



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 20

Disclosure of convictions and proceedings

Chapter 7 — Securities

Chapter 8 — Futures industry

Chapter 9 — Miscellaneous

Issued 18/5/1992

From 5 July 2007, this document may be referred to as Regulatory Guide 20 (RG 20) or Practice Note 20 (PN 20). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 20.1) or their practice note number (e.g. PN 20.1).

Headnotes

Forms 701, 704, 705, 706, 802A, 803A, 803B, 903A, 903B, 907 and 908; conviction of an offence other than a traffic offence; spent convictions; legal or disciplinary proceedings pending; disciplinary action.

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Purpose

This guide replaces NCSC Release 318.

RG 20.1 This guide provides guidance on the scope of certain items relating to disclosure of legal or disciplinary proceedings to the following:

- (a) applicants required to complete Corporations Regulations Form 701 for a dealer's licence or an investment adviser's licence under s782(1) of the Corporations Law (the Law), or a futures broker's licence or a futures adviser's licence under s1144(1) of the Law;
- (b) holders of a dealer's licence or an investment adviser's licence required to complete Form 704 to notify a change in particulars under s790 of the Law;
- (c) holders and former holders of dealers' licences and investment advisers' licences required to make an annual statement under s791 of the Law by completion of Forms 705 or 706;
- (d) holders of a futures brokers' licence or a futures advisers' licence required to complete Form 802A to notify a change in particulars under s1156 of the Law;
- (e) holders and former holders of futures brokers' licences and futures advisers' licences required to make an annual statement under s1157(1) of the Law by completion of Forms 803A or 803B;
- (f) applicants for registration as auditors or liquidators under s1279(2) of the Law required to complete Forms 903A or 903B respectively; and
- (g) registered auditors and liquidators required to lodge triennial statements under s1288 of the Law by completion of Forms 907 and 908 respectively.

It is not intended to be a comprehensive interpretation of the requirements of the Corporations Regulations.

Background

RG 20.2 The Forms mentioned in para 1 above require, among other things, disclosure of particulars of:

- (a) a prior conviction; and
- (b) proceedings pending which may lead to a conviction.

RG 20.3 With effect from 30 June 1990, Pt VIIC of the *Crimes Act 1914* provides that a prior conviction is a spent conviction if the person convicted was not sentenced to imprisonment or was not sentenced for more than 30 months and the waiting period has expired. “Waiting period” means the period of 10 years beginning on the day on which the person was convicted of the offence (five years for a child offender).

RG 20.4 The Forms mentioned in (f) and (g) in para 1 also require disclosure of particulars of:

- (a) action taken by the Companies Auditors and Liquidators Disciplinary Board (the Board) against an applicant; and
- (b) disciplinary proceedings pending that may lead to action by the Board.

Conviction of an offence other than a traffic offence

RG 20.5 The Forms in para 1 above require disclosure of particulars of a conviction of an offence other than a traffic offence.

Traffic offences

RG 20.6 A traffic offence may be defined as one which, by its very nature, involves the public roads or footpaths. Thus, manslaughter does not become a traffic offence simply because it is committed while driving a motor car in a particular case. Careless driving, on the other hand, is always a traffic offence, because it is not necessarily an offence to drive carelessly on private property.

RG 20.7 An unfavourable judgement in civil proceedings (for example, a negligence claim) is not a conviction.

Spent convictions

RG 20.8 With regard to the Forms mentioned in (a), (b) and (d) in para 1, particulars of a spent conviction are not required to be disclosed.

Legal or disciplinary proceedings pending

RG 20.9 The Forms in para 1 require particulars about incomplete legal or disciplinary proceedings which, if they were complete and resulted in a conviction, or action taken respectively, would require disclosure on the Forms of the conviction or the action taken.

RG 20.10 Such proceedings are pending when the formal act required to commence them has been taken, but a decision of the Court or other authority has not been handed down. The commencement point varies according to the nature of the proceedings, but examples include the making of an application by the ASC to the Board under s1292 of the Law or to the Court under s599 of the Law or, in relation to an offence, where the applicant is charged with that offence.

RG 20.11 The mere lodging of a complaint, which may eventually lead to legal proceedings being taken, does not commence those proceedings and is not therefore required to be reported. Similarly, a civil claim against the applicant (for example, an action for negligence) is not a proceeding of a sort which must be disclosed.

Disciplinary action

RG 20.12 Item 4 of Forms 903A and 903B requires an applicant to state, among other things, whether he or she has at any time been otherwise dealt with by the Board or by any other body having, or previously having, authority in Australia or elsewhere relating to the registration or disciplining of auditors or liquidators, or by a Tax Agents Board, or by a professional body.

RG 20.13 The words “otherwise dealt with” in the context mean punished or disciplined in some other way. For example, the Board may admonish or reprimand or require undertakings to be given as to future conduct (see s1292(9) of the Law). Action of that sort must be disclosed, but a person against whom an authority has decided to take no action has not been “dealt with”.