

Regulation Update: August 2017

Changes have been made to financial markets regulations

The regulations that made these changes are:

[Financial Markets Conduct Amendment Regulations 2017](#) (in force 9 August 2017)

Financial Markets Conduct (Fees) Amendment Regulations (No 2) 2017 (in force 8 September 2017)

Financial Markets Authority (Levies) Amendment Regulations (No 2) 2017 (in force 8 September 2017)

[Regulatory Systems \(Commercial Matters\) Amendment Act 2017 Commencement Order 2017](#)

Key changes

Making annual reports available to shareholders electronically

The Companies Act 1993 requires certain companies to:

- prepare an annual report setting out prescribed financial and other information about the company; and
- send to each shareholder each year either a copy of the annual report or a notice asking the shareholder if they would like to receive a copy of the report.

The notice or annual report can be sent electronically, but only if the shareholder has 'opted-in', in accordance with the relevant legal requirements.

The Companies Act 1993 was amended in 2016 to allow [FMC reporting entities](#) to use an alternative process for making their annual reports available to shareholders. The [Financial Markets Conduct Amendment Regulations 2017](#) prescribe the alternative process:

- 'FMC reporting entities' can:
 - make their annual report publicly available online; and
 - send a one-off notice to shareholders asking if and how they would like to receive annual reports going forward.
- A company that is an FMC reporting entity and that issues equity securities under the FMC Act must use the new streamlined process for accounting periods that end after 31 December 2017. Other companies that are FMC reporting entities can choose to use the streamlined process or not.
- Under the streamlined process, a shareholder can at any time contact the company to change if and how they receive the annual report.

Changes to fees and levies

The Financial Markets Conduct (Fees) Regulations 2014 currently impose a fee for lodgement of a PDS or confirmation notice for managed investment products in a managed fund. The fee is \$600 per fund covered by the PDS or notice. These amendments will result in the same fee being payable for each multi-fund investment option or life cycle stage of a life cycle investment option covered by the PDS or notice.

Currently, the levy for class 9 (payable on lodgement of a PDS for managed investment products in a managed fund) is \$609.50 per fund covered by the PDS. These amendments will result in the same amount being payable for each multi-fund investment option or life cycle stage of a life cycle investment option covered by the PDS.

For most levy classes, the levy is payable to the Registrar of Financial Service Providers. If the levy is not paid, the Registrar may deregister the person under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. This serves as a deterrent against non-payment. There is no equivalent sanction for classes 8, 10, and 13, where the levy is payable to the FMA. If persons in those classes do not pay their levies, the FMA has to take debt recovery action, which results in it incurring costs. Changes will allow the FMA to recover those costs from the people who do not pay their levies on time.

Defined benefit schemes register obligations

Defined benefit schemes are schemes where a member receives payment based on a formula (which may include the member's length of employment) rather than based on their contributions to the scheme. Unlike other schemes, defined benefit schemes are not required to provide periodic 'fund updates' because information about the performance of a fund is not as relevant to members. A regulation change has been made so that defined benefit schemes are also exempt from entering the same information on the FMC offers register.

Rating agency

Under the FMC regulations, different requirements apply to non-bank deposit takers depending on whether they have an 'investment grade credit rating' (which is defined in the regulations with reference to each registered credit rating agency). A change has been made to define an investment grade credit rating for the rating agency Equifax Australasia Credit Ratings Pty Limited, which was registered after the FMC Regulations were first made.

Civil liability for Schedule 8 contraventions

The FMC Regulations [have also been amended](#) to provide for the civil liability consequences where certain provisions in Schedule 8 of the regulations are contravened, and in particular the level of maximum penalty that will apply. Having different levels of liability is now possible as a result of amendments to the FMC Act made by the Regulatory Systems (Commercial Matters) Amendment Act 2017.

Most changes to FMC Act made by Regulatory Systems (Commercial Matters) Amendment Act 2017 commenced

This order brings most of the changes to the FMC Act made in [subpart 7](#) of Part 1 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 into force on 9 August 2017. The amendments address issues identified during the implementation of the FMC Act and aim to ensure that the FMC Act works effectively and that compliance costs are minimised. The remaining provisions of subpart 7 will be brought into force at a later date.