



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 150

Electronic applications and dealer personalised applications

Related instruments [CO 00/43], [CO 00/44]

Chapter 7 — Securities

Chapter 6D — Fundraising

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From 5 July 2007, this document may be referred to as Regulatory Guide 150 (RG 150) or Policy Statement 150 (PS 150). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 150.1) or their policy statement number (e.g. PS 150.1).

What this guide is about

RG 150.1 This guide sets out when we will give relief from the Corporations Law so that:

A electronic applications for securities need not use the forms or processes required for applications on paper forms;

see *RG 150.4–RG 150.45*

B licensed dealers may personalise and issue application forms for securities, created by themselves or by issuers.

see *RG 150.46–RG 150.72*

RG 150.2 This guide relates to applications for securities regulated by the Corporations Law before and after the Corporate Law Economic Reform Program Act 1999 (“CLERP Act”) commences. The CLERP Act commences on 13 March 2000.

For our approach to electronic applications under the post CLERP Act regime, see RG 150.8, RG 150.38–RG 150.45 and RG 150.65–RG 150.72

RG 150.3 As a priority, we are reviewing the regulatory regimes governing applications for life insurance products and superannuation products. The review will determine if there are any regulatory impediments to using electronic applications for those products. We intend to apply the policy of this guide as consistently as possible to applications for life insurance products and superannuation products.

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A Electronic applications

Our policy

RG 150.4 We have given relief from s1020, 1024E and 1024G of the Corporations Law to allow an issuer to receive:

- (a) an electronic application for securities which is made by entering information into computer screens; and
- (b) a paper application form for securities that is a print-out of a computer screen.

The computer screens need not resemble the paper application form lodged with the paper prospectus.

RG 150.5 The relief is in [CO 00/43]. Class Order [CO 00/43] is based on existing [CO 99/790]. ([CO 99/790] allows electronic prospectuses and electronic application forms to be distributed. Class Order [CO 00/43] substantially replicates the relief given to allow electronic prospectuses to be distributed but provides more flexible relief for electronic application forms.)

RG 150.6 The key conditions of our relief are that:

- (a) the issuer takes all reasonable measures to ensure that an investor to whom an electronic application form is issued is given access, at the same time and by the same means, to the relevant prospectus. (For example, if an application form is made available by electronic means, the prospectus should also be made electronically available. If an electronic application form is made available as a print-out, the prospectus that is provided should also be a print-out.)

If a replacement prospectus has been lodged in relation to the original lodged paper prospectus, the investor must be given access to the replacement prospectus.

If a supplementary prospectus has been lodged in relation to the original lodged paper prospectus, the investor must be given access to the supplementary prospectus. Access must be given at the same time and by the same means as the investor is given access to the application form and the prospectus or replacement prospectus.

- (b) an electronic application form must contain:
 - (i) particulars of the relevant securities and prospectus and the expiry date of the prospectus;

- (ii) a prominent warning that:
 - (A) there is a prospectus with information about investing in the securities;
 - (B) it is advisable to read the prospectus before applying for the securities; and
 - (C) a person who gives another person access to the application form must at the same time and by the same means give the other person access to the relevant prospectus and any supplementary prospectus;

For an explanation of point (C), see RG 150.27–RG 150.29

- (iii) a statement that, while the prospectus is current, the issuer will send paper copies of the prospectus, any supplementary prospectus and the application form, on request and without charge;

For an explanation, see RG 150.25–RG 150.26

- (iv) all the information disclosed in the lodged paper application form for the purpose of compliance with Division 2 of Part 7.12. It must contain this information except when information is disclosed in the relevant electronic prospectus instead.

If the application form is a printed copy of an electronic application form, the statements in paragraph (ii) may be replaced. In this situation, it must state that the Corporations Law prohibits a person from passing the form on to another person, unless it is attached to, or accompanied by, a copy of the relevant prospectus and of any relevant supplementary prospectus.

If the relevant electronic application form is software which generates an application, the software must display the information in (i) to (iv) to the investor.

(An electronic application form may contain links and information relevant to applying for the securities. They should not distract the investor from reading and understanding the prospectus and form.)

- (c) the issuer may not issue securities in response to an application made on an electronic application form, unless the issuer has reasonable grounds to believe that conditions (a) and (b) are met.

For an explanation, see RG 150.31–RG 150.33

- (d) before issuing an electronic application form, the issuer must give us:
 - (i) a complete and unaltered print-out of the form;

- (ii) if the form will be issued on any disk, tape, CD-ROM or other article, a copy of that article; and
- (iii) if the form will be made available on an internet site:
 - (A) the address of the site; and
 - (B) an electronic copy of the form.
- (e) the issuer keeps for seven years:
 - (i) records adequate to demonstrate that it has complied with the conditions of our relief;
 - (ii) if the issuer enables an investor to apply for securities by using software — a copy of each screen which would be displayed to them. This copy must be in any durable and legible medium. (The records must show every application screen that an investor could have seen depending on the information they entered. For example, the application screen might offer a number of payment options and if an investor nominates a particular payment option, payment instructions relevant only to that option appear. The issuer's records should include the payment instructions appearing to the investor depending on whichever payment option they choose).

RG 150.7 If a prospectus is lodged before the CLERP Act commences, persons to whom [CO 99/790] or [CO 00/43] apply may choose to comply with either of those class orders.

RG 150.8 If a prospectus or other disclosure document is lodged after the CLERP Act commences, the distribution of electronic disclosure documents and electronic application forms will be covered by [CO 00/44]. Class Order [CO 00/44] is based on [CO 00/43] but is consistent with the CLERP Act.

How to obtain a copy of [CO 00/43] or [CO 00/44] or apply for relief outside the terms of [CO 00/43] or [CO 00/44]

- You can get a copy of [CO 00/43] or [CO 00/44] in the ASIC Digest or from ASIC Infoline on 1300 300 630.
- You can apply for relief for proposals outside the terms of [CO 00/43] or [CO 00/44] by applying at any Regional Office of ASIC. See Regulatory Guide 51 *Applications for relief* (RG 51) for guidance on how to apply.

You can also contact ASIC Infoline on 1300 300 630 for information and assistance.

Underlying principles

RG 150.9] We:

- (a) aim to be technology neutral in our regulatory approach;
- (b) promote the advantages that electronic commerce offers issuers and investors; and
- (c) more specifically, support the development of electronic commerce in the context of electronic applications in a manner that will not adversely affect investors.

RG 150.10 Section 1020 is the key provision from which we must give relief. The conditions of relief in [CO 00/43] aim to provide mechanisms that support the investor protection principles of s1020 (see RG 150.13-RG 150.14) to a level in the electronic environment that is comparable to the current paper-based mechanisms of s1020.

See RG 150.12 for the text of s1020

RG 150.11 The relief reflects our policy of focusing on regulatory principles when translating regulatory requirements, with their origins in a paper environment, to the electronic environment. The most appropriate means of giving effect to those principles in an electronic environment may then be considered.

Explanations

Investor protection principles of s1020

RG 150.12 Section 1020 provides in part that:

“A person shall not issue a form of application for the issue of securities of a corporation unless:

- (a) if the securities are debentures — the form is attached to, or accompanied by, a copy of a prospectus;*
- (b) otherwise — the form is attached to a copy of a prospectus;*
- (c) a copy of the form, and the prospectus, have been lodged...”*

RG 150.13 A fundamental principle of s1020 is that an investor should receive a prospectus before deciding to invest so that they have an opportunity to make an informed investment decision. The “attach/accompany” requirement in s1020 is a mechanism to give effect to the principle.

RG 150.14 Section 1020 also requires that a copy of the application form that investors will use has been lodged with us, together with its related prospectus.

Industry impetus for the relief in [CO 00/43]

RG 150.15 Class Order [CO 99/790] gives effect to the policy in Regulatory Guide 107 *Electronic prospectuses* (RG 107) of allowing an electronic application form to differ from its paper counterpart lodged with us, only in restricted ways relating to:

- (a) the different technological tools available to readers of electronic as distinct from paper documents, for example, hypertext links; and
- (b) investor protection mechanisms. For example, the electronic application form must contain a prominent statement to the effect that the Corporations Law prohibits any person from passing on to another person the application form unless it is attached to, or accompanied by, the complete and unaltered electronic prospectus and any relevant supplementary prospectus.

(See conditions 1 and 3 of the first exemption of [CO 99/790]).

RG 150.16 We have been asked to give relief to allow the use of electronic application forms that differ from the paper form in more ways than [CO 99/790] permitted.

Sections 1020, 1024G and 1024E — relief required

RG 150.17 To implement the electronic applications proposal, relief from s1020, 1024E and 1024G is required.

RG 150.18 Relief from s1020 is necessary because using electronic applications may involve issuing a form which would not be a copy of the paper form lodged with the relevant paper prospectus. Section 1020 also requires that a copy of the application form ultimately to be used by investors has been lodged with us, together with the relevant prospectus.

See RG 150.12 for the text of s1020

RG 150.19 It may also be necessary to give relief from s1024G because the “copy” issue is relevant to that section. Under s1024G, a prospectus may state that specified information is to be set out in the application form, for example, debenture interest rates. A copy of the form which includes the specified information must be lodged with us: s1024G(1)(c). Each copy of the prospectus that is issued while the

relevant form is current within the meaning of s1024G must be accompanied by, or have attached to it, as the case requires, the form or a copy of it.

RG 150.20 In addition, it may be necessary to give relief from s1024E, again, because of the “copy” issue. Section 1024E deals with applications made on out of date application forms. Under s1024E(3), an issuer must send an investor certain information, including a current application form. For certainty, we are giving relief so that the application form may be electronic.

Policy concern with electronic application forms

RG 150.21 Our primary policy concern is to make sure that all of the information needed by an investor to make an investment decision is provided, whether the application is on paper or is electronic. For example, if under s1024G, debenture interest rate information is included in the paper application form, then the debenture interest rate information should also be provided to an investor applying electronically.

[CO 00/43] relief

RG 150.22 The approach of [CO 00/43] is to focus on the concept of an application process, rather than on a paper application form. The relief in [CO 00/43] is intended to allow issuers to receive electronic applications for securities, without needing to replicate in the electronic environment the forms and processes used for paper applications. The electronic application screens need not resemble the paper application form. For example, the electronic application screens could include broker codes that are not included in the paper form.

RG 150.23 However, we also intend that investors making electronic applications receive equivalent protections as under the paper-based regime. In particular, an investor must be given the same information about the securities, whether they apply on paper or electronically. (The information about the process of applying on paper or electronically may differ.)

RG 150.24 Four aspects of our relief are explained further below.

Free paper prospectus available on request

RG 150.25 Under our relief, an investor who makes an electronic application would see a statement that, while the prospectus is current, they can ask the issuer for a free copy of the relevant paper prospectus

and a paper application form. A substantially similar condition appears in [CO 99/790] (see first exemption, condition 4).

RG 150.26 It may be that the investor has received an electronic copy or a print-out of an electronic copy rather than the paper prospectus. As noted in RG 107, investors wishing to read a prospectus might not be able to use an electronic prospectus as effectively as a paper prospectus: see RG 107.74. Similarly, a print-out of an electronic prospectus might not effectively reproduce all information contained in the paper prospectus. (For example, information in colour.) Therefore, we consider it appropriate to require the issuer to provide, on request, a copy of the paper prospectus to an investor who has received an electronic copy of the prospectus or a print-out of it.

Warning that application form must be distributed with prospectus

RG 150.27 Our relief also requires an electronic application screen to contain a warning that a person who gives another person access to the application form must, at the same time and by the same means, give the other person access to the relevant prospectus and any supplementary prospectus. Class Order [CO 99/790] contains a similar requirement (see condition 3 of the first exemption of [CO 99/790]). The warning reflects the requirement in s1020 that a person must not distribute an application form without the relevant prospectus (see RG 150.12).

RG 150.28 We consider that including the warning in the electronic application screen is a useful reminder of the s1020 obligation and is not an unduly onerous condition.

RG 150.29 The warning also reflects the requirement of s727 of the Law post CLERP Act. Subsection 727(2) prohibits the distribution of an application form for an offer of securities that requires disclosure unless the form is included in, or accompanied by, a copy of the disclosure document.

No access to application form without access to prospectus

RG 150.30 Under our relief, the issuer must take all reasonable measures to make sure that a person is only given access to an electronic application form, when they are given access (by the same means) to a copy of the relevant electronic prospectus. One way of satisfying this requirement would be to provide a link from the electronic prospectus to the electronic application form. However, we do not want to prescribe the methods that an issuer might use to comply with this condition.

Issuer believes on reasonable grounds that the investor was given access to prospectus

RG 150.31 Under our relief, the issuer must only issue securities in response to an electronic application form if, among other things, it believes on reasonable grounds that all reasonable measures were taken to ensure that the investor was given access to a copy of the relevant prospectus before they applied. We will not prescribe the steps that an issuer should take to satisfy this condition.

RG 150.32 Examples of steps that might in some cases be sufficient would be if the issuer required the investor to:

- (a) sign an acknowledgment on a print-out of the electronic application form that they had been given access to a copy of the prospectus before they applied for the securities; or
- (b) enter a Personal Identification Number next to a declaration similar to (a) on the electronic application form.

RG 150.33 However, issuers might want to take additional steps in their compliance programs. For example, if applications are made through a dealer, issuers might want to require the dealer to obtain a signed acknowledgment from the investor that they had received the prospectus.

Related electronic application matters

Developing standard electronic application format

RG 150.34 The relief in [CO 00/43] gives issuers flexibility in designing electronic applications. We consider that it would be in the interests of both industry and investors, if industry combined the benefits of the relief with developing standards for electronic applications. It is likely that issuers of securities and dealers would enjoy efficiency gains if they used common standards for electronic applications. We will consult with industry about the possibilities for developing standards for electronic applications.

Signing of electronic application forms

RG 150.35 We have been asked to provide guidance on applicants signing electronic application forms. The Corporations Law does not require an applicant to sign an application form whether in paper or in electronic form. However, there are a number of reasons why an issuer might want an investor to sign an application form. For example, an issuer might:

- (a) regard an investor's signature as evidence that the investor agrees to the terms on which the issuer will issue securities to them;

- (b) regard an investor's signature as verification that the investor is the person named in the application; or
- (c) not have systems in place to accept electronic payment. They might want the investor to send a cheque together with a signed application form to match the payment with the application.

However, we consider that it is primarily a matter for the issuer and investor to decide:

- whether an investor signs an application; and
- if an electronic application that is completed and submitted online is to be signed, how to resolve the technical issues for an investor (whether an individual or a corporate entity) signing electronically.

Out of date electronic application forms

RG 150.36 We have not prescribed how issuers should identify whether an electronic application was made on the basis of outdated disclosures for the purposes of complying with s1024E. An example of a method an issuer could use is assigning a number to each version of an electronic application for a particular prospectus that was made available.

Lodging electronic applications

RG 150.37 We have been asked to explain how an investor can lodge an electronic application either by a print-out or electronically via an intermediary or directly with the issuer. The Corporations Law does not regulate how applications should be submitted to issuers. We consider that this is a matter to be agreed on by the parties involved, having regard to relevant factors like the law of contract.

Impact of the CLERP Act on [CO 00/43] relief

RG 150.38 Under the pre CLERP Act regulatory regime, an issuer wanting to use electronic applications needs relief from the "copy/lodgment" requirement. The post CLERP Act regime does not require an application form to be lodged with us unless the form is in effect part of the prospectus because it:

- (a) contains s710 prospectus information and is incorporated by reference into the prospectus under s712; or
- (b) is used both as an application form and a supplementary document to the prospectus under s719.

RG 150.39 It may also be that if an application form is included in the prospectus, it will be provided to us as a matter of course when the prospectus is lodged under s727(1). However, we consider that in this situation, only the prospectus has been lodged. This is because unless paragraphs RG 150.38(a) or (b) apply, the application form is not part of the prospectus even if it has been included in the prospectus.

RG 150.40 We consider that our relief from the copy/lodgement requirement for application forms will not be necessary if the prospectus has been lodged with us after the CLERP Act commences.

RG 150.41 However, s723 of the post CLERP Act regime imposes a new requirement. It provides in part that if an offer of securities needs a disclosure document, the securities may only be issued or transferred:

- (a) in response to an application form; and
- (b) if the issuer or transferor has reasonable grounds to believe that:
 - (i) the form was included in, or accompanied by, the disclosure document when the form was distributed by the issuer or transferor; or
 - (ii) the form was copied or directly derived by the applicant from a form described in (i).

We consider that the “disclosure document” referred to in paragraph (b)(i) means a substantially faithful copy of the disclosure document lodged with us (see the definitions of “disclosure document”, “prospectus”, “profile statement” and “offer information statement” in s9).

[Historical note: RG 150.41 amended 5/7/2000 by inserting the term “substantially faithful” in the last sentence.]

RG 150.42 An issuer might lodge a paper disclosure document with us but also want to distribute an electronic version. There may be differences between the paper and electronic versions reflecting the difference between paper and electronic mediums (for example, the inclusion of hypertext links to other documents from the electronic disclosure document). Depending on the extent of the differences, there may sometimes be doubt whether:

- (a) the electronic disclosure document is a copy of the lodged paper disclosure document; and
- (b) an electronic application form distributed by the issuer or transferor with the electronic disclosure document, or copied or directly derived by an investor from that electronic application form, satisfies s723.

RG 150.43 To provide certainty in the post CLERP Act regime, we have given relief from s723. Our relief clarifies that securities may be issued or transferred:

- (a) in response to an electronic application form; and
- (b) if the issuer or transferor has reasonable grounds to believe that the form was included in, or accompanied by, the electronic disclosure document when distributed by them, or copied or directly derived by the investor from that form.

RG 150.44 A condition of the relief reflects the purpose of s723. An issuer must only issue securities if, among other things, it believes on reasonable grounds that all reasonable measures were taken to ensure that the investor was given access to a copy of the relevant disclosure document before applying for the relevant securities.

RG 150.45 The relief is in [CO 00/44]. It substantially replicates the terms and conditions of relief given in [CO 00/43] but has been modified to reflect changes made to the Law by the CLERP Act.

B Dealer personalised applications

Our policy

RG 150.46 We have given relief from s1020 of the Corporations Law to allow dealers licensed under Chapter 7 of the Corporations Law (“dealers”) to personalise and issue electronic application forms for securities and print-outs of electronic applications forms. They can issue and personalise application forms that they create or that issuers create. A dealer created form would be used instead of the application forms provided by the issuer of the relevant prospectus. The relief for the pre CLERP Act regulatory regime is in [CO 00/43]. (The relief for the post CLERP Act regulatory regime is in [CO 00/44]. See *RG 150.65–RG 150.72*).

RG 150.47 Dealers must comply with comparable conditions of relief to issuers (see RG 150.6).

RG 150.48 If an application is made using a dealer personalised form, issuers must only issue securities if, among other things, they believe on reasonable grounds that all reasonable measures were taken to ensure that the investor was given access to a copy of the relevant prospectus before completing the application.

Underlying principles

RG 150.49 The mere personalising of applications does not compromise investor protection. It may assist issuers and dealers to handle applications more efficiently and also lead to better customer service.

Explanations

Industry impetus for our relief

RG 150.50 Industry has asked us to give relief so that persons other than issuers may issue personalised application forms. We understand that in the managed investments context, our relief will:

- (a) promote efficiency and may also lead to consequential cost savings which could flow through to investors;
- (b) assist in reducing the number of errors made in completing and processing multiple handwritten forms; and
- (c) assist in reducing the time currently taken to complete and process handwritten forms.

Relief required

RG 150.51 To allow dealers to create and personalise their own forms or to personalise issuer created electronic applications, relief from s1020 is required.

See RG 150.12 for the text of s1020

RG 150.52 Relief from s1020 is necessary because using dealer personalised forms may involve the issue of a form which:

- (a) would accompany, but might not be attached to, a prospectus when the dealer gives it to an investor; and
- (b) would not be a copy of the issuer's paper form lodged with the relevant paper prospectus. For example an issuer created electronic application screen might not be a copy of the lodged paper form, and the further changes made to the screen by a dealer who personalises it is likely to increase the risk that it is not a copy.

Existing relief

RG 150.53 We have given relief to allow issuers to issue personalised application forms: see Regulatory Guide 56 *Prospectuses* at RG 56.169–RG 56.174. To the extent that a dealer personalised application is electronic, [CO 99/790] allows an electronic application form to differ from its paper counterpart lodged with us only in restricted ways (see RG 150.15).

Policy concern with dealer personalised applications

Dealers use personalised applications that are acceptable to issuers

RG 150.54 A key policy concern is to ensure that if an investor uses a dealer personalised application, the issuer will accept the application in the normal course. For example, we would be concerned if an application made using a dealer personalised application could not be processed by an issuer because it did not conform to an issuer's formatting requirements and was rejected.

RG 150.55 We consider that before relying on our relief, a dealer has a clear duty to its client under its licence to ensure that any form that they personalise is acceptable to the relevant issuer. For example, a dealer might use forms that were unacceptable to issuers or personalise forms in ways unacceptable to issuers, with the result that issuers reject applications made on the forms. In this case, we consider that the dealer may have breached its obligation to perform its dealer's duties efficiently, honestly and fairly.

RG 150.56 The terms on which a dealer and an issuer agree to the dealer personalising applications for the issuer's securities are a commercial matter for them. For example, an issuer could publish standards for dealer created forms that are acceptable to the issuer. This approach would overcome the need for an issuer to negotiate separately with every dealer that wanted to personalise applications for the issuer's securities.

Investor is given copy of prospectus before applying

RG 150.57 A key policy concern with dealers creating and personalising their own application forms is that it gives rise to a potentially greater risk, than in the current environment. The risk is that an investor might not receive a prospectus before deciding to apply for the securities. This is because a dealer created application form is not related to, and is issued separately from, a specific prospectus.

RG 150.58 Similarly, it may be that issuers create "generic" electronic application screens that a dealer may personalise and use for any of the issuer's products. The use of this kind of generic form could give rise to the same concern.

RG 150.59 To address this concern, our relief includes conditions that:

- (a) the dealer must take all reasonable measures to make sure that an investor has access to a copy of the prospectus with the application form. This requirement reflects the requirements of s1020 (see RG 150.12) and s727 (see RG 150.29); and
- (b) the issuer must believe on reasonable grounds that the condition in (a) was met. The issuer could, for example, ensure that dealers who issue personalised application forms have adequate systems in place to ensure that every form is issued with the relevant prospectus.

[CO 00/43] relief

Relief available to licensed dealers

RG 150.60 Our relief is only available to a person holding a dealers licence and not a person holding an investment advisers licence. Our relief contemplates a situation when a person:

- (a) as part of their normal business systematically and regularly personalises application forms for clients with a view to influencing the clients to apply for the securities through them; and
- (b) expects to receive and retain commissions or other benefits from issuers or other relevant parties in recognition of the person's role in effecting their clients' applications.

RG 150.61 It is arguable that personalising the application forms is part of a process that constitutes an attempt by the person to induce their client to offer to acquire the securities. In this case, the person is carrying on a business of dealing in securities (see the definitions of “securities business” in s93 and “deal” in s9). They therefore require a dealers licence (see s780(1)). (See Superseded Policy Statement 116 *Investment advisory services: licensing and “independent” advisory services* [SPS 116] for further discussion on conduct that amounts to inducing.)

Relief applies to both dealer and issuer created applications

RG 150.62 Our relief allows dealers to personalise application forms created by themselves or issuers. We understand that some issuers may prefer that their own forms are used because the forms might:

- (a) contain particular information that the issuers need in an application (for example, in a managed investments context, information about opening an account with the issuer); and
- (b) be in particular formats designed specifically for processing by the issuer’s computer system.

RG 150.63 As noted in RG 150.56, the terms on which an issuer agrees to a dealer using personalised application forms for the issuer’s securities is a commercial matter between the issuer and the dealer.

Out of date dealer personalised application forms

RG 150.64 We have not prescribed methods that issuers should use to distinguish if a dealer personalised application was made on the basis of out of date disclosures for the purposes of complying with s1024E. An example of a method that issuers might choose is to require each version of a dealer personalised application used for a particular prospectus to have a version number.

Impact of the CLERP Act on [CO 00/43] relief

RG 150.65 Under the pre CLERP Act regulatory regime, to enable dealers to personalise forms, relief is needed. Relief is required from s1020 because of the “attach” and “copy/lodgment” requirements (see RG 150.13–RG 150.14).

RG 150.66 The post CLERP Act regulatory regime allows an application form to be included in or accompany a prospectus. It omits the “attach” requirement (see s727). In addition, an application form need not be lodged with us except in the circumstances described in RG 150.38.

RG 150.67 We consider that:

- (a) the relief in [CO 00/43] will not be necessary if the prospectus or other disclosure document has been lodged with us after the CLERP Act commences (see RG 150.38-RG 150.40);
- (b) no new relief is required if dealers personalise issuer created electronic application forms as described in RG 150.70; and
- (c) new relief is required from s723 to allow dealers to create and personalise application forms as contemplated in this guide (see RG 150.71).

Dealers personalise issuer forms

RG 150.68 We have given relief from s723. The relief enables securities to be issued or transferred in response to electronic application forms distributed by the issuer or transferor of the securities with the disclosure document or copies or direct derivations of the forms.

The reasons for our relief are set out in RG 150.41–RG 150.43

RG 150.69 Subsection 723(1)(b) refers to the application form being copied, or directly derived by the applicant from a form included in or accompanied by the disclosure document when the form was distributed by the person issuing or transferring the securities.

RG 150.70 We consider that securities may be issued or transferred in compliance with s723 if the issuer or transferor has reasonable grounds to believe that the form on which the application was made was copied from the issuer original and personalised by a dealer with the authority of the applicant. This is because the applicant authorises the dealer to make a copy of the “original” electronic application form on the applicant’s behalf, for them to sign. Section 52 of the Law provides in part that a reference to doing an act or thing includes a reference to authorising the act or thing to be done.

Dealer created forms

RG 150.71 If a dealer creates a form for an investor, we consider that relief is required from s723. This is because:

- (a) the form was not distributed by the issuer or transferor of the securities;
- (b) the form was not included in or accompanied by the disclosure document when it was distributed by the issuer or transferor; and
- (c) the form was not copied or directly derived by the investor from the issuer’s or transferor’s form.

RG 150.72 We have given relief from s723 to allow securities to be issued or transferred in response to a dealer created application form. The relief is conditional on, among other things, the issuer or transferor having reasonable grounds to believe that all reasonable measures were taken to make sure that the investor was given access to the disclosure document before they applied. The relief is in [CO 00/44].

Related information

RG 150.73

Headnotes

Electronic applications, licensed dealers, personalising application forms.

Class orders and pro formas

[CO 99/790], [CO 00/43], [CO 00/44]

Policy statements

Superseded Policy Statement 116 *Investment advisory services: licensing and “independent” advisory services* [SPS 116]

Regulatory guides

RG 56 *Prospectuses*

RG 107 *Electronic prospectuses*

Legislation

Corporations Law as in force before the commencement of the CLERP Act: Chapter 7 s9, 93, 780(1), 1020, 1024G

Corporations Law as in force after the commencement of the CLERP Act: s723, 727

Media releases

[MR 99/315]