

*substitute*

*Recommendation, issue or sale situation for eligible emissions unit — statement under Carbon Pollution Reduction Scheme Act*

- (1) Subject to subsections (2) and (3), in a recommendation situation, issue situation or sale situation for an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*), the regulated person:
- (a) does not have to give the client a Product Disclosure Statement; and

- 
- (b) must give the client the statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009* (an ***emissions unit statement***), setting out a concise description of the characteristics of the eligible emissions unit.

*Recommendation, issue or sale situation — client has copy of current emissions unit statement*

- (2) In a recommendation situation, issue situation or sale situation for an eligible emissions unit:
- (a) the regulated person does not have to give the client an emissions unit statement if the regulated person believes, on reasonable grounds, that the client has a copy of the current version of the emissions unit statement; and
- (b) the client is not to be treated as having a copy of the current version of the emissions unit statement merely because the client may have access to a website that sets out the statement.

*Recommendation, issue or sale situation for eligible emissions unit — specified issuers*

- (3) In a recommendation situation, issue situation or sale situation for an eligible emissions unit, the regulated person does not have to give the client a Product Disclosure Statement or an emissions unit statement if the person is:
- (a) the Australian Climate Change Regulatory Authority; or
- (b) the Clean Development Mechanism Executive Board; or
- (c) the government of a country other than Australia.

**19.2 Subsection 1012D (6)**

*omit*

a Product Disclosure Statement

*insert*

an emissions unit statement

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**19.3 Subsections 1012D (7) to (9A)**

*omit*

**19.4 Subsection 1012IA (2), subheading**

*substitute*

*Obligation on provider to give client emissions unit statement*

**Subsection 1012IA (2)**

*omit*

must give the client a Product Disclosure Statement for the product if a Product Disclosure Statement for the product would

*insert*

must give the client the statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009* (an ***emissions unit statement***) for the product if the emissions unit statement would

**19.5 Subsection 1012IA (3), subheading**

*substitute*

*Determining whether emissions unit statement would have to be given for an equivalent direct acquisition*

**19.6 Subsection 1012IA (3)**

*omit*

a Product Disclosure Statement for the financial product

*insert*

the emissions unit statement

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## 19.7 Subsection 1017A (1)

*substitute*

- (1) The following people may request the person who would have been the responsible person for a Product Disclosure Statement for an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*) under Division 2 to provide the statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009* (an ***emissions unit statement***):
  - (a) a person who:
    - (i) has been or should have been given, or who has obtained, the emissions unit statement for the eligible emissions unit; and
    - (ii) is not a holder of the eligible emissions unit;
  - (b) a financial services licensee;
  - (c) an authorised representative of a financial services licensee;
  - (e) a person who is not required to hold an Australian financial services licence because the person is covered by:
    - (i) paragraph 911A (2) (j); or
    - (ii) an exemption in regulations made for the purposes of paragraph 911A (2) (k); or
    - (iii) an exemption specified by ASIC for the purposes of paragraph 911A (2) (l).

*Note* The person is not the responsible person for a Product Disclosure Statement for the eligible emissions unit because section 1013A does not apply in relation to the eligible emissions unit.

## 19.8 Paragraph 1017E (1) (b)

*substitute*

- (b) a seller (the ***product provider***) of a financial product that is an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*) in relation to which the seller has provided the statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*;

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**19.9 Subsection 1018A (1)**

*omit*

if a particular financial product is available for acquisition by persons as retail clients (whether or not it is also available for acquisition by persons as wholesale clients) by way of issue, or pursuant to sale offers to which section 1012C applies or will apply,

*insert*

in an issue situation or sale situation for a financial product that is an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*) that is available for acquisition by persons as retail clients (whether or not it is also available for acquisition by persons as wholesale clients),

**19.10 Paragraph 1018A (1) (d)**

*omit*

a Product Disclosure Statement

*insert*

the statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*

**19.11 Paragraph 1018A (1) (e)**

*omit*

the Product Disclosure Statement

*insert*

the statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*

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**19.12 Subsection 1018A (2)**

*omit*

if a particular financial product, or proposed financial product, is not available for acquisition by persons as retail clients but it is reasonably likely that the product will become so available (whether or not it is, or will also become, available for acquisition by persons as wholesale clients) by way of issue, or pursuant to sale offers to which section 1012C will apply,

*insert*

in an issue situation or sale situation for a financial product that is an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*) and is not available for acquisition by persons as retail clients, but is reasonably likely to become so available,

**19.13 Paragraph 1018A (2) (d)**

*omit*

a Product Disclosure Statement

*insert*

the statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*

**19.14 Paragraph 1018A (2) (e)**

*omit*

the Product Disclosure Statement

*insert*

the statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*

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**19.15 Paragraph 1018A (2) (f)**

*omit*

the Product Disclosure Statement

*insert*

the statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*

**19.16 Subsection 1018A (3)**

*omit*

a Product Disclosure Statement

*insert*

the statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*

**19.17 Subparagraph 1018A (4) (c) (i)**

*omit*

a Product Disclosure Statement

*insert*

a statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*

**19.18 Subparagraph 1018A (4) (d) (i)**

*omit*

a Product Disclosure Statement

*insert*

a statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*

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**19.19 Subparagraph 1018A (4) (d) (ii)**

*omit*

a Statement

*insert*

a statement

**19.20 Section 1020D**

*omit*

a financial product

*insert*

an eligible emissions unit (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*)

**19.21 Paragraph 1020D (b)**

*substitute*

- (b) if the acquisition occurs in circumstances in which the party is required by a provision of this Part to have been given a statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009* for the eligible emissions unit—taken to have notice of any contract, document or matter not specifically referred to in a statement given to the party.

**19.22 Subparagraph 1020E (1) (a) (ii)**

*omit*

financial products

*insert*

eligible emissions units (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*)

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**19.23 Paragraph 1020E (1) (b)**

*omit*

financial products

*insert*

eligible emissions units (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*)

**19.24 Paragraph 1020E (2) (a)**

*omit*

the financial products to which the document, advertisement or statement

*insert*

the eligible emissions units to which the statement or advertisement

**19.25 Paragraph 1020E (2) (b)**

*omit*

financial products

*insert*

eligible emissions units

**19.26 Paragraph 1020E (7) (a)**

*omit*

the financial products

*insert*

the eligible emissions units

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**19.27 Paragraph 1020E (7) (b)**

*omit*

the document, advertisement or statement

*insert*

the statement or advertisement

**19.28 Paragraph 1020E (7) (b)**

*omit each mention of*

the financial products

*insert*

the eligible emissions units

**19.29 Subparagraph 1021C (1) (a) (i)**

*omit*

a Product Disclosure Statement or a Supplementary Product Disclosure Statement

*insert*

a statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*

**19.30 Subsection 1021C (2)**

*substitute*

- (2) In this Subdivision, a reference (including in the definitions in subsection (1)) to a statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009* includes a reference to something purporting to be a statement of that kind.

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**19.31 Subparagraph 1021C (3) (a) (i)**

*omit*

a Product Disclosure Statement or a Supplementary Product Disclosure Statement

*insert*

a statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*

**19.32 Paragraph 1021C (5) (a)**

*omit*

a Product Disclosure Statement for a financial product

*insert*

a statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*

**19.33 Section 1021G**

*omit*

disclosure documents or statements

*insert*

a statement mentioned in section 278 of the *Carbon Pollution Reduction Scheme Act 2009*

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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>.