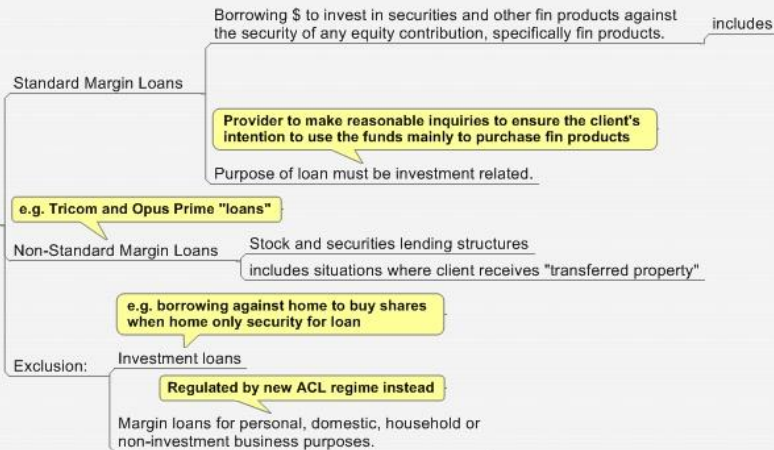


Proposed Margin Lending Laws

Product definition



Simplified PDS

Draft Not yet released

Responsible lending obligations

Applies to margin loan lenders
Consistent with ACL/National Consumer Credit requirements

Lenders can rely on an SOA provided by a planner, as long as it's not more than 30 days old.

Not considered "advice"

Assessment of Unsuitability

Lender must make reasonable inquiries about unsuitability

must consider

For retail clients (price of facility is < \$500k)

- whether client "retail"
- double-gearing
- security guarantors
- amount of debt
- amount and source of incomes
- ability to service loan

Ability to repay must not rely on potential investment returns.

e.g. Credit checks

must make effort to verify information

Lenders must provide (within set timeframes) written assessment of unsuitability to borrower if requested by the borrower, at no charge

Regulations deem certain situations as unsuitable

e.g. The client cannot be contacted by any usual means of communication, and has not appointed an agent.

e.g. Client is unable to enter the contract

Extra clause in FSG telling client about ability to request Assessment of Unsuitability

Applies to

- new loans
- increasing limit in existing loans

Stipulated by Regulations

Advisers recommending margin loans

SOA

if recommending margin loan, must consider

Extended Reasonable Basis obligation

FSG

- Recommendation must be appropriate to needs and circumstances
- make reasonable inquiries
- must take reasonable steps to verify client's situation
- must make other inquiries prescribed by the regulations

Notification requirements for margin calls

Particularly relevant where loan arranged through planner

Clarifies ambiguity about who's responsible to notify client of margin calls

Lender must notify client as soon as practicable

Unless client explicitly agrees to notifications being provided by planner as their agent (pursuant to contractual arrangement between the lender, the client, and the agent).

Timing

Consultation ends on 29 May
Bill introduced into Parliament in June

AFSL variation

Licence applications (new and variations) to be made within 3 months of legislation commencement
Licences will be issued within a further period of 6 months
When waiting for AFSL/authorisation to be granted responsible lending obligations still apply

Existing margin products

e.g. of "new obligations": increase credit limit, margin call, issuing periodic statements.

New requirements triggered when "new obligations" apply (i.e.. unsuitability requirements, etc).

Must be member of external dispute resolution scheme



This diagram a summary of the main elements of the proposed margin lending laws. It does not purport to cover all requirements. The Bill is likely to change before becoming law. The document is subject to a Creative Commons Licence - www.creativecommons.org. The author is Holley Nethercote Commercial Lawyers. To attribute the author, please provide this link to www.holleynethercote.com.au. This diagram does not constitute legal advice, and is current as at May 2009.