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Corporations Act 2001

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**About this compilation**

**This compilation**

This is a compilation of the *Corporations Regulations 2001* that shows the text of the law as amended and in force on 1 November 2023 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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**Note about these Regulations**

These Regulations are made under the *Corporations Act 2001*. To assist users of these Regulations, these Regulations follow, as far as possible, the drafting style, structure and numbering of the *Corporations Regulations 1990* that were made under the *Corporations Act 1989*. Because some provisions of the *Corporations Regulations 1990* are not remade in these Regulations, some gaps appear in the numbering of these Regulations. Also, the drafting style departs in minor ways from that used in the *Corporations Regulations 1990*.

Chapter 1—Introductory

Part 1.0—Miscellaneous

1.0.01 Name of Regulations

These Regulations are the *Corporations Regulations 2001*.

1.0.02 Definitions

Note: A number of expressions used in these Regulations are defined in the Act, including the following:

(a) financial product;

(b) financial service;

(c) managed investment scheme;

(d) superannuation entity;

(e) trustee.

(1) In these Regulations:

***ACH*** means Australian Clearing House Pty Limited.

***Act*** means the *Corporations Act 2001*.

***agent*** means a person appointed under subsection 601CG(1) of the Act.

***approved foreign bank***:

(a) in relation to a participant of a licensed market, means a bank:

(i) established by or under the law of a foreign country; and

(ii) in relation to which there is in force an approval given by the market licensee in accordance with its operating rules or by ASIC under the market integrity rules; and

(b) in relation to a financial services licensee other than a participant of a licensed market, means a bank:

(i) regulated by an overseas regulator; and

(ii) in relation to which there is in force an approval given by ASIC for the purposes of this definition.

***approved form***, in relation to a provision of the Act or of these Regulations, means the form that is approved under paragraph 350(1)(b) of the Act for use for that provision.

***associated provisions***, in relation to provisions (the ***core provisions***) of the relevant old legislation as in force at a particular time, include (but are not limited to):

(a) any regulations or other instruments that are or were in force for the purposes of any of the core provisions at that time; and

(b) any interpretation provisions that apply or applied in relation to any of the core provisions at that time (whether or not they also apply or applied for other purposes); and

(c) any provisions relating to liability (civil or criminal) that apply or applied in relation to any of the core provisions at that time (whether or not they also apply or applied for other purposes); and

(d) any provisions that limit or limited, or that otherwise affect or affected, the operation of any of the core provisions at that time (whether or not they also limit or limited, or affect or affected, the operation of other provisions).

***ASTC*** means ASX Settlement and Transfer Corporation Pty Limited.

***ASTC certificate cancellation provisions*** means the provisions of the ASTC operating rules that deal with:

(a) the cancellation of certificates or other documents of title to Division 4 financial products; and

(b) matters incidental to the cancellation of those certificates or documents.

***ASTC‑regulated transfer*** means a transfer of a Division 4 financial product:

(a) within the meaning of:

(i) Division 4 of Part 7.11 of the Act; and

(ii) regulations relating to transfer made for sections 1074A and 1074E of the Act; and

(b) that is effected through ASTC; and

(c) that, according to the ASTC operating rules, is an ASTC‑regulated transfer.

***benefit fund*** has the meaning given by section 16B of the *Life Insurance Act 1995*.

***building society*** has the same meaning as in section 16 of the RSA Act.

***capital guaranteed***, for a superannuation product or an RSA, means that the contributions and accumulated earnings may not be reduced by a negative investment return or a reduction in the value of an asset in which the product is invested.

***capital guaranteed fund*** means a public offer superannuation fund, or a sub‑fund of a public offer superannuation fund, that has the following characteristics:

(a) its investments comprise 1 or more of the following only:

(i) deposits with an ADI;

(ii) investments in a capital guaranteed superannuation product or RSA;

(b) the contributions and accumulated earnings of its members cannot be reduced by negative investment returns (within the meaning of subregulation 5.01(1) of the SIS Regulations) or by any reduction in the value of its assets.

***capital guaranteed member*** means a member whose interest in a public offer superannuation fund is fully invested in a capital guaranteed fund.

***carbon abatement contract*** has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

***cash management trust interest*** means an interest that:

(a) is an interest in a registered scheme or a notified foreign passport fund; and

(b) relates to an undertaking of the kind commonly known as a cash management trust.

***client money reporting infringement notice***: see regulation 7.8.05A.

***client money reporting infringement notice period***: see regulation 7.8.05A.

***CPI*** means the Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Bureau of Statistics.

***Division 3 asset*** means:

(a) shares mentioned in paragraph 1073A(1)(a) of the Act; or

(b) debentures mentioned in paragraph 1073A(1)(b) of the Act; or

(c) interests in a registered scheme mentioned in paragraph 1073A(1)(c) of the Act; or

(ca) a CGS depository interest mentioned in paragraph 1073A(1)(da) of the Act; or

(d) securities mentioned in paragraph 1073A(1)(e) of the Act.

***Division 3 rights*** means:

(a) rights mentioned in paragraph 1073A(1)(d) of the Act; and

(b) rights related to securities mentioned in paragraph 1073A(1)(e) of the Act.

***Division 3 securities*** means Division 3 assets and Division 3 rights.

***Division 4 financial product*** has the meaning given by regulation 7.11.03.

***enduring power of attorney*** means an enduring power of attorney that complies with a law of a State or Territory.

***Exchange body*** means:

(a) Australian Stock Exchange Limited; or

(b) a subsidiary of Australian Stock Exchange Limited.

***financial business***means a business that:

(a) consists of, or includes, the provision of financial services; or

(b) relates wholly or partly to the provision of financial services.

***form*** means an approved form or a prescribed form.

***friendly society*** has the meaning given by section 16C of the *Life Insurance Act 1995*.

***friendly society funeral product***: see subregulation 7.6.01(7).

***FSR commencement*** means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.

***funeral services entity***: see subregulation 7.6.01(7).

***generic MySuper product***: a class of beneficial interest in a superannuation entity is a ***generic MySuper product*** if:

(a) the superannuation entity is a regulated superannuation fund; and

(b) the RSE licensee of the fund is authorised to offer that class of beneficial interest in the fund as a MySuper product under section 29T of the SIS Act; and

(c) the RSE licensee of the fund is not authorised to offer that class of beneficial interest in the fund as a MySuper product because section 29TA or 29TB of the SIS Act is satisfied in relation to the class.

***income stream financial product*** means an annuity or other facility that is a financial product which provides an income stream, including:

(a) an income stream that is an investment life insurance product; or

(b) an income designated under section 9 of the *Social Security Act 1991* or section 5H of the *Veterans’ Entitlements Act 1986*;

but does not include any of the following:

(c) a financial product under paragraph 764A(1)(ba) of the Act;

(d) anything that is not a financial product under section 765A of the Act;

(e) available money;

(f) deposit money;

(g) a managed investment product;

(ga) a foreign passport fund product;

(h) a security;

(i) a loan that has not been repaid in full;

(j) gold, silver or platinum bullion.

Note: In accordance with subsections 761G(6) and (7) of the Act, superannuation products and RSAs are not income stream financial products.

***investment‑based financial product*** means:

(a) a financial product under section 763B of the Act; or

(b) a financial product under paragraph 764A(1)(ba), (bb) or (j) of the Act; or

(c) a financial product under paragraph 764A(1)(m) of the Act that is specified to be an investment‑based financial product; or

(d) a security; or

(e) a managed investment product; or

(f) an investment life insurance product; or

(g) a deposit product; or

(ga) a carbon unit;

(gb) an Australian carbon credit unit;

(gc) an eligible international emissions unit;

but does not include any of the following:

(h) anything that is not a financial product under section 765A of the Act;

(i) an income stream financial product.

Note: In accordance with subsections 761G(6) and (7) of the Act, superannuation products and RSAs are not income stream financial products.

***Lloyd’s*** has the same meaning as in the *Insurance Act 1973*.

***medical indemnity insurance product*** means an arrangement:

(a) under which medical indemnity cover is provided to:

(i) a medical practitioner as defined in section 4 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*; or

(ii) a registered health professional prescribed by regulations made under the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* for the purposes of a provision of Part 3 of that Act; and

(b) to which the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* applies.

***minor fee****,* for a standard margin lending facility, means a fee or cost for the facility that:

(a) does not relate to the ordinary acquisition, operation or closure of the facility; and

(b) is less than $10.

***NFPFRN***: see ***Notified Foreign Passport Fund Registration Number***.

***non‑cash payment financial product*** means a financial product under section 763D of the Act, other than:

(a) a derivative; or

(b) a financial product under paragraph 764A(1)(k) of the Act; or

(c) anything that is not a financial product under section 765A of the Act.

***non‑Division 3 securities*** means financial products to which Division 3 or 4 of Part 7.11 of the Act applies because of a declaration made by ASIC under paragraph 1075A(1)(b) of the Act.

***Notified Foreign Passport Fund Registration Number***or ***NFPFRN****,* for a notified foreign passport fund, is the unique registration code allocated to the fund by the home regulator for the fund.

***old Corporations Act*** means the *Corporations Act 2001* as in force immediately before the FSR commencement.

***policy committee*** has the same meaning as in the SIS Act.

***pre‑FSR securities*** means securities defined in subsection 92(3) of the old Corporations Act.

***preserved benefits*** means preserved benefits under:

(a) Subdivision 6.1.2 of the SIS Regulations; or

(b) Subdivision 4.1.2 of the RSA Regulations.

***proper ASTC transfer*** means:

(a) an ASTC‑regulated transfer of a Division 4 financial product effected:

(i) through the prescribed CS facility operated by the ASTC; and

(ii) in accordance with the operating rules of the ASTC; and

(b) an ASTC‑regulated transfer that the ASTC, in accordance with its operating rules, determines:

(i) to comply substantially with the applicable provisions of those operating rules; and

(ii) to be taken to be, and always to have been, a proper ASTC transfer.

***public offer entity*** has the same meaning as in the SIS Act.

***public offer superannuation fund*** has the same meaning as in the SIS Act.

***qualifying gas exchange product*** means an arrangement for the physical delivery of natural gas or related goods or services, including pipeline capacity.

***qualifying gas trading exchange*** means a facility:

(a) established by the Australian Energy Market Operator Limited (ACN 072 010 327) exercising its functions under subsection 91BRK(1) of the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008* (SA); and

(b) through which persons may elect to buy and sell natural gas or related goods or services (including pipeline capacity).

***quarter day*** means 31 March, 30 June, 30 September or 31 December.

***recipient***:

(a) in relation to an infringement notice given under regulation 7.2A.04, has the meaning given by regulation 7.2A.03; and

(b) in relation to a client money reporting infringement notice, has the meaning given by regulation 7.8.05A; and

(c) in relation to an infringement notice given under regulation 7.5A.104, has the meaning given by regulation 7.5A.103.

***registration number*** means:

(a) for a company—the number allotted to the company under paragraph 118(1)(a) or 601BD(1)(a) of the Act; or

(b) for a registered body—the number allotted to it under section 601CB or 601CE of the Act; or

(c) for an auditor—the number allotted to a person on registration of that person as an auditor.

***restricted non‑preserved benefits*** means restricted non‑preserved benefits under:

(a) Subdivision 6.1.3 of the SIS Regulations; or

(b) Subdivision 4.1.3 of the RSA Regulations.

***risk‑based financial product*** means:

(a) a financial product that is a facility through which, or through the acquisition of which, a person manages financial risk; or

(b) a life risk insurance product;

but does not include any of the following:

(c) a derivative;

(d) anything that is not a financial product under section 765A of the Act.

Note: In accordance with subsections 761G(5) and (7) of the Act, general insurance products are not risk‑based financial products.

***RSA Act*** means the *Retirement Savings Accounts Act 1997*.

***RSA Regulations*** means the *Retirement Savings Accounts Regulations 1997*.

***settlement documents***, in relation to a transaction, means:

(a) if the agreement for the transaction has not been discharged—documents the supply of which in accordance with the agreement is sufficient to discharge the obligations of the seller under the agreement, in so far as the obligations relate to the supply of documents in connection with the transaction; or

(b) if the agreement for the transaction has been discharged, whether by performance or otherwise—documents the supply of which in accordance with the agreement would, if the agreement had not been discharged, be sufficient to discharge the obligations of the seller under the agreement, in so far as the obligations relate to the supply of documents in connection with the transaction.

***simple managed investment scheme*** means a registered scheme (other than a passport fund) which is or was offered because it meets 1 of the following requirements:

(a) the scheme invests at least 80% of its assets in money in an account with a bank on the basis that the money is available for withdrawal:

(i) immediately during the bank’s normal business hours; or

(ii) at the end of a fixed‑term period that does not exceed 3 months;

(b) the scheme invests at least 80% of its assets in money on deposit with a bank on the basis that the money is available for withdrawal:

(i) immediately during the bank’s normal business hours; or

(ii) at the end of a fixed‑term period that does not exceed 3 months;

(c) the scheme invests at least 80% of its assets under 1 or more arrangements by which the responsible entity of the scheme can reasonably expect to realise the investment, at the market value of the assets, within 10 days.

***simple sub‑fund product*** means a security in a retail CCIV that is, or was, offered because the security is referable to a sub‑fund of the CCIV (other than a passport fund) that meets one of the following requirements:

(a) the CCIV, in respect of the sub‑fund, invests at least 80% of the assets of the sub‑fund in money in an account with a bank on the basis that the money is available for withdrawal:

(i) immediately during the bank’s normal business hours; or

(ii) at the end of a fixed‑term period that does not exceed 3 months;

(b) the CCIV, in respect of the sub‑fund, invests at least 80% of the assets of the sub‑fund in money on deposit with a bank on the basis that the money is available for withdrawal:

(i) immediately during the bank’s normal business hours; or

(ii) at the end of a fixed‑term period that does not exceed 3 months;

(c) the CCIV, in respect of the sub‑fund, invests at least 80% of the assets of the sub‑fund under one or more arrangements by which the corporate director of the CCIV can reasonably expect to realise the investment, at the market value of the assets, within 10 days.

***SIS Act*** means the *Superannuation Industry (Supervision) Act 1993*.

***SIS Regulations*** means the *Superannuation Industry (Supervision) Regulations 1994*.

***sub‑plan***, in relation to a regulated superannuation fund, means a segment of the fund comprising a member or members of the fund, being a sub‑plan that the trustee determines should be made.

***successor fund*** has the same meaning as in the SIS Regulations.

***superannuation interest*** has the same meaning as in the SIS Act.

***superannuation lump sum*** has the meaning given by subsection 995‑1(1) of the *Income Tax Assessment Act 1997*.

***superannuation scheme*** means a complying superannuation fund within the meaning of subsection 995‑1(1) of the *Income Tax Assessment Act 1997*.

***superannuation‑sourced money*** means money in relation to which:

(a) the provider of a financial service knows that the money:

(i) will be paid to a person as a superannuation lump sum by the trustee of a regulated superannuation fund; or

(ii) has been paid as an eligible termination payment (within the meaning of these Regulations as in force immediately before 1 July 2007) or as a superannuation lump sum at any time during the previous 6 months; or

(b) the provider of the financial service ought reasonably to know that fact.

***unrestricted non‑preserved benefits*** means unrestricted non‑preserved benefits under:

(a) Subdivision 6.1.4 of the SIS Regulations; or

(b) Subdivision 4.1.4 of the RSA Regulations.

***warrant*** means:

(a) a derivative that is transferable; or

(b) a financial product that is transferable and that would, apart from the effect of paragraph 761D(3)(c) of the Act, be a derivative, and is excluded by that paragraph only because it is:

(i) a security mentioned in paragraph 92(5)(c) of the Act; or

(ii) a legal or equitable right or interest mentioned in subparagraph 764A(1)(b)(ii) of the Act; or

(iii) a legal or equitable right or interest mentioned in subparagraph 764A(1)(ba)(ii) of the Act; or

(iv) a legal or equitable right or interest mentioned in subparagraph 764A(1)(bb)(ii) of the Act.

(2) In these Regulations, a reference to a form by number is a reference to the form so numbered in Schedule 2.

1.0.02AA Meaning of *basic deposit product—*prescription ofprior notice requirement

(1) This regulation is made for the purposes of subparagraph (d)(ii) of the definition of ***basic deposit product***in section 9 of the Act.

(2) The prior notice requirement for an ADI included in the class of ADIs specified in subregulation (3) is a period of not more than 7 days before a withdrawal or transfer of funds from a facility made available by the ADI.

(3) The class of ADIs is ADIs entitled under the *Banking Act 1959* to use any of the following expressions in relation to their financial business:

(a) credit union;

(b) credit society;

(c) credit co‑operative;

(d) building society.

1.0.02AB Meaning of *prescribed CS facility*

For the purposes of the definition of ***prescribed CS facility***in section 9 of the Act, ASX Settlement and Transfer Corporation Pty Limited (also known as ‘ASTC’) is prescribed.

1.0.02A Meaning of *prescribed financial market*

For the definition of ***prescribed financial market*** in section 9 of the Act, the following financial markets are prescribed:

(a) Asia Pacific Exchange Limited;

(b) ASX Limited;

(c) Chi‑X Australia Pty Ltd;

(d) National Stock Exchange of Australia Limited;

(e) SIM Venture Securities Exchange Ltd.

1.0.02B Proprietary company thresholds (Act s 45A)

(1) For the purposes of paragraphs 45A(2)(a) and (3)(a) of the Act, the amount of $50 million is prescribed.

(2) For the purposes of paragraphs 45A(2)(b) and (3)(b) of the Act, the amount of $25 million is prescribed.

(3) For the purposes of paragraphs 45A(2)(c) and (3)(c) of the Act, the number 100 is prescribed.

1.0.03 Prescribed forms (Act s 350)

(1) A form in Schedule 2 mentioned in an item in column 4 of Schedule 1 is prescribed for the provision of the Act, or of these Regulations, that is specified in the item in column 2.

Note: Under section 350 of the Act, a document that the Act requires to be lodged with ASIC in a prescribed form must:

(a) if a form for the document is prescribed in these Regulations, be in that prescribed form; and

(b) if a form for the document is not prescribed in these Regulations but ASIC has approved a form for the document, be in that approved form.

(2) In a form, unless the contrary intention appears, a reference to a Chapter, Part, Division, section, subsection, paragraph or subparagraph is a reference to that Chapter, Part, Division, section, subsection, paragraph or subparagraph of the Act.

1.0.03A Documents that must be in the prescribed form

Documents lodged under the Act

(1) A document mentioned in the table under a provision of the Act mentioned in the table must be in the prescribed form.

| Item | Document | Provision of the Act |
| --- | --- | --- |
| 1A | Certificate to the effect that all documents accompanying a notice lodged under section 263 or 264 of the Act have been duly stamped as required by any applicable law relating to stamp duty | Paragraph 265(4)(b) |
| 1B | Notice stating that a person other than the original chargee has become the holder of a registrable charge on property of a company | Subsection 268(1) |
| 1C | Notice setting out particulars of a variation in the terms of a registrable charge on property of a company | Subsection 268(2) |
| 1 | Notice of appointment to administer a compromise or arrangement | Subsection 415(1) |
| 2 | Notice that an order for the appointment of a receiver of property has been obtained or of the appointment of a receiver | Paragraph 427(1)(a) |
| 3 | Notice of the appointment of a person to enter into possession or take control of the property of a corporation | Paragraph 427(1A)(a) |
| 4 | Notice of entering into possession or taking control | Paragraph 427(1B)(a) |
| 5 | Notice that the person has ceased to be a controller | Paragraph 427(4)(a) |
| 6 | Written notice stating that a company is taken to have passed a resolution to wind up the company | Paragraph 446A(5)(a) |
| 7 | Notice of the appointment of an administrator | Paragraph 450A(1)(a) |
| 8 | Notice of failure to execute deed of company arrangement | Paragraph 450C(a) |
| 9 | Notice of termination of deed of company arrangement | Paragraph 450D(a) |
| 10 | Notice of filing of application to wind up a company | Paragraph 470(1)(a) |
| 11 | Notice of making of order to wind up a company | Paragraph 470(1)(b) |
| 12 | Notice of withdrawal or dismissal of application to wind up a company | Paragraph 470(1)(c) |
| 15 | Written notice disclaiming property | Subsection 568A(1) |
| 20 | A copy of the whole or a specified part of the register of members of a notified foreign passport fund | Subsection 1213P(4) |

Documents lodged under the Passport Rules

(2) If the Passport Rules for this jurisdiction contain a requirement to lodge a document with ASIC (however the lodgement is described), the document must be lodged with ASIC in the prescribed form.

Note: The requirement in the Passport Rules need not use the word “lodge”. For example, if the Passport Rules contain a requirement to notify ASIC of a matter or to provide a document to ASIC, subregulation (2) requires the notification or document to be in the prescribed form.

Note: Under section 350 of the Act, a document that the Act requires to be lodged with ASIC in a prescribed form must:

(a) if a form for the document is prescribed in these Regulations, be in that prescribed form; and

(b) if a form for the document is not prescribed in these Regulations but ASIC has approved a form for the document, be in that approved form.

1.0.03B Documents that must be lodged with ASIC

A document mentioned in an item in the table for a provision mentioned in the item must be lodged:

(a) with ASIC; and

(b) if the document is mentioned for subsection 430(1) of the Act—by a controller, within 7 days of the controller receiving a report under that subsection.

| Item | Document | Provision of the Act |
| --- | --- | --- |
| 1 | Statement in writing in the prescribed form verifying a report about the affairs of a company | Subsection 430(1) or 475(1) or (2) |
| 2 | Report about the affairs of a company | Subsection 430(1) |

Note: Under section 350 of the Act, a document that the Act requires to be lodged with ASIC in a prescribed form must:

(a) if a form for the document is prescribed in these Regulations, be in that prescribed form; and

(b) if a form for the document is not prescribed in these Regulations but ASIC has approved a form for the document, be in that approved form.

On 23 December 2004, forms for the documents mentioned in item 1 of the table are not prescribed in these Regulations.

1.0.03C Documents that must be in a form approved by ASIC

A document mentioned in the table under a provision of the Act mentioned in the table must be in a form approved by ASIC (if a form has been approved).

| Item | Document | Provision of the Act |
| --- | --- | --- |
| 3 | Notice of termination of deed of company arrangement | Paragraph 450D(b) |

Note: The documents mentioned in the table are not required to be lodged with ASIC under the Act, and are not documents to which section 350 of the Act applies.

1.0.04 Directions and instructions in forms

A form must be completed in accordance with the directions and instructions specified in the form.

1.0.05 Documents and information required by forms

(1) If a form requires:

(a) the lodging of a document; or

(b) the giving of information:

(i) by completing the form in the prescribed manner; or

(ii) by supplying or completing another document;

the document or information is taken to be the document or information required for the provision of the Act or of these Regulations for which the form is approved under paragraph 350(1)(b) of the Act or included in Schedule 2.

(2) If the Act requires particulars to be provided by the giving of information in a form, the particulars included in the form are taken to be the particulars required:

(a) if the form is an approved form—for the provision of the Act for which the form is approved under paragraph 350(1)(b) of the Act; and

(b) if the form is a prescribed form—for the provision of the Act for which the form is included in Schedule 2.

1.0.06 Annexures accompanying forms

(1) In this regulation:

***annexure*** includes a document that is with a form.

(2) An annexure to a form must:

(a) have an identifying mark; and

(b) be endorsed with the words:

‘This is the annexure of (*insert the number of pages*) pages marked (*insert an identifying mark*) mentioned in the (*insert a description of the form*) signed by (*insert* ‘me’ *or* ‘us’) and dated (*insert the date of signing*)’; and

(c) be signed by each person signing the form to which the document is annexed.

(3) The pages in an annexure must be numbered consecutively.

(4) If a form has a document annexed, the following particulars of the annexure must be written on the form:

(a) the identifying mark; and

(b) the number of pages.

1.0.07 General requirements for documents

Unless ASIC otherwise approves, a document to be lodged must:

(a) be on white or light pastel colour paper:

(i) of international A4 size; and

(ii) of medium weight and good quality; and

(b) be clearly printed or written in black or dark blue in a manner that is permanent and will make possible a reproduction, by photographic, computerised or other electronic means that is satisfactory to ASIC; and

(c) not be a carbon copy or a copy reproduced by any spirit duplication method; and

(d) subject to paragraph (h), have margins of not less than 10 millimetres on all sides; and

(e) if it comprises 2 or more sheets, be fastened together securely in the top left‑hand corner; and

(f) for a document for a corporation, managed investment scheme or sub‑fund of a CCIV (the ***subject***)—display on the first page of the document or, if the document is a single sheet, on that sheet:

(i) the subject’s name; and

(ii) subject to regulation 7.6.03, the subject’s ACN, ARBN, ARSN or ARFN; and

(iii) subject to regulation 7.6.03, if the last 9 digits of the subject’s ABN are the same, and in the same order, as the last 9 digits of the subject’s ACN, ARBN, ARSN or ARFN—the subject’s ABN; and

(iv) if the subject is a managed investment scheme that is a notified foreign passport fund—the NFPFRN for the fund and any other unique number for the fund allocated to the fund by ASIC; and

(fa) for all documents—display on the first page of the document or, if the document is a single sheet, on that sheet:

(i) the title of the document; and

(ii) the section number of the Act under which the document is being lodged; and

(g) have the following information at the top left‑hand of the first sheet:

(i) registered agent number (if any); and

(ii) lodging party or agent name; and

(iii) address; and

(iv) telephone number; and

(v) facsimile number (if any); and

(vi) DX number and applicable suburb or city (if any); and

(h) at the top right‑hand of the first sheet, have a blank space that measures 35 millimetres from the top of the page and 65 millimetres from the right‑hand side of the page; and

(j) if the document is a form relating to a no liability company, be completed by inserting the words ‘No Liability’ in place of the word ‘Limited’; and

(k) in the case of an unlimited company, have the word ‘Limited’ omitted; and

(l) if the document contains maps or charts on which areas have been distinguished by colour, also distinguish those areas by hatching, numbering or lettering.

Note: In addition to the requirements in paragraph (f), if a managed investment scheme is also an Australian passport fund, all documents relating to the fund lodged with ASIC must also include the scheme’s APFRN: see section 1212B of the Act.

1.0.08 Information to accompany financial documents lodged for financial years

(1) A document lodged under subsection 319(1) of the Act for a financial year must be accompanied by the approved form setting out the following information:

(a) if the disclosing entity is a company (other than a retail CCIV):

(i) the ACN of the company or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ACN, the ABN of the company; and

(ii) the dates on which the financial year to which the document relates begins and ends; and

(iii) a statement of certification in accordance with regulation 1.0.16; or

(b) if the disclosing entity is a body (other than a company):

(i) the ARBN of the body or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARBN, the ABN of the body; and

(ii) the dates on which the financial year to which the document relates begins and ends; and

(iii) a statement of certification in accordance with regulation 1.0.16; or

(c) if the disclosing entity is a registered scheme:

(i) the ARSN of the scheme or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARSN, the ABN of the scheme; and

(ii) the dates of the beginning and end of the half‑year to which the document relates; and

(iii) the name of the responsible entity of the scheme and the name of the scheme; and

(iv) a statement of certification in accordance with regulation 1.0.16; or

(d) if the disclosing entity is a retail CCIV:

(i) the name of the sub‑fund of the CCIV in respect of which the document is lodged; and

(ii) the name of the corporate director of the CCIV; and

(iii) the ACN of the CCIV or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ACN, the ABN of the company; and

(iv) the ARFN of that sub‑fund of the CCIV or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARFN, the ABN of that sub‑fund; and

(v) the dates on which the financial year to which the document relates begins and ends; and

(vi) a statement of certification in accordance with regulation 1.0.16; or

(e) if the disclosing entity is a registrable superannuation entity:

(i) the entity’s ABN; and

(ii) the dates on which the financial year to which the document relates begins and ends; and

(iii) the name of the entity and its RSE licensee; and

(iv) a statement of certification in accordance with regulation 1.0.16.

Note: Section 1232C of the Act extends section 292 of the Act to preparing annual financial reports and directors’ reports for sub‑funds of retail CCIVs, and applies Division 1 of Part 2M.3 of the Act accordingly.

(2) A document lodged by a notified foreign passport fund under subsection 319(1AA) of the Act for a financial year must be accompanied by the approved form setting out the following information:

(a) the NFPFRN for the fund and any other unique number for the fund allocated to the fund by ASIC;

(b) the name of the fund;

(c) the name and ARBN of the operator of the fund;

(d) the dates on which the financial year to which the document relates begins and ends;

(e) a statement of certification in accordance with regulation 1.0.16.

1.0.09 Information to accompany financial documents etc lodged for half‑years

A document lodged under section 320 of the Act for a half‑year must be accompanied by the approved form setting out the following information:

(a) if the disclosing entity is a company (other than a retail CCIV):

(i) the ACN of the company or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ACN, the ABN of the company; and

(ii) the dates on which the half‑year to which the document relates begins and ends; and

(iii) a statement of certification in accordance with regulation 1.0.16; or

(b) if the disclosing entity is a body (other than a company):

(i) the ARBN of the body or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARBN, the ABN of the body; and

(ii) the dates on which the half‑year to which the document relates begins and ends; and

(iii) a statement of certification in accordance with regulation 1.0.16; or

(c) if the disclosing entity is a registered scheme:

(i) the ARSN of the scheme or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARSN, the ABN of the scheme; and

(ii) the dates of the beginning and end of the half‑years to which the document relates; and

(iii) the name of the responsible entity of the scheme and the name of the scheme; and

(iv) a statement of certification in accordance with regulation 1.0.16; or

(d) if the disclosing entity is a retail CCIV:

(i) the name of the sub‑fund of the CCIV in respect of which the document is lodged; and

(ii) the name of the corporate director of the CCIV; and

(iii) the ACN of the CCIV or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ACN, the ABN of the company; and

(iv) the ARFN of that sub‑fund of the CCIV or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARFN, the ABN of that sub‑fund; and

(v) the dates on which the financial year to which the document relates begins and ends; and

(vi) a statement of certification in accordance with regulation 1.0.16.

Note: Section 1232F of the Act extends section 302 of the Act to preparing half‑year financial reports and directors’ reports for sub‑funds of retail CCIVs (if there are ED securities referable to the sub‑fund), and applies Division 2 of Part 2M.3 of the Act accordingly.

1.0.10 Continuous disclosure notices

A document lodged under section 675 or 675A of the Act must be accompanied by Form 1003 setting out the following information:

(a) if the disclosing entity is a body:

(i) the ACN or ARBN of the body or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ACN or ARBN, the ABN of the body; and

(ii) a statement of certification in accordance with regulation 1.0.16; or

(b) if the disclosing entity is a registered scheme:

(i) the ARSN of the scheme or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARSN, the ABN of the scheme; and

(ii) the name of the responsible entity of the scheme and the name of the scheme; and

(iii) a statement of certification in accordance with regulation 1.0.16.

1.0.11 Certain documents to be signed by personal representatives etc

Unless these Regulations state otherwise, a document relating to a corporation that is a proprietary company to which section 201F of the Act applies that does not have a director or secretary must be signed by the personal representative or trustee mentioned in that section.

1.0.12 Form of notice of resolution

A copy of a resolution lodged under subsection 136(5), 157(2), 162(3), 246F(3), 254H(4), 254N(2), 256C(3), 260B(7), 461(2), 506(1B), 507(11) or 510(1A) of the Act must be set out in, or annexed to, a notice in accordance with the approved form.

1.0.13 Time for lodging documents

If:

(a) a document must be lodged; and

(b) the period within which the document must be lodged is not prescribed;

the document must be lodged:

(c) if paragraph (d) does not apply—within one month; or

(d) if the document is to be lodged by a foreign company and ASIC allows a further period because of special circumstances—that further period;

after the happening of the event to which the document relates.

1.0.14 Address of registered office or place of business

If notice must be given under these Regulations of:

(a) the address of an office or a proposed office; or

(b) the address of a place of business;

of a corporation or a person, the notice must include:

(c) if applicable, the number of the room in which; and

(d) if applicable, the number of the floor or level on which; and

(e) the place in Australia in which;

the office or place of business is, or is to be, situated.

1.0.15 Affidavits and statements in writing

(1) An affidavit or statement in writing must be sworn or made, on behalf of a corporation, by a director or a secretary of the corporation.

(2) If an affidavit is sworn outside Australia, the affidavit is sufficient if it appears to be sworn in accordance with the requirements of the law of that place.

1.0.16 Certification and verification of certain documents

(1) A document relating to a corporation or registered scheme that is to be certified or verified must be certified or verified in the approved form and signed by:

(a) a director or secretary of the corporation, or of the responsible entity of the scheme, who resides in Australia or an external territory; or

(b) an agent of the corporation or entity or, if the agent is a company, a director or secretary of the company who resides in Australia or an external territory.

(2) Subregulation (1) does not apply to a document relating to a notified foreign passport fund.

(3) A document relating to a notified foreign passport fund that is to be certified or verified must be certified or verified in the approved form and signed by:

(a) a director or secretary of the operator of the fund; or

(b) the local agent for the operator of the fund; or

(c) if the local agent is a company—a director or secretary of that company.

(4) A document relating to a registrable superannuation entity that is to be certified or verified must be certified or verified in the approved form and signed by a director of the entity.

1.0.17 Documents signed or sworn in accordance with the rules of court

(1) A document that is signed in accordance with the rules of court is taken to have been signed in accordance with regulation 1.0.11.

(2) An affidavit or statement that is sworn or made in accordance with the rules of court is taken to have been sworn or made in accordance with regulation 1.0.15.

1.0.18 Prescribed provisions (Act s 53)

For section 53 of the Act, the following provisions of the Act are prescribed:

(a) section 657A;

(b) paragraphs 12(2)(b) and (c) of the Act.

1.0.20 Copies of orders to be lodged

A person who obtains an order of the Court under or for:

(e) subsection 484(1); or

(ea) paragraph 484(2)(c); or

(f) section 583; or

(g) section 585; or

(h) section 601ND; or

(j) section 1322;

of the Act, must lodge an office copy of the order with ASIC.

1.0.21 Identification of lodged orders

If an order or copy of an order of a court is lodged with ASIC, it must be accompanied by a cover page in Form 105 identifying the legislative provision or other law under which the order was made and the nature of the order.

1.0.22 Meaning of *this jurisdiction*—specification of external Territories for specified provisions of Chapter 7 of the Act

For the purposes of subsection 5(9) of the Act, each of the external Territories is included in ***this jurisdiction*** for the purposes of Chapter 7 of the Act (except Parts 7.2 to 7.5 and Part 7.11) in relation to:

(a) a superannuation product; and

(b) an RSA; and

(c) a financial service that relates to a superannuation product; and

(d) a financial service that relates to an RSA.

Part 1.1—Prescribed amounts

1.1.01 Prescribed amounts

The amount specified in an item in column 3 of Schedule 4 is prescribed in relation to the matter specified in the item in column 2.

Part 1.2—Interpretation

Division 1—General

1.2.01 Remuneration recommendations (Act s 9B)

For paragraph 9B(2)(f) of the Act, a recommendation, or advice or information, provided in relation to one or more members of the key management personnel for a company by an employee of a company within the same consolidated entity, is not a remuneration recommendation.

Part 1.2A—Disclosing entities

1.2A.01 Securities declared not to be ED securities

For section 111AJ of the Act, the following securities are declared not to be ED securities:

(a) securities of a body that, under the listing rules of the Australian Stock Exchange Limited, is an exempt foreign entity; or

(b) securities that are quoted on Australian Bloodstock Exchange Limited.

1.2A.02 Foreign companies issuing securities under foreign scrip offers etc exempt from disclosing entity provisions

(1) For section 111AS of the Act, a foreign company is exempt from the disclosing entity provisions in respect of ED securities under section 111AG of the Act if:

(a) the company issues the securities in connection with a foreign takeover bid or foreign scheme of arrangement; and

(b) the securities issued are, at the time of issue, securities in a class of securities quoted on an approved foreign exchange; and

(c) the terms and conditions of the issue to citizens and Australian permanent residents are the same as those applying to each other person receiving securities that are in the same class; and

(d) the same notices, documents or other information (or, where applicable, an English translation of these) (modified, if necessary, to include any additional information for the purposes of complying with Chapter 6D of the Act) are given to Australian citizens or permanent residents as are given to each other person; and

(e) the notices, documents and other information are given to Australian citizens and permanent residents at the same time, or as soon as practicable after, they are given to those other persons; and

(f) in relation to the issue—the company complies with all legislative and stock exchange requirements in the place in which is located:

(i) the approved foreign exchange; or

(ii) if more than one—the principal approved exchange;

on which the company’s securities are quoted.

(2) In this regulation:

***approved foreign exchange*** includes:

(a) American Stock Exchange Inc.;

(b) New York Stock Exchange Inc.;

(c) New Zealand Stock Exchange;

(d) The Stock Exchange of Hong Kong Ltd;

(e) Stock Exchange of Singapore Limited;

(f) The Amsterdam Stock Exchange;

(g) the Frankfurt Stock Exchange;

(h) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;

(i) the Milan Stock Exchange;

(j) the NASDAQ National Market;

(k) the Paris Bourse;

(l) the Tokyo Stock Exchange;

(m) the Toronto Stock Exchange;

(n) the Zurich Stock Exchange.

***foreign scheme of arrangement*** means a compromise or arrangement that is subject to court approval under subsection 411(6) of the Act, between:

(a) a foreign company and a class of its creditors; or

(b) a foreign company and a class of its members.

***foreign takeover bid*** means a bid to acquire some or all of the securities of:

(a) all holders of a class of securities of a foreign company; or

(b) all holders of those securities except the bidder or the bidder and associates of the bidder.

1.2A.03 Foreign companies issuing securities under employee share scheme exempt from the disclosing entity provisions

(1) For section 111AS of the Act, a foreign company is exempt from the disclosing entity provisions in respect of an offer of shares in the company for issue or sale:

(a) that is made to employees of the company, or of an associated body corporate, under an employee share scheme; and

(b) in relation to which a disclosure document is lodged with ASIC.

(2) Subregulation (1) is not affected by any action of an employee, the result of which is that another person who is not an employee acquires an interest in a share issued under the employee share scheme.

(3) For this regulation:

(a) an ***employee share scheme*** is a scheme under which a company offers for issue or sale shares (or options over issued shares) in the company only to a person who is a full‑time or part‑time director or employee of the company or of an associated body corporate when the offer is made; and

(b) a body corporate is an ***associated body corporate*** in relation to a foreign company if:

(i) the body corporate is related to the company within the meaning of section 50 of the Act; or

(ii) the body corporate is entitled to at least 20% of the voting shares of the company; or

(iii) the company is entitled to at least 20% of the voting shares of the body corporate.

Chapter 2A—Registration of companies

Part 2A.1—Size of partnerships or associations (Act s 115(2))

2A.1.01 Size of partnerships or associations

(1) For paragraph 115(1)(b) of the Act, the number prescribed for a kind of partnership or association is the number specified in the following table for that kind of partnership or association:

| Item | Kind of partnership or association | Number |
| --- | --- | --- |
| 1 | (a) Actuaries, medical practitioners, patent attorneys, sharebrokers, stockbrokers or trademark attorneys  (b) Partnerships or associations of the kind specified in subregulation (2) | 50 |
| 2 | Architects, pharmaceutical chemists or veterinary surgeons | 100 |
| 3 | Legal practitioners | 400 |
| 4 | Accountants | 1 000 |

(2) For paragraph (b) of item 1 of the table in subregulation (1), the partnership or association is one that:

(a) has as its primary purpose collaborative scientific research; and

(b) includes as members:

(i) at least 1 university; and

(ii) at least 1 private sector participant;

whether or not it also includes government agencies or publicly funded research bodies.

(3) In subregulation (2):

***private sector participant*** means an entity that obtains the majority of its revenue from sources other than Commonwealth, State or Territory appropriations.

Part 2A.2—Change of place of registration of company (Act s 119A(3))

2A.2.01 Approval of application for change of place of registration

(1) An application to ASIC for a change in the State or Territory in this jurisdiction in which a company is taken to be registered must be approved by a special resolution of the company.

(2) A copy of the special resolution must be given to ASIC within 14 days after the day on which it is passed.

2A.2.02 Special resolution may be set aside by Court order

(1) Within 28 days after the passing of a special resolution approving an application for a change in the State or Territory in this jurisdiction in which a company is taken to be registered, a member, or members, of the company having at least 10% of the votes capable of being cast on the special resolution may apply in writing to the Court to have the resolution set aside.

(2) A member may, with the written consent of other members mentioned in subregulation (1), apply on their behalf to the Court under that subregulation.

(3) The Court may order the special resolution to be set aside if the Court is satisfied that it would unfairly prejudice the applicant or applicants if the State or Territory in which the company is taken to be registered were changed in accordance with the resolution.

(4) The company must give ASIC a copy of the Court order within 14 days after the day on which it is made.

2A.2.03 Application for change of place of registration

(1) A company may, in accordance with a special resolution of the company, apply to ASIC for a change in the State or Territory in this jurisdiction in which the company is taken to be registered.

(2) The application must be in accordance with the approved form.

2A.2.04 Change of place of registration

(1) On application under regulation 2A.2.03, ASIC must alter the details of the company’s registration to show the change in the State or Territory in this jurisdiction in which the company is taken to be registered if:

(a) the company has passed a special resolution approving the application for the change; and

(b) the Court has not made an order setting aside the special resolution; and

(c) the relevant Minister of the State or Territory in which the company is taken to be registered has approved the change under subparagraph 119A(3)(a)(i) of the Act; and

(d) ASIC is not aware of any other reason why the change should not be made.

(2) ASIC must not alter details of the company’s registration until 28 days after the day on which the application was made.

(3) ASIC must give the company a new certificate of registration after it alters details of the company’s registration.

Chapter 2B—Basic features of a company

Part 2B.6—Names

2B.6.01 Availability of names (Act s 147)

(1) For paragraphs 147(1)(a) and (b) of the Act, the rules for ascertaining whether a name is identical with another name are the rules set out in Part 1 of Schedule 6.

(2) For paragraph 147(1)(c) of the Act, a name is unacceptable for registration under the regulations if it is unacceptable under the rules set out in Part 2 of Schedule 6.

2B.6.02 Consents required for use of certain letters, words and expressions

(1) This regulation applies to a name if:

(a) the name:

(i) is the subject of an application for registration of a name under section 117 of the Act; or

(ii) is the subject of an application for reservation of a name under section 152 of that Act; or

(iii) for an application for a change of name under section 157 of the Act—is the name to which the previous name is to be changed; and

(b) the name is, uses or includes:

(i) letters, or a word or expression, specified in column 2 of an item in Part 4 or 5 of Schedule 6; or

(ii) other letters, or another word or expression (whether or not in English), that is of like import to the letters, word or expression specified in the item.

(2) In paragraph (1)(b), a reference to letters, a word or an expression being used includes a reference to the letters, word or expression being used:

(a) as part of another word or expression; or

(b) in combination with other words or letters, or other symbols.

(3) However, this regulation does not apply to use of the letters ADI as part of another word.

Example: The letters ***adi*** appear in the word ***traditional***. This regulation does not apply to use of the word ***traditional***.

(4) If an item in Part 4 of Schedule 6 applies in relation to the name, the application must be accompanied by the written consent of the Minister who is specified in the item.

(5) If an item in Part 5 of Schedule 6 applies in relation to the name, the application must be accompanied by the written consent of the public authority, instrumentality or agency that is specified in the item.

2B.6.02A Exemption from requirement to include “Limited” in name

(1) For the purposes of subsections 5H(5) and 5I(1) of the Act, subsection 148(2) of the Act does not apply in relation to Westpac Banking Corporation (ABN 33 007 457 141).

(2) For the purposes of subsection 5I(1) of the Act, the *Westpac Banking Corporation (Transfer of Incorporation) Act 2000* (NSW) is the specified law.

2B.6.03 Exemptions from requirement to set out name and ACN on certain documents (Act s 155)

For section 155 of the Act, the exemptions provided for in Schedule 7 apply in relation to the requirements of subsection 153(2) of the Act.

Chapter 2C—Registers

Part 2C.1—Registers generally

Division 2C.1.1—Location of register

2C.1.01 Form of notice

A notice to be lodged under subsection 172(2) of the Act must be in a form approved by ASIC (if a form has been approved).

Division 2C.1.2—Right to inspect and get copies of register

2C.1.02 Form of register

For subsection 173(3) of the Act, a copy of a register must be provided as a delimited text file:

(a) produced by a commercially available spreadsheet or database application; and

(b) copied onto a CD‑ROM or a USB portable memory device.

2C.1.03 Improper purposes for getting copy of register

For paragraph 173(3A)(b) of the Act, the following purposes are prescribed:

(a) soliciting a donation from a member of a company;

(b) soliciting a member of a company by a person who is authorised to assume or use the word stockbroker or sharebroker in accordance with section 923B of the Act;

(c) gathering information about the personal wealth of a member of a company;

(d) making an offer that satisfies paragraphs 1019D(1)(a) to (d) of the Act;

(e) making an invitation that, were it an offer to purchase a financial product, would be an offer that satisfies paragraphs 1019D(1)(a) to (d) of the Act.

Note: See subsection 1019D(1) of the Act for a description of unsolicited offers to purchase financial products off‑market.

2C.1.04 Information to be included in application for copy of register

For paragraph 173(3A)(c) of the Act, the information that must be contained in an application is the name and address of the applicant.

Note: An application must also state the purpose for accessing a copy of a register—see subsection 173(3A) of the Act.

Division 2C.1.3—Use of information on registers by bodies corporate

2C.1.05 Contact with members after failure to provide copy of register

(1) This regulation applies if a body corporate mentioned in regulation 12.8.02 has failed to give a person a copy of the part of the register of members of the body who hold member shares:

(a) within 28 days after the person’s request for a copy; or

(b) if a longer period has been allowed by ASIC—within the longer period.

(2) If the person:

(a) makes a statutory declaration that the person intends to use information that is contained in that part of the register:

(i) for the purpose of contacting members of the body, or sending material to members of the body, for a purpose mentioned in subsection 177(1A) of the Act; and

(ii) in a way that does not contravene that subsection or another law; and

(b) gives the statutory declaration to the body corporate; and

(c) pays the reasonable costs of contacting the members, or sending material to the members;

the body corporate must do everything that is reasonably possible to arrange for the members to be contacted, or for the material to be sent to the members, on the person’s behalf by a third party service provider nominated by the body corporate.

(3) If the body corporate believes on reasonable grounds that the person intends to use information that is contained in that part of the register:

(a) for a purpose that is not in accordance with subparagraph (2)(a)(i); or

(b) in a way that is not in accordance with subparagraph (2)(a)(ii);

the body corporate is not required to arrange for the members to be contacted or for the material to be sent to the members on the person’s behalf, and may terminate any existing arrangement.

(4) The arrangements made by the body corporate must ensure that, to the extent reasonably possible:

(a) the details, from the register of members, of each member to whom material is to be sent, or with whom contact is to be made, will be provided to the third party service provider within 14 days after the person pays the costs mentioned in subregulation (2); and

(b) a copy of any material that is to be sent to a member will be provided to the third party service provider within 28 days after the person provides the material to the body corporate; and

(c) if material is not to be sent to a member—written details of the contact that is to be made with a member must be provided to the third party service provider within 28 days after the person provides the written details to the body corporate; and

(d) for any material that is to be sent to a member—the material will be sent to the member within 14 days after the body corporate provides the material to the third party service provider; and

(e) if material is not to be sent to a member—contact will be made with the member within 14 days after the body corporate provides, to the third party service provider, the written details of the contact that is to be made with the member.

(5) An arrangement made under subregulation (2) must:

(a) allow for contact to be made, or material to be sent, for a period of 6 months after the period mentioned in subregulation (1); and

(b) require the person to pay the reasonable costs of contacting the members or sending material to the members to be paid on each occasion before the contact is made or the material is sent.

(6) A reference in subregulation (1) to the register of members of a body corporate who hold member shares includes a reference to:

(a) the register of members of a body corporate that is a company limited by guarantee; and

(b) the register of members of a body corporate limited by shares and guarantee, who do not hold shares in the body.

Chapter 2D—Officers and employees

Part 2D.2—Restrictions on indemnities, insurance and termination payments

Division 2D.2.2—Termination payments

2D.2.01 Meaning of *base salary*

(1) For the definition of ***base salary*** in section 9 of the Act, the matters specified in the following table are base salary.

| Item | Matter |
| --- | --- |
| 1 | The components of a short‑term employee benefit that:  (a) are not dependent on the satisfaction of a performance condition; and  (b) are specified in paragraphs (a), (c) and (d) of column 3 of item 6 in the table in subregulation 2M.3.03(1); and  (c) are paid during the relevant period |
| 2 | A superannuation contribution that:  (a) is not dependent on the satisfaction of a performance condition; and  (b) is paid during the relevant period |
| 3 | A share‑based payment that:  (a) is not dependent on the satisfaction of a performance condition; and  (b) is specified in column 3 of item 11 in the table in subregulation 2M.3.03(1); and  (c) is paid during the relevant period |
| 4 | A liability or prospective liability to pay tax in respect of a fringe benefit taxable amount under:  (a) the *Fringe Benefits Tax Assessment Act 1986*; or  (b) the *Fringe Benefits Tax Act 1986*;  that relates to the provision of a matter specified in item 1, 2 or 3 |

(2) For subregulation (1):

(a) if a person has held an office in relation to a company:

(i) throughout a period of more than 12 months; or

(ii) throughout a number of periods of more than 12 months in total;

the ***relevant period*** for that person is the last 12 months of that period or the last 12 months of the total period; and

(b) if a person has held an office in relation to a company:

(i) throughout a period of 12 months or less; or

(ii) throughout a number of periods of 12 months or less in total;

the ***relevant period*** for that person is that period or the total period.

2D.2.02 Meaning of *benefit*

(1) For paragraph 200AB(1)(e) of the Act, each of the following things is specified:

(a) any kind of pension, other than a pension paid from a superannuation fund or a superannuation annuity (whether it is paid from an Australian or a foreign fund);

(b) an amount paid as a voluntary out‑of‑court settlement in a matter relating to the termination of employment;

(c) a payment:

(i) that is made as part of a restrictive covenant, restraint‑of‑trade clause or non‑compete clause (however described); and

(ii) the value of which, when added to the value of all other payments (if any) already made or payable in connection with the person’s retirement from board or managerial offices in the company and related bodies corporate, exceeds the payment limit set by section 200G of the Act.

Note: Subsection 200AB(1) of the Act provides that a benefit includes specified things. Paragraph 200AB(1)(e) of the Act provides that a benefitincludes a thing specified in regulations. Things that are not specified in subsection 200AB(1) of the Act or subregulation (1) may also be benefits for the purposes of the Act.

(2) For subsection 200AB(2) of the Act, each of the following things is specified:

(a) a deferred bonus, including a benefit attributable to:

(i) the release of the deferred bonus from a restriction relating to death or incapacity; or

(ii) the investment of the deferred bonus; or

(iii) another change to the value of the deferred bonus;

(b) a payment from a defined benefits superannuation scheme that was in existence when this regulation commenced;

(c) a genuine superannuation contribution that is paid by an employer or employee on or after the commencement of this regulation;

(d) genuine accrued benefits that are payable under a law within the meaning of section 200H of the Act;

(e) a payment made under a requirement imposed by a law of another country;

(f) a reasonable payment that is made:

(i) in accordance with a policy of the company or body that applies to all employees; and

(ii) as a result of a genuine redundancy; and

(iii) having regard to the length of a person’s service in an office or position;

(g) a payment from a prescribed superannuation fund due to death or incapacity.

Example for paragraph (d): A payment of annual leave, long service leave or sick leave.

Note: Subsection 200AB(2) of the Act provides that a benefit does not include a thing specified in regulations. Things that are not specified in subregulation (2) may also not be benefits for the purposes of the Act.

(3) In this regulation:

***deferred bonus*** includes an amount, or property, that:

(a) is earned by, accrued by or allocated to a person as remuneration in respect of a period of employment before the person’s retirement; and

(b) is not paid, provided or released to the person at the time at which it is earned, accrued or allocated.

***prescribed superannuation fund*** has the meaning given by section 200B of the Act.

2D.2.03 When benefit given in connection with retirement from an office or a position

(1) For subsection 200A(1A) of the Act, each of the following circumstances is specified in relation to a benefit:

(a) circumstances in which the benefit is the automatic vesting of share‑based payments for a person on or as a result of retirement from an office or a position;

(b) circumstances in which the benefit is the accelerated vesting of share‑based payments for a person on or as a result of retirement from an office or a position; and

(c) circumstances in which the benefit is a payment made to a person in lieu of the giving of notice of termination.

Note: Subsection 200A(1A) of the Act provides that a benefit is given in connection with a person’s retirement from an office or a position if the benefit is given in circumstances specified in regulations.

(2) For paragraph 200F(1)(b) of the Act, a benefit requires shareholder approval:

(a) if it:

(i) is a deferred bonus under paragraph 2D.2.02(2)(a); and

(ii) is subject to automatic or accelerated vesting under subregulation (1); and

(iii) exceeds the payment limit set by section 200G of the Act; and

(b) if it is not a benefit attributable to the release of a deferred bonus from a restriction due to death or incapacity.

Part 2D.6—Disqualification from managing corporations

Division 2D.6.1—Automatic disqualification (Act s 206B)

2D.6.01 Prescribed foreign jurisdictions (Act s 206B(7))

For section 206B of the Act, a foreign country, or part of a foreign country, mentioned in the following table is prescribed.

| Item | Country or part of country |
| --- | --- |
| 1 | New Zealand |

Part 2D.7—Ban on hedging remuneration of key management personnel

2D.7.01 Hedging arrangements (Act s 206J(3))

(1) For subsection 206J(3) of the Act, an arrangement in the following table is to be treated as an arrangement that has the effect of limiting the exposure of a member mentioned in subsection 206J(1) of the Act to the risk mentioned in that subsection.

|  |  |
| --- | --- |
| Item | Arrangement |
| 1 | A put option on incentive remuneration |
| 2 | A short position on shares that forms part of incentive remuneration |
| 3 | An income protection insurance contract in which the insurable risk event affects the financial value of remuneration or equity or an equity‑related instrument for the key management personnel |

(2) For subsection 206J(3) of the Act, an arrangement in the following table is not to be treated as an arrangement that has the effect of limiting the exposure of a member mentioned in subsection 206J(1) of the Act to the risk mentioned in that subsection.

|  |  |
| --- | --- |
| Item | Arrangement |
| 1 | An income protection insurance contract in which the insurable risk event is the death, incapacity or illness of any of the key management personnel |
| 2 | A foreign currency risk arrangement |

(3) In this regulation, a ***short position*** is a position in relation to shares in a listed entity where the quantity of the shares that a person has is less than the quantity of the shares that the person has an obligation to deliver.

(4) In subregulation (3), the person has the shares if:

(a) the person is holding the shares on the person’s own behalf; or

(b) another person is holding the shares on the person’s behalf; or

(c) the person has entered into an agreement to buy the shares but has not received the shares; or

(d) the person has vested title in the shares in a borrower, or in an entity nominated by the borrower, under a securities lending arrangement.

(5) In subregulation (3), the shares that the person has an obligation to deliver are the shares that the person:

(a) has an obligation to deliver under a sale agreement where the shares have not been delivered; or

(b) has an obligation to vest title in a lender under a securities lending arrangement; or

(c) has any other non‑contingent legal obligation to deliver.

Chapter 2E—Related party transactions

2E.1.01 Small amounts given to related entity

For subsection 213(1) of the Act, $5 000 is prescribed.

Chapter 2G—Meetings

Part 2G.2—Meetings of members of companies

Division 6—Proxies and body corporate representatives

2G.2.01 Authentication of appointment of proxy (Act s 250A)

(1) For subsection 250A(1) of the Act, an electronic authentication of an appointment of a proxy must include:

(a) a method of identifying the member; and

(b) an indication of the member’s approval of the information communicated.

(2) If a member appoints a proxy by e‑mail or Internet‑based voting:

(a) the member must be identified by personal details (for example, the member’s name, address and date of birth); and

(b) the member’s approval of the information communicated must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a shareholder registration number or holder identification number).

Chapter 2K—Charges

Part 2K.2—Registration

2K.2.01 Lien or charge on crop or wool, or stock mortgage, that is a registrable security: prescribed law—subsection 262(5) of the Act

For subsection 262(5) of the Act, each of the following laws is a prescribed law of a State or Territory:

NEW SOUTH WALES

Parts II and III of the Liens on Crops and Wool and Stock Mortgages Act 1898

Parts 2 and 3 (to the extent that Part 3 applies to agricultural goods mortgages) of the *Security Interests in Goods Act 2005*

VICTORIA

Parts VII and VIII of the *Instruments Act 1958*

QUEENSLAND

Part II (being provisions that apply in relation to registration of instruments that are stock mortgages, liens upon crops and liens on wool) and Part IV (other than section 24) of the *Bills of Sale and Other Instruments Act 1955*

*The Liens on Crops of Sugar Cane Act 1931*

WESTERN AUSTRALIA

Sections 7 and 8 and Parts IX, X and XI of the *Bills of Sale Act 1899*

SOUTH AUSTRALIA

*Liens on Fruit Act, 1923*

*Stock Mortgages and Wool Liens Act, 1924*

TASMANIA

Sections 36 of the *Bills of Sale Act 1900*

S*tock, Wool and Crop Mortgages Act 1930*

AUSTRALIAN CAPITAL TERRITORY

Parts IV and V of the *Instruments Act 1933*.

2K.2.02 Time period for the provisional registration of charges

For paragraph 265(5)(b) of the Act, the period in which a certificate to the effect set out in paragraph 265(4)(b) of the Act must be produced to ASIC is 90 days after the notice is lodged.

2K.2.03 Charge that is a registrable security: specified law—paragraphs 273A(4)(b), 273B(3)(b) and 273C(3)(b) of the Act

For paragraphs 273A(4)(b), 273B(3)(b) and 273C(3)(b) of the Act the following law is a specified law of a State or Territory:

NEW SOUTH WALES

*Security Interests in Goods Act 2005*

Chapter 2L—Debentures

Part 2L.2—Duties of borrower

2L.2.01 Register relating to trustees for debenture holders

(1) For subsection 283BCA(2) of the Act, ASIC must enter the following details in the register in relation to a trustee for debenture holders:

(a) the name and address of the trustee;

(b) either:

(i) if the trustee has an ACN—the trustee’s ACN; or

(ii) the trustee’s ABN;

(c) the name and address of the borrower who appointed the trustee;

(d) the name of the trust for which the trustee has been appointed to act;

(e) the day the trust deed was executed.

(2) If ASIC receives a notice from a borrower under subsection 283BC(2) of the Act that the trustee has revoked the trust deed, it must amend the register by removing the details entered on the register in relation to the trustee.

Chapter 2M—Financial reports and audit

Part 2M.3—Financial reporting

Division 1—Annual financial reports and directors’ reports

2M.3.01 Disclosures required by notes to consolidated financial statements—annual financial reports (Act s 295)

(1) For paragraph 295(3)(a) of the Act, if paragraph 295(2)(b) of the Act applies to a parent entity, the following disclosures are required in the notes to the financial statements of the consolidated entity:

(a) current assets of the parent entity;

(b) total assets of the parent entity;

(c) current liabilities of the parent entity;

(d) total liabilities of the parent entity;

(e) shareholders’ equity in the parent entity separately showing issued capital and each reserve;

(f) profit or loss of the parent entity;

(g) total comprehensive income of the parent company;

(h) details of any guarantees entered into by the parent entity in relation to the debts of its subsidiaries;

(i) details of any contingent liabilities of the parent entity;

(j) details of any contractual commitments by the parent entity for the acquisition of property, plant or equipment;

(k) comparative information for the previous period for each of paragraphs (a) to (j).

(2) The disclosures in subregulation (1) must be calculated in accordance with accounting standards in force in the financial year to which the disclosure relates.

(3) In this regulation:

***parent entity*** means a company, registered scheme, registrable superannuation entity or disclosing entity that is required by the accounting standards to prepare financial statements in relation to a consolidated entity.

2M.3.03 Prescribed details (Act s 300A)

(1) For paragraph 300A(1)(c) of the Act, the details set out in the table relating to a person are prescribed.

| Item | Condition (if any) | Details |
| --- | --- | --- |
| *General* | | |
| 1 |  | The person’s name |
| 2 |  | Each position held by the person in the financial year |
| 3 | If the person has held a position mentioned in item 2 for less than the whole financial year | (a) The date on which the person began holding the position  (b) The date (if any) on which the person ceased to hold the position |
| 4 | If there has been a change in the chief executive officer or a director of the entity during the period:  (a) starting immediately after the reporting date; and  (b) ending immediately before the date on which the financial report is authorised for issue | (a) The name of each person involved in the change  (b) The position involved  (c) The date on which the change occurred |
| 5 | If a person (other than a director or chief executive officer) has retired during the period:  (a) starting immediately after the reporting date; and  (b) ending immediately before the date on which the financial report is authorised for issue | (a) The person’s name  (b) The position involved  (c) The date on which the retirement took effect |
| *Payments and benefits* | | |
| 6 | Note: See subregulation (2). | The person’s short‑term employee benefits, divided into at least the following components:  (a) cash salary, fees and short‑term compensated absences;  (b) short‑term cash profit‑sharing and other bonuses;  (c) non‑monetary benefits;  (d) other short‑term employee benefits |
| 7 | Note: See subregulation (2). | The person’s post‑employment benefits, divided into at least the following components:  (a) pension and superannuation benefits;  (b) other post‑employment benefits |
| 8 | Note: See subregulation (2). | The person’s long‑term employee benefits other than benefits mentioned in items 6 and 7, separately identifying any amount attributable to a long‑term incentive plan |
| 9 | Note: See subregulation (2). | The person’s termination benefits |
| 10 | For any position the person started to hold during the financial year | Payments (if any) made to the person, before the person started to hold the position, as part of the consideration for the person agreeing to hold the position, including:  (a) the monetary value of the payment; and  (b) the date of the payment |
| 11 | Note: See subregulation (2). | Share‑based payments made to the person, divided into at least the following components:  (a) equity‑settled share‑based payment transactions, showing separately:  (i) shares and units; and  (ii) options and rights;  (b) cash‑settled share‑based payment transactions; |
|  |  | (c) all other forms of share‑based payment compensation (including hybrids) |
| *Compensation* | | |
| 12 | For each grant of a cash bonus, performance‑related bonus or share‑based payment compensation benefit made to a person, whether part of a specific contract for services or not | The terms and conditions of each grant affecting compensation in the reporting period or a future reporting period, including the following:  (a) the grant date;  (b) the nature of the compensation granted; |
|  |  | (c) the service and performance criteria used to determine the amount of compensation; |
|  |  | (d) if there has been any alteration of the terms or conditions of the grant since the grant date—the date, details and effect of each alteration; |
|  |  | (e) the percentage of the bonus or grant for the financial year that was paid to the person, or that vested in the person, in the financial year; |
|  |  | (f) the percentage of the bonus or grant for the financial year that was forfeited by the person (because the person did not meet the service and performance criteria for the bonus or grant) in the financial year; |
|  |  | (g) the financial years, after the financial year to which the report relates, for which the bonus or grant will be payable if the person meets the service and performance criteria for the bonus or grant; |
|  |  | (h) estimates of the maximum and minimum possible total value of the bonus or grant (other than option grants) for financial years after the financial year to which the report relates |
| 13 | For each contract for services between a person and the disclosing entity (or any of its subsidiaries) | Any further explanation that is necessary in addition to those prescribed in paragraph 300A(1)(ba) of the Act and item 12 to provide an understanding of: |
|  |  | (a) how the amount of compensation in the current reporting period was determined; and |
|  |  | (b) how the terms of the contract affect compensation in future periods |
| 14 | If the terms of share‑based payment transactions (including options or rights) granted as compensation to key management personnel have been altered or modified by the disclosing entity or any of its subsidiaries during the reporting period | (a) The date of the alteration  (b) The market price of the underlying equity instrument at the date of the alteration  (c) The terms of the grant of compensation immediately before the alteration, including:  (i) the number and class of the underlying equity instruments, exercise price; and |
|  |  | (ii) the time remaining until expiry; and  (iii) each other condition in the terms that affects the vesting or exercise of an option or other right |
|  |  | (d) The new terms  (e) The difference between:  (i) the total of the fair value of the options or other rights affected by the alteration immediately before the alteration; and |
|  |  | (ii) the total of the fair value of the options or other rights immediately after the alteration |
| 15 | If options and rights over an equity instrument issued or issuable by the disclosing entity or any of its subsidiaries have been provided as compensation to a person during the reporting period  Note: See subregulation (3). | (a) The number of options and the number of rights that:  (i) have been granted; and  (ii) have vested;  during the reporting period  (b) The terms and conditions of each grant made during the reporting period, including:  (i) the fair value per option or right at grant date; and  (ii) the exercise price per share or unit; and |
|  |  | (iii) the amount, if any, paid or payable by the recipient; and  (iv) the expiry date; and |
|  |  | (v) the date or dates when the options or rights may be exercised; and |
|  |  | (vi) a summary of the service and performance criteria that must be met before the beneficial interest vests in the person |
| 16 | If an equity instrument that is issued or issuable by the disclosing entity or any of its subsidiaries has been provided as a result of the exercise during the reporting period of options and rights that have been granted as compensation to a person  Note: See subregulation (3). | (a) The number of equity instruments  (b) If the number of options or rights exercised differs from the number of equity instruments disclosed under paragraph (a)—the number of options or rights exercised  (c) The amount paid per instrument  (d) The amount unpaid per instrument |
|  | *Remuneration disclosure* |  | |
| 17 | For an option or right over equity instruments:  (a) issued or issuable by the disclosing entity or any of its subsidiaries; and  (b) held, whether directly, indirectly or beneficially, by any of the following:  (i) each key management person;  (ii) a close member of the family of that person;  (iii) an entity over which the person or the family member has, either directly or indirectly, control, joint control or significant influence | The number of each of the following:  (a) options and rights held at the start of the reporting period;  (b) options and rights granted during the reporting period as compensation;  (c) options and rights exercised during the reporting period;  (d) options and rights resulting from any other change during the reporting period;  (e) options and rights held at the end of the reporting period;  (f) options and rights vested at the end of the reporting period;  (g) options and rights vested and exercisable at the end of the reporting period;  (h) options and rights vested and unexercisable at the end of the reporting period | |
| 18 | For an equity instrument (other than an option or a right):  (a) issued or issuable by the disclosing entity or any of its subsidiaries; and  (b) held, whether directly, indirectly or beneficially, by any of the following:  (i) each key management person;  (ii) a close member of the family of that person;  (iii) an entity over which the person or the family member has, either directly or indirectly, control, joint control or significant influence | The number of each of the following:  (a) equity instruments held at the start of the reporting period;  (b) equity instruments granted during the reporting period as compensation;  (c) equity instruments received during the reporting period on the exercise of an option or right;  (d) equity instruments resulting from any other change during the reporting period;  (e) equity instruments held at the end of the reporting period;  (f) equity instruments if included in the number disclosed under paragraph (e), held nominally at the end of the reporting period | |
| 19 | For a transaction (other than share‑based payment compensation) that:  (a) involves an equity instrument issued or issuable by the disclosing entity or any of its subsidiaries; and  (b) has occurred, during the reporting period, between the disclosing entity or any of its subsidiaries and any of the following:  (i) a key management person;  (ii) a close member of the family of that person;  (iii) an entity over which the person or the family member has, either directly or indirectly, control, joint control or significant influence;  if the terms or conditions of the transaction were more favourable than those that it is reasonable to expect the entity would adopt if dealing at arms‑length with an unrelated person | (a) The nature of each different type of transaction  (b) For each transaction, the terms and conditions of the transaction | |
| 20 | For the aggregate of loans made, guaranteed or secured, directly or indirectly, by the disclosing entity and any of its subsidiaries, in the reporting period in relation to:  (a) all key management personnel; and  (b) close members of the family of a member of the key management personnel; and  (c) an entity over which any of the persons mentioned in paragraphs (a) and (b) have, directly or indirectly, control, joint control or significant influence | (a) The amount outstanding at the start of the reporting period  (b) The amount of interest paid and payable in the reporting period to the disclosing entity or to any of the entity’s subsidiaries  (c) The difference between the amount disclosed under paragraph (b) and the amount of interest that would have been charged on an arms‑length basis  (d) Each write‑down and each allowance for doubtful receivables recognised by the disclosing entity or by any of the entity’s subsidiaries  (e) The amount outstanding at the end of the reporting period  (f) The number of key management personnel included in the group aggregate at the end of the reporting period  (g) A summary of the terms and conditions of the loans | |
| 21 | If the aggregate of loans made, guaranteed or secured, directly or indirectly, by the disclosing entity and any of its subsidiaries, in the reporting period in relation to:  (a) a particular key management person; and  (b) close members of the family of the key management person; and  (c) an entity over which any of the persons mentioned in paragraphs (a) and (b) has, directly or indirectly, control, joint control or significant influence;  is greater than $100 000 | (a) The amount outstanding at the start of the reporting period  (b) The amount of interest paid and payable in the reporting period to the disclosing entity or to any of the entity’s subsidiaries  (c) The difference between the amount disclosed under paragraph (b) and the amount of interest that would have been charged on an arms‑length basis  (d) Each write‑down and each allowance for doubtful receivables recognised by the disclosing entity or by any of the entity’s subsidiaries  (e) The amount outstanding at the end of the reporting period  (f) The highest amount of the key management person’s indebtedness during the reporting period  (g) A summary of the terms and conditions of the loans | |
| 22 | For a transaction during the reporting period between the disclosing entity, or any of its subsidiaries, and a key management person, a close member of the family of that person, or an entity over which the key management person or the family member has, directly or indirectly, control, joint control or significant influence, other than a transaction mentioned in item 19, 20 or 21 or subregulation (3B) | (a) Each type of transaction of a different nature  (b) The terms and conditions of each type of transaction or, if there are different categories of terms and conditions within a type of transaction, the terms and conditions of each category of transaction  (c) For each type of transaction or, if there are different categories of terms and conditions within a type of transaction, for each category of transaction:  (i) the names of the persons involved in the transaction; and  (ii) the aggregate amount recognised | |
| 23 | For each aggregate amount disclosed under item 22 | (a) The total of amounts recognised as revenue, separately identifying, if applicable, the total amounts recognised as:  (i) interest revenue; or  (ii) dividend revenue  (b) The total of amounts recognised as expense, separately identifying, if applicable, the total amounts recognised as:  (i) interest expense; or  (ii) write‑downs of receivables and allowances made for doubtful receivables | |
|  |  | (c) Any further disclosures necessary to provide an understanding of the effects of the transactions on the financial statements prepared in accordance with Australian Accounting Standards | |
| 24 | For each transaction identified under item 22 | (a) The total of all assets, classified into current and non‑current assets, and, if applicable, any allowance for doubtful receivables at the end of the reporting period  (b) The total of all liabilities, classified into current and non‑current liabilities | |

(2) For items 6, 7, 8, 9 and 11 of the table:

(a) the information of the kind described in the item for the previous financial year must also be disclosed in the financial year to which the item relates (to give comparative information for the purposes of the item); but

(b) paragraph (a) does not apply in relation to the first financial year in which paragraph 300A(1)(c) of the Act applies in relation to a person.

Note: The effect of paragraph (b) is that no comparative information is required in the first period of reporting on a specific individual.

(3) For items 15 to 19 of the table, a disclosure required by the item must:

(a) be separated into each class of equity instrument; and

(b) identify each class of equity instrument by:

(i) the name of the disclosing entity or the relevant subsidiary that issued the equity instrument; and

(ii) the class of equity instrument; and

(iii) if the instrument is an option or right—the class and number of equity instruments for which it may be exercised.

(3A) For items 20 and 21 of the table in subregulation (1), loans do not include loans involved in transactions that are in substance options, including non‑recourse loans.

(3B) A transaction with, or an amount that is receivable from or payable under a transaction to, a key management person, a close member of the family of that person, or an entity over which the person or the family member has, directly or indirectly, control, joint control or significant influence, is excluded from the requirements of items 22 to 24 if:

(a) the transaction occurs within a normal employee, customer or supplier relationship on terms and conditions no more favourable than those that it is reasonable to expect the entity would have adopted if dealing at arms‑length with an unrelated person; and

(b) information about the transaction does not have the potential to affect adversely decisions about the allocation of scarce resources made by users of the financial statements, or the discharge of accountability by the key management person; and

(c) the transaction is trivial or domestic in nature.

(3C) Items 17 to 24 of the table in subregulation (1) apply in relation to a directors’ report for a financial year commencing on or after 1 July 2013.

(4) For subregulation (1), a company must apply the requirements of relevant accounting standards when disclosing the information mentioned in the subregulation.

(5) In subregulation (1), an expression that is:

(a) used in the subregulation; and

(b) defined in a relevant accounting standard that is applied for the purpose of disclosing information;

has the meaning given by that accounting standard.

2M.3.04 Prescribed details—annual directors’ report of a registrable superannuation entity

(1) For the purposes of paragraph 300C(1)(a) of the Act, the details in the following table in relation to the remuneration of each member of the key management personnel of a registrable superannuation entity are prescribed.

| Prescribed details | | |
| --- | --- | --- |
| Item | Applicable members | Details |
| General | | |
| 1 | Each member | The name of the member |
| 2 | Each member who:  (a) began to hold a position as a member of the key management personnel during the most recently completed financial year; or  (b) retired from a position as a member of the key management personnel during the most recently completed financial year | The date on which the member:  (a) began holding the position; or  (b) retired from the position |
| 3 | Each member whose position changed during the most recently completed financial year | Both of the following:  (a) the member’s name and position;  (b) when the change occurred |
| 4 | Each member who retired during the most recently completed financial year | Both of the following:  (a) the member’s name and position;  (b) when the retirement took effect |
| Payments and benefits | | |
| 5 | Each member | The short‑term employee benefits of the member for the most recently completed financial year, divided into at least the following components:  (a) cash salary, fees and short‑term compensated absences;  (b) short‑term cash profit‑sharing and other bonuses;  (c) non‑monetary benefits;  (d) other short‑term employee benefits |
| 6 | Each member | The post‑employment benefits of the member for the most recently completed financial year, divided into at least the following components:  (a) pension and superannuation benefits;  (b) other post‑employment benefits |
| 7 | Each member | The long‑term employee benefits other than benefits mentioned in items 5 and 6 for the member for the most recently completed financial year (any amount attributable to a long‑term incentive plan being separately identified) |
| 8 | Each member whose position as a member of the key management personnel was terminated during the most recently completed financial year | The member’s termination benefits |
| 9 | Each member who:  (a) began to hold a position as a member of the key management personnel during the most recently completed financial year; and  (b) received a payment as part of the consideration for agreeing to hold the position | Details of the payment, including:  (a) the monetary value of the payment; and  (b) the date of the payment |
| 10 | Each member | The share‑based payments made to the member during the most recently completed financial year, divided into at least the following components:  (a) equity‑settled share‑based payment transactions, showing separately:  (i) shares and units; and  (ii) options and rights;  (b) cash‑settled share‑based payment transactions;  (c) all other forms of share‑based payment compensation (including hybrids) |
| Compensation | | |
| 11 | If a grant of a cash bonus, performance‑related bonus or share‑based payment compensation benefit, whether part of a specific contract for services or not, was made to a member during the most recently completed financial year—each such member | The terms and conditions of each grant affecting compensation, including the following:  (a) the grant date;  (b) the nature of the compensation granted;  (c) the service and performance criteria used to determine the amount of compensation;  (d) if there has been any alteration of the terms or conditions of the grant since the grant date—the date, details and effect of each alteration;  (e) the percentage of the bonus or grant for the financial year that was paid to the member, or that vested in the member, in the financial year;  (f) the percentage of the bonus or grant for the financial year that was forfeited by the member (because the member did not meet the service and performance criteria for the bonus or grant) in the financial year;  (g) the financial years, after the most recently completed financial year, for which the bonus or grant will be payable if the member meets the service and performance criteria for the bonus or grant;  (h) estimates of the maximum and minimum possible total value of the bonus or grant (other than option grants) for financial years after the most recently completed financial year |
| 12 | If, during the most recently completed financial year, a contract for services was negotiated between the RSE licensee and a member—each such member | An explanation of:  (a) how the amount of compensation was determined; and  (b) how the terms of the contract affect compensation in future periods |
| 13 | If the terms of share‑based payment transactions (including options or rights) granted as compensation to a member were altered or modified by the RSE licensee during the most recently completed financial year—each such member | All of the following:  (a) the date of the alteration or modification;  (b) the market price of the underlying equity instrument at the date of the alteration or modification;  (c) the terms of the grant of compensation immediately before the alteration or modification, including:  (i) the number and class of the underlying equity instruments; and  (ii) the exercise price for any option or other right affected by the alteration or modification, immediately before and after the alteration or modification; and  (iii) the time remaining until expiry of the underlying equity instruments; and  (iv) each other condition in the terms affecting the vesting or exercise of an option or other right;  (d) the modified or altered terms;  (e) the difference between:  (i) the total of the fair value of the options or other rights affected by the alteration or modification immediately before the alteration or modification; and  (ii) the total of the fair value of the options or other rights immediately after the alteration or modification |
| 14 | If, during the most recently completed financial year, options and rights over an equity instrument issued or issuable by the RSE licensee or by a related body corporate were provided as compensation to a member—each such member | All of the following:  (a) the number of options and the number of rights that, during the financial year, were:  (i) granted; and  (ii) vested;  (b) the terms and conditions of each grant made during the financial year, including:  (i) the fair value per option or right at grant date; and  (ii) the exercise price per share or unit; and  (iii) the amount, if any, paid or payable by the member; and  (iv) the expiry date of the grant; and  (v) when the options or rights may be exercised; and  (vi) a summary of the service and performance criteria that must be met before the beneficial interest vests in the member |
| 15 | If an equity instrument that is issuable by the RSE licensee or a related body corporate was issued as a result of the exercise, during the most recently completed financial year, of options and rights that were granted as compensation to a member—each such member | All of the following:  (a) how many equity instruments were issued;  (b) if the number of options or rights exercised differs from the number of equity instruments disclosed under paragraph (a)—how many options or rights were exercised;  (c) the amount paid under each instrument;  (d) the amount payable under each instrument that is yet to be paid |
| 16 | If an amount attributable to the service of a member for the most recently completed financial year is paid to an organisation or entity rather than to the member—each such member | Both of the following:  (a) the amount;  (b) the name of the organisation or entity |

(2) If:

(a) a member of the key management personnel receives a payment, benefit or compensation from a related party of the registrable superannuation entity; and

(b) all or part of the payment, benefit or compensation relates to work performed for the registrable superannuation entity;

then, to the extent that the payment, benefit or compensation relates to that work, the table applies to the payment, benefit or compensation in the same way as if it were paid or given by the registrable superannuation entity.

(3) The details referred to in item 14 or 15 of the table must be separated into each class of equity instrument, and each class of equity instrument must be identified by:

(a) the name of the issuing entity; and

(b) the class of equity instrument; and

(c) if the instrument is an option or right—the class and number of equity instruments for which it may be exercised.

Accounting standards apply to the reporting of prescribed details

(4) The details are to be determined in accordance with the requirements of any relevant accounting standards.

(5) If an expression used in the table, or in subregulation (2) or (3), is defined in a relevant accounting standard, the expression has the meaning given by the standard.

Part 2M.4—Auditor

2M.4.01A Membership designations (Act s 324BE)

For paragraph 324BE(1)(b) of the Act, a designation mentioned in an item of the table is prescribed for membership of the professional accounting body mentioned in the item.

| Membership designations | | |
| --- | --- | --- |
| Item | Professional accounting body | Designation |
| 1 | Institute of Chartered Accountants in Australia | CA; or  FCA |
| 2 | CPA Australia | CPA; or  FCPA |
| 3 | Institute of Public Accountants | FIPA; or  MIPA |

2M.4.01 Notice of appointment of auditors

The responsible entity of a registered scheme must lodge a notice in the approved form telling ASIC of the appointment by the entity of an auditor of the scheme under section 331AB of the Act within 14 days of the appointment.

Part 2M.4A—Annual transparency reports for auditors

2M.4A.01 Application

This Part applies in relation to annual transparency reports for:

(a) the transparency reporting year in which Schedule 1 to the *Corporations Legislation Amendment (Audit Enhancement) Act 2012* commences; and

(b) all later transparency reporting years.

Note: For the definitions of ***annual transparency report*** and ***transparency reporting year***, see section 9 of the Act.

2M.4A.02 Content of annual transparency report (Act s 332B)

(1) For subsection 332B(1) of the Act, Schedule 7A sets out the information that an annual transparency report published in accordance with subsection 332A(2) of the Act must contain.

(2) If the report is published by an audit firm or authorised audit company, see Part 2 of Schedule 7A.

(3) If the report is published by an individual auditor, see Part 3 of Schedule 7A.

Part 2M.6—Modification of the operation of Chapter 2M of the Act

2M.6.01 Modifications (Act s 343)

For section 343 of the Act, the operation of Chapter 2M of the Act is modified in accordance with this Part.

2M.6.05 Conduct of auditor—relevant relationships

The operation of Chapter 2M of the Act in relation to:

(a) all companies; and

(b) all registered schemes; and

(c) all disclosing entities;

is modified as set out in Schedule 5C.

Chapter 2N—Updating ASIC information about companies and registered schemes

Part 2N.2—Extract of particulars

2N.2.01 Particulars ASIC may require in an extract of particulars (Act s 346B)

Particulars for a company

(1) For the purposes of section 346B of the Act, the following particulars are prescribed for a company (other than a CCIV):

(a) ACN;

(b) name;

(c) address of registered office;

(d) address of principal place of business in this jurisdiction;

(e) for each director and company secretary:

(i) the person’s name; and

(ii) the person’s usual residential address, or, if the person is entitled to have an alternative address under subsection 205D(2) of the Act, that alternative address; and

(iii) the person’s date and place of birth;

(f) the date of appointment or cessation of each director, secretary or alternate director;

(g) for issued shares—the classes into which the shares are divided, and for each class of share issued:

(i) the number of shares in the class; and

(ii) the total amount paid up for the class; and

(iii) the total amount unpaid for the class;

(h) for a proprietary company—the names and addresses of:

(i) if the company has 20 or fewer members—all members; or

(ii) if the company has more than 20 members—the top 20 members in each class;

(i) for a proprietary company that has a share capital:

(i) the total number of shares in each class held by each of the members mentioned in paragraph (h); and

(ii) whether or not the shares are fully paid; and

(iii) whether or not the shares are beneficially owned;

(j) for the ultimate holding company—its name and either:

(i) its ACN or ARBN if registered in this jurisdiction; or

(ii) the place at which it was incorporated or formed if not registered in this jurisdiction.

Particulars for a CCIV

(1A) For the purposes of section 346B of the Act, the following particulars are prescribed for a CCIV:

(a) ACN;

(b) name;

(c) address of registered office;

(d) for the corporate director of the CCIV:

(i) the ACN of the corporate director; and

(ii) the name of the corporate director; and

(iii) the date of appointment of the corporate director;

(e) for each sub‑fund of the CCIV:

(i) the ARFN of the sub‑fund; and

(ii) the name of the sub‑fund;

(f) for issued shares—the sub‑funds to which the shares are referable, and for each sub‑fund:

(i) the classes of shares referable to the sub‑fund; and

(ii) the number of shares referable to the sub‑fund in each of those classes; and

(iii) for each of those classes—the total amount paid up for shares referable to the sub‑fund in the class; and

(iv) for each of those classes—the total amount unpaid for shares referable to the sub‑fund in the class.

Particulars for a registered scheme

(2) For the purposes of section 346B of the Act, the following particulars are prescribed for a registered scheme:

(a) ARSN;

(b) name;

(c) name and ACN of the responsible entity;

(d) if the scheme is a managed investment scheme that is a unit trust:

(i) issued interests in the scheme; and

(ii) the classes into which the interests are divided; and

(iii) for each class of interest issued—the number of interests in the class, the total amount paid up for the class and the total amount unpaid for the class;

(e) if the scheme is a managed investment scheme that is not a unit trust:

(i) issued interests in the scheme; and

(ii) a description of the nature of the interests (for example, interest in a limited partnership, right to participate in a timesharing scheme); and

(iii) the number of the interests; and

(iv) the total amount paid for the interests; and

(v) the total amount unpaid for the interests.

Additional particulars for an Australian passport fund

(3) For the purposes of section 346B of the Act, the following particulars are prescribed for a registered scheme that is an Australian passport fund, in addition to the particulars prescribed for the scheme under subregulation (2):

(a) the APFRN for the fund;

(b) if the fund has or had a name in a participating economy (including Australia) that is different from its current name in Australia, then for each name that the fund has or had in a participating economy:

(i) that name; and

(ii) the name of each participating economy in which the fund has or had that name; and

(iii) for each such economy—the start date and (if applicable) the end date of each period during which the fund has or had that name in that economy.

Particulars for a notified foreign passport fund

(4) For the purposes of section 346B of the Act, the following particulars are prescribed for a notified foreign passport fund:

(a) the NFPFRN for the fund and any other unique number for the fund allocated to the fund by ASIC;

(b) the name of the fund;

(c) the name of the home economy for the fund;

(d) in relation to the operator of the fund:

(i) the name and ARBN of the operator; and

(ii) the name and address of each local agent of the operator; and

(iii) the address of the operator’s registered office or principal place of business in its place of origin;

(e) if the fund has or had a name in a participating economy (including Australia) that is different from its current name in Australia, then for each name that the fund has or had in a participating economy:

(i) that name; and

(ii) the name of each participating economy in which the fund has or had that name; and

(iii) for each such economy—the start date and (if applicable) the end date of each period during which the fund has or had that name in that economy.

Part 2N.4—Return of particulars

2N.4.01 Particulars ASIC may require in a return of particulars (Act s 348B)

Particulars for a company

(1) For the purposes of section 348B of the Act, the following particulars are prescribed for a company (other than a CCIV):

(a) the personal details of a director, secretary or alternate director mentioned in subsection 205B(3) of the Act;

(b) the date of appointment or cessation of a director, secretary or alternate director;

(c) the date of change of name or change of address of a director, secretary or alternate director;

(d) evidence that a specified person is (or is not) a director, secretary or alternate director;

(e) completion of a declaration indicating that the company is a special purpose company within the meaning of regulation 3 of the *Corporations (Review Fees) Regulations 2003*;

(f) the name of the ultimate holding company;

(g) the date on which a company became, or ceased to be, the ultimate holding company;

(h) the previous name, or the new name, of the ultimate holding company;

(i) the date of issue, cancellation, or transfer of shares;

(j) the date of any change to amounts paid on shares;

(k) a statement of whether or not shares for one or more members are beneficially owned;

(l) the date of any change to beneficial ownership of shares;

(m) any of the following information from the share structure table for a class of share:

(i) the share class code;

(ii) the full title of the class of share;

(iii) the total number of shares in the class that have been issued;

(iv) the total amount paid for shares in the class;

(v) the total amount unpaid for shares in the class;

(n) the date on which a new member’s name was entered in the register of members;

(o) a statement that the company is:

(i) a small proprietary company mentioned in subsection 45A(2) of the Act; or

(ii) a large proprietary company mentioned in subsection 45A(3) of the Act; or

(iii) a foreign controlled small proprietary company mentioned in paragraph 292(2)(b) of the Act;

(p) a statement that the company is listed (or not listed) on a financial market, and the name of the financial market (if any);

(q) a statement of whether the company complies with subsection 348C(2) or (3) of the Act;

(r) information that the company is required to provide under subsection 142(2), 146(1), 205B(1) or (4), 254X(1) or 319(1) of the Act.

Particulars for a CCIV

(1A) For the purposes of section 348B of the Act, the following particulars are prescribed for a CCIV:

(a) for the corporate director of the CCIV:

(i) the name of the corporate director; and

(ii) the address of the corporate director; and

(iii) the date of appointment or cessation of the corporate director; and

(iv) the date of change of name or change of address of the corporate director; and

(v) evidence that a specified person is (or is not) the corporate director;

(b) the date on which a new member’s name was entered in the register of members kept by the CCIV;

(c) for each sub‑fund of the CCIV:

(i) the date of issue, cancellation, or transfer of shares referable to the sub‑fund; and

(ii) the classes of shares referable to the sub‑fund; and

(iii) for each of those classes—the total number and value of shares referable to the sub‑fund in the class; and

(iv) for each of those classes—the total amount paid up for shares referable to the sub‑fund in the class; and

(v) for each of those classes—the total amount unpaid for shares referable to the sub‑fund in the class;

(d) for each sub‑fund of the CCIV—a statement that the sub‑fund is listed (or not listed) and, if the sub‑fund is listed, the name of the prescribed financial market for which the sub‑fund or the CCIV is included in the official list;

(e) for each financial year specified in the return of particulars for each sub‑fund of a retail CCIV—the name of each auditor of a financial report for the sub‑fund for that year;

(f) for a retail CCIV—the name of the auditor of the compliance plan for the retail CCIV;

(g) if a sub‑fund of the CCIV is an Australian passport fund—the name of the implementation reviewer for the Australian passport fund for each review period for the Australian passport fund specified in the return of particulars.

Particulars for a registered scheme

(2) For the purposes of section 348B of the Act, the following particulars are prescribed for a registered scheme:

(a) the date on which a new member’s name was entered in the register of members;

(b) the new name of the responsible entity of the scheme;

(c) information that the scheme is required to provide under subsection 319(1) of the Act;

(d) for each financial year for the scheme specified in the return of particulars—the name of each auditor of a financial report for the scheme for that year;

(e) the name of the auditor of the compliance plan for the scheme;

(f) if the scheme is an Australian passport fund—the name of the implementation reviewer for the fund for each review period for the fund specified in the return of particulars.

Particulars for a notified foreign passport fund

(3) For the purposes of section 348B of the Act, the following particulars are prescribed for a notified foreign passport fund:

(a) the date on which a new member’s name was entered in the register of members;

(b) the new name of the operator of the fund;

(c) information that the fund is required to provide under subsection 319(1AA) of the Act;

(d) for each financial year for the fund specified in the return of particulars—the name of each auditor of a report for the fund for that year that is prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund;

(e) the name of the implementation reviewer for the fund for each review period for the fund specified in the return of particulars.

Definitions

(4) In this regulation:

***implementation reviewer***, for a passport fund, has the same meaning as in the Passport Rules for this jurisdiction.

***review period***, for a passport fund, has the meaning given by subsection 15(1) of the Passport Rules for this jurisdiction.

Chapter 5—External administration

Part 5.1—Arrangements and reconstructions

5.1.01 Prescribed information for paragraph 411(3)(b) and subparagraph 412(1)(a)(ii) of the Act

(1) For paragraph 411(3)(b) and subparagraph 412(1)(a)(ii) of the Act, unless ASIC otherwise allows, the explanatory statement must:

(a) for a proposed arrangement between a Part 5.1 body and its creditors, or a class of its creditors:

(i) state the matters set out; and

(ii) have annexed to it the reports and copies of documents mentioned;

in Part 2 of Schedule 8; and

(b) for a proposed arrangement between a Part 5.1 body and its members, or a class of its members, other than a proposed arrangement mentioned in paragraph (c):

(i) state the matters set out; and

(ii) have annexed to it the reports and copies of documents mentioned;

in Part 3 of Schedule 8; and

(c) for a proposed arrangement between a Part 5.1 body and its members, or a class of its members, in relation to the reconstruction of a corporation, or the amalgamation of 2 or more corporations, if:

(i) the whole or part of the undertaking or of the property of a corporation is to be transferred to a trustee to be held beneficially on behalf of the unit holders of the trust; or

(ii) the shares in the corporation that are held by members are to be cancelled and control is to pass to a trustee to be held on behalf of a unit holder of the trust;

state the matters set out and have annexed to it the documents and, if the trustee of that business operates no other business in relation to that trust, the reports mentioned, in Part 4 of Schedule 8.

(2) For the purposes of Schedule 8, ***securities exchange*** means Australian Stock Exchange Limited.

5.1.50 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 415D of the Act

For the purposes of subparagraph 415D(6)(b)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation 5.3A.50(2) is prescribed.

Part 5.2—Receivers, and other controllers, of corporations

5.2.01 Controller’s notice to owner or lessor of property—how given

A notice under subsection 419A(3) of the Act must be given to the owner or lessor, as the case may be, by personal delivery or by prepaid post to the owner’s or lessor’s usual place of residence or business or the place of residence or business last known to the controller.

5.2.02 Certified copies of reports

A copy of:

(a) a report that must be lodged; and

(b) a certificate or other document annexed to that report;

must be certified in writing to be a true copy by:

(c) for a copy lodged for paragraph 429(2)(c) of the Act—the controller of property of the corporation; or

(f) for a copy lodged for subsection 475(7) of the Act—by the liquidator or provisional liquidator of the company.

5.2.50 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 434J of the Act

For the purposes of subparagraph 434J(5)(b)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation 5.3A.50(2) is prescribed.

Part 5.3A—Administration of a company’s affairs with a view to executing a deed of company arrangement

5.3A.03A Notice of first meeting of creditors

(1) This regulation is made for paragraph 436E(3)(b) of the Act.

(2) The information about a meeting that is to be set out in a notice is at least the following information:

(a) the name of the company;

(b) any trading name of the company;

(c) the ACN of the company;

(d) the section of the Act or, in the case of a combined notice, the sections of the Act under which the notice is being given;

(e) the time, date and place for the meeting;

(f) the purpose for which the meeting is being convened under that section;

(g) the time and date by which proofs of debt, and proxies for the meeting, are to be submitted;

(h) the name and contact details of the administrator;

(i) the date on which the administrator was appointed;

(j) the section of the Act under which the administrator was appointed.

5.3A.05 Administrator’s notice to owner or lessor of property—how given

A notice under subsection 443B(3) of the Act must be given to the owner or lessor, as the case may be, by personal delivery or by prepaid post to the owner’s or lessor’s usual place of residence or business or the place of residence or business last known to the administrator.

5.3A.06 Provisions included in deed of company arrangement

For subsection 444A(5) of the Act, the prescribed provisions are those set out in Schedule 8A.

5.3A.06A Notice of resolution to wind up voluntarily

(1) This regulation is made for paragraph 446A(5)(b) of the Act.

(2) The notice must be published by the end of the next business day after a liquidator is appointed to administer the winding up of the company.

5.3A.07A Notice of appointment of administrator

(1) This regulation is made for paragraph 450A(1)(b) of the Act.

(2) The information about an appointment that is to be set out in a notice is at least the following information:

(a) the name of the company;

(b) any trading name of the company;

(c) the ACN of the company;

(d) the section of the Act or, in the case of a combined notice, the sections of the Act under which the notice is being given;

(e) the name and contact details of the administrator;

(f) the date on which the administrator was appointed;

(g) the section of the Act under which the administrator was appointed.

(3) The period within which the notice is to be published is 3 business days after an administrator is appointed.

5.3A.50 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 451E of the Act

(1) For the purposes of subparagraph 451E(5)(b)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation (2) is prescribed.

(2) The kinds of contracts, agreements or arrangements are as follows:

(a) an agreement (within the meaning of the ***Convention*** defined in section 3 of the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013*);

(b) a contract, agreement or arrangement that is a licence, permit or approval issued by:

(i) the Commonwealth, a State or a Territory; or

(ii) an authority of the Commonwealth or of a State or a Territory; or

(iii) a local governing body established by or under a law of a State or Territory;

(c) a contract, agreement or arrangement relating to Australia’s national security, border protection or defence capability;

(d) a contract, agreement or arrangement for the supply of goods or services to a public hospital or a public health service;

(e) a contract, agreement or arrangement for the supply of goods or services by or on behalf of a public hospital or a public health service;

(f) a contract, agreement or arrangement for the supply of essential or critical goods or services to, or the carrying out of essential or critical works for:

(i) the Commonwealth, a State or a Territory; or

(ii) an authority of the Commonwealth or of a State or a Territory; or

(iii) a local governing body established by or under a law of a State or Territory; or

(iv) the public on behalf of an entity covered by subparagraph (i), (ii) or (iii);

Note: Examples of these essential or critical goods, services or works include public transport services, public security or safety services, and works affecting essential public infrastructure.

(g) a contract, agreement or arrangement that is, or is directly connected with, a derivative;

(h) a contract, agreement or arrangement that is, or is directly connected with, a securities financing transaction;

(i) a contract, agreement or arrangement for the underwriting of an issue, or sale, of securities, financial products, bonds, promissory notes, or syndicated loans;

(j) a contract, agreement or arrangement under which a party is or may be liable to subscribe for, or to procure subscribers for, securities, financial products, bonds, promissory notes, or syndicated loans;

(k) a contract, agreement or arrangement that is, or governs, securities, financial products, bonds, promissory notes, or syndicated loans;

(l) a contract, agreement or arrangement under which securities are offered, or may be offered, under a rights issue;

(m) a contract, agreement or arrangement for the sale of all or part of a business, including by way of the sale of securities or financial products;

(n) a contract, agreement or arrangement for the issue of an instrument that:

(i) is a security, financial product, bond, promissory note, or syndicated loan; and

(ii) belongs to a class of such instruments, each of which is fungible, and the first of which was issued before 1 July 2018;

(o) a contract, agreement or arrangement that is, or is directly connected with, a margin lending facility;

(p) a contract, agreement or arrangement that is:

(i) a covered bond (within the meaning of the *Banking Act 1959*); or

(ii) for issuing such a bond; or

(iii) directly connected with such a bond or the issuing of such a bond;

(q) a contract, agreement or arrangement providing for the management of financial investments;

(r) a contract, agreement or arrangement that involves a special purpose vehicle, and that provides for securitisation or a public‑private partnership;

(s) a contract, agreement or arrangement that involves a special purpose vehicle, and that provides for a project finance arrangement under which:

(i) a financial accommodation is to be repaid or otherwise discharged primarily from the project’s cash flow; and

(ii) all or substantially all of the project’s assets, rights and interests are to be held as security for the financial accommodation;

(t) a contract, agreement or arrangement for the keeping in escrow of:

(i) code, or passwords, for computer software; or

(ii) material directly associated with such code or passwords;

(u) a contract, agreement or arrangement for the commercial charter of a ship if:

(i) the ship is not an Australian ship (within the meaning of the *Shipping Registration Act 1981*); and

(ii) the charter is by an Australian national (within the meaning of that Act) for the purposes of exporting goods from Australia, or from an external Territory, to another country;

(v) a contract, agreement or arrangement under which the priority of security interests in particular property is changed or can change;

(w) a contract, agreement or arrangement that is a flawed asset arrangement;

(x) a contract, agreement or arrangement that is, or is directly connected with, a factoring arrangement (within the meaning of the *ASIC Corporations (Factoring Arrangements) Instrument 2017/794*);

(y) a contract, agreement or arrangement that is the operating rules (other than the listing rules) of a financial market;

Note: The operating rules of a licensed market are a contract, see subsection 793B(1) of the Act.

(z) a contract, agreement or arrangement that is the operating rules of a clearing and settlement facility;

Note: The operating rules of a licensed CS facility are a contract, see subsection 822B(1) of the Act.

(za) a contract, agreement or arrangement that confers rights on the operator of a financial market, or the operator of a clearing and settlement facility, in relation to the operation of the market or facility;

(zb) a contract, agreement or arrangement of which the parties include the Reserve Bank of Australia and the operator of a clearing and settlement facility;

(zc) a contract, agreement or arrangement under which participants in a clearing and settlement facility may settle obligations on behalf of other participants in the facility;

(zd) a legally enforceable arrangement referred to in paragraph 9(1)(b) of the *Payment Systems and Netting Act 1998* that supports an approved RTGS system (within the meaning of that Act);

Note: The arrangement includes the rules that are part of that arrangement.

(ze) an approved netting arrangement (within the meaning of the *Payment Systems and Netting Act 1998*);

Note: The arrangement includes the rules that are part of that arrangement.

(zf) a contract, agreement or arrangement that confers rights on:

(i) the operator of an approved RTGS system (within the meaning of the *Payment Systems and Netting Act 1998*); or

(ii) the coordinator of an approved netting arrangement (within the meaning of that Act);

in relation to the operation of that system or netting arrangement;

(zg) a contract, agreement or arrangement under which the parties to an arrangement covered by paragraph (zd) or (ze) (the ***main arrangement***) may settle obligations on behalf of other parties to the main arrangement;

(zh) a close‑out netting contract (within the meaning of the *Payment Systems and Netting Act 1998*);

(zi) a contract, agreement or arrangement under which security is given over financial property (within the meaning of the *Payment Systems and Netting Act 1998*) in respect of eligible obligations (within the meaning of that Act) of a party to a contract covered by paragraph (zh);

(zj) a netting market (within the meaning of the *Payment Systems and Netting Act 1998*);

(zk) a market netting contract (within the meaning of the *Payment Systems and Netting Act 1998*);

(zl) a contract, agreement or arrangement under which security is given, in accordance with a market netting contract covered by paragraph (zk), in respect of obligations of a party to the market netting contract;

(zm) a contract, agreement or arrangement that is an outsourcing arrangement for the purposes of *Prudential Standard CPS 231 Outsourcing* or *Prudential Standard SPS 231 Outsourcing*;

Note 1: In 2018, *Prudential Standard CPS 231 Outsourcing* was set out in the Banking, Insurance and Life Insurance (prudential standard) determination No. 6 of 2016.

Note 2: In 2018, *Prudential Standard SPS 231 Outsourcing* was set out in the Superannuation (prudential standard) determination No. 3 of 2012.

(zn) a contract, agreement or arrangement entered into or renewed on or after 1 July 2018, but before 1 July 2023, as a result of either of the following:

(i) the novation of, or the assignment of one or more rights under, a contract, agreement or arrangement entered into before 1 July 2018;

(ii) a variation of a contract, agreement or arrangement entered into before 1 July 2018;

(zo) a contract, agreement or arrangement entered into on or after 1 July 2018, but before 1 July 2023, for the provision of any of the following kinds of work, goods or services for a particular project:

(i) building work (within the meaning of the *Federal Safety Commissioner Act 2022*);

(ii) work to be carried out anywhere in Australia that, if carried out in New South Wales, would be covered by paragraph 5(1)(d) or (f) of the *Building and Construction Industry Security of Payment Act 1999* (NSW) and not be excluded by subsection 5(2) of that Act;

(iii) goods or services to be provided anywhere in Australia that, if provided in New South Wales, would be related goods and services (within the meaning of the *Building and Construction Industry Security of Payment Act 1999* (NSW));

if the total payments under all contracts, agreements or arrangements for the project for work, goods or services of those kinds is at least $1 billion;

(zp) a contract, agreement or arrangement that:

(i) is entered into to enable the satisfactory completion of a contract, agreement or arrangement covered by paragraph (zo); and

(ii) is for the provision of a kind of work, goods or services covered by that paragraph;

(zq) a contract, agreement or arrangement that is for reinsurance or retrocession.

Part 5.3B—Restructuring of a company

Division 1—Preliminary

5.3B.01 Definitions

In this Part, unless the contrary intention appears:

***accepted***, in relation to a proposal to make a restructuring plan, has the meaning given by subregulation 5.3B.25(1).

***admissible debt or claim***, in relation to a company under restructuring or a company’s restructuring plan, means a debt or claim that would be admissible to proof against the company under subsection 553(1) of the Act if:

(a) the company were wound up; and

(b) the relevant date were:

(i) if the company is under restructuring—the beginning of the restructuring; and

(ii) if the company has made a restructuring plan—the beginning of the restructuring that ended when the plan was made;

but does not include:

(c) the entitlements of an employee of the company; or

(d) a debt or claim that would be admissible to proof under subsection 553(1A) of the Act.

Note: Employee ***entitlements*** are defined in subsections 596AA(2) and (3) of the Act and include superannuation contributions payable by the company.

***affected creditor*** means:

(a) in relation to a proposal to vary or terminate a company’s restructuring plan—a creditor of the company who is a party (as creditor) to the plan; or

(b) in relation to a proposal by a company to make a restructuring plan—a person who would be a party to the restructuring plan if it were made.

***excluded creditor***, in relation to a company under restructuring, means a creditor of the company who:

(a) is the restructuring practitioner for the company; or

(b) was, at the time the restructuring began, a related creditor of the company; or

(c) was, on becoming an affected creditor, a related entity of the restructuring practitioner.

***make***, in relation to a restructuring plan, has the meaning given by regulation 5.3B.26.

***proposal period***, in relation to a company under restructuring, has the meaning given by regulation 5.3B.17.

***propose***, in relation to a restructuring plan, has the meaning given by regulation 5.3B.14.

***related creditor*** of a company means a person who is a related entity, and a creditor, of the company.

***restructuring proposal statement*** means a statement made by a company under regulation 5.3B.16.

Division 2—Restructuring

Subdivision A—Restructuring generally

5.3B.02 When restructuring ends

(1) For the purposes of paragraph 453A(b) of the Act, the restructuring of a company ends if:

(a) the company makes a declaration under subregulation (2); or

(b) the company fails to propose a restructuring plan within the proposal period; or

(c) the company’s proposal to make a restructuring plan lapses under regulation 5.3B.20; or

(d) the restructuring practitioner for the company terminates the restructuring under section 453J of the Act; or

(e) the Court orders that the restructuring of the company is to end; or

(f) an administrator of the company is appointed under section 436A, 436B or 436C of the Act; or

(g) a liquidator or provisional liquidator of the company is appointed; or

(j) the company makes a restructuring plan.

(2) The directors of a company under restructuring:

(a) may make a declaration in writing that the restructuring of the company is to end on a specified day for any reason; and

(b) must give a copy of the declaration to:

(i) the company’s restructuring practitioner; and

(ii) the company’s creditors;

before the day specified in the declaration.

5.3B.03 Eligibility criteria for restructuring

(1) For the purposes of paragraph 453C(1)(a) of the Act, the test for eligibility is that on the day the restructuring begins the total liabilities of the company to pay any admissible debts and claims must not exceed $1 million.

(2) For the purposes of paragraph 453C(1)(b) of the Act, a period of 7 years is prescribed.

(3) For the purposes of paragraph 453C(1)(c) of the Act, a period of 7 years is prescribed.

(4) For the purposes of paragraph 453C(2)(b) of the Act, a prescribed circumstance is that:

(a) the other company is a related body corporate of the company in relation to which the eligibility criteria are to be met; and

(b) the other company is, or has been:

(i) under restructuring; or

(ii) the subject of a simplified liquidation process; and

(c) if subparagraph (b)(i) applies—the restructuring practitioner for the other company was appointed no more than 20 business days before the day on which the restructuring of the company in relation to which the eligibility criteria are to be met began; and

(d) if subparagraph (b)(ii) applies—the other company began to follow the simplified liquidation process no more than 20 business days before the day on which the restructuring of the company in relation to which the eligibility criteria are to be met began.

5.3B.04 Transactions or dealings in the ordinary course of business

(1) For the purposes of subsection 453L(4) of the Act, this regulation prescribes the circumstances in which entering into a transaction or dealing by a company is to not be treated as in the ordinary course of the company’s business.

(2) The circumstances are as follows:

(a) the transaction or dealing is for the purposes of satisfying an admissible debt or claim;

(b) the transaction or dealing relates to the transfer or sale of the whole or a part of the business;

(c) the transaction or dealing relates to the payment of a dividend.

5.3B.05 Consent to transactions or dealings outside the ordinary course of business

(1) This regulation applies if the restructuring practitioner for a company under restructuring consents to a transaction or dealing under paragraph 453L(2)(b) of the Act.

(2) The consent must be given:

(a) in writing; or

(b) if the restructuring practitioner is satisfied that the delay caused by giving a written consent would not be in the best interests of the company’s creditors as a whole—orally.

(3) If the consent is given in writing, the written consent must specify any conditions imposed on the consent.

(4) If the consent is given orally, the restructuring practitioner must, within 2 business days after the day on which the consent is given:

(a) make a written record of the consent and any conditions imposed on the consent; and

(b) provide a copy of the written record to the company.

(5) The restructuring practitioner must keep a record of the consent for 5 years after the day on which the consent is given.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

5.3B.06 Termination of restructuring

For the purposes of paragraph 453J(3)(b) of the Act, the following information is prescribed:

(a) the following details about the company:

(i) the name of the company;

(ii) any trading name of the company;

(iii) the ACN of the company;

(iv) the address of the company’s registered office;

(v) any website maintained by or on behalf of the company;

(vi) the company’s email address (if any);

(b) the following details about the restructuring practitioner:

(i) the restructuring practitioner’s name;

(ii) the address and telephone number of the principal place where the restructuring practitioner practises as a registered liquidator;

(iii) if the restructuring practitioner practises as a registered liquidator as a member of a firm or under a name or style other than the person’s own name—the name of that firm or the name or style under which the person practises;

(iv) the Registered Liquidator Number for the restructuring practitioner as specified on the Register of Liquidators;

(c) the day on which the restructuring of the company began;

(d) the day on which the notice is given to the company;

(e) the reason for terminating the restructuring of the company;

(f) the signature of the restructuring practitioner;

(g) any other information that the restructuring practitioner considers appropriate.

Subdivision B—Restructuring practitioner for company under restructuring

5.3B.07 Authority

This Subdivision is made for the purposes of subsection 453E(2) of the Act.

5.3B.08 Powers of restructuring practitioner for company under restructuring

The restructuring practitioner for a company under restructuring has the power to investigate the company’s business, property, affairs and financial circumstances for the purposes of:

(a) preparing a declaration under regulation 5.3B.18; or

(b) deciding whether to terminate the restructuring of the company; or

(c) resolving a disagreement under regulation 5.3B.22; or

(d) performing or exercising any other function, duty or power as restructuring practitioner for the company.

5.3B.09 Replacement restructuring practitioner must fulfil certain past requirements

(1) This regulation applies in relation to a restructuring practitioner for a company (the ***replacement practitioner***) who is appointed under subsection 456E(1) of the Act.

Replacement practitioner must resolve existing creditor disputes

(2) If:

(a) before the appointment, a notice was given under subregulation 5.3B.22(2) to the restructuring practitioner for the company (the ***former practitioner***) setting out a creditor’s disagreement with the schedule of debts and claims included with the company’s restructuring proposal statement; and

(b) at the time of the appointment, the former practitioner has not given notice under subregulation 5.3B.22(6) or (7) in relation to the disagreement;

the replacement practitioner must give the notice under subregulation 5.3B.22(6) or (7), as the case requires, as soon as practicable after the appointment.

Replacement practitioner must lodge outstanding notices etc.

(3) If:

(a) before the appointment, a restructuring practitioner for the company was required to do a thing under Subdivision B or C of Division 5; and

(b) at the time of the appointment, the thing has not been done;

the replacement practitioner must do the thing within 2 business days after the day on which the replacement practitioner is appointed.

5.3B.11 Protection from liability

A person who is or has been the restructuring practitioner for a company under restructuring is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith and without negligence in the exercise or performance, or the purported exercise or performance, of powers, functions or duties under the Act or these regulations relating to the restructuring of the company.

Subdivision C—Stay on enforcing rights merely because the company is under restructuring etc.

5.3B.12 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 454N of the Act

For the purposes of subparagraph 454N(5)(c)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation 5.3A.50(2) is prescribed.

Division 3—Restructuring plan

Subdivision A—Preliminary

5.3B.13 Authority

Unless otherwise specified, this Division is made under section 455B of the Act.

Subdivision B—Proposing a restructuring plan

5.3B.14 How a restructuring plan is *proposed*

(1) A company under restructuring ***proposes*** a restructuring plan if:

(a) the company prepares:

(i) a restructuring plan that complies with the requirements in regulation 5.3B.15; and

(ii) a restructuring proposal statement that complies with the requirements in regulation 5.3B.16; and

(b) the company executes the restructuring plan during the proposal period; and

(c) the company’s restructuring practitioner prepares and signs a declaration in accordance with regulation 5.3B.18; and

(d) the restructuring practitioner gives a copy of the restructuring plan, restructuring proposal statement and declaration in accordance with subregulation 5.3B.21(1); and

(e) immediately before the restructuring practitioner gives the copies in accordance with subregulation 5.3B.21(1), regulation 5.3B.24 is satisfied in relation to the company.

(2) For the purposes of subsection 455A(3) of the Act, the company is taken to have proposed the restructuring plan on the day the company’s restructuring practitioner does the things mentioned in paragraph (1)(d).

5.3B.15 Contents of restructuring plan

(1) A company under restructuring must prepare a restructuring plan that complies with the requirements of this regulation.

(2) The restructuring plan must:

(a) be in the form approved under regulation 5.3B.65 (if any); and

(b) identify the company’s property that is to be dealt with; and

(c) specify how the property is to be dealt with; and

(d) provide for the remuneration of the restructuring practitioner for the plan; and

(e) specify the date on which the restructuring plan was executed.

(3) The restructuring plan may:

(a) authorise the restructuring practitioner for the plan to deal with the identified property in the way specified in the plan; and

(aa) provide that, when performing a function or duty, or exercising a power, as restructuring practitioner for the plan, the restructuring practitioner is taken to act as agent for and on behalf of the company; and

(b) provide for any matter relating to the company’s financial affairs; and

(c) be expressed to be conditional on the occurrence of a specified event within a specified period of no longer than 10 business days after the day on which the proposal to make the restructuring plan is accepted.

(4) The restructuring plan must not:

(a) provide for the transfer of property (other than money) to a creditor; or

(b) provide for the company to make payments under the plan, in respect of an admissible debt or claim, after 3 years beginning on the day the plan is made.

5.3B.16 Restructuring proposal statement

(1) A restructuring plan must be accompanied by a restructuring proposal statement.

(2) The restructuring proposal statement must:

(a) include a schedule of debts and claims; and

(b) be in the form approved under regulation 5.3B.65 (if any); and

(c) contain such information as the form requires.

5.3B.17 Meaning of *proposal period*

(1) The ***proposal period***, in relation to a company that is under restructuring, is the period of 20 business days beginning on the day the restructuring begins.

Restructuring practitioner may extend proposal period

(2) The company’s restructuring practitioner may, on application by the company, extend the proposal period by no more than 10 business days if the restructuring practitioner is satisfied on reasonable grounds that requiring the company to give a restructuring plan within the proposal period would not be reasonable in the circumstances.

(3) The restructuring practitioner may not extend the proposal period more than once under subregulation (2).

Court may extend proposal period

(4) The Court may, on application by the company, order an extension of the proposal period.

Notification of extension

(5) Within 2 business days after the day on which the proposal period is extended under subregulation (2) or (4), the restructuring practitioner must:

(a) lodge with ASIC notice of the extension:

(i) in the prescribed form (if any); and

(ii) in accordance with subregulation 5.6.75(4); and

(b) give a copy of the notice to as many of the company’s creditors as reasonably practicable.

5.3B.18 Restructuring practitioner must make declaration in relation to restructuring plan

(1) As soon as practicable after a company executes a restructuring plan, the company’s restructuring practitioner must make a declaration in accordance with this regulation.

(2) The declaration must:

(a) if the restructuring practitioner believes on reasonable grounds that:

(i) the eligibility criteria for restructuring are met in relation to the company; and

(ii) if the restructuring plan is made, the company is likely to be able to discharge the obligations created by the plan as and when they become due and payable;

state that; and

(b) if the restructuring practitioner believes on reasonable grounds that all information required to be set out in the company’s restructuring proposal statement has been set out in that statement—state that; and

(c) if the restructuring practitioner does not believe on reasonable grounds a matter mentioned in paragraph (a) or (b)—identify the matter in relation to which a belief on reasonable grounds could not be formed and set out the reasons for that conclusion; and

(d) if, at the time a person became an affected creditor, the person was a related entity of the restructuring practitioner—specify the name of the affected creditor and the nature of the relationship between the affected creditor and the restructuring practitioner.

Note: A declaration must not be false or misleading in a material particular, or omit anything that would render it materially false or misleading: see section 1308 of the Act.

(3) The declaration must be signed by the restructuring practitioner.

Offence

(4) The restructuring practitioner for a company commits an offence if:

(a) the restructuring practitioner prepares a declaration under this regulation; and

(b) the restructuring practitioner does not:

(i) make reasonable inquiries into the company’s business, property, affairs and financial circumstances; or

(ii) take reasonable steps to verify the company’s business, property, affairs and financial circumstances;

for the purpose of assessing the accuracy and completeness of the information provided by the company in the restructuring plan and restructuring proposal statement.

Penalty: 50 penalty units.

(5) An offence based on subregulation (4) is an offence of strict liability.

5.3B.19 Restructuring practitioner must notify company of defect in restructuring plan

(1) The restructuring practitioner for a company under restructuring commits an offence if:

(a) at any time before the restructuring practitioner prepares a declaration under regulation 5.3B.18 in relation to the company’s restructuring plan:

(i) the restructuring practitioner becomes aware that the information in the plan, or in the restructuring proposal statement that accompanies the plan, is incomplete or inaccurate; and

(ii) the restructuring practitioner has reasonable grounds to believe that, if the plan is made, the matter to which the incompleteness or inaccuracy relates is likely to affect the company’s ability to meet its obligations under the plan; and

(b) the restructuring practitioner does not, as soon as practicable after becoming so aware:

(i) notify the company of the incompleteness or inaccuracy; and

(ii) provide an opportunity for the company to address the incompleteness or inaccuracy.

Penalty: 50 penalty units.

(2) An offence based on subregulation (1) is an offence of strict liability.

5.3B.20 Proposal to make restructuring plan lapses

(1) A company’s proposal to make a restructuring plan lapses if:

(a) the restructuring plan is not accepted in accordance with subregulation 5.3B.25(1); or

(b) the company’s restructuring practitioner cancels the proposal to make the plan in accordance with subregulation (2).

(2) The restructuring practitioner for a company may cancel the company’s proposal to make a restructuring plan if, before the restructuring plan is made, the restructuring practitioner:

(a) becomes aware that the information in the plan is incomplete or inaccurate, and has reasonable grounds to believe that, if the plan is made, the matter to which the incompleteness or inaccuracy relates is likely to affect the company’s ability to meet its obligations under the plan; or

(b) becomes aware that one or more affected creditors were not disclosed in the company’s restructuring proposal statement; or

(c) becomes aware that the company’s restructuring proposal statement was deficient because it omitted a material particular or because it was incorrect in a material particular; or

(d) becomes aware of a material change in the company’s circumstances that:

(i) was not foreshadowed in the company’s restructuring proposal statement; and

(ii) in the opinion of the restructuring practitioner, is capable of affecting an affected creditor’s decision whether or not to accept the restructuring plan.

5.3B.21 Proposing a restructuring plan to creditors

(1) As soon as practicable after a company executes a restructuring plan, the restructuring practitioner for the company must do the following:

(a) give to as many of the company’s affected creditors as reasonably practicable a copy of:

(i) the company’s restructuring plan; and

(ii) the restructuring plan standard terms; and

(iii) the company’s restructuring proposal statement; and

(iv) the declaration prepared by the restructuring practitioner under regulation 5.3B.18;

(b) ask each affected creditor to:

(i) give a written statement setting out whether or not the restructuring plan should be accepted; and

(ii) if the creditor agrees with the company’s assessment of the amount of the creditor’s admissible debts or claims—verify the creditor’s admissible debts or claims as set out in the schedule of debts and claims included with the restructuring proposal statement; and

(iii) if the creditor disagrees with the company’s assessment of the amount of the creditor’s admissible debts or claims—notify the restructuring practitioner in accordance with regulation 5.3B.22;

(c) inform each affected creditor of the person to whom the statement should be given and of the need to give the statement before the end of the acceptance period.

(2) Paragraphs (1)(b) and (c) do not apply in relation to an excluded creditor.

Definitions

(3) In this regulation:

***acceptance period*** means:

(a) the period of 15 business days beginning on the day the company’s restructuring practitioner gives documents in accordance with subregulation (1); or

(b) if creditors are given a notice under paragraph 5.3B.22(7)(d)—the longer of:

(i) the period of 15 business days beginning on the day the company’s restructuring practitioner gives documents in accordance with subregulation (1) of this regulation; and

(ii) the period beginning on the day the company’s restructuring practitioner gives documents in accordance with subregulation (1) of this regulation and ending on the last day of the period of 5 business days after the day on which the notice under paragraph 5.3B.22(7)(d) is given; or

(c) such other period as the Court orders under regulation 5.3B.60.

***restructuring plan standard terms*** means the terms specified in subregulation 5.3B.27(1).

5.3B.22 Creditors may dispute schedule of debts and claims before restructuring plan is made

(1) This regulation applies in relation to a person if:

(a) the person is a creditor of a company that is proposing to make a restructuring plan; and

(b) the plan has not been made; and

(c) the person disagrees with the schedule of debts and claims included with the company’s restructuring proposal statement because:

(i) the person’s admissible debts or claims are not specified; or

(ii) the company’s assessment of the person’s admissible debts or claims is incorrect; or

(iii) the person is incorrectly specified as an excluded creditor.

Creditor may notify restructuring practitioner of disagreement

(2) The person may give written notice of the disagreement to the company’s restructuring practitioner.

(3) The notice:

(a) may be given:

(i) if the person received a copy of the plan—within 5 business days after the day on which the person receives the plan; or

(ii) if the person otherwise became aware of the plan—within 5 business days after the day on which the person becomes so aware; or

(iii) after the period specified in subparagraph (i) or (ii), if the notice includes a statement setting out the person’s reasons for not giving the notice within that period; and

(b) if the disagreement relates to the person’s admissible debts or claims:

(i) must include detailed particulars of the debt or claim sought to be proved; and

(ii) in the case of a debt, must include a statement of account; and

(iii) must specify the vouchers (if any) by which the statement can be substantiated; and

(c) if the disagreement relates to the person’s status as an excluded creditor—must include detail sufficient to resolve the disagreement.

(4) The restructuring practitioner may, after receiving the notice, request that the person or the directors of the company:

(a) give the restructuring practitioner information about the company’s business, property, affairs and financial circumstances; and

(b) verify the information by statutory declaration.

Restructuring practitioner may refuse to consider disagreement

(5) If the notice is given after the period specified in subparagraph (3)(a)(i) or (ii), the restructuring practitioner may refuse to consider the disagreement if the restructuring practitioner is satisfied that the person did not take all reasonable steps to give notice within that period.

(6) If the restructuring practitioner refuses to consider the disagreement:

(a) the restructuring practitioner is taken to have recommended that the schedule of debts and claims not be varied; and

(b) the restructuring practitioner must give written notice to the company and the person setting out the restructuring practitioner’s reasons for the refusal; and

(c) subregulation (7) does not apply.

Restructuring practitioner must resolve disagreement as soon as practicable

(7) If:

(a) a person gives notice under subregulation (2) of a disagreement to the restructuring practitioner for a company; and

(b) the restructuring practitioner has not refused to consider the disagreement under subregulation (5);

the restructuring practitioner must:

(c) give written notice to the company and the person:

(i) setting out the restructuring practitioner’s recommendations for resolving the disagreement; and

(ii) giving reasons for the recommendations; and

(d) if the restructuring practitioner recommends that the schedule of debts and claims be varied and is of the opinion that the variation is significant—give written notice to the company and as many of the company’s creditors as reasonably practicable:

(i) stating that fact; and

(ii) outlining the creditors’ rights under regulation 5.3B.23.

(8) If the restructuring practitioner recommends that the schedule of debts and claims be varied, the company must vary the schedule in accordance with the recommendation as soon as practicable.

5.3B.23 Creditors may change vote

(1) This regulation applies if:

(a) a company proposes to make a restructuring plan; and

(b) an affected creditor of the company gave a statement under paragraph 5.3B.21(1)(b) in relation to the plan.

(2) At any time before the end of the acceptance period, the creditor may:

(a) withdraw the statement; and

(b) give a new statement under paragraph 5.3B.21(1)(b) in relation to the plan.

(3) A statement may be withdrawn, and a new statement may be given, more than once before the end of the acceptance period.

Definitions

(4) In this regulation:

***acceptance period*** has the same meaning as in subregulation 5.3B.21(3).

5.3B.24 Company under restructuring must do certain things

This regulation is satisfied in relation to a company under restructuring if:

(a) the company has:

(i) paid the entitlements of its employees that are payable; and

(ii) given returns, notices, statements, applications or other documents as required by taxation laws (within the meaning of the *Income Tax Assessment Act 1997*); or

(b) the company is substantially complying with the matter concerned.

Note: Employee ***entitlements*** are defined in subsections 596AA(2) and (3) of the Act and include superannuation contributions payable by the company.

Subdivision C—Accepting a proposal for a restructuring plan

5.3B.25 Acceptance of restructuring plan

When restructuring plan is accepted

(1) A company’s restructuring plan is ***accepted*** if, at the end of the last day of the acceptance period, the majority in value of those creditors from whom the restructuring practitioner for the plan has received a statement under paragraph 5.3B.21(1)(b) stated that the restructuring plan should be accepted.

(2) For the purposes of subregulation (1):

(a) the value of an affected creditor is to be worked out:

(i) by reference to the value of the creditor’s admissible debts or claims that are known at the time the restructuring began; or

(ii) if a person is an affected creditor because the person purchased another creditor’s admissible debts or claims—by reference to the value of the purchase price; and

(b) where there have been mutual credits, mutual debts or other mutual dealings between the company and an affected creditor:

(i) an account is to be taken of what is due from the one party to the other in respect of those mutual dealings; and

(ii) the sum due from the one party is to be set off against any sum due from the other party; and

(iii) the value of the affected creditor is to be worked out only by reference to the balance of the account; and

(c) disregard an affected creditor who is an excluded creditor.

Note: For the purposes of subparagraph (a)(ii), the purchase price would normally be the price stated in the contract for the purchase of the admissible debt or claim. However, if the amount paid by the person is different from the price stated in the contract, then the purchase price would be the amount that was actually paid.

Offence

(3) A person commits an offence if:

(a) the person gives, or agrees or offers to give, to an affected creditor any valuable consideration; and

(b) the person does so with the intention of securing the affected creditor’s acceptance or non‑acceptance of the restructuring plan.

Penalty: 50 penalty units.

Definitions

(5) In this regulation:

***acceptance period*** has the same meaning as in subregulation 5.3B.21(3).

5.3B.26 How a restructuring plan is *made*

(1) If a company’s proposal to make a restructuring plan is accepted in accordance with regulation 5.3B.25, the company is taken to have ***made*** the restructuring plan.

(2) The restructuring plan is taken to have been ***made***:

(a) if the plan is expressed to be conditional on the occurrence of a specified event within a specified period and the event occurs within that period—on the day after the end of that period; and

(b) otherwise—on the day after the end of the acceptance period.

(3) A restructuring plan that has been made has the same force and validity as if it were a deed executed by each of the parties to the plan.

Definitions

(4) In this regulation:

***acceptance period*** has the same meaning as in subregulation 5.3B.21(3).

5.3B.27 Standard terms for restructuring plans

(1) A restructuring plan made by a company is taken to include all of the following terms:

(a) all admissible debts and claims rank equally;

(b) if the total amount paid by the company under the plan in respect of those debts or claims is insufficient to meet those debts or claims in full, those debts or claims will be paid proportionately;

(c) a creditor is not entitled to receive, in respect of an admissible debt or claim, more than the amount of the debt or claim;

(d) the amount of an admissible debt or claim will be ascertained as at the time immediately before the restructuring began;

(e) if a creditor is a secured creditor:

(i) if the creditor does not realise the creditor’s security interest while the plan is in force, the creditor is taken, for the purposes of working out the amount payable to the creditor under the plan, to be a creditor only to the extent (if any) by which the amount of the creditor’s admissible debt or claim exceeds the value of the creditor’s security interest; and

(ii) if the creditor realises the creditor’s security interest while the plan is in force, the creditor is taken, for the purposes of working out the amount payable to the creditor under the plan, to be a creditor only to the extent of any balance due to the creditor after deducting the net amount realised.

(2) A restructuring plan is void to the extent that it is inconsistent with any of the matters set out in subregulation (1).

5.3B.28 Parties to restructuring plan

The parties to a restructuring plan are:

(a) the company to which the plan relates; and

(b) any person who has an admissible debt or claim in relation to the plan.

5.3B.29 Effect of restructuring plan

(1) This regulation applies on and after the day on which a restructuring plan is made in relation to a company.

(2) The plan is binding on:

(a) subject to subregulations (3) and (4)—a creditor of the company to the extent that the creditor has an admissible debt or claim in relation to the plan; and

(b) the company; and

(c) the company’s officers and members; and

(d) the restructuring practitioner for the plan.

(3) If a creditor of the company is a secured creditor, the plan is binding on the creditor:

(a) if the value of the creditor’s security interest is less than the value of the creditor’s admissible debts or claims—only to the extent of the difference between the values; and

(b) if the value of the creditor’s security interest is equal to or more than the value of the creditor’s admissible debts or claims—only to the extent that the creditor consents to be bound by the plan.

(4) The fact that a restructuring plan has been made does not prevent a secured creditor from realising or otherwise dealing with the security interest, unless:

(a) the secured creditor accepted the proposal to make the plan and the plan prevents the secured creditor from doing so; or

(b) the Court so orders under subregulation 5.3B.64(2).

(5) The fact that a restructuring plan has been made does not affect a right that an owner or lessor of property has in relation to that property, unless:

(a) the owner or lessor accepted the proposal to make the plan and the plan affects that right; or

(b) the Court so orders under subregulation 5.3B.64(4).

(6) Subregulation (5) does not apply in relation to an owner or lessor of PPSA retention of title property of the company.

Note: Subregulation (3) applies in relation to an owner or lessor of PPSA retention of title property of the company. Such an owner or lessor is a secured creditor of the company (see section 51F of the Act (meaning of ***PPSA retention of title property***)).

5.3B.30 Protection of company’s property from persons bound by restructuring plan

(1) Until a restructuring plan terminates, this regulation applies to a person bound by the plan.

(2) A person bound by the plan cannot:

(a) make an application for an order to wind up the company on the basis of an admissible debt or claim; or

(b) proceed with such an application made before the plan became binding on the person.

(3) A person bound by the plan cannot:

(a) begin or proceed with a proceeding against the company or in relation to any of its property to recover an admissible debt or claim; or

(b) begin or proceed with an enforcement process in relation to property of the company to recover an admissible debt or claim;

except:

(c) with the leave of the Court; and

(d) in accordance with such terms (if any) as the Court imposes.

5.3B.31 When restructuring plan terminates

(1) A company’s restructuring plan terminates:

(a) on the day on which all of the following conditions are satisfied:

(i) the company’s obligations under the plan have been fulfilled;

(ii) the obligations of any other party to the plan have been fulfilled;

(iii) all admissible debts or claims have been dealt with in accordance with the plan; or

(b) if the Court makes an order under regulation 5.3B.63 terminating the plan—on the day the Court determines and specifies in the order; or

(c) if both of the following conditions are satisfied:

(i) the plan is expressed to be subject to the occurrence of a specified event within a specified period of no longer than 10 business days after the day on which the plan is made;

(ii) the event does not occur within that period;

on the next business day after the end of that period; or

(d) if both of the following conditions are satisfied:

(i) there has been a contravention of the plan by a person bound by the plan;

(ii) the contravention has not been rectified within the period of 30 business days beginning on the day the contravention occurred;

on the next business day after the end of that period; or

(e) on the day on which an administrator of the company is appointed under section 436A, 436B or 436C of the Act; or

(f) on the day on which a liquidator or provisional liquidator of the company is appointed;

whichever happens first.

(2) If a company’s restructuring plan terminates because of the happening of the event mentioned in paragraph (1)(a):

(a) the company is entitled to any property that was subject to the plan but that was not required by the plan to be distributed to creditors; and

(b) the company is released from all admissible debts or claims.

(3) If a company’s restructuring plan terminates because of the happening of an event mentioned in paragraph (1)(b), (c), (d), (e) or (f), any admissible debt or claim that has not been dealt with in accordance with the plan is taken to be due and payable on the business day after the day on which the termination occurs.

5.3B.32 Effect of termination or avoidance

The termination or avoidance, in whole or in part, of a restructuring plan does not affect the validity of anything that was done in good faith under the plan by a person before the person had notice of the termination or avoidance.

Subdivision D—Restructuring practitioner for a restructuring plan

5.3B.33 Appointment of restructuring practitioner for restructuring plan

If a company under restructuring makes a restructuring plan, the company’s restructuring practitioner is to be the restructuring practitioner for the restructuring plan unless the company, by resolution of the board, appoints someone else to be the restructuring practitioner for the plan.

5.3B.34 Vacancy in office of restructuring practitioner for restructuring plan

(1) Where the restructuring practitioner for a company’s restructuring plan:

(a) dies; or

(b) becomes prohibited from acting as restructuring practitioner for the plan; or

(c) resigns by notice in writing given to the company;

the appointer may appoint someone else as restructuring practitioner for the restructuring plan.

(2) In subregulation (1):

***appointer***, in relation to the restructuring practitioner for a company’s restructuring plan, means:

(a) if the restructuring practitioner was appointed by the Court under Division 90 of Schedule 2 to the Act (review of the external administration of a company) or subregulation (4) of this regulation—the Court; or

(b) the company.

(3) An appointment under subregulation (1) by the company must be made by resolution of the board.

(4) Where a company has made a restructuring plan, but for some reason no restructuring practitioner for the plan is acting, the Court may appoint a person as restructuring practitioner for the plan on the application of ASIC or of an officer, member or creditor of the company.

5.3B.35 Declaration by new and replacement restructuring practitioners—relevant relationships

(1) This regulation applies in relation to a person if:

(a) the person is the restructuring practitioner for a company’s restructuring plan; and

(b) either:

(i) the person was not the company’s restructuring practitioner immediately before the person was appointed as the restructuring practitioner for the plan; or

(ii) the person was appointed as the restructuring practitioner for the plan under subregulation 5.3B.34(1) otherwise than by the Court.

(2) As soon as practicable after being appointed, the person must make a declaration of relevant relationships.

Note: Failure to comply with this subregulation is an offence (see subsection 1311(1) of the Act).

(3) The person must give a copy of the declaration under subregulation (2) to as many of the company’s creditors as reasonably practicable.

Note: Failure to comply with this subregulation is an offence (see subsection 1311(1) of the Act).

(4) As soon as practicable after making a declaration under subregulation (2), the person must lodge a copy of the declaration with ASIC.

Note: Failure to comply with this subregulation is an offence (see subsection 1311(1) of the Act).

(5) In a prosecution for an offence constituted by a failure to include a particular matter in a declaration under this regulation, it is a defence if the defendant proves that:

(a) the defendant made reasonable enquiries; and

(b) after making these enquiries, the defendant had no reasonable grounds for believing that the matter should have been included in the declaration.

5.3B.36 Replacement declarations—relevant relationships

(1) If:

(a) at a particular time, the restructuring practitioner for a company’s restructuring plan makes a declaration of relevant relationships under section 453D of the Act or regulation 5.3B.35; and

(b) at a later time:

(i) the declaration has become out‑of‑date; or

(ii) the restructuring practitioner becomes aware of an error in the declaration;

the restructuring practitioner must, as soon as practicable, make a replacement declaration of relevant relationships.

Note: Failure to comply with this subregulation is an offence (see subsection 1311(1) of the Act).

(2) The restructuring practitioner must give a copy of the replacement declaration under subregulation (1) to as many of the company’s creditors as reasonably practicable.

Note: Failure to comply with this subregulation is an offence (see subsection 1311(1) of the Act).

(3) As soon as practicable after making a replacement declaration under subregulation (1), the person must lodge a copy of the replacement declaration with ASIC.

Note: Failure to comply with this subregulation is an offence (see subsection 1311(1) of the Act).

(4) In a prosecution for an offence constituted by a failure to include a particular matter in a declaration under this regulation, it is a defence if the defendant proves that:

(a) the defendant made reasonable enquiries; and

(b) after making these enquiries, the defendant had no reasonable grounds for believing that the matter should have been included in the declaration.

5.3B.37 Functions of restructuring practitioner for restructuring plan

The functions of the restructuring practitioner for a company’s restructuring plan are:

(a) to receive money from, and hold money on trust for, the company; and

(b) to pay the money to creditors in accordance with the plan; and

(c) if requested to do so by the company’s directors:

(i) to realise the property of the company that is available to pay creditors in accordance with the plan; and

(ii) to distribute the proceeds of the realisation of the property among the creditors in accordance with the plan; and

(d) to answer questions about the performance or exercise of any of the restructuring practitioner’s functions and powers as restructuring practitioner for the plan; and

(e) to do anything that is incidental to the performance or exercise of those functions and powers; and

(f) to do anything else that is necessary or convenient for the purpose of administering the plan.

5.3B.38 Replacement restructuring practitioner must lodge outstanding notices etc.

(1) This regulation applies in relation to a restructuring practitioner for a restructuring plan (the ***replacement practitioner***) who is appointed under subregulation 5.3B.34(1).

(2) If:

(a) before the appointment, a restructuring practitioner for the plan was required to do a thing under:

(i) Division 4; or

(ii) Subdivision B or C of Division 5; and

(b) at the time of the appointment, the thing has not been done;

the replacement practitioner must do the thing within:

(c) 2 business days after the day on which the replacement practitioner is appointed; or

(d) if the requirement arose because the restructuring practitioner was given notice or became aware of a thing—within 2 business days after the day on which the replacement practitioner is given the notice or becomes so aware.

5.3B.39 When restructuring practitioner may dispose of encumbered property

(1) The restructuring practitioner for a company’s restructuring plan must not dispose of:

(a) property of the company that is subject to a security interest; or

(b) property (other than PPSA retention of title property) that is used or occupied by, or is in the possession of, the company but of which someone else is the owner or lessor.

Note: PPSA retention of title property is subject to a PPSA security interest, and so is covered by paragraph (a) (see definition of ***PPSA retention of title property*** in section 51F of the Act).

(2) Subregulation (1) does not prevent a disposal:

(a) in the ordinary course of the company’s business; or

(b) with the written consent of the secured party, owner or lessor, as the case may be; or

(c) with the leave of the Court.

(3) The Court may only give leave under paragraph (2)(c) if satisfied that arrangements have been made to adequately protect the interests of the secured party, owner or lessor, as the case may be.

(4) If the restructuring practitioner proposes to dispose of property under paragraph (2)(a), the Court may, by order, direct the restructuring practitioner not to carry out that proposal.

(5) The Court may only make an order under subregulation (4) on the application of:

(a) if paragraph (1)(a) applies—the secured party; or

(b) if paragraph (1)(b) applies—the owner or lessor, as the case may be.

(6) The Court may only make an order under subregulation (4) if it is not satisfied that arrangements have been made to protect adequately the interests of the applicant for the order.

(7) If:

(a) a company has made a restructuring plan that has not terminated; and

(b) property of the company is subject to a security interest; and

(c) the restructuring practitioner disposes of the property;

the disposal extinguishes the security interest.

(8) For the purposes of paragraph (2)(a), if:

(a) property is used or occupied by, or is in the possession of, a company; and

(b) another person is the owner of the property; and

(c) either:

(i) the property is PPSA retention of title property; or

(ii) the property is subject to a retention of title clause under a contract; and

(d) the owner demands the return of the property;

a disposal of the property that occurs after the demand is made does not mean that the disposal is not in the ordinary course of the company’s business.

5.3B.42 Protection from liability

A person who is or has been the restructuring practitioner for a company’s restructuring plan is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith and without negligence in the exercise or performance, or the purported exercise or performance, of powers, functions or duties under the Act or these regulations relating to the plan.

5.3B.43 Right of indemnity

A person who is or has been the restructuring practitioner for a company’s restructuring plan is entitled to be indemnified out of the company’s property (other than any PPSA retention of title property subject to a PPSA security interest that is perfected within the meaning of the *Personal Property Securities Act 2009*) for:

(a) any debts or liabilities incurred, or damages or losses sustained, in good faith and without negligence, by the restructuring practitioner:

(i) in the performance or purported performance of the restructuring practitioner’s functions or duties; or

(ii) in the exercise or purported exercise of the restructuring practitioner’s powers; and

(b) the remuneration to which the restructuring practitioner is entitled under Insolvency Practice Rules made under Subdivision DA of Division 60 of Schedule 2 to the Act.

5.3B.44 Right of indemnity has priority over other debts

General rule

(1) Subject to section 556 of the Act, a right of indemnity under regulation 5.3B.43 has priority over:

(a) all the company’s unsecured debts; and

(b) any debts of the company secured by a PPSA security interest in property of the company if, when the restructuring of the company begins, the security interest is vested in the company because of the operation of any of the following provisions:

(i) section 267 or 267A of the *Personal Property Securities Act 2009* (property subject to unperfected security interests);

(ii) section 588FL of the Act (collateral not registered within time); and

(c) subject otherwise to this section—debts of the company secured by a circulating security interest in property of the company.

Debts secured by circulating security interests—receiver appointed before the beginning of restructuring etc.

(2) A right of indemnity under regulation 5.3B.43 does not have priority over debts of the company that are secured by a circulating security interest in property of the company, except so far as the secured party agrees, if:

(a) before the making of the restructuring plan, the secured party:

(i) appointed a receiver of property of the company under a power contained in an instrument relating to the security interest; or

(ii) obtained an order for the appointment of a receiver of property of the company for the purpose of enforcing the security interest; or

(iii) entered into possession, or assumed control, of property of the company for that purpose; or

(iv) appointed a person so as to enter into possession or assume control (whether as agent for the secured party or for the company); and

(b) the receiver or person is still in office, or the secured party is still in possession or control of the property.

Debts secured by circulating security interests—receiver appointed after restructuring plan made etc.

(3) Subregulation (4) applies if:

(a) debts of the company are secured by a circulating security interest in property of the company; and

(b) after the company’s restructuring plan is made, the secured party, consistently with Part 5.3B of the Act:

(i) appoints a receiver of property of the company under a power contained in an instrument relating to the security interest; or

(ii) obtains an order for the appointment of a receiver of property of the company for the purpose of enforcing the security interest; or

(iii) enters into possession, or assumes control, of property of the company for that purpose; or

(iv) appoints a person to enter into possession or assume control (whether as agent for the secured party or for the company).

(4) A right of indemnity of the restructuring practitioner under regulation 5.3B.43 has priority over those debts only in so far as it is a right of indemnity for debts incurred, or remuneration accruing, before written notice of the appointment, or of the entering into possession or assuming of control, as the case may be, was given to the restructuring practitioner.

Debts secured by circulating security interests—priority over right of indemnity in relation to repayment of money borrowed etc.

(5) A right of indemnity under regulation 5.3B.43 does not have priority over debts of the company that are secured by a circulating security interest in property of the company, except so far as the secured party consents in writing, to the extent that the right of indemnity relates to debts incurred for:

(a) the repayment of money borrowed; or

(b) interest in respect of money borrowed; or

(c) borrowing costs.

5.3B.45 Lien to secure indemnity

(1) To secure a right of indemnity under regulation 5.3B.43, the restructuring practitioner has a lien on the company’s property.

(2) A lien under subregulation (1) has priority over another security interest only in so far as the right of indemnity under regulation 5.3B.43 has priority over debts secured by the other security interest.

Division 4—The restructuring practitioner

5.3B.46 Authority

This Division is made for the purposes of subsection 456G(1) of the Act.

5.3B.47 Company must notify restructuring practitioner of certain matters

(1) The directors of a company that has made a restructuring plan that has not terminated must, within 2 business days after the day on which the directors become aware of the happening of an event mentioned in subregulation (4), give written notice of the event to the restructuring practitioner for the plan.

(2) The restructuring practitioner must, within 2 business days after the day on which the restructuring practitioner receives the notice:

(a) lodge with ASIC notice in the prescribed form (if any) of the happening of the event; and

(b) give a copy of the notice to as many of the company’s creditors as reasonably practicable.

(3) If:

(a) a restructuring practitioner for the plan (the ***replacement practitioner***) is appointed under subregulation 5.3B.34(1); and

(b) at the time of the appointment, notice of the happening of the event has not been lodged or given in accordance with subregulation (2);

the directors must give written notice of the event to the replacement practitioner within 2 business days after the day on which the replacement practitioner is appointed.

(4) The events that must be notified are as follows:

(a) an administrator of the company is appointed under section 436A, 436B or 436C of the Act;

(b) a liquidator or provisional liquidator of the company is appointed.

Division 5—Information, reports, documents etc.

Subdivision A—Preliminary

5.3B.48 Authority

This Division is made for the purposes of section 457A of the Act.

Subdivision B—Information, reports, documents etc. during restructuring

5.3B.49 Declaration by directors—eligibility to be under restructuring and other matters

(1) Within 5 business days after the day on which the restructuring of a company begins or such longer period as the company’s restructuring practitioner allows, the directors of the company must give to the restructuring practitioner a declaration in accordance with this regulation.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

(2) The declaration must:

(a) be in the form approved under regulation 5.3B.65 (if any); and

(b) state whether, in the directors’ opinion, there are reasonable grounds to believe that the company has entered into a transaction that would be voidable under section 588FE of the Act if:

(i) the company were being wound up because the company had resolved by special resolution that it be wound up voluntarily; and

(ii) the resolution had been passed on the day on which the declaration is given; and

(iii) the company were under restructuring immediately before the company passed the resolution; and

(iv) the relation‑back day were the day on which the restructuring of the company began;

other than a transaction that would be an unfair preference; and

(c) state whether, in the directors’ opinion, there are reasonable grounds to believe that the eligibility criteria for restructuring were met in relation to the company at the time the restructuring began, and set out the reasons for that opinion.

Note: A declaration must not be false or misleading in a material particular, or omit anything that would render it misleading in a material respect: see section 1308 of the Act.

(3) The declaration must be signed by each director of the company.

5.3B.50 Notice of appointment of restructuring practitioner for company

(1) Within 1 business day after the day on which a restructuring practitioner for a company is appointed, the restructuring practitioner must lodge with ASIC notice of the appointment:

(a) in the prescribed form (if any); and

(b) in accordance with subregulation 5.6.75(4).

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

(2) Within 1 business day after the day on which a restructuring practitioner for a company is appointed, the restructuring practitioner must give information about the following to as many of the company’s creditors as reasonably practicable:

(a) the fact that the restructuring practitioner has been appointed in relation to the company;

(b) the name of the company;

(c) any trading name of the company;

(d) the ACN of the company;

(e) the name and contact details of the restructuring practitioner;

(f) the date on which the restructuring practitioner was appointed;

(g) the restructuring process and the process of making a restructuring plan, including:

(i) the proposal period in relation to the company; and

(ii) the amount of time in which an affected creditor may decide whether a proposed restructuring plan should be accepted; and

(iii) how an affected creditor may verify or dispute the creditor’s admissible debts or claims;

(h) how a person may obtain further information about the restructuring process and the process of making a restructuring plan;

(i) the right of creditors to request information, reports and documents under sections 70‑40 and 70‑45 of Schedule 2 to the Act.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

5.3B.51 Notice of termination of appointment of restructuring practitioner for company

Within 2 business days after the day on which the appointment of a person as restructuring practitioner for a company terminates, notice in the prescribed form (if any) of the termination must be lodged with ASIC:

(a) if the termination is because of the death of the person—by the company; and

(b) otherwise—by the person.

5.3B.52 Notice of restructuring plan etc. given to affected creditors

Within 2 business days after the day on which the restructuring practitioner for a company gives, in accordance with subregulation 5.3B.21(1), a copy of:

(a) the company’s restructuring plan; and

(b) the company’s restructuring proposal statement; and

(c) the declaration prepared by the restructuring practitioner under regulation 5.3B.18;

the restructuring practitioner must lodge with ASIC in the prescribed form (if any):

(d) the plan; and

(e) the restructuring proposal statement; and

(f) the declaration.

5.3B.53 Notice of end of restructuring

If the restructuring of a company ends because of the happening of an event mentioned in subregulation 5.3B.02(1), the person who was the restructuring practitioner for the company immediately before the restructuring ended must, within 2 business days after the day on which the event happens:

(a) lodge with ASIC notice in the prescribed form (if any) of:

(i) the ending of the restructuring; and

(ii) the reason for the ending; and

(b) give a copy of the notice to as many of the company’s creditors as reasonably practicable.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

Subdivision C—Information, reports, documents etc. once restructuring plan is made

5.3B.54 Notice of appointment of restructuring practitioner for restructuring plan

Within 2 business days after the day on which a restructuring practitioner for a restructuring plan is appointed, the restructuring practitioner must lodge with ASIC notice of the appointment:

(a) in the prescribed form (if any); and

(b) in accordance with subregulation 5.6.75(4).

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

5.3B.55 Notice of making of restructuring plan

If a company makes a restructuring plan, the restructuring practitioner for the plan must, within 2 business days after the day on which the plan is made:

(a) give to as many of the company’s creditors as reasonably practicable a written notice:

(i) stating that the plan has been made; and

(ii) specifying the day on which the plan was made; and

(b) lodge with ASIC notice in the prescribed form (if any) of the making of the plan, including information about:

(i) the total value of the debts and claims set out in the schedule of debts and claims included with the company’s restructuring proposal statement; and

(ii) the number of affected creditors to whom the restructuring practitioner gave a copy of the documents mentioned in paragraph 5.3B.21(1)(a); and

(iii) the proportion in value of affected creditors that gave, before the end of the acceptance period, a statement under paragraph 5.3B.21(1)(b) that the plan should be accepted.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

5.3B.56 Notice of contravention of restructuring plan

Director to notify restructuring practitioner

(1) If a director of a company that has made a restructuring plan becomes aware that:

(a) there has been a contravention of the plan by a person bound by the plan (who may be the director); or

(b) there is likely to be a contravention of the plan by a person bound by the plan (who may be the director);

the director must, within 2 business days after the day on which the director becomes aware of the contravention or likely contravention, give written notice of the contravention or likely contravention to the restructuring practitioner for the plan.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

Restructuring practitioner to notify company’s creditors

(2) If the restructuring practitioner for a restructuring plan receives notice under subregulation (1), or otherwise becomes aware, that:

(a) there has been a contravention of the plan by a person bound by the plan (who may be the restructuring practitioner); or

(b) there is likely to be a contravention of the plan by a person bound by the plan (who may be the restructuring practitioner);

the restructuring practitioner must, within 2 business days after the day on which the restructuring practitioner receives the notice or becomes so aware:

(c) lodge with ASIC notice in the prescribed form (if any) of the contravention or likely contravention; and

(d) give a copy of the notice to as many of the company’s creditors as reasonably practicable.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

5.3B.57 Notice of termination of restructuring plan

(1) If a company’s restructuring plan terminates because of the happening of the event mentioned in paragraph 5.3B.31(1)(a):

(a) the directors of the company must, within 2 business days after the day on which the directors become aware of the happening of the event, give written notice of the termination to the person (the ***former practitioner***) who was the restructuring practitioner for the plan immediately before the termination; and

(b) the former practitioner must, within 2 business days after the day on which the former practitioner receives the notice:

(i) lodge with ASIC notice in the prescribed form (if any) of the termination; and

(ii) give a copy of the notice to as many of the company’s creditors as reasonably practicable.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

(2) If a company’s restructuring plan terminates because of the happening of an event mentioned in paragraph 5.3B.31(1)(b), (c), (d), (e) or (f):

(a) the directors of the company must, within 2 business days after the day on which the directors become aware of the happening of the event, give written notice of the termination and the reason for the termination to the person (the ***former practitioner***) who was the restructuring practitioner for the plan immediately before the termination; and

(b) the former practitioner must, within 2 business days after the day on which the former practitioner receives the notice:

(i) lodge with ASIC notice in the prescribed form (if any) of the termination and the reason for the termination; and

(ii) give a copy of the notice to as many of the company’s creditors as reasonably practicable.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

5.3B.58 Notice of termination of appointment of restructuring practitioner for restructuring plan

Within 2 business days after the day on which the appointment of a person as restructuring practitioner for a company’s restructuring plan terminates, notice in the prescribed form (if any) of the termination must be lodged with ASIC:

(a) if the termination is because of the death of the person—by the company; and

(b) otherwise—by the person.

Division 6—Powers of Court

5.3B.59 Authority

This Division is made for the purposes of subsection 458B(1) of the Act.

5.3B.60 Court may make orders in relation to creditor disputes before restructuring plan is made

(1) This regulation applies if:

(a) a company proposes to make a restructuring plan; and

(b) a person notifies the company’s restructuring practitioner under subregulation 5.3B.22(2) that the person disagrees with the schedule of debts and claims included with the company’s restructuring proposal statement; and

(c) the restructuring practitioner:

(i) refuses to consider the disagreement under subregulation 5.3B.22(5); or

(ii) makes, or refuses to make, a recommendation under subregulation 5.3B.22(7)to vary the schedule of debts and claims.

(2) The Court may, on the application of the company or a creditor of the company, make one or more of the following orders:

(a) that the restructuring practitioner consider the disagreement and make a recommendation in accordance with subregulation 5.3B.22(7);

(b) that the schedule of debts and claims be varied as set out in the order;

(c) that the acceptance period for the proposal to make the restructuring plan be extended.

(3) If the Court makes an order under subregulation (2), the restructuring practitioner must, within 2 business days after the day on which the order is made:

(a) lodge with ASIC notice in the prescribed form (if any):

(i) setting out the terms of the order; and

(ii) outlining the creditors’ rights under regulation 5.3B.23; and

(b) give a copy of the notice to as many of the company’s creditors as reasonably practicable.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

5.3B.61 When Court may vary restructuring plan

(1) A restructuring plan that has been made by a company must not be varied except in accordance with this regulation.

(2) The Court may make an order varying a restructuring plan:

(a) on its own initiative; or

(b) on the application of:

(i) the company; or

(ii) an affected creditor; or

(iii) the restructuring practitioner for the plan; or

(iv) ASIC.

5.3B.62 When Court may void or validate restructuring plan

Voiding of restructuring plan

(1) The Court may make an order declaring that all or part of a company’s restructuring plan is void if the Court is satisfied that:

(a) there are reasonable grounds to believe that the plan, or a part of the plan, was not made in accordance with, or does not comply with, the Act or these regulations; or

(b) the restructuring practitioner for the plan has committed a breach of duty in relation to the plan; or

(c) the restructuring practitioner for the plan has breached a condition of the restructuring practitioner’s registration as a liquidator; or

(d) the restructuring practitioner for the plan has breached a condition imposed under section 20‑35 of Schedule 2 to the Act, to the extent that the condition relates to restructuring plans.

(2) The Court may make any other order that it thinks appropriate in relation to the declaration.

Validity of plan despite contravention

(3) The Court may make an order declaring that all or part of a company’s restructuring plan is valid, despite a contravention of a provision of the Act or these regulations, if the Court is satisfied that:

(a) the provision was substantially complied with; and

(b) no injustice will result for anyone bound by the plan if the contravention is disregarded.

Applications for orders under this regulation

(4) The Court may make an order under this regulation on the application of:

(a) the company; or

(b) an affected creditor; or

(c) the company’s restructuring practitioner; or

(d) ASIC.

(5) However, an application for an order under this regulation must not be made if the plan has terminated because of paragraph 5.3B.31(1)(a).

5.3B.63 When Court may terminate restructuring plan

(1) The Court may make an order terminating a company’s restructuring plan if the Court is satisfied that:

(a) information about the company’s business, property, affairs or financial circumstances that:

(i) was false or misleading; and

(ii) can reasonably be expected to have been material to the affected creditors in deciding whether to accept the plan;

was contained in the plan or the restructuring proposal statement that accompanied the plan; or

(b) there was an omission from the plan or statement and the omission can reasonably be expected to have been material to such creditors in so deciding; or

(c) there has been a material contravention of the plan by a person bound by the plan; or

(d) effect cannot be given to the plan without injustice or undue delay; or

(e) the plan or a provision of it is, an act or omission done or made under the plan was, or an act or omission proposed to be so done or made would be contrary to the interests of the creditors of the company as a whole; or

(f) the plan should be terminated for some other reason.

(2) The Court may make an order under this regulation:

(a) on its own initiative; or

(b) on the application of:

(i) the company; or

(ii) an affected creditor; or

(iii) the restructuring practitioner for the company or for the plan; or

(iv) ASIC.

5.3B.64 Court may limit rights of secured creditor or owner or lessor

(1) This regulation applies where:

(a) a company is under restructuring; or

(b) a company makes a restructuring plan that has not terminated.

(2) Subject to subsection 454C(3) of the Act, the Court may order a secured creditor of the company not to realise or otherwise deal with the security interest, except as permitted by the order.

(3) The Court may only make an order under subregulation (2) if satisfied that:

(a) for the creditor to realise or otherwise deal with the security interest would have a material adverse effect on achieving the purposes of the plan; and

(b) having regard to:

(i) the terms of the plan; and

(ii) the terms of the order; and

(iii) any other relevant matter;

the creditor’s interests will be adequately protected.

(4) The Court may order the owner or lessor of property that is used or occupied by, or is in the possession of, the company not to take possession of the property or otherwise recover it.

(5) Subregulation (4) does not apply in relation to PPSA retention of title property of the company.

(6) The Court may only make an order under subregulation (4) if satisfied that:

(a) for the owner or lessor to take possession of the property or otherwise recover it would have a material adverse effect on achieving the purposes of the plan; and

(b) having regard to:

(i) the terms of the plan; and

(ii) the terms of the order; and

(iii) any other relevant matter;

the interests of the owner or lessor will be adequately protected.

(7) An order under this regulation may be made subject to conditions.

(8) An order under this regulation may only be made on the application of:

(a) if paragraph (1)(a) applies—the restructuring practitioner for the company; or

(b) if paragraph (1)(b) applies—the restructuring practitioner for the plan.

Division 7—Other matters

5.3B.65 Approved forms

ASIC may, in writing, approve a form for the purposes of a provision of this Part.

Part 5.4—Winding up in insolvency

5.4.01AAA Meaning of *statutory minimum* and *statutory period—*prescribed amounts

(1) For the purposes of paragraph (a) of the definition of ***statutory minimum*** in section 9 of the Act, the amount prescribed is:

(a) in relation to a company that is eligible for temporary restructuring relief—$20,000; and

(b) otherwise—$4,000.

(2) For the purposes of paragraph (a) of the definition of ***statutory period*** in section 9 of the Act, the period prescribed is:

(a) in relation to a company that is eligible for temporary restructuring relief—6 months; and

(b) otherwise—21 days.

(3) Paragraphs (1)(a) and (2)(a) do not apply in relation to statutory demands served on or after 1 August 2021.

5.4.01 Application to Court for winding up—prescribed agency

The Australian Prudential Regulation Authority is a prescribed agency for paragraph 459P(1)(g) of the Act.

5.4.01A Notice of application to wind up a company

(1) This regulation is made for paragraph 465A(1)(c) of the Act.

(2) The information about an application that is to be set out in a notice is at least the following information:

(a) if the rules of court require particular information to be published for the application and the court has not dispensed with publication under the rules of court—that information;

(b) if the rules of court do not require particular information to be published, or the court has dispensed with publication under the rules of court:

(i) the name of the company; and

(ii) any trading name of the company; and

(iii) the ACN of the company; and

(iiia) if paragraph 465A(1)(c) of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act—the ARFN of the sub‑fund; and

(iv) the date on which the application was filed; and

(v) the identifying number allocated by the court when the application was filed; and

(vi) the name of the applicant; and

(vii) the address for service of the applicant; and

(viii) the name and address of the court where the application will be heard; and

(ix) the time and date of the court hearing; and

(x) the way in which documents that are filed in relation to the application may be obtained.

Note: If paragraph 465A(1)(c) of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act, that section translates most of this sub‑regulation’s references to the company so that they are references to the sub‑fund.

5.4.01B Notice of Court‑ordered winding up

(1) This regulation is made for the purposes of subsection 465A(2) of the Act.

(2) The information about an order by the Court that must be set out in a notice is at least the following information:

(a) the Court that made the order;

(b) the date the order was made;

(c) the name of the liquidator appointed to administer the winding up;

(d) the name of the company;

(e) any business name of the company;

(f) any ABN of the company;

(g) any ACN of the company;

(h) if subsection 465A(2) of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act—the ARFN of the sub‑fund.

Note: If subsection 465A(2) of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act, that section translates most of this sub‑regulation’s references to the company so that they are references to the sub‑fund.

5.4.02 Compromise of debt by liquidator—prescribed amount

For paragraph 477(2A)(a) of the Act, the amount of $100,000 is prescribed.

Part 5.4C—Winding up by ASIC

5.4C.01 Notice of intention to order winding up of a company

(1) For subparagraph 489EA(6)(b)(ii) of the Act, this regulation prescribes the manner of publishing notice of ASIC’s intention to make an order under subsection 489EA(1), (2), (3) or (4) of the Act.

(2) Notice is to be published on the publication website, established under subsection 5.6.75(1), at least 10 business days before ASIC makes the order.

Part 5.5—Voluntary winding up

Division 1—Resolution for winding up

5.5.01 Notice of resolution to wind up voluntarily

(1) This regulation is made for paragraph 491(2)(b) of the Act.

(2) The information about a resolution that is to be set out in a notice is at least the following information:

(a) the name of the company;

(b) any business name of the company;

(c) the ACN of the company;

(ca) if paragraph 491(2)(b) of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act—the ARFN of the sub‑fund;

(d) the section of the Act under which the notice is being given;

(e) the name and contact details of the liquidator;

(f) the date on which the resolution was passed.

(3) The notice must be published by the end of the next business day after a liquidator is appointed to administer the winding up of the company.

Note: If paragraph 491(2)(b) of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act, that section translates most of this regulation’s references to the company so that they are references to the sub‑fund.

Division 2—Simplified liquidation process

Subdivision A—Preliminary

5.5.02 Declaration about eligibility for simplified liquidation process and other matters

For the purposes of subsection 498(3) of the Act, the following information is prescribed:

(a) whether, in the directors’ opinion, there are reasonable grounds to believe that the company has entered into a transaction that would be voidable under section 588FE of the Act, other than a transaction that would be an unfair preference;

(b) whether, in the directors’ opinion, there are reasonable grounds to believe that, on the declaration being given, the eligibility criteria for the simplified liquidation process will be met in relation to the company, and the reasons for that opinion.

5.5.03 Eligibility criteria for simplified liquidation process

(1) For the purposes of paragraph 500AA(1)(d) of the Act, the test for eligibility is that the total liabilities of the company on the day on which the triggering event occurred must not exceed $1 million.

(2) For the purposes of paragraph 500AA(1)(e) of the Act, a period of 7 years is prescribed.

(3) For the purposes of paragraph 500AA(1)(f) of the Act, a period of 7 years is prescribed.

(4) For the purposes of paragraph 500AA(2)(b) of the Act, a prescribed circumstance is that:

(a) the other company is a related body corporate of the company in relation to which the eligibility criteria are to be met; and

(b) the other company is, or has been:

(i) under restructuring; or

(ii) the subject of a simplified liquidation process; and

(c) if subparagraph (b)(i) applies—the restructuring practitioner for the other company was appointed no more than 20 business days before the day on which the company in relation to which the eligibility criteria are to be met began to follow the simplified liquidation process; and

(d) if subparagraph (b)(ii) applies—the other company began to follow the simplified liquidation process no more than 20 business days before the day on which the company in relation to which the eligibility criteria are to be met began to follow the simplified liquidation process.

(5) For the purposes of paragraph 500AA(2)(c) of the Act, a prescribed circumstance is that:

(a) the company has been under restructuring; and

(b) the restructuring terminated no more than 20 business days before the day on which the company began to follow the simplified liquidation process.

Subdivision B—Simplified liquidation process

5.5.04 Transactions that are not voidable

(1) This regulation is made for the purposes of paragraph 500AE(3)(b) of the Act.

(2) An unfair preference of a company is not voidable despite subsection 588FE(2) of the Act, provided either subregulation (3) or (4) is satisfied.

(3) This subregulation is satisfied if:

(a) the company is subject to the simplified liquidation process; and

(b) the transaction was entered into, or an act was done for the purposes of giving effect to it, before the day that is 3 months before the relation‑back day; and

(c) no creditor under the transaction is a related entity of the company.

(4) This subregulation is satisfied if:

(a) the company is subject to the simplified liquidation process; and

(b) the transaction was entered into, or an act was done for the purposes of giving effect to it:

(i) during the 3 months ending on the relation‑back day; or

(ii) after that day but on or before the day when the winding up began; and

(c) either:

(i) the transaction results in the creditor receiving from the company no more than $30,000 in value; or

(ii) if the transaction forms part of a series of related transactions, all of the related transactions result in the creditor receiving from the company no more than $30,000 in value; and

(d) no creditor under the transaction is a related entity of the company.

5.5.05 Reports by liquidator

(1) This regulation is made for the purposes of paragraph 500AE(3)(f) of the Act and applies in relation to the liquidator of a company that is subject to the simplified liquidation process.

(2) If, in the opinion of the liquidator, there are reasonable grounds to believe that:

(a) a past or present officer or employee, or a member or contributory, of the company; or

(b) a person who has taken part in the formation, promotion, administration, management or winding up of the company;

may have engaged in conduct constituting an offence under a law of the Commonwealth or a State or Territory in relation to the company that has had, or is likely to have, a material adverse effect on the interests of the creditors as a whole or of a class of creditors as a whole, the liquidator must:

(c) as soon as practicable, and in any event within 6 months, after first forming the opinion, lodge with ASIC a report in the prescribed form (if any) with respect to the matter and state in the report whether the liquidator proposes to make an application for an examination or order under section 597 of the Act; and

(d) give ASIC such information, and give to it such access to and facilities for inspecting and taking copies of any documents, as ASIC requires.

(3) The liquidator may also, if the liquidator thinks fit, lodge further reports specifying any other matter that, in the liquidator’s opinion, it is desirable to bring to the notice of ASIC.

(4) If it appears to the Court, in the course of winding up a company, that:

(a) a person mentioned in paragraph (2)(a) or (b) has engaged in conduct constituting an offence under a law of the Commonwealth or a State or Territory in relation to the company that has had, or is likely to have, a material adverse effect on the interests of the creditors as a whole or of a class of creditors as a whole; and

(b) the liquidator has not lodged with ASIC a report with respect to the matter;

the Court may, on the application of a person interested in the winding up, direct the liquidator to lodge such a report.

5.5.06 Notice of adoption of simplified liquidation process

(1) This regulation is made for the purposes of paragraph 500AE(3)(f) of the Act.

(2) If the liquidator of a company adopts the simplified liquidation process on a day, the liquidator must, within 2 business days after that day, lodge with ASIC:

(a) notice in the prescribed form (if any) of the adoption; and

(b) a copy of the declaration given by the directors of the company to the liquidator in accordance with section 498 of the Act.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

Subdivision C—Ceasing of simplified liquidation process

5.5.07 Liquidator must cease to follow the simplified liquidation process

(1) For the purposes of paragraph 500AC(1)(b) of the Act, a prescribed circumstance is that the liquidator believes on reasonable grounds that:

(a) the company, or a director of the company, has engaged in conduct; and

(b) the conduct involved fraud or dishonesty; and

(c) the conduct has had, or is likely to have, a material adverse effect on the interests of the creditors as a whole or of a class of creditors as a whole.

(2) The liquidator is taken to have ceased to follow the simplified liquidation process on the day on which the liquidator first held the belief.

5.5.08 Transition from simplified liquidation process

(1) This regulation is made for the purposes of subsection 500AC(2) of the Act.

Notice of cessation of process

(2) If the liquidator of a company ceases to follow the simplified liquidation process on a day, the liquidator must, within 2 business days after that day, lodge with ASIC notice in the prescribed form (if any) of the cessation.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

Validity of things done during process

(3) Subject to this regulation, the cessation of the simplified liquidation process in relation to a company does not affect the validity of anything that was done in good faith in relation to the company before the cessation.

Reports by liquidator

(4) If, at any time during the simplified liquidation process, it appeared to the liquidator that one or more of the circumstances in paragraph 533(1)(a), (b) or (c) existed, section 533 of the Act applies in relation to the liquidator as if paragraph 533(1)(d) were modified by omitting “within 6 months” and substituting “within 6 months after the day on which the simplified liquidation process in relation to the company ended”.

5.5.09 Working out whether the 25% in value of creditors test met

For the purposes of paragraph 500AD(b) of the Act, a person who is a related entity, and a creditor, of the company is not to be taken into account.

Part 5.6—Winding up generally

5.6.11 Meaning of *proof of debt or claim*

In regulations 5.6.37 to 5.6.57, unless the contrary intention appears:

***proof of debt or claim*** includes a statement of particulars of a debt or claim submitted in accordance with regulation 5.6.39, as well as a formal proof of debt or claim.

5.6.37 Establishing title to priority

Regulations 5.6.39 to 5.6.57 (inclusive) apply to the establishment of a title to priority as if it were a debt or claim.

5.6.39 Notice to submit particulars of debt or claim

Companies not subject to the simplified liquidation process

(1) Subject to subregulations (1A) and (1B), a liquidator may from time to time fix a day, not less than 14 days after the day on which notice is given in accordance with subregulation (2), on or before which a creditor may submit particulars of his or her debt or claim.

Companies subject to the simplified liquidation process

(1A) Subregulation (1) does not apply in relation to a liquidator of a company that is subject to the simplified liquidation process.

(1B) A liquidator of a company that is subject to the simplified liquidation process must fix a single day that is 14 days after the day on which notice is given in accordance with subregulation (2), on or before which a creditor may submit particulars of his or her debt or claim.

Notice requirements

(2) A notice under subregulation (1) or (1B) must be lodged with ASIC in accordance with subregulation 5.6.75(4).

(3) A notice under subregulation (1) or (1B) must state at least the following information:

(a) the name of the company;

(b) any trading name of the company;

(c) the ACN of the company;

(ca) if Division 1 of Part 5.6 of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act—the ARFN of the sub‑fund;

(d) the day fixed under subregulation (1) or (1B), as the case requires.

(4) A notice under subregulation (1B) may include a requirement that all, or a specified class, of debts or claims must be proved formally.

Note: If Division 1 of Part 5.6 of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act, that section translates most of this regulation’s references to the company so that they are references to the sub‑fund.

5.6.40 Preparation of a proof of debt or claim

(1) A proof of debt or claim may be prepared by the creditor personally or by a person authorised by the creditor.

(2) A proof prepared by an authorised person must state his or her authority and means of knowledge.

5.6.41 Disclosure of security

A proof of debt or claim must state:

(a) whether the creditor is or is not a secured creditor; and

(b) the value and nature of the creditor’s security (if any); and

(c) whether the debt is secured wholly or in part.

5.6.42 Discounts

In preparing a proof of debt or claim, a creditor must allow for all discounts for which an allowance would have been made if the company were not being wound up.

5.6.43 Periodical payments

(1) If rent or any other payment:

(a) falls due at stated times; and

(b) the relevant date is a time other than one of those times;

the person entitled to the rent or other payment may submit a proof of debt or claim for a proportionate part of the rent or other payment, up to the date of the winding up order or resolution, as if the rent or payment accrued from day to day.

(2) If the liquidator remains in control of premises rented to a company that is being wound up, subregulation (1) does not affect the right of the landlord of the premises to claim payment of rent by the company or the liquidator during the period of the company’s occupation or the liquidator’s control.

5.6.43A Debt or claim of uncertain value—appeal to Court

(1) An appeal to the Court under subsection 554A(3) of the Act must be made:

(a) within 21 days after the person aggrieved becomes aware of the liquidator’s estimate or, if the period is extended under subregulation (2), within the extended period; and

(b) in accordance with the rules of court.

(2) On application by the person aggrieved before or after the end of the period of 21 days mentioned in subregulation (1), the Court may extend the period within which an appeal must be made.

5.6.44 Debt discount rate (Act s 554B)

The discount by which the amount payable on the future date is to be reduced under section 554B of the Act is 8% a year calculated from the declaration of the dividend to the time when the debt would have become payable according to the terms on which it was contracted.

5.6.45 Employees’ wages

(1) If the employees of a company make demands:

(a) for wages or salaries (whether or not earned wholly or in part by way of commission), whether or not payable to the employees for annual leave or long service leave; or

(b) for retrenchment payments;

one proof of debt or claim may be prepared and submitted on behalf of those employees.

(2) A proof of debt or claim prepared and submitted under subregulation (1):

(a) must have annexed to it a schedule setting out the names of the employees and the amounts due to each of them; and

(b) has the same effect as if separate proofs had been prepared and submitted by each of the employees named in the schedule.

5.6.46 Production of bill of exchange and promissory note

If a company is, or may become, liable on:

(a) a bill of exchange; or

(b) a promissory note; or

(c) any other negotiable instrument or security;

it must be produced to the liquidator before a proof of debt or claim for the liability can be admitted, unless the Court otherwise orders.

5.6.47 Admission of debt or claim without formal proof

(2) If a liquidator admits a debt or claim without formal proof, it is not necessary for the liquidator formally to admit the debt or claim in writing.

(3) If a creditor’s debt or claim has been admitted without formal proof, a notice of dividend is sufficient notice of the admission.

(4) A liquidator must not reject a debt or claim without:

(a) notifying the creditor of the grounds of the liquidator’s rejection; and

(b) requiring that a formal proof of debt or claim be submitted for that debt or claim.

5.6.48 Notice to creditors to submit formal proof

Companies not subject to the simplified liquidation process

(1) Subject to subregulation (1A), a liquidator may from time to time fix a day, not less than 14 days after the day on which notice is given in accordance with subregulation (2), on or before which creditors of the company whose debts or claims have not been admitted are formally to prove their debts or claims.

Companies subject to the simplified liquidation process

(1A) Subregulation (1) does not apply in relation to a liquidator of a company that is subject to the simplified liquidation process.

Note: A notice given under subregulation 5.6.39(1B) may include a requirement that the creditors of a company that is subject to the simplified liquidation process must formally prove all or a specified class of debts or claims (see subregulation 5.6.39(4)).

Notice requirements

(2) A liquidator must give a notice under subregulation (1):

(a) by lodging the notice with ASIC in accordance with subregulation 5.6.75(4); and

(b) to every person who, to the knowledge of the liquidator, claims to be a creditor of the company, and whose debt or claim has not been admitted.

(3) A notice under subregulation (1) must state at least the following information:

(a) the name of the company;

(b) any trading name of the company;

(c) the ACN of the company;

(ca) if Division 1 of Part 5.6 of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act—the ARFN of the sub‑fund;

(d) the day fixed under subregulation (1).

Failure to comply with liquidator’s requirements

(4) A creditor of the company who fails to comply with a requirement of a liquidator under subregulation (1) is excluded:

(a) from the benefit of a distribution made before his or her debt or claim is admitted; and

(b) from objecting to that distribution.

Note: If Division 1 of Part 5.6 of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act, that section translates most of this regulation’s references to the company so that they are references to the sub‑fund.

5.6.49 Formal proof of debt or claim

(1) A debt or claim may be formally proved by delivering or sending by post a formal proof of debt or claim to the liquidator.

(2) A formal proof of debt or claim:

(a) that is prepared and submitted in accordance with regulation 5.6.45—must be in accordance with Form 536; and

(b) in any other case—must be in accordance with Form 535.

5.6.50 Contents of formal proof of debt or claim

(1) A formal proof of debt or claim must:

(a) contain detailed particulars of the debt or claim sought to be proved; and

(b) in the case of a debt, include a statement of account; and

(c) specify the vouchers (if any) by which the statement can be substantiated.

(2) The liquidator may at any time call for the production of the vouchers mentioned in subregulation (1).

5.6.51 Costs of proof

A creditor must bear the cost:

(a) of proving his or her debt or claim; or

(b) of amending a proof of debt or claim;

unless the Court otherwise orders.

5.6.52 Liquidator to notify receipt of proof of debt or claim

If a liquidator is requested to do so by the person submitting a proof of debt or claim, the liquidator must notify that person of the receipt of the proof and whether or not it has been admitted under regulation 5.6.47.

5.6.53 Time for liquidator to deal with proofs

(1) A liquidator must, within:

(a) 28 days after receiving a request in writing from a creditor to do so; or

(b) if ASIC allows—any further period;

in writing:

(c) admit all or part of the formal proof of debt or claim submitted by the creditor; or

(d) reject all or part of the formal proof of debt or claim; or

(e) require further evidence in support of it.

(2) If the liquidator does not deal with a request under subregulation (1) in accordance with that subregulation, the creditor who submitted the proof may apply to the Court for a decision in respect of it.

(3) If the liquidator gives notice in writing to a creditor that further evidence is required in support of the formal proof of debt or claim submitted by the creditor under subregulation (1), the period mentioned in that subregulation is taken not to have begun to run until the day on which the liquidator receives a sufficient written answer to his or her notice.

5.6.54 Grounds of rejection and notice to creditor

(1) Within 7 days after the liquidator has rejected all or part of a formal proof of debt or claim, the liquidator must:

(a) notify the creditor of the grounds for that rejection in accordance with Form 537; and

(b) give notice to the creditor at the same time:

(i) that the creditor may appeal to the Court against the rejection within the time specified in the notice, being not less than 14 days after service of the notice, or such further period as the Court allows; and

(ii) that unless the creditor appeals in accordance with subparagraph (i), the amount of his or her debt or claim will be assessed in accordance with the liquidator’s endorsement on the creditor’s proof.

(2) A person may appeal against the rejection of a formal proof of debt or claim within:

(a) the time specified in the notice of the grounds of rejection; or

(b) if the Court allows—any further period.

(3) The Court may extend the time for filing an appeal under subregulation (2), even if the period specified in the notice has expired.

(4) If the liquidator has admitted a formal proof of debt or claim, the notice of dividend is sufficient notice of the admission.

5.6.55 Revocation or amendment of decision of liquidator

(1) If the liquidator considers that a proof of debt or claim has been wrongly admitted, the liquidator may:

(a) revoke the decision to admit the proof and reject all of it; or

(b) amend the decision to admit the proof by increasing or reducing the amount of the admitted debt or claim.

(2) If the liquidator considers that all of a proof of debt or claim has been wrongly rejected, the liquidator may:

(a) revoke the decision to reject the proof of debt or claim; and

(b) admit all of the proof or admit part of it and reject part of it.

(3) If the liquidator:

(a) revokes a decision to admit a proof of debt or claim and rejects all of it; or

(b) amends that decision by reducing the amount of the admitted debt or claim;

the liquidator must inform the creditor by whom it was lodged, in writing, of his or her grounds for the revocation or amendment.

(4) If the liquidator revokes a decision to admit a proof of debt or claim and rejects all of it, or amends that decision by reducing the amount of the admitted debt or claim, the creditor must at once repay to the liquidator:

(a) the amount received as dividend for the proof; or

(b) the amount received as dividend that exceeds the amount that the creditor would have been entitled to receive if his or her debt or claim had been originally admitted for the reduced amount.

(5) If the liquidator:

(a) revokes a decision to reject all of a proof of debt or claim; or

(b) amends a decision to admit part of a proof of debt or claim;

by increasing the amount of the admitted debt or claim, the creditor by whom it was lodged is entitled to be paid, out of available money for the time being in the hands of the liquidator:

(c) the dividend; or

(d) an additional amount of dividend;

that the creditor would have been entitled to receive if all of the debt or claim had been originally admitted, or the increased amount had been admitted, before the available money is applied to pay a further dividend.

(6) The creditor is not entitled to disturb the distribution of any dividends declared before the liquidator revoked or amended the decision.

5.6.56 Withdrawal or variation of proof of debt or claim

A proof of debt or claim may be withdrawn, reduced or varied by a creditor with the consent of the liquidator.

5.6.57 Oaths

The liquidator in a winding up by the Court may:

(a) administer an affirmation or oath; and

(b) take an affidavit;

for the purposes of the liquidator’s duties in relation to admitting a debt or claim.

5.6.58 Liquidator to make out provisional list of contributories

If the liquidator of a company considers it necessary to make calls on or adjust the rights of contributories, the liquidator must, as soon as practicable, make out a provisional list of contributories in accordance with Form 538.

5.6.59 Time and place for settlement of list

(1) The liquidator must give to each person included in the list not less than 14 days’ notice in writing, in accordance with Form 539, of the time and place appointed to settle the list.

(2) The liquidator or a person acting on his or her behalf must lodge a statement in writing in the prescribed form that notice under subregulation (1) was given to each person included in the provisional list of contributories.

Note: Under section 350 of the Act, a document that the Act requires to be lodged with ASIC in a prescribed form must:

(a) if a form for the document is prescribed in these Regulations, be in that prescribed form; and

(b) if a form for the document is not prescribed in these Regulations but ASIC has approved a form for the document, be in that approved form.

On 23 December 2004, a form for the document mentioned in subregulation (2) is not prescribed in these Regulations.

(3) A statement under subregulation (2) is evidence that the notice was sent to a person on the list at the address shown for that person, in the absence of evidence to the contrary.

5.6.60 Settlement of list of contributories

(1) Before settling the list of contributories, the liquidator must hear and determine any objection by a person to being included in the list.

(2) The liquidator must settle the list of contributories and certify it, in accordance with Form 541, at the time and place specified in the notice given under regulation 5.6.59.

5.6.61 Supplementary list

(1) The liquidator may at any time vary or add to the list of contributories by:

(a) making out a provisional supplementary list of contributories in accordance with Form 542; and

(b) settling and certifying that list in accordance with Form 543.

(2) Regulation 5.6.59 and subregulation 5.6.60(1) apply to making out, or settling and certifying, a supplementary list by the liquidator.

5.6.62 Notice to contributories

(1) Within 14 days after the settlement of the list, or supplementary list, of contributories, the liquidator must:

(a) notify each person included in the list, or supplementary list, of his or her inclusion; and

(b) at the same time give each person notice that he or she may appeal to the Court against his or her inclusion within:

(i) 21 days after service of the notice; or

(ii) if the Court allows—any further period.

(2) A person may appeal against his or her inclusion in the list, or supplementary list, of contributories, within:

(a) 21 days after service on the person of the notice under subregulation (1); or

(b) if the Court allows—any further period.

(3) The Court may extend the time for filing an appeal under subregulation (2), even if the period of 21 days specified in subregulation (1) has expired.

(4) A notice for subregulation (1) must be in accordance with Form 544.

(5) The liquidator, or a person acting on the liquidator’s behalf, must lodge a statement in writing in the prescribed form that notice under subregulation (1) was given to each person placed on the list, or supplementary list, of contributories.

Note: Under section 350 of the Act, a document that the Act requires to be lodged with ASIC in a prescribed form must:

(a) if a form for the document is prescribed in these Regulations, be in that prescribed form; and

(b) if a form for the document is not prescribed in these Regulations but ASIC has approved a form for the document, be in that approved form.

On 23 December 2004, a form for the document mentioned in subregulation (5) is not prescribed in these Regulations.

(6) A statement under subregulation (5) is sufficient evidence that the notice was sent to a person on the list at the address shown for that person, in the absence of evidence to the contrary.

5.6.63 Dividend payable only on admission of a debt or claim

A dividend in the winding up of the affairs of a company may be paid only to a creditor whose debt or claim has been admitted by the liquidator at the date of the distribution of dividends.

5.6.64 Application of regulations 5.6.37 to 5.6.57

For regulations 5.6.64 to 5.6.71, regulations 5.6.37 to 5.6.57 apply:

(a) to the formal proof of a debt or claim; and

(b) to the rejection and to an appeal against the rejection of all or part of a formal proof of a debt or claim.

5.6.65 Liquidator to give notice of intention to declare a dividend

(1) Subject to subregulation (1A), the liquidator must give notice of his or her intention to declare a dividend not more than 2 months before the intended date:

(a) by lodging a notice with ASIC in accordance with subregulation 5.6.75(4); and

(b) in writing, in accordance with Form 547 or, for a final dividend, in accordance with Form 548, to any person whose debt or claim has not been admitted and who:

(i) for a winding up by the Court—is shown as a creditor in the report on the affairs of the company under subsection 475(1) of the Act; or

(ii) for a members’ voluntary winding up—appears in the company’s records to be a creditor; or

(iii) for a creditors’ voluntary winding up—is shown as a creditor in the list of creditors prepared in accordance with subparagraph 497(1)(a)(ii) of the Act; or

(iv) to the knowledge of the liquidator claims to be, or might claim to be, a creditor of the company.

(1A) The requirement in subregulation (1) that the notice must be given not more than 2 months before the intended date does not apply in relation to a liquidator of a company that is subject to the simplified liquidation process.

(2) A notice in accordance with subregulation (1) must specify a date, not less than 21 days after the date of the notice, on or before which formal proof, in accordance with Form 535 or 536, of a debt or claim must be submitted to participate in the distribution.

(2A) Also, the notice must state at least the following information:

(a) the name of the company;

(b) any trading name of the company;

(c) the ACN of the company;

(d) if Division 1 of Part 5.6 of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act—the ARFN of the sub‑fund.

(3) Subject to regulation 5.6.68, a person:

(a) who claims to be a creditor; and

(b) who does not submit a formal proof of a debt or claim on or before the date specified in the notice given under subregulation (1);

is excluded from participating in the distribution to which that notice relates.

Note: If Division 1 of Part 5.6 of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act, that section translates most of this regulation’s references to the company so that they are references to the sub‑fund.

5.6.66 Time allowed for dealing with formal proof of debt or claim

(1) If the liquidator has given notice in accordance with subregulation 5.6.65(1), the liquidator must:

(a) within 14 days after the date shown in the notice; or

(b) within such further period as ASIC allows;

in writing:

(c) before the end of that period:

(i) admit a formal proof of debt or claim received by the liquidator; or

(ii) reject it; or

(iii) admit part of it and reject part of it; or

(iv) require further evidence in support of it; and

(d) give notice of the liquidator’s decision to the creditor who submitted the proof.

(2) If, within whichever period is applicable under paragraph (1)(a) or (b) or subregulation (3), the liquidator does not, in writing, deal with a formal proof of debt or claim in accordance with paragraphs (1)(c) and (d), the creditor who submitted the proof may apply to the Court for a decision on it.

(3) If the liquidator gives notice to a creditor that further evidence is required in relation to a formal proof of debt or claim submitted by the creditor:

(a) the liquidator must, in writing, deal with the formal proof of debt or claim in accordance with paragraphs (1)(c) and (d), within whichever period mentioned in paragraph (1)(a) or (b) is applicable; and

(b) that period must be taken not to have begun to run until the day on which the liquidator receives a sufficient written answer to his or her request.

5.6.67 Declaration and distribution of dividend

(1) The liquidator must, as soon as practicable, declare and distribute a dividend among the creditors whose debts or claims have been admitted.

(2) The liquidator must distribute as dividend all money in hand except enough:

(a) to meet the costs of administration; or

(b) to give effect to the provisions of the Act.

(3) If the liquidator declares a dividend, he or she must send a notice of that declaration, in accordance with Form 549, to every person entitled to receive payment of the dividend.

5.6.67A Single declaration and distribution of dividend for companies in simplified liquidation

The liquidator of a company that is subject to the simplified liquidation process may declare and distribute a dividend only once among creditors whose debts or claims have been admitted.

5.6.68 Rights of creditor who has not proved debt before declaration of dividend

(1) If:

(a) a creditor’s debt or claim has not been admitted before the declaration of a dividend; and

(b) the debt or claim is admitted;

the creditor is entitled to be paid dividends that the creditor has failed to receive, out of any available money for the time being in the hands of the liquidator, before that money is applied to the payment of a further dividend.

(2) A creditor is not entitled to disturb the distribution of a dividend declared before the creditor’s debt or claim was admitted.

(3) This regulation does not apply in relation to a creditor of a company that is subject to the simplified liquidation process.

5.6.69 Postponement of declaration

If the liquidator postpones the declaration of a dividend past the date shown for that purpose in the notice lodged with ASIC in accordance with subregulation 5.6.75(4), the liquidator must lodge another notice with ASIC for publication on the publication website of the liquidator’s intention to declare a dividend.

5.6.70 Payment of dividend to a person named

If a person to whom a dividend is payable lodges an authority in accordance with Form 550 with the liquidator, the liquidator must pay the dividend to the person to whom payment is directed by that authority.

5.6.70A Prescribed rate of interest on debts and claims from relevant date to date of payment

For section 563B of the Act, the prescribed rate of interest on the amount paid in respect of an admitted debt or claim for the period starting on the relevant date and ending on the day on which the payment is made is 8% a year.

5.6.70B Notice of disclaimer

(1) This regulation is made for subsection 568A(2) of the Act.

(2) The information about a disclaimer that is to be set out in a notice is at least the following information:

(a) the name of the company;

(b) any trading name of the company;

(c) the ACN of the company;

(ca) if subsection 568A(2) of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act—the ARFN of the sub‑fund;

(d) the paragraph of subsection 568(1) of the Act under which the property is disclaimed;

(e) a description of the property;

(f) if the property is a contract (other than an unprofitable contract or a lease of land)—the date on which the Court granted leave under subsection 568(1A) of the Act;

(g) the name and contact details of the liquidator.

Note: If subsection 568A(2) of the Act applies for a sub‑fund of a CCIV because of section 1237B of the Act, that section translates most of this sub‑regulation’s references to the company so that they are references to the sub‑fund.

5.6.71 Distribution of surplus in a winding up by the Court

(1) An order in a winding up by the Court authorising the liquidator to distribute any surplus to a person entitled to it must, unless the Court otherwise directs, have annexed to it a schedule in accordance with Form 551.

(2) The liquidator must send to each person to whom any surplus is distributed a notice in accordance with Form 552.

5.6.72 Distribution of surplus as directed

If a person who receives a notice of distribution of surplus in accordance with subregulation 5.6.71(2) lodges with the liquidator an authority in accordance with Form 553, the liquidator must distribute that surplus to the person to whom payment is directed by that authority.

5.6.73 Eligible unsecured creditor

Creditors that are eligible unsecured creditors

(1) For paragraph 579Q(1)(b) of the Act, the following creditors are specified:

(a) a creditor to which either of the following applies as a result of a modification of the Act made under paragraph 571(1)(d) of the Act:

(i) a debt payable by a company or companies in a group to any other company or companies in the group is not extinguished;

(ii) a claim that a company or companies in a group has against any other company or companies in the group is not extinguished;

(b) a creditor that is determined by a Court to be an eligible unsecured creditor.

Creditors that are not eligible unsecured creditors

(2) For subsection 579Q(2) of the Act, a creditor that is determined by a Court not to be an eligible unsecured creditor is specified.

5.6.74 External administration matters—prescribed countries

For the purposes of subparagraph 581(2)(a)(iii) of the Act, the following countries are prescribed:

(a) the Bailiwick of Jersey;

(b) Canada;

(c) the Independent State of Papua New Guinea;

(d) Malaysia;

(e) New Zealand;

(f) the Republic of Singapore;

(g) Switzerland;

(h) the United Kingdom;

(i) the United States of America.

5.6.75 Publication in the prescribed manner

(1) ASIC must establish and maintain a website (the ***publication website***) on which it publishes notices that have to be:

(a) published in the prescribed manner under Part 5.1, 5.3A, 5.3B, 5.4, 5.4B, 5.4C, 5.5, 5.6, 5.8 or 5A.1 of the Act; or

(b) lodged in accordance with this section.

(2) ASIC is taken to have complied with a requirement to publish a notice, or a copy of a notice, in the prescribed manner if ASIC publishes the notice on the publication website.

(3) A person (other than ASIC) is taken to have complied with a requirement to publish a notice, or a copy of a notice, in the prescribed manner if the person electronically lodges the notice with ASIC for publication by ASIC.

(4) A person electronically lodges a notice, or a copy of a notice, with ASIC if:

(a) the person:

(i) pays the fee prescribed under the *Corporations (Fees) Regulations 2001*; and

(ii) sends the notice in an electronic communication to the portal for ASIC’s publication website, in the format required by ASIC; and

(iii) receives an electronic communication from ASIC that confirms the fee has been paid and the notice has been lodged; or

(b) the notice, or a copy of the notice, appears on the publication website.

(5) If a person lodges a notice, or a copy of a notice, in accordance with subsection (4), ASIC must publish the notice or copy of the notice on the publication website.

Note: This regulation is made for section 1367A of the Act.

Part 5.7B—Recovering property or compensation for the benefit of creditors of insolvent company

5.7B.01 Extension of temporary relief for insolvent trading safe harbour

For the purposes of subparagraph 588GAAA(1)(b)(ii) of the Act, the period prescribed is the period starting on the day that section 588GAAA of the Act commenced and ending at the end of 31 December 2020.

Chapter 5B—Bodies corporate registered as companies, and registrable bodies

Part 5B.2—Registrable bodies

5B.2.01 Certified copies of certificates of incorporation etc

For paragraphs 601CB(a) and 601CE(a) of the Act, a certified copy of a current certificate of the incorporation or registration in its place of origin, or a document of similar effect, of:

(a) a registrable Australian body; or

(b) a foreign company;

that is lodged with an application for registration under Division 1 or 2 of Part 5B.2 of the Act, must be a copy that:

(c) within the 3 months immediately before the day on which it is lodged; or

(d) if ASIC permits—within a longer period;

has been certified to be a true copy by a person:

(e) who has the custody of the original document under a law in force in the place of origin of the corporation or company; and

(f) who exercises under that law functions similar to those exercised by ASIC.

5B.2.02 Manner of certifying constituent documents

For paragraphs 601CB(b) and 601CE(b) of the Act, a certified copy of a constitution of:

(a) a registrable Australian body; or

(b) a foreign company;

must be a copy that:

(c) within the period of 3 months immediately preceding the day on which it is lodged; or

(d) if ASIC permits—a longer period;

has been certified to be a true copy:

(e) by a person:

(i) to whom the custody of the original document is committed under a law in force in the place of origin of the corporation or company; and

(ii) who exercises under that law functions similar to those exercised by ASIC; or

(f) by a notary public; or

(g) by a director or secretary of the body:

(i) if the body is a registrable Australian body—by a statement in writing; or

(ii) if the body is a foreign company—by affidavit.

5B.2.03 Manner of sending letters (Act ss 601CC(2) and 601CL(3))

For subsections 601CC(2) and 601CL(3) of the Act, a letter must be sent by post.

5B.2.04 Manner of sending notices (Act ss 601CC(3) and 601CL(4))

For subsections 601CC(3) and 601CL(4) of the Act, a notice must be sent by prepaid certified mail.

5B.2.05 Prescribed countries (Act s 601CDA(a))

For paragraph 601CDA(a) of the Act, a country mentioned in the following table is prescribed:

| Item | Country |
| --- | --- |
| 1 | New Zealand |

5B.2.06 Notices (Act s 601CV(1))

(1) A notice in writing of a change in a constitution or other document, in accordance with paragraph 601CV(1)(b) of the Act, must be accompanied by a copy of the instrument effecting the change or a copy of the document as changed, being a copy that is certified to be a true copy of that instrument or document by a person mentioned in paragraph 5B.2.02(e), (f) or (g).

(2) A notice in writing of a change in director’s powers, in accordance with subparagraph 601CV(1)(d)(i) of the Act, must be accompanied by a memorandum in writing executed by or on behalf of the foreign company after a change in those powers stating the powers of its directors as changed.

Part 5B.3—Names of registrable Australian bodies and foreign companies

5B.3.01 Availability of names (Act s 601DC)

(1) For paragraphs 601DC(1)(a) and (b) of the Act, the rules for ascertaining whether a name is identical with another name are the rules set out in Part 1 of Schedule 6.

(2) For paragraph 601DC(1)(c) of the Act, a name is unacceptable for registration under the regulations if the name is unacceptable under the rules set out in Part 2 of Schedule 6.

5B.3.02 Consents required for use of certain letters, words and expressions

(1) This regulation applies to a name if:

(a) the name:

(i) is the subject of an application for registration of a name under section 601BC, 601CB or 601CE of the Act; or

(ii) is the subject of an application for reservation of a name under section 601DA of that Act; or

(iii) for a notice of change of name under section 601DH of the Act—is the name to which the previous name is to be changed; and

(b) the name is, uses or includes:

(i) letters, or a word or expression, specified in column 2 of an item in Part 4 or 5 of Schedule 6; or

(ii) other letters, or another word or expression (whether or not in English), that is of like import to the letters, word or expression specified in the item.

(2) In paragraph (1)(b), a reference to letters, a word or an expression being used includes a reference to the letters, word or expression being used:

(a) as part of another word or expression; or

(b) in combination with other words or letters, or other symbols.

(3) However, this regulation does not apply to use of the letters ADI as part of another word.

Example: The letters ***adi*** appear in the word ***traditional***. This regulation does not apply to use of the word ***traditional***.

(4) If an item in Part 4 of Schedule 6 applies in relation to the name, the application or notice must be accompanied by the written consent of the Minister who is specified in the item.

(5) If an item in Part 5 of Schedule 6 applies in relation to the name, the application or notice must be accompanied by the written consent of the public authority, instrumentality or agency that is specified in the item.

5B.3.03 Exemptions from requirement to set out ARBN etc on certain documents (Act s 601DG)

For section 601DG of the Act, the exemptions provided for in Schedule 7 apply in relation to the requirements of paragraphs 601DE(1)(b), (c) and (d) of the Act.

5B.3.04 Notices (Act s 601DH(1))

(1) A notice in writing of a change of name in accordance with subsection 601DH(1) of the Act, must have annexed to it:

(a) a copy of the certificate of incorporation or registration of the registered body, or a document of similar effect, being a certificate or document evidencing the change; or

(b) if no certificate or document of that kind exists—a copy of the instrument effecting the change;

being a copy that is certified by a person mentioned in paragraph 5B.2.02(e), (f) or (g) to be a true copy of that certificate, document or instrument.

Chapter 5C—Managed investment schemes

Part 5C.1—Registration of managed investment schemes

5C.1.01 Applying for registration

(1) An application under section 601EA of the Act to register a managed investment scheme must be in the approved form.

(2) The form must state the name of the managed investment scheme.

(3) The stated name must not be the same as the name of:

(a) another managed investment scheme that is the subject of an application for registration under section 601EA of the Act that is lodged but not yet determined; or

(b) a registered scheme; or

(c) a foreign passport fund in relation to which a notice of intention has been lodged under section 1213 of the Act if:

(i) the operator of the fund has not withdrawn the notice under subsection 1213(3) of the Act; and

(ii) ASIC has not rejected the notice of intention under section 1213B of the Act; or

(d) a notified foreign passport fund.

(4) A statement made for paragraph 601EA(4)(c) of the Act must be in the approved form.

5C.1.02 Change of name of registered schemes

(1) To change the name of a registered scheme, the responsible entity of the scheme must lodge a notice in the approved form stating the proposed name of the scheme.

(2) The stated name must not be the same as the name of:

(a) another managed investment scheme that is the subject of an application for registration under section 601EB of the Act that is lodged but not yet determined; or

(b) a registered scheme; or

(c) a foreign passport fund in relation to which a notice of intention has been lodged under section 1213 of the Act if:

(i) the operator of the fund has not withdrawn the notice under subsection 1213(3) of the Act; and

(ii) ASIC has not rejected the notice of intention under section 1213B of the Act; or

(d) a notified foreign passport fund.

(3) On application in accordance with this regulation, ASIC must amend the record of the registration of the scheme to include the name of the scheme as proposed to be amended.

5C.1.03 Modification (Act s 601QB)

(1) For section 601QB of the Act, the operation of Chapter 5C of the Act is modified in accordance with this regulation.

(2) If:

(a) a managed investment scheme is registered under section 601EB of the Act; and

(b) the managed investment scheme is also registered on the Australian Business Register; and

(c) the last 9 digits of the ABN of the registered scheme are the same, and in the same order, as the last 9 digits of its ARSN; and

(d) a document relating to the scheme is lodged with ASIC, and displays that ABN;

section 601EC of the Act does not apply to the document.

Part 5C.2—The responsible entity

5C.2.01 Duty of responsible entities’ agents—surveillance checks

The agent of a responsible entity must take all reasonable steps to assist the entity and ASIC when ASIC is conducting a check whether the entity is complying with the constitution and compliance plan of a registered scheme and with the Act.

5C.2.02 Appointment of temporary responsible entities

ASIC, or a member of a registered scheme, may apply to the Court for the appointment of a temporary responsible entity of the scheme if ASIC or member reasonably believes that the appointment is necessary to protect scheme property or the interests of members of the scheme.

5C.2.03 Form of notices (Act ss 601FL(2) and 601FM(2))

A notice to be lodged under subsection 601FL(2) or 601FM(2) of the Act must be in the approved form.

5C.2.04 Notice of appointment of temporary responsible entities

As soon as practicable after the Court appoints a temporary responsible entity for a registered scheme on application by a member of the scheme under section 601FN of the Act, the member must lodge a notice in the approved form that tells ASIC of the appointment.

5C.2.05 Form of notices (Act s 601FP(3))

A notice to be lodged under subsection 601FP(3) of the Act must be in the approved form.

Part 5C.4—The compliance plan

5C.4.01 Agents’ authorities to be lodged

If a compliance plan, or modification of a plan, lodged with ASIC under section 601HC or subsection 601HE(3) of the Act is signed by an agent of the directors of the responsible entity of the registered scheme to which the plan relates, the authority to do so, or a copy of the authority verified by a director of the entity, must be attached to the plan or modification.

5C.4.02 Agents to assist auditors of compliance plans

An agent of the responsible entity of a registered scheme, and an officer of the agent, must:

(a) allow the auditor of the scheme’s compliance plan to have access to the books of the scheme; and

(b) if the auditor requires the agent or entity to give the auditor information or an explanation for the audit—give the information or explanation to the auditor; and

(c) otherwise assist the conduct of the audit.

Part 5C.5—The compliance committee

5C.5.01 Responsible entities etc to assist compliance committees

(1) This regulation applies to a person who is the responsible entity of a registered scheme, an officer of the entity, an agent of the entity or an officer of the agent.

(2) The person must:

(a) allow the compliance committee to have access to the books of the scheme; and

(b) if the committee requires the person to give the committee information or an explanation about the scheme—give the information or explanation to the committee; and

(c) otherwise assist the committee in the performance of its functions.

Part 5C.9—Winding up

5C.9.01 Notice of commencement of winding up

The responsible entity of a registered scheme must lodge a notice in the approved form telling ASIC that winding up of the scheme has commenced, or been completed, within 14 days of the commencement or completion.

Part 5C.11—Exemptions and modifications

Division 1—Exemptions

5C.11.01 Certain schemes not managed investment schemes

(1) This regulation is made for the purposes of paragraph (n) of the definition of ***managed investment scheme*** in section 9 of the Act.

(2) An approved benefit fund (within the meaning of subsection 16B(1) of the *Life Insurance Act 1995*) is declared not to be a managed investment scheme.

(2A) A scheme (a ***litigation funding scheme***) that has all of the following features is declared not to be a managed investment scheme:

(a) the dominant purpose of the scheme is for each of its general members to seek remedies to which the general member may be legally entitled;

(b) the possible entitlement of each of its general members to remedies arises out of:

(i) the same, similar or related transactions or circumstances that give rise to a common issue of law or fact; or

(ii) different transactions or circumstances but the claims of the general members can be appropriately dealt with together;

(c) the possible entitlement of each of its general members to remedies relates to transactions or circumstances that occurred before or after the first funding agreement (dealing with any issue of interests in the scheme) is finalised;

(d) the steps taken to seek remedies for each of its general members include a lawyer providing services in relation to:

(i) making a demand for payment in relation to a claim; or

(ii) lodging a proof of debt; or

(iii) commencing or undertaking legal proceedings; or

(iv) investigating a potential or actual claim; or

(v) negotiating a settlement of a claim; or

(vi) administering a deed of settlement or scheme of settlement relating to a claim;

(e) a person (the ***funder***) provides funds, indemnities or both under a funding agreement (including an agreement under which no fee is payable to the funder or lawyer if the scheme is not successful in seeking remedies) to enable the general members of the scheme to seek remedies;

(f) the funder is not a lawyer or legal practice that provides a service for which some or all of the fees, disbursements or both are payable only on success.

(3) A scheme (a ***litigation funding scheme***) that has all of the following features is declared not to be a managed investment scheme:

(a) the scheme relates to a Chapter 5 body corporate;

(b) the creditors or members of the body corporate provide funds (including through a trust), indemnities or both to the body corporate or external administrator;

(c) the funds, indemnities or both enable the external administrator or the body corporate to:

(i) conduct investigations; or

(ii) seek or enforce a remedy against a third party; or

(iii) defend proceedings brought against the body corporate in relation to the external administration of the body corporate (other than in relation to allegations, made by creditors or members of the body corporate, of negligence or non‑performance of duties by the external administrator).

(4) An arrangement (a ***litigation funding arrangement***) that has all of the following features is declared not to be a managed investment scheme:

(a) the dominant purpose of the arrangement is proving claims made by a general member who is an individual under Division 6 of Part 5.6 of the Act (which may include the funding of the preparation and the lodgement of the proofs);

(b) the steps taken under the arrangement include a lawyer providing services in relation to:

(i) making a demand for payment in relation to a claim; or

(ii) lodging a proof of debt; or

(iii) commencing or undertaking legal proceedings; or

(iv) investigating a potential or actual claim; or

(v) negotiating a settlement of a claim; or

(vi) administering a deed of settlement or scheme of settlement relating to a claim;

(c) a person (the ***funder***) provides funds, indemnities or both under a funding agreement (including an agreement under which no fee is payable to the funder or lawyer if the arrangement is not successful in proving claims) to enable the general member to prove the claims;

(d) the funder is not a lawyer or legal practice that provides a service for which some or all of the fees, disbursements or both are payable only on success;

(e) the arrangement is not a litigation funding scheme.

(5) An arrangement (a ***litigation*** ***funding arrangement***) that has all of the following features is declared not to be a managed investment scheme:

(a) the dominant purpose of the arrangement is for a general member to seek remedies to which the general member may be legally entitled;

(b) the steps taken to seek remedies include a lawyer providing services in relation to:

(i) making a demand for payment in relation to a claim; or

(ii) lodging a proof of debt; or

(iii) commencing or undertaking legal proceedings; or

(iv) investigating a potential or actual claim; or

(v) negotiating a settlement of a claim; or

(vi) administering a deed of settlement or scheme of settlement relating to a claim;

(c) a person (the ***funder***) provides funds, indemnities or both under a funding agreement (including an agreement under which no fee is payable to the funder or lawyer if the arrangement is not successful in seeking remedies) to enable the general member to seek remedies;

(d) the funder is not a lawyer or legal practice that provides a service for which some or all of the fees, disbursements or both are payable only on success;

(e) the arrangement is not a litigation funding scheme.

(6) In this regulation:

***external administrator*** includes an administrator, a liquidator (including a provisional liquidator) and a controller.

***general member***:

(a) in relation to a litigation funding scheme—means a member of the scheme who:

(i) is not the funder; and

(ii) is not a lawyer providing services for the purposes of the scheme; and

(b) in relation to a litigation funding arrangement—means the party to the arrangement who:

(i) is not the funder; and

(ii) is not a lawyer providing services for the purposes of the arrangement.

Division 2—Modifications

5C.11.02 Modifications

For section 601QB of the Act, the operation of the Act is modified in accordance with this Division.

5C.11.03 Register of members of registered schemes (Act s 169(1))

The register of members of a registered scheme need not contain information about a member whose only interest in the scheme is as the holder of an option.

5C.11.03A How to work out the value of an interest

If a registered scheme is quoted on 2 or more prescribed financial markets, paragraph 253F(a) of the Act is to be applied so that the value of an interest in the registered scheme is taken to be the last sale price, on the market on which the scheme is listed, on the trading day immediately before the day on which the poll is taken.

5C.11.04 Names of registered schemes (Act s 601EB(1))

ASIC must not register a managed investment scheme under Part 5C.1 of the Act if the name of the scheme stated under subregulation 5C.1.01(2) does not comply with subregulation 5C.1.01(3).

5C.11.05A Schemes not required to be registered (Act s 601ED)

Subsection 601ED(2) of the Act has effect as if the words ‘and Division 2 of Part 7.9 applied to the interests at that time’ were inserted after the words ‘when the issues were made’.

5C.11.06 Liability of responsible entities (Act s 601FB(4))

In determining the liability under subsection 601FB(2) of the Act of the responsible entity of a registered scheme to the members of the scheme for an act or omission of an agent appointed by the entity under that subsection, the amount recovered under subsection 601FB(4) of the Act is to be disregarded.

Chapter 5D—Licensed trustee companies

Part 5D.1—Preliminary

5D.1.01 Prescribed requirements for publication

For the definition of ***publish*** in section 601RAA of the Act:

(a) a notice mentioned in paragraph 601WBH(b) of the Act is to be published in the *Gazette* and on the ASIC website; and

(b) a notice mentioned in paragraph 601WDA(1)(b) or subsection 601WDA(3) of the Act is to be published in a national newspaper and on the transferring company’s website.

5D.1.01A Meaning of *trustee company*

(1) For subsection 601RAB(1) of the Act, a company that is listed in Schedule 8AA is a trustee company for the purpose of the Act.

(2) A company that performs the function of the Public Trustee of a State or Territory may only be listed in Schedule 8AA if:

(a) the State or Territory requests the Minister to prescribe the company as a trustee company; and

(b) the Minister agrees to the request.

5D.1.02 Meaning of *traditional trustee company services* and *estate management functions*

(1) For paragraph 601RAC(3)(f) of the Act, acting in any of the following capacities is prescribed:

(a) as trustee for the holders of debt securities of a body;

(b) as trustee of a trust established for purposes that include issuing debt securities (including loan‑backed securities and mortgage‑backed securities) or managing or servicing the assets of the trust;

(c) as trustee for the benefit of present or future creditors of another person when holding:

(i) mortgages, charges, guarantees, indemnities or other rights or benefits that have been given to secure debts owing to the creditors; and

(ii) the proceeds from the enforcement of any of those things that have been given in subparagraph (i);

(d) as custodian for another trustee or for the responsible entity of a registered scheme or other commercial entity;

(e) as trustee of a managed investment scheme the main assets of which consist of land and improvements on the land where the trustee is not responsible for the daily management of the land or any business conducted on the land;

(f) as trustee for employee share or benefit schemes;

(g) as trustee for trusts the main activities of which consist of making loans to, or otherwise investing in, companies or other commercial entities;

(h) as an escrow agent;

(i) as a person named in a will as an executor when not actively providing a service or function;

(j) as a person named in a power of attorney as an attorney when not actively providing a service or function;

(k) preparing a power of attorney for a person’s medical treatment or for guardianship of a person’s affairs;

(l) preparing a living will or advance health directive of any kind.

(1A) Paragraph (1)(d) does not apply to a custodian that is a trustee establishing and operating a common fund.

(2) In this regulation:

***debt security*** means:

(a) any debenture, debenture stock, bond, note or other security of a corporation or body; or

(b) any convertible note issued by a company or any convertible note in a unit trust scheme issued by the trustee of a unit trust scheme; or

(c) any right to a security mentioned in paragraph (a) or (b);

whether or not it is a charge on the assets of the corporation, company, society or unit trust scheme.

***employee share or benefit scheme*** means a scheme under which a company offers for issue or sale shares (or options over issued shares) in the company, or some other benefit in the company, only to a director or employee of the company, or of an associated body corporate, when the offer is made.

***escrow agent*** means a person with whom is deposited a contract, deed, bond or other written agreement or property for delivery to the grantee, promisee or some other person on resolution of a dispute or fulfilment of some condition.

***loan‑backed security*** means:

(a) an instrument or property:

(i) creating a right or interest (whether described as a unit, bond or otherwise) for a beneficiary; or

(ii) conferring a right or interest (whether described as a unit, bond or otherwise) on a beneficiary; or

(iii) consisting of a right or interest (whether described as a unit, bond or otherwise) of a beneficiary;

in a scheme under which the profits, distributions of capital or income in which beneficiaries share arise or arises from the acquisition, holding, management or disposal of a loan or pool of loans; or

(b) an instrument which evidences a right or interest mentioned in paragraph (a); or

(c) a debt security:

(i) the payments under which by the person that issues or makes the instrument are derived mainly from the acquisition, holding, management or disposal of a loan or pool of loans; and

(ii) that is secured by a mortgage or charge over a loan or pool of loans.

***mortgage‑backed security*** has the meaning given in regulation 5D.1.03.

5D.1.03 Meaning of *mortgage‑backed security*

(1) A ***mortgage‑backed security*** is:

(a) an interest in a trust that entitles the holder of, or beneficial owner under, the interest to:

(i) the whole, or any part, of the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a mortgage or pool of mortgages; or

(ii) any amount payable by the mortgagor or mortgagors under a mortgage or mortgages (whether or not the amount is payable to the holder of, or beneficial owner under, the interest on the same terms as under the mortgage or mortgages); or

(iii) payments that are derived mainly from the income or receipts of a mortgage or pool of mortgages;

and that may, in addition, entitle the holder, or beneficial owner, to a transfer or assignment of the mortgage or mortgages; or

(b) a debt security (whether or not in writing) the payments under which by the person who issues or makes the debt security are derived mainly from the income or receipts of a mortgage or pool of mortgages; or

(c) any of the following:

(i) an interest in a trust:

(A) creating a right or interest (whether described as a unit, bond or otherwise) for a beneficiary; or

(B) conferring a right or interest (whether described as a unit, bond or otherwise) on a beneficiary; or

(C) consisting of a right or interest (whether described as a unit, bond or otherwise) of a beneficiary;

in a scheme under which any profit or income in which the beneficiaries share arises from the acquisition, holding, management or disposal of a mortgage, pool of mortgages or the income or receipts of a mortgage or pool of mortgages;

(ii) any instrument that evidences a right or interest mentioned in subparagraph (i);

(iii) a security (whether or not in writing) the payments under which by the person who issues or makes the security are derived mainly from the income or receipts of a mortgage or pool of mortgages;

(iv) an interest in a trust or a debt security (whether or not in writing);

(v) an instrument or property that creates an interest in, or charge over an interest in, a trust;

(vi) a debt security (whether or not in writing);

(vii) any other property to which paragraph (a) or (b) or subparagraph (i), (ii) or (iii) applies.

(2) However, a mortgage‑backed security does not include an instrument or property consisting of any of the following:

(a) a mortgage;

(b) the transfer of a mortgage;

(c) a declaration of trust.

5D.1.04 Interaction between trustee company provisions and State and Territory laws

(1) For paragraph 601RAE(4)(a) of the Act, the trustee company provisions are intended to apply to the exclusion of the provisions of State or Territory laws prescribed in Schedule 8AB.

(2) For paragraph 601RAE(4)(b) of the Act, the trustee company provisions are intended not to apply to the exclusion of the State or Territory laws, or the provisions of State or Territory laws, prescribed in Schedule 8AC, so far as those laws relate to an administrator of a person’s estate.

(3) For paragraph 601RAE(4)(b) of the Act, the trustee company provisions are intended not to apply to the exclusion of the State or Territory laws, or the provisions of State or Territory laws, prescribed in Schedule 8AD.

Part 5D.2—Powers etc of licensed trustee companies

Division 2.1—Annual Information Returns

5D.2.01 Obligation on licensed trustee company to provide an annual information return if requested

(1) For section 601SAB of the Act, this regulation prescribes the obligation of a licensed trustee company to provide an annual information return.

(2) The licensed trustee company commits an offence if:

(a) a person mentioned in subregulation (3) requests an annual information return; and

(b) the company does not provide the return to the person in accordance with the requirements in subregulations (5), (6) and (8) and regulation 5D.2.02.

Penalty: 500 penalty units.

(2A) A person commits an offence if the person is involved in a contravention of subregulation (1) by a licensed trustee company.

Penalty:

(a) for an individual—50 penalty units; and

(b) for a body corporate—500 penalty units.

(3) A person may request an annual information return if the person is one of the following:

(a) in the case of the estate of a deceased person:

(i) if the person died testate—a beneficiary under the deceased person’s will; or

(ii) if the person died intestate—a person who, under a law of a State or Territory, has, is entitled to, or claims to be entitled to, an interest in the deceased person’s estate; or

(iii) a person who has commenced a proceeding in a court, under a law of a State or Territory, to seek to be included as a beneficiary of the deceased person’s estate;

(b) in relation to a charitable trust:

(i) the settlor, or one of the settlors, of the trust; or

(ii) a person who, under the terms of the trust, has power to appoint or remove a trustee of the trust or to vary (or cause to be varied) any of the terms of the trust; or

(iii) a person, or a person’s appointed successor, who is named in the instrument establishing the trust as a person who must, or may, be consulted by the trustee or trustees before distributing or applying money or other property for the purposes of the trust;

(c) in the case of any other trust:

(i) the settlor, or one of the settlors, of the trust; or

(ii) a person who, under the terms of the trust, has power to appoint or remove a trustee of the trust or to vary (or cause to be varied) any of the terms of the trust; or

(iii) a beneficiary of the trust.

(4) The person must make the request for an annual information return in writing to the licensed trustee company and may indicate in the request which one of the following forms of return is required:

(a) by sending it to the person’s postal address;

(b) by emailing it to a nominated email address.

(5) The annual information return must be provided within 30 days after the request from the person is received by the licensed trustee company, and then annually.

(6) The annual information return must be for the last financial year that the licensed trustee company has provided a service to the person who has requested the return.

(7) However, the licensed trustee company is not required to provide an annual information return covering a period:

(a) before 1 July 2010; or

(b) before it provided a service to the person.

(8) The annual information return must be provided as follows:

(a) if requested in a particular form—in the form requested;

(b) in all other cases—by sending it to the person’s postal address.

5D.2.02 Information to be included in annual information return

The annual information return provided by a licensed trustee company must include the following:

(a) for a person mentioned in subparagraphs 5D.2.01(3)(a)(i) and (ii) and (c)(iii):

(i) details of income earned on the person’s interest in the trust or estate; and

(ii) details of expenses in operating the trust or estate in relation to the person’s interest in the trust or estate; and

(iii) the net value of the person’s interest in the trust or estate;

(b) for any other person mentioned in subregulation 5D.2.01(3):

(i) details of income earned on the trust’s assets; and

(ii) details of expenses in operating the trust’s assets, including remuneration, commission or other benefits received by the trustee company; and

(iii) the net value of the trust’s assets;

(c) if required under the terms of the trust—a copy of the trust’s audit report and financial statements for the year.

Division 2.2—Common funds

5D.2.03 Common funds

This Division is made for section 601SCC of the Act.

5D.2.04 Establishment of common funds

(1) A licensed trustee company may:

(a) establish accounts within a common fund; and

(b) establish a common fund on the basis of units or another suitable basis.

(2) If the common fund includes money that is not estate money and that is not otherwise held in trust, the licensed trustee company is taken to hold the money in trust for the person on whose behalf the money is invested in the common fund.

5D.2.05 Deciding details about common funds

(1) A licensed trustee company that is establishing a common fund commits an offence if, at the time of establishing the fund, it does not ensure that its Board makes a decision, in writing, about the following:

(a) any limitation on the amount of money that will form the common fund;

(b) the investment strategy for the common fund, including the following:

(i) the class of investments in which the common fund may be invested;

(ii) the procedure for valuing the investments;

(iii) if the trustee company is to seek expert advice about proposed investments—the type of expert advice to be sought;

(c) the amount of fees that are to be paid by:

(i) the common fund for the provision of traditional trustee company services; and

(ii) each account in the common fund;

(d) the manner in which a withdrawal can be made from the common fund;

(e) the procedure for auditing the common fund;

(f) if the common fund is to have a limited life—the duration of the common fund;

(g) if the common fund is to have a minimum amount that may be invested in the fund on account of each estate—the minimum amount.

Penalty: 500 penalty units.

(2) The licensed trustee company commits an offence if it does not:

(a) within 14 days of making the decision:

(i) send a copy of the decision to ASIC; and

(ii) publish a copy of the decision on its website; and

(b) if requested by a person entitled to request an annual information return under subregulation 5D.2.01(3), make a copy of the decision available to the person within 30 days of the request being received.

Penalty: 500 penalty units.

(3) A person commits an offence if the person is involved in a contravention of subregulation (1) or (2) by a licensed trustee company.

Penalty:

(a) for an individual—50 penalty units; and

(b) for a body corporate—500 penalty units.

5D.2.06 Operation of common funds

Compliance with the Act and regulations

(1) A licensed trustee company may, from time to time and without liability for breach of trust, pay into or withdraw an amount from a common fund in accordance with the Act and these Regulations.

Note: Payments into a common fund may be prohibited where this is contrary to the conditions on which the company holds the money: see subsection 601SCB(3) of the Act.

Withdrawals

(2) A licensed trustee company may do the following:

(a) withdraw an amount from a common fund for a purpose relating to a trust or estate that is part of the fund and is managed or administered by the company;

(b) withdraw from a common fund an amount at credit in the fund on account of a trust matter or a managed estate and invest the amount on the separate account of the matter or estate.

(3) A licensed trustee company commits an offence if it pays interest from the common fund on withdrawn amounts on or after the day of the withdrawal.

Penalty: 500 penalty units.

Derivatives

(4) A licensed trustee company commits an offence if:

(a) when managing and administering a common fund, the trustee company enters into a derivative; and

(b) at the time of entering into the derivative:

(i) the trustee company did not do so for the purpose of managing a financial risk arising from:

(A) variations in the expenses of the common fund; or

(B) variations in the revenue obtainable from investments made by the common fund; and

(ii) the arrangement was not in accordance with the trustee company’s equitable and other duties as a trustee under the relevant State or Territory provisions set out in Schedule 8AE.

Penalty: 500 penalty units.

Applying income from investment

(5) A licensed trustee company commits an offence if it applies income from investment of a common fund other than for:

(a) payment of the company’s fee for the proper administration and management of the fund under the Act, regulations and terms of the common fund, proportionate to the value of the work done or the services rendered; and

(b) allocation in accordance with subregulation (6) in relation to the accounts from which the fund is derived.

Penalty: 500 penalty units.

(6) For paragraph (5)(b), the allocation must be made at intervals not exceeding 6 months.

Investments

(7) A licensed trustee company commits an offence if:

(a) the trustee company invests money committed to its administration or management; and

(b) the investment is:

(i) not in accordance with a decision of the Board made for the purpose of regulation 5D.2.05; and

(ii) not made in a manner in which trust funds may be invested by a trustee under the relevant State or Territory provisions set out in Schedule 8AE.

Penalty: 500 penalty units.

Valuation of investments

(8) A licensed trustee company commits an offence if it does not comply with the following requirements about the valuation of investments of common funds:

(a) by the third business day of each month, the trustee company must decide the value of the investments in each common fund as at the first business day of the month;

(b) subject to subregulation (9), in deciding the value of securities listed on a financial market for a month, the trustee company must take the last sale price of the first business day of the month published by the market operator as the value of the listed securities;

(c) the trustee company must make withdrawals from the common fund and further investments on the basis of the last valuation of investments made by the company.

Penalty: 500 penalty units.

(9) The requirement in paragraph 8(b) does not apply if, in a particular month, the licensed trustee company decides it is in the best interests of each account in the common fund that a sale price used for the valuation be one taken later in that month.

Realising investments

(10) A licensed trustee company may sell investments belonging to a common fund.

(11) A licensed trustee company that has realised an investment in a common fund commits an offence if it does not credit or debit a profit or loss from the investment to the unit holders of the common fund:

(a) in proportion to the amount invested in the common fund by the unit holders at the time of the realisation; and

(b) within 14 days of the realisation.

Penalty: 500 penalty units.

Offence for involvement in contravention

(12) A person commits an offence if the person is involved in a contravention of subregulation (3), (4), (5), (7), (8) or (11) by a licensed trustee company.

Penalty:

(a) for an individual—50 penalty units; and

(b) for a body corporate—500 penalty units.

5D.2.07 Register of investments

(1) A licensed trustee company commits an offence if it does not maintain a register of investments for each common fund in accordance with subregulation (2).

Penalty: 500 penalty units.

(2) The register must contain:

(a) a record identifying each investment made by the common fund; and

(b) details of amounts held to the credit of the common fund.

Note: For other obligations relating to common funds: see section 601SCB of the Act.

(3) A person commits an offence if the person is involved in a contravention of subregulation (1) by a licensed trustee company.

Penalty:

(a) for an individual—50 penalty units; and

(b) for a body corporate—500 penalty units.

5D.2.08 Financial reports

(1) A licensed trustee company must comply with this regulation in relation to each common fund established by the company that is not a registered scheme.

Account keeping

(2) The licensed trustee company commits an offence if it does not keep accounts that:

(a) correctly record and explain its transactions for the common fund and the fund’s financial position and performance; and

(b) would enable true and fair financial statements to be prepared and audited.

Penalty: 500 penalty units.

Auditing

(3) The licensed trustee company commits an offence if it does not:

(a) have the financial statements for a financial year for the common fund audited by a registered company auditor; and

(b) obtain an auditor’s report for the financial statements.

Penalty: 500 penalty units.

Lodging financial statements with ASIC

(4) The licensed trustee company commits an offence if it does not lodge the audited financial statements for the fund with ASIC within 3 months of the end of the financial year.

Penalty: 500 penalty units.

Request for financial information

(5) A person who is entitled to request an annual information return under subregulation 5D.2.01(3) may request, in writing, that the licensed trustee company provide the information mentioned in subregulation (7).

(6) The licensed trustee company commits an offence if it does not provide the information mentioned in subregulation (7) to the person within 30 days of receiving the request under subregulation (5).

Penalty: 500 penalty units.

(7) The information that must be provided is:

(a) a copy of the common fund’s financial statements and audit report; and

(b) the classes of investments in which the common fund is invested and how the investment is divided between each class; and

(c) the trustee company’s investment strategy for the common fund.

Offence for involvement in contravention

(8) A person commits an offence if the person is involved in a contravention of subregulation (2), (3), (4), or (6) by a licensed trustee company.

Penalty:

(a) for an individual—50 penalty units; and

(b) for a body corporate—500 penalty units.

Part 5D.3—Regulation of fees charged by licensed trustee companies

5D.3.01 Modification of section 601TAB of the Act: disclosure to clients of changed fees

For paragraph 601YAB(1)(b) of the Act, Chapter 5D of the Act applies as if section 601TAB of the Act were modified by inserting after subsection (3) the following subsections:

‘(4) A licensed trustee company is not required to comply with paragraph (1)(a) or (b) or (3)(a) in relation to a client who is a lost client, or an agent who is a lost agent.

(5) In subsection (4):

***lost client*** means a client who, at a particular time, is uncontactable.

***lost agent*** means an agent who, at a particular time, is uncontactable.

(6) In subsection (5):

***uncontactable***, in relation to a person who is a client or an agent of a licensed trustee company, means:

(a) the licensed trustee company:

(i) never had an address for the person; or

(ii) sent at least 1 written communication to the person’s last known address which was returned unclaimed and the person has not, since the communication, given the company a contact address; and

(b) if the person is an agent, the licensed trustee company made a reasonable attempt to get the agent’s address from the agent’s client or the client’s carers.’

Part 5D.4—Obligations of receiving company after transfer

5D.4.01 Preserving rights under dispute resolution systems and arrangements for compensation

(1) This regulation applies if ASIC makes a determination under subsection 601WBA(1) of the Act that there is to be a transfer of estate assets and liabilities from a transferring company to a receiving company.

(2) For the purposes of section 601SAB of the Act, the obligations of the receiving company include the provision to retail clients of access to the following in relation to a complaint arising from the provision of traditional trustee services by the transferring company:

(a) the arrangements for compensation the receiving company is required to have under subsection 912B(1) of the Act;

(b) the dispute resolution system the receiving company is required to have under subparagraph 912A(1)(g)(i) of the Act.

Chapter 6—Takeovers

Part 6.2—Exceptions to the prohibition

6.2.01A Prescribed requirements

For the purposes of paragraph (b) of item 19A of the table in section 611 of the Act, the requirement that the company is an eligible CSF company at the time of the acquisition of the relevant interest is prescribed.

6.2.01 Prescribed circumstances (Act s 611)

For item 20 in the table in section 611 of the Act, the acquisition of a relevant interest in voting shares in a following body corporate is prescribed:

(a) a body corporate that is incorporated within Australia or an external Territory and is a public authority or an instrumentality or agency of the Crown in right of a State or Territory;

(b) a corporation sole;

(f) a foreign company or recognised company in respect of which an exemption from compliance with subsection 61(1) of the *Co‑operation Act 1923* of New South Wales is in force;

(g) a society within the meaning of *The Co‑operative and Other Societies Act of 1967* or *The Co‑operative Housing Societies Act of 1958* of Queensland;

(i) an association within the meaning of *The Primary Producers’ Co‑operative Associations Act of 1923* of Queensland;

(j) an association, society, institution or body incorporated under the *Associations Incorporation Act 1981* of Queensland;

(k) a body incorporated or deemed to be incorporated by or under a law of South Australia other than the Corporations Law of South Australia, the Companies Code (South Australia) or a corresponding previous enactment of South Australia;

(l) a society (other than a society that is a financial institution) within the meaning of section 5 of the *Building Societies Act 1976* of Western Australia;

(n) a co‑operative company registered under Part VI of the *Companies (Co‑operative) Act 1943* or a corresponding previous enactment of Western Australia;

(o) a society registered under the *Co‑operative and Provident Societies Act 1903* of Western Australia;

(p) an association, society, institution or body incorporated under the *Associations Incorporation Act 1895* of Western Australia;

(q) a trustee bank registered under the *Trustee Banks Act 1984* of Tasmania;

(r) a society (other than a society that is a financial institution) registered under the *Co‑operative Industrial Societies Act 1928* of Tasmania;

(ra) a society registered under the *Co‑operative Housing Societies Act 1963* of Tasmania;

(s) an association, society, institution or body incorporated under the *Associations Incorporations Act 1964* of Tasmania;

(t) a body corporate created by section 75Q of the *Conveyancing and Law of Property Act 1884* of Tasmania;

(u) a society (other than a society that is a financial institution) registered under the *Co‑operative Societies Act 1939* of the Australian Capital Territory;

(v) an association, society, institution or body incorporated under the *Associations Incorporation Act 1953* of the Australian Capital Territory;

(w) a corporation constituted under the *Unit Titles Act 1970* of the Australian Capital Territory;

(x) a society registered under the *Co‑operatives Act 1997* of the Northern Territory.

6.2.02 Other prescribed circumstances (Act s 611)

For item 20 in the table in section 611 of the Act, the acquisition by a person of a relevant interest in voting shares in a body corporate that results from the person holding an office specified in Schedule 3 is prescribed.

Part 6.6—Variation of offers

6.6.01 Right to withdraw acceptance

(1) For paragraph 650E(3)(a) of the Act, a notice under paragraph 650E(2)(a) of the Act relating to securities entered on a register or subregister of a prescribed CS facility must be in a form approved by the operating rules of that prescribed CS facility for Part 6.6 of the Act (which may include an electronic form).

(2) For paragraph 650E(4)(a) of the Act, if securities are entered on a register or subregister of a prescribed CS facility, a person to whom section 650E of the Act applies must take the action that the operating rules of the prescribed CS facility require in relation to the return of the securities.

(3) For paragraph 650E(5)(a) of the Act, if a person withdraws an acceptance of an offer, the bidder must take any action that the operating rules of the prescribed CS facility require in relation to any of the securities:

(a) to which the acceptance relates; and

(b) that are entered on a register or subregister of the prescribed CS facility.

Part 6.8—Acceptances

6.8.01 Acceptance of offers made under off‑market bid

For paragraph 653A(b) of the Act, if the operating rules of a prescribed CS facility require an acceptance of an offer to which paragraph 653A(a) applies to be made in a particular way, to the extent that the acceptance relates to the securities in the offer, the acceptance must be made in that way.

6.8.02 Acceptances by transferees and nominees of offers made under off‑market bid

For paragraph 653B(4)(a) of the Act, a notice relating to securities entered on a register or subregister of a prescribed CS facility must be in a form approved by the operating rules of the prescribed CS facility for Part 6.8 of the Act (which may include an electronic form).

Part 6.10—Review and intervention

6.10.01 Application for review of Takeovers Panel decision

For subsection 657EA(3) of the Act, an application for review of a decision of the Takeovers Panel must not be made later than 2 business days after the day on which the decision was made.

Chapter 6A—Compulsory acquisitions and buy‑outs

Part 6A.1—Compulsory acquisitions and buy‑outs after takeover bid

6A.1.01 Terms on which securities to be acquired

For paragraph 661C(4)(a) of the Act, an election relating to securities entered on an electronic register or subregister of a prescribed CS facility must be in an electronic form approved by the operating rules of the prescribed CS facility.

Chapter 6CA—Continuous disclosure

6CA.1.01 Continuous disclosure: other disclosing entities

For paragraph 675(2)(d) of the Act, the disclosure of information under section 675 of the Act is not required if:

(a) a reasonable person would not expect the information to be disclosed; and

(b) the information is confidential; and

(c) at least 1 of the following applies:

(i) the disclosure of the information would contravene a law;

(ii) the information is about a matter of supposition;

(iii) the information is not definite enough to make disclosure appropriate;

(iv) the information relates to an incomplete proposal or a matter that is in the course of negotiation;

(v) the information was prepared or created for the internal management purposes of the entity;

(vi) the information is a trade secret.

Chapter 6D—Fundraising

Part 6D.2—Disclosure to investors about securities

6D.2.01 Exemption—member shares

Part 6D.2 of the Act does not apply to an offer of a member share within the meaning given by regulation 12.8.03.

6D.2.02 Exemption—foreign companies

Part 6D.2 of the Act does not apply to an offer under a dividend reinvestment plan or bonus share plan of fully‑paid shares in a foreign company to an existing holder of shares in the foreign company.

6D.2.03 Sophisticated investors

(1) For subparagraph 708(8)(c)(i) of the Act, $2.5 million is specified.

(2) For subparagraph 708(8)(c)(ii) of the Act, $250 000 is specified.

Note: Under subsection 708(8) of the Act, an offer of a body’s securities does not need disclosure to investors under Part 6D.2 of the Act if it appears from a certificate given by a qualified accountant no more than 6 months before the offer is made that the person to whom the offer is made:

(a) has net assets of at least the amount specified in regulations made for the purposes of subparagraph 708(8)(c)(i); or

(b) has a gross income for each of the last 2 financial years of at least the amount specified in regulations made for the purposes of subparagraph 708(8)(c)(ii).

6D.2.04 Simple corporate bonds—base prospectus

(1) For subsections 713C(5) and (6) of the Act, this regulation specifies:

(a) the information that must be contained in a base prospectus for simple corporate bonds; and

(b) the statements that must be set out in a base prospectus for simple corporate bonds.

(2) Subregulation (1) does not prevent a base prospectus from containing other material or setting out other statements.

(3) A base prospectus must contain a table of contents and sections dealing with the following matters:

(a) Section 1: What you need to know;

(b) Section 2: About the bonds;

(c) Section 3: About the issuer;

(d) Section 4: Risks;

(e) Section 5: Other information you should consider;

(f) Section 6: Glossary.

Section 1: What you need to know

(4) The following statements, or statements to the same effect as the following statements, must be set out in section 1 of a base prospectus:

(a) This document will be the base prospectus for these bonds for 3 years from the time it is lodged with the Australian Securities and Investments Commission.

(b) There will be a separate offer‑specific prospectus for each offer of bonds during the life of this base prospectus.

(c) To make an informed investment decision about these bonds, you should read the offer‑specific prospectus and this base prospectus before investing.

(d) This base prospectus alone is not an offer. The offer is contained in the offer‑specific prospectus, this base prospectus and other information that is incorporated by reference into the offer‑specific prospectus and this base prospectus.

(e) To find out more about the pros and cons of investing in corporate bonds, visit ASIC’s MoneySmart website: http://moneysmart.gov.au.

Section 2: About the bonds

(5) The following information must be contained in section 2 of a base prospectus:

(a) information on the program of the bonds (if applicable), including any pre‑planned future issues of bonds;

(b) details of the key aspects of the bonds, including information about the following matters:

(i) the interaction between the coupon rate and yield;

(ii) the interest rate of the bonds;

(iii) the term of the bonds;

(iv) the maturity and redemption of the bonds;

(v) events that will constitute default;

(vi) guarantees in relation to the bonds and information about any guarantors;

(vii) security and ranking.

Note: If information mentioned in this subregulation is contained in another document that has been lodged with ASIC, a base prospectus may refer to that lodged document instead of setting out the information (see section 713E of the Act).

Section 3: About the issuer

(6) The following information must be contained in section 3 of a base prospectus:

(a) brief information about the issuing body that includes a summary of the body’s:

(i) business; and

(ii) management personnel (including directors and senior managers); and

(iii) business strategy; and

(iv) governance arrangements;

(b) the trust deed relating to the issuing body;

(c) an explanation of the role of the trustee;

(d) additional information about the issuing body that relates to the investment decision, and where that information can be obtained, including:

(i) a reference to the issuing body’s annual report and financial report; and

(ii) a reference to any half‑year report that the issuing body lodged with ASIC after it lodged an annual financial report and before it lodged the most recent copy of the base prospectus with ASIC; and

(e) the key financial ratios, calculated in accordance with regulation 6D.2.06, that are relevant to the issuing body, accompanied by:

(i) an explanation of those key financial ratios; and

(ii) information about how a change to those key financial ratios may affect the bonds to be issued under the base prospectus.

Note: If information mentioned in this subregulation is contained in another document that has been lodged with ASIC, a base prospectus may refer to that lodged document instead of setting out the information (see section 713E of the Act).

(7) The following statements, or statements to the same effect as the following statements, must be set out in section 3 of a base prospectus:

A publicly listed entity must release financial reports and continuously disclose information that may have an impact on its share or bond price. This information is available publicly on the relevant market exchange. You should consider this information when making an investment decision about bonds. While this information is important, it is not considered part of the disclosure document for the offer of bonds using this base prospectus.

Section 4: Risks

(8) The following information must be contained in section 4 of a base prospectus:

(a) the main risks associated with bonds and an explanation of those risks;

(b) the issuing body’s main business risks;

(c) if other risks specific to bonds may be relevant to a consumer’s investment decision—an explanation of those other risks;

(d) if other business risks may be relevant to a consumer’s investment decision—an explanation of those other risks.

Note: If information mentioned in this subregulation is contained in another document that has been lodged with ASIC, a base prospectus may refer to that lodged document instead of setting out the information (see section 713E of the Act).

Section 5: Other information you should consider

(9) The following information must be contained in section 5 of a base prospectus:

(a) an explanation of the consequences, relating to taxation, of investing in bonds;

(b) information relating to privacy in general and the issuing body’s obligations under privacy laws;

(c) any applicable selling restrictions.

Note: If information mentioned in this subregulation is contained in another document that has been lodged with ASIC, a base prospectus may refer to that lodged document instead of setting out the information (see section 713E of the Act).

(10) The following statements, or statements to the same effect as the following statements, must be set out in section 5 of a base prospectus:

(a) More information on the tax implications associated with investing in bonds can be found on the Australian Taxation Office’s website: http://www.ato.gov.au.

(b) The following is a list of material referred to, but not set out in full, in this base prospectus. However, the material (or relevant extracts of the material) is incorporated by reference and, as such, forms part of the offer of bonds covered by this base prospectus.

(11) Section 5 of a base prospectus must contain a list of material referred to, but not set out in full, in the prospectus.

Section 6: Glossary

(12) The information that section 6 of a base prospectus must contain is information that is adequate to explain the meanings of terms required to understand the content of:

(a) the base prospectus; or

(b) the offer‑specific prospectus that is combined with the base prospectus to create a 2‑part simple corporate bonds prospectus.

Note: See section 713B of the Act.

6D.2.05 Simple corporate bonds—offer‑specific prospectus

(1) For subsections 713D(6) and (7) of the Act, this regulation specifies:

(a) the information that must be contained in an offer‑specific prospectus for an offer of simple corporate bonds; and

(b) the statements that must be set out in an offer‑specific prospectus for an offer of simple corporate bonds.

(2) Subregulation (1) does not prevent an offer‑specific prospectus from containing other material or setting out other statements.

(3) An offer‑specific prospectus for an offer of simple corporate bonds must contain a table of contents and sections dealing with the following matters:

(a) Section 1: What you need to know;

(b) Section 2: Key dates and offer details;

(c) Section 3: Offer‑specific information you should consider.

Section 1: What you need to know

(4) The following statements, or statements to the same effect as the following statements, must be set out in section 1 of an offer‑specific prospectus:

(a) This offer‑specific prospectus is not a summary of the information contained in the base prospectus.

(b) This offer‑specific prospectus is only relevant for this offer of bonds.

(c) A base prospectus applies to this offer of bonds.

(d) This offer‑specific prospectus provides offer details, key dates and other relevant information for the offer. The base prospectus for this offer provides additional information that is also critical to your decision. You should take all of the information in the base prospectus into consideration before making your decision in relation to this offer.

(e) To find out more about the pros and cons of investing in corporate bonds, visit ASIC’s MoneySmart website: http://moneysmart.gov.au.

Section 2: Key dates and offer details

(5) The following information must be contained in section 2 of an offer‑specific prospectus:

(a) the terms of the offer, which must include the following:

(i) the name of the issuing body;

(ii) the size of the series, or tranche, to which the offer relates;

(iii) the face value of the bonds;

(iv) the term of the bonds;

(v) the maturity date of the bonds;

(vi) guarantees in relation to the bonds and information about any guarantors;

(vii) the interest rate of the bonds;

(viii) interest payment dates;

(ix) events that will constitute default;

(x) details of any existing security;

(xi) the structure of the offer;

(xii) the minimum size of an application for the bonds;

(xiii) the prescribed financial market on which the bonds will be listed;

(b) a short explanation of the circumstances in which the bonds can be redeemed;

(c) any fees and costs associated with the offer;

(d) either:

(i) if a provision of the base prospectus contains information about any selling restrictions—a reference to the provision; or

(ii) if subparagraph (i) does not apply—information about any selling restrictions;

(e) an explanation of where investors can obtain additional information about the offer, including:

(i) a reference to financial advisors or other professional advisors; and

(ii) the contact details of the issuing body.

Note: If information mentioned in this subregulation is contained in another document that has been lodged with ASIC, an offer‑specific prospectus may refer to that lodged document instead of setting out the information (see section 713E of the Act).

Section 3: Offer‑specific information you should consider

(6) The following information must be contained in section 3 of an offer‑specific prospectus:

(a) any significant information necessary to update the information in the base prospectus;

(b) any notices that the issuing body has issued to explain changes that have occurred to the base prospectus since it was lodged with ASIC;

(c) the key financial ratios, calculated in accordance with regulation 6D.2.06, that are relevant to the issuing body, accompanied by:

(i) details of any change in those key financial ratios since the last offer‑specific prospectus was issued; or

(ii) if no offer‑specific prospectus has previously been issued—details of any change in those key financial ratios compared with the key financial ratios at the time the base prospectus was lodged with ASIC;

(d) an explanation of how the issuing body will use the funds raised by issuing the bonds;

(e) a brief summary of the effect of the offer on the issuing body;

(f) the ranking of the bonds and any other debt on issue;

(g) an explanation of any changes to the risks disclosed in the base prospectus;

(h) the amount that anyone has paid or agreed to pay, or the nature and value of any benefit that anyone has given or agreed to give, to:

(i) any directors or proposed directors of the issuing body; or

(ii) a person named in the prospectus as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of the prospectus; or

(iii) a promoter of the issuing body; or

(iv) an underwriter (but not a sub‑underwriter) to the issue or sale or a financial services licensee named in the prospectus as a financial services licensee involved in the issue or sale.

Note: If information mentioned in this subregulation is contained in another document that has been lodged with ASIC, an offer‑specific prospectus may refer to that lodged document instead of setting out the information (see section 713E of the Act).

6D.2.06 Simple corporate bonds—key financial ratios relevant to issuing body

(1) For paragraphs 6D.2.04(6)(e) and 6D.2.05(6)(c), the key financial ratios that are relevant to an issuing body are:

(a) the gearing ratio; and

(b) the working capital ratio; and

(c) the interest cover ratio.

(2) The key financial ratios referred to in subregulation (1) must be calculated in accordance with subregulations (3) to (5), based on the issuing body’s most recent financial statements or, if applicable, the issuing body’s consolidated financial statements.

(3) The gearing ratio must be calculated using the following formula:

start formula start fraction Total liabilities over Total equity end fraction end formula

(4) The working capital ratio must be calculated using the following formula:

start formula start fraction Current assets over Current liabilities end fraction end formula

(5) The interest cover ratio must be calculated using the following formula:

start formula start fraction EBITDA over Net interest expense end fraction end formula

where:

***EBITDA*** means earnings before net interest expense, taxes, depreciation and amortisation, for the period to which the issuing body’s most recent financial statements relate.

***net interest expense*** means the interest expense net of interest revenue, taking account of any related hedging arrangements recognised in the profit and loss statements, for the period to which the issuing body’s most recent financial statements relate.

Note: The issuing body’s most recent financial statements may relate to a period that is less than 12 months.

Part 6D.3A—Crowd‑sourced funding

6D.3A.01 Offers that are eligible to be made under Part 6D.3A of the Act

Class of securities

(1) For the purposes of paragraph 738G(1)(c) of the Act, this subregulation specifies fully‑paid ordinary shares as a class of securities.

Note: Paragraph 738G(1)(c) of the Act requires securities to be of a class specified in the regulations for an offer for the issue of the securities to be eligible to be made under Part 6D.3A of the Act.

Other requirements

(2) For the purposes of paragraph 738G(1)(f) of the Act, this subregulation specifies the requirement that the funds sought to be raised by the offer are not intended by the company to be used, to any extent, by:

(a) the company to issue a credit facility (within the meaning of regulation 7.1.06) to a related party of the company that is not a wholly‑owned subsidiary of the company; or

(b) a related party of the company to issue a credit facility (within the meaning of regulation 7.1.06) to the company or to another related party of the company.

6D.3A.02 Contents of CSF offer document—general

(1) For the purposes of subsection 738J(2) of the Act, this regulation, and regulations 6D.3A.03, 6D.3A.04, 6D.3A.05 and 6D.3A.06, specify the information that must be contained in a CSF offer document for a CSF offer of securities (the ***securities on offer***) made by a company (the ***offering company***).

(2) Subregulation (1) does not prevent a CSF offer document from containing other information.

Note 1: The other information may be contained in a section identified in subregulation (3), in another section of the offer document or in an appendix to the offer document.

Note 2: An appendix to the offer document is part of the offer document.

(3) The offer document must contain a table of contents and sections dealing with the following matters:

(a) Section 1: Risk warnings;

(b) Section 2: Information about the offering company;

(c) Section 3: Information about the offer;

(d) Section 4: Information about investor rights.

(4) Information required to be contained in a section of the offer document may be presented in any order within the section.

Note: The contents of the CSF offer document may be published in a commonly accessible digital format.

6D.3A.03 Contents of CSF offer document—Section 1: Risk warnings

The following statement must be set out in section 1 of the offer document:

“Crowd‑sourced funding is risky. Issuers using this facility include new or rapidly growing ventures. Investment in these types of ventures is speculative and carries high risks.

You may lose your entire investment, and you should be in a position to bear this risk without undue hardship.

Even if the company is successful, the value of your investment and any return on the investment could be reduced if the company issues more shares.

Your investment is unlikely to be liquid. This means you are unlikely to be able to sell your shares quickly or at all if you need the money or decide that this investment is not right for you.

Even though you have remedies for misleading statements in the offer document or misconduct by the company, you may have difficulty recovering your money.

There are rules for handling your money. However, if your money is handled inappropriately or the person operating the platform on which this offer is published becomes insolvent, you may have difficulty recovering your money.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself to any investment.”.

6D.3A.04 Contents of CSF offer document—Section 2: Information about the offering company

(1) The following information must be contained in section 2 of the offer document:

(a) the name, ACN and type of the offering company;

(b) the address of the registered office of the offering company;

(c) the address of the principal place of business of the offering company;

(d) the names of each of the following persons, as well as his or her skills and experience relevant to the management of the offering company:

(i) each director of the offering company, and any person proposed by the offering company to be a director of the offering company;

(ii) each senior manager of the offering company, and any person proposed by the offering company to be a senior manager of the offering company;

(e) a description of the offering company’s business and its organisational structure;

(f) a description, or a summary, of the capital structure of the offering company (relating to both equity and debt in the offering company), including the classes (if any) of securities in the offering company, and the rights associated with the securities in the offering company;

(g) a description of the main risks facing the offering company’s business;

(h) a description, or a summary, of the key provisions of the offering company’s constitution that deal with any rights and liabilities that attach to the securities in the issuing company;

(i) if the offering company is a proprietary company, a description or summary of the following:

(i) the key provisions of any agreement or proposed agreement between shareholders that deal with any rights and liabilities that attach to, or may affect, the securities in the issuing company;

(ii) any right of the directors of the company to refuse to register a transfer of shares in the company.

Note: For paragraph (a), the offering company will be one of the types set out in subsection 112(1) of the Act.

(1A) If a summary of the information in paragraph (1)(f) is contained in section 2 of the offer document, then:

(a) the information in full must be contained in another section of, or in an appendix to, the offer document; and

(b) section 2 of the offer document must include a cross reference to the location of that information.

(2) Section 2 of the offer document must also contain a copy, or a summary, of:

(a) if the offering company was registered before the financial year in which the CSF offer is to be made—the financial statements, that comply with the accounting standards, for the company for the most recently completed financial year; or

(b) if the offering company was registered during the financial year in which the CSF offer is to be made—the financial statements for the company for at least so much of that financial year as ends 1 month before the CSF offer is to be made.

(2A) If a summary of the financial statements mentioned in subregulation (2) is contained in section 2 of the offer document, then:

(a) a copy of the statements must be contained in another section of, or in an appendix to, the offer document; and

(b) section 2 of the offer document must include a cross reference to the location of the statements.

(3) Section 2 of the offer document must also contain the following information:

(a) if the offering company, or any person referred to in paragraph (1)(d), has been convicted of an offence against the Act—details of the offence, including a description of the circumstances giving rise to it;

(b) if a civil penalty under the Act has been imposed on the offering company, or any person referred to in paragraph (1)(d)—details of the penalty, including a description of the circumstances giving rise it;

(c) if a person referred to in paragraph (1)(d) is or has been disqualified from managing corporations under Part 2D.6 of the Act—details of the disqualification, including a description of the circumstances giving rise to it;

(d) if a person referred to in paragraph (1)(d) is or has been subject to a banning order under section 920A of the Act—details of the order, including a description of the circumstances giving rise to it;

(e) if a person referred to in paragraph (1)(d) is or has been subject to a court order under paragraph 921A(2)(a) of the Act—details of the order, including a description of the circumstances giving rise to it;

(f) if a person referred to in paragraph (1)(d) is or has been a director, secretary or senior manager of a corporation when it became insolvent—details of the insolvency, including a description of the circumstances giving rise to it;

(g) if ASIC has accepted under subsection 93AA(1) of the ASIC Act an undertaking given by the offering company, or by any person referred to in paragraph (1)(d) in relation to the offering company—details of the undertaking, including a description of the circumstances giving rise to it;

(h) if, during the 10‑year period before the CSF offer is to be made, the offering company has:

(i) been convicted of any offence other than one against the Act; or

(ii) had imposed on it any penalty under any law other than the Act;

details of the offence or penalty, including a description of the circumstances giving rise to it;

(i) if, during the 10‑year period before the CSF offer is to be made, any person referred to in paragraph (1)(d) has, in any of the capacities referred to in that paragraph with any company:

(i) been convicted of any offence other than one against the Act; or

(ii) had imposed on him or her a penalty under any law other than the Act;

details of the offence or penalty, including a description of the circumstances giving rise to it.

6D.3A.05 Contents of CSF offer document—Section 3: Information about the offer

(1) The following information must be contained in section 3 of the offer document:

(a) a description, or a summary, of the securities on offer, including information on the rights associated with those securities;

(b) the minimum subscription amount for the offer (see subsection 738L(8) of the Act);

(c) the maximum subscription amount for the offer (see subsection 738L(7) of the Act);

(d) the period that the offering company expects the offer to remain open;

(e) a description of how the offering company intends to use the proceeds from the offer (including a description of how the company intends to use any proceeds of the offer in excess of the minimum subscription amount for the offer).

(1A) If a summary of the information mentioned in paragraph (1)(a) is contained in section 3 of the offer document, then:

(a) the information in full must be contained in another section of, or in an appendix to, the offer document; and

(b) section 3 of the offer document must include a cross reference to the location of that information.

(2) If any of the proceeds of the offer will be paid, directly or indirectly, to any of the following persons, section 3 of the offer document must also contain a description of the payment:

(a) a person referred to in paragraph 6D.3A.04(1)(d);

(b) the CSF intermediary that will publish the offer, or any other person that is a related party (within the meaning of subsection 738G(3) of the Act) of that CSF intermediary;

(c) a person promoting or marketing the offer;

(d) a person that holds securities entitling the person to exercise more than 20% of the rights to vote at a general meeting of the offering company;

(e) a person that controls the offering company;

(f) any other person that is a related party (within the meaning of subsection 738G(3) of the Act) of the offering company.

(3) Without limiting subregulation (2), proceeds of the offer will be paid indirectly to a person if those proceeds will be paid for the benefit of the person by an intermediary entity such as a nominee, trust or partnership.

(4) Section 3 of the offer document must also contain a description of each previous CSF offer (if any) of securities by the following entities:

(a) the offering company;

(b) for each person referred to in paragraph 6D.3A.04(1)(d) for the offering company—any other company that had, at the time of a previous CSF offer by that other company, the person as a director or senior manager;

(c) for each person that controls the offering company—any other company that the person controlled at the time of a previous CSF offer by that other company;

(d) any other company that is a related party (within the meaning of subsection 738G(3) of the Act) of the offering company.

(5) The description of a previous CSF offer referred to in subregulation (4) must include a description of the outcome of the offer.

6D.3A.06 Contents of CSF offer document—Section 4: Information about investor rights

(1) The following information must be contained in section 4 of the offer document:

(a) a description of the cooling off rights contained in section 738ZD of the Act;

(b) a description of the effect of subsection 738ZA(5) of the Act (responsible intermediary for CSF offer to provide communication facility).

(2) To the extent that any of the following provisions apply to the offering company, section 4 of the offer document must also contain a description of the effect of those provisions:

(aa) subsection 301(2) of the Act (about when financial reports have to be audited);

(a) subsection 301(5) of the Act (about financial accounts not required to be audited for up to 5 years);

(b) subsections 250N(5) and (6) of the Act (about company not required to hold an AGM for up to 5 years);

(c) subsections 314(1AF) and (2A) of the Act (about annual financial reporting to members and making the reports accessible online);

(d) item 19A of the table in section 611 of the Act (about the exception to the prohibition on acquiring relevant interests in voting shares);

(e) section 738ZK of the Act (about Chapter 2E of the Act applying to proprietary companies that have one or more CSF shareholders).

Note: The provisions mentioned in paragraph (2)(a) or (b) only apply to an offering company covered under section 738ZI of the Act.

6D.3A.07 Obligation of CSF intermediary relating to their platforms—applicant risk acknowledgement

(1) For the purposes of paragraph 738ZA(3)(b) of the Act, this regulation sets out the requirements for an acknowledgement by a person making an application pursuant to a CSF offer.

(2) The following statement must be set out in the acknowledgement:

“I have read the CSF offer document. I understand this document is not a prospectus and contains less information than a prospectus.

I have read the risk warning and I understand that it contains some of the important information for making a decision about investing. However:

(a) I understand that crowd‑sourced funding is risky and that I may lose my entire investment; and

(b) I confirm that I could bear that loss without suffering undue hardship; and

(c) I understand that I may never be able to sell my shares and the value of my investment may be diluted over time.

I am aware that I can use the communication facility to ask questions and that there is a 5 business day cooling off period in relation to this investment.”.

6D.3A.08 Gatekeeper obligation of CSF intermediary—checks

(1) For the purposes of subsection 738Q(1) of the Act, this regulation prescribes the checks that a CSF intermediary needs to conduct before publishing any of the following documents (the ***offer document***) on a platform of the intermediary:

(a) a CSF offer document (or a document purporting to be a CSF offer document);

(b) a supplementary CSF offer document (or a document purporting to be a supplementary CSF offer document);

(c) a replacement CSF offer document (or a document purporting to be a replacement CSF offer document);

for a CSF offer of securities made by a company (the ***offering company***).

Identity of offering company

(2) The CSF intermediary must check the following information:

(a) the name, ACN and type of the offering company;

(b) the address of the registered office of the offering company;

(c) the address of the principal place of business of the offering company.

Eligibility to crowd fund

(3) The CSF intermediary must check whether:

(a) the company satisfies the requirements in paragraphs 738H(1)(a), (b), (c), (d), (e) and (f) of the Act; and

(b) the offer document satisfies the requirements in subsection 738J(2) and section 738K of the Act.

Information on directors etc.

(4) The CSF intermediary must check the following:

(a) the names and addresses of each person referred to in paragraph 6D.3A.04(1)(d);

(b) whether the offer document contains the information required by subregulation 6D.3A.04(3).

6D.3A.09 Gatekeeper obligation of CSF intermediary—reasonable standard of checks

(1) For the purposes of subsection 738Q(2) of the Act, this regulation prescribes what constitutes a reasonable standard in relation to all the checks referred to in regulation 6D.3A.08.

(2) To the extent that information to be checked is of a kind that is included in a register kept by ASIC under the Act, or on ASIC’s website, a reasonable standard is to check:

(a) whether the information is included in that register or on that website; and

(b) if the information is so included—whether the information is contrary to any other information that the CSF intermediary has; and

(c) if the information is the name and address of a person referred to in paragraph 6D.3A.04(1)(d)—whether the name and address is consistent with the name and address used by that person on an original, a certified copy or an authenticated electronic copy of:

(i) a primary photographic identification document; or

(ii) both a primary non‑photographic identification document and a secondary identification document.

(3) Subject to subregulation (4), for all other kinds of information or matters to be checked, a reasonable standard is to:

(a) explain in writing to the offering company what information or matters are required, including the level of detail required for such information and matters; and

(b) require the offering company to provide such information and matters to the CSF intermediary in accordance with a reasonable process that the CSF intermediary has developed, documented and implemented for this purpose.

(4) A reasonable standard for checking whether the offer document (see subregulation 6D.3A.08(1)) satisfies the requirements in section 738K of the Act is to check the offer document in accordance with a reasonable process that the CSF intermediary has developed, documented and implemented for this purpose.

(5) In this regulation:

***certified copy*** has the same meaning as in the *Anti‑Money Laundering and Counter‑Terrorism Financing Rules Instrument 2007 (No. 1)*.

***primary non‑photographic identification document*** has the same meaning as in the *Anti‑Money Laundering and Counter‑Terrorism Financing Rules Instrument 2007 (No. 1)*.

***primary photographic identification document*** has the same meaning as in the *Anti‑Money Laundering and Counter‑Terrorism Financing Rules Instrument 2007 (No. 1)*.

***secondary identification document*** has the same meaning as in the *Anti‑Money Laundering and Counter‑Terrorism Financing Rules Instrument 2007 (No. 1)*.

6D.3A.10 Obligation of CSF intermediary relating to their platforms—general CSF risk warning

(1) For the purposes of subsection 738ZA(2) of the Act, this regulation specifies the terms of a general CSF risk warning.

(2) Those terms are as follows:

“Crowd‑sourced funding is risky. Issuers using this facility include new or rapidly growing ventures. Investment in these types of ventures is speculative and carries high risks.

You may lose your entire investment, and you should be in a position to bear this risk without undue hardship.

Even if the company is successful, the value of your investment and any return on the investment could be reduced if the company issues more shares.

Your investment is unlikely to be liquid. This means you are unlikely to be able to sell your shares quickly or at all if you need the money or decide that this investment is not right for you.

Even though you have remedies for misleading statements in the offer document or misconduct by the company, you may have difficulty recovering your money.

There are rules for handling your money. However, if your money is handled inappropriately or the person operating this platform becomes insolvent, you may have difficulty recovering your money.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself to any investment.”.

Part 6D.5—Fundraising—miscellaneous

6D.5.01 Warrants that are securities

For paragraph 742(1)(b) of the Act, a warrant that is a security is exempted from all provisions of Chapter 6D of the Act.

6D.5.02 Modification of paragraph 708(8)(c) of the Act: renewal period for accountants’ certificates

For paragraph 742(1)(c) of the Act, section 708 of the Act applies as if paragraph 708(8)(c) of the Act were modified by omitting “6 months” and substituting “2 years”.

6D.5.03 Modification of section 738X of the Act: requirement to notify right to withdraw application only applies if defect is materially adverse

For the purposes of paragraph 742(1)(c) of the Act, Chapter 6D of the Act applies as if section 738X of the Act were modified so that subsection 738X(7) of the Act only applies if the defect in the CSF offer document referred to in paragraph 738X(5)(a) of the Act is materially adverse from the point of view of an investor.

Chapter 7—Financial services and markets

Part 7.1—Preliminary

Division 1—General

7.1.04 Derivatives

(1) For paragraph 761D(1)(b) of the Act, the prescribed period is:

(a) for a foreign exchange contract—3 business days; and

(b) in any other case—1 business day.

(2) For subsection 761D(2) of the Act, and subject to this regulation, an arrangement is declared to be a derivative if the following conditions are satisfied in relation to the arrangement:

(a) the arrangement is not a foreign exchange contract;

(b) under the arrangement, a party to the arrangement must, or may be required to, provide at some future time (which may be less than 1 day after the arrangement is entered into) consideration of a particular kind or kinds to someone;

(c) the amount of the consideration, or the value of the arrangement, is ultimately determined, derived from or varies by reference to (wholly or in part) the value or amount of something else (of any nature whatsoever and whether or not deliverable), including, for example, one or more of the following:

(i) an asset;

(ii) a rate (including an interest rate or exchange rate);

(iii) an index;

(iv) a commodity.

(4) An arrangement under which:

(a) a party has, or may have, an obligation to buy tangible property (other than Australian or foreign currency) at a price and on a date in the future; and

(b) another party has, or may have, an obligation to sell that property; and

(c) the arrangement does not permit the seller’s obligations to be wholly settled by cash, or by set‑off between the parties, rather than by delivery of the property; and

(d) neither usual market practice, nor the rules of a licensed market or a licensed CS facility, permits the seller’s obligations to be closed out by the matching up of the arrangement with another arrangement of the same kind under which the seller has offsetting obligations to buy;

is not an arrangement to which subregulation (2) applies to the extent only that the arrangement deals with that purchase and sale.

(5) An arrangement under which:

(a) a party has an obligation to buy property; and

(b) another party has an obligation to sell the property;

is not an arrangement to which subregulation (2) applies merely because the arrangement provides for the consideration to be varied by reference to a general inflation index (for example, the Consumer Price Index).

(6) A contract for the future provision of services is not an arrangement to which subregulation (2) applies.

(7) A thing that is described in subsection 764A(1) of the Act, other than paragraph 764A(1)(c), is not an arrangement to which subregulation (2) applies.

(8) For paragraph 761D(3)(d) of the Act, each of the following is declared not to be a derivative:

(a) tradeable water rights;

(b) an arrangement:

(i) under which a person (the ***seller***) has, or may have, an obligation to sell tradeable water rights at a future date; and

(ii) under which another person (the ***buyer***) has, or may have, an obligation to buy the tradeable water rights, or replacement water rights, at a future date; and

(iii) that does not permit the seller’s obligations to be wholly settled by cash, or by set‑off between the seller and the buyer, rather than by transfer of ownership of the tradeable water rights or replacement water rights; and

(iv) in relation to which neither usual market practice, nor the rules of a licensed market or of a licensed CS facility, allow the seller’s obligations to be closed out by matching up the arrangement with another arrangement of the same kind under which the seller has offsetting obligations to buy the tradeable water rights or replacement water rights;

(c) a carbon abatement contract.

Note: For ***carbon abatement contract***, see subregulation 1.0.02(1).

(9) Subregulations (4) to (8) apply whether or not a matter mentioned in those subregulations is described in subsection 761D(1) of the Act.

(10) In subregulation (8):

***replacement water rights*** means tradeable water rights that are granted, issued or authorised as a replacement for the seller’s tradeable water rights, including as a result of transformation arrangements mentioned in subsection 97(1) of the *Water Act 2007*.

***tradeable water rights*** has the same meaning as in the *Water Act 2007*.

7.1.04A Meaning of *kind* of financial products (section 1012IA of the Act)

(1) For section 761CA of the Act, this regulation applies in relation to paragraph (a) of the definition of ***custodial arrangement*** in subsection 1012IA(1) of the Act.

(2) Each of the following is a kind of financial product:

(a) for interests in a managed investment scheme, all the interests in that managed investment scheme;

(b) in any other case, all the financial products issued by a person or the person’s related bodies corporate.

7.1.04B Meaning of *class* of financial products (managed investment schemes)

(1) For section 761CA of the Act, this regulation applies in relation to paragraph 1017F(4)(d) of the Act.

(2) An interest in a managed investment scheme is in the same class as another interest in a managed investment scheme if they are both interests in the same managed investment scheme.

7.1.04C Meaning of *class* of financial products (superannuation products)

(1) For section 761CA of the Act, this regulation applies in relation to paragraph 1017F(4)(d) of the Act.

(2) A superannuation product is in the same class as another superannuation product if they are both issued by the same superannuation entity.

7.1.04CAA Meaning of *claimant intermediary*—persons excluded from being claimant intermediaries

(1) For the purposes of subsection 761CAA(2) of the Act, a person is not a claimant intermediary in the circumstances set out in subregulation (2), (4), (5), (6), (7), (8), (9), (10), (11) or (12).

Mortgage brokers and mortgage intermediaries

(2) The circumstances are:

(a) the person is a mortgage broker or mortgage intermediary; and

(b) the mortgage broker or mortgage intermediary provides a credit service to a consumer; and

(c) the mortgage broker or mortgage intermediary represents the consumer in pursuing a claim under an insurance product.

(3) Expressions used in subregulation (2) that are also used in the *National Consumer Credit Protection Act 2009* have the same meaning in that subregulation as they have in that Act.

Insurance brokers

(4) The circumstances are that the person is an insurance broker (within the meaning of the *Insurance Contracts Act 1984*).

Qualified accountants

(5) The circumstances are:

(a) the person is a qualified accountant; and

(b) the qualified accountant provides one or more of the following services to a person (the ***client***):

(i) preparing a financial report or financial statements (including, but not limited to, a financial report or financial statements required under the Act);

(ii) auditing financial records;

(iii) a tax agent service (within the meaning of the *Tax Agent Services Act 2009*);

(iv) if the qualified accountant is a limited licensee (within the meaning of subregulation 7.6.04(3)) or supervises and has responsibility for the provision of financial services covered by the financial services licence of a limited licensee—a financial service covered by the financial services licence of the limited licensee; and

(c) the qualified accountant represents the client in pursuing a claim under an insurance product.

Veterinarians

(6) The circumstances are:

(a) the person (the ***veterinarian***) is registered under the law of a State or Territory as a veterinarian, veterinary practitioner or veterinary surgeon; and

(b) the veterinarian represents a person insured under an insurance product in pursuing a claim under the product; and

(c) the claim relates to the management or prevention of a disease, injury or condition of an animal covered by the insurance product.

Travel agents

(7) The circumstances are:

(a) the person is a travel agent; and

(b) the travel agent represents a person insured under an insurance product in pursuing a claim under the product; and

(c) the claim relates to any of the following matters covered by the insurance product:

(i) financial loss for fares for any form of transport or accommodation to be used in the course of a specified journey if the insured person does not start or complete the journey;

(ii) loss or damage to personal belongings while the insured person is on a specified journey;

(iii) a sickness or disease contracted, or injury sustained, by the insured person on a specified journey;

(iv) loss, damage or compensation for an event affecting the insured person on a specified journey that ordinarily forms a part of insurance commonly regarded as travel insurance, including loss of cash or credit cards, legal liability, hijack, kidnap or ransom.

Financial advisers

(8) The circumstances are:

(a) the person is a financial services licensee whose Australian financial services licence covers the provision of financial product advice; or

(b) both of the following are satisfied:

(i) the person is an authorised representative of a financial services licensee whose Australian financial services licence covers the provision of financial product advice;

(ii) the person is authorised by the licensee to provide financial product advice on behalf of the licensee.

Financial counsellors

(9) The circumstances are that the person is a member of one ofthe following bodies, acting in that capacity:

(a) Financial Counselling Australia Ltd;

(b) Financial Counsellors Association of New South Wales Inc;

(c) Financial and Consumer Rights Council Inc.;

(d) Financial Counsellors Association of Queensland Inc.;

(e) Financial Counsellors Association of Western Australia Inc;

(f) The South Australian Financial Counsellors’ Association Incorporated;

(g) Financial Counselling Tasmania Inc.;

(h) Financial Counsellors ACT;

(i) Money Workers Association of the Northern Territory Incorporated.

Property managers

(10) The circumstances are:

(a) the person (the ***property manager***) carries on a business of managing property; and

(b) the property manager manages property on behalf of one or more other persons; and

(c) the property manager represents a person insured under an insurance product in pursuing a claim in relation to the property under the insurance product.

Estate management

(11) The circumstances are:

(a) the person (the ***estate manager***) administers the estate of a person who is:

(i) deceased; or

(ii) incapable of managing the person’s own affairs because of physical or mental incapacity; and

(b) the estate manager represents a person insured under an insurance product in pursuing a claim under the insurance product; and

(c) the claim relates to the estate or its administration.

Public Trustees etc.

(12) The circumstances are:

(a) the person (the ***estate manager***) is the Public Trustee (however described) of a State or Territory; and

(b) the estate manager administers the estate of a person; and

(c) the estate manager represents a person insured under an insurance product in pursuing a claim under the insurance product; and

(d) the claim relates to the estate or its administration.

7.1.04CA Kinds of financial products

(1) For section 761CA of the Act, this regulation applies in relation to paragraph 917C(3)(ba) of the Act.

(2) The following are kinds of financial product:

(a) motor vehicle insurance;

(b) home building insurance;

(c) home contents insurance;

(d) sickness and accident insurance;

(e) consumer credit insurance;

(f) travel insurance.

7.1.04CB When providing certain claims handing and settling services is not the primary part of a business

For the purposes of paragraph 761DA(2)(b) of the Act, circumstances in which a person’s provision of claims handling and settling services on behalf of one or more insurers is taken not to be the primary part of a business carried on by the person are when those services are:

(a) investigating the validity of claims under insurance products, or providing assistance in relation to such investigations; or

(b) assessing the extent of insurers’ liabilities to other persons under insurance products under which claims are made, or providing assistance in relation to such assessments.

7.1.04D Meaning of *issuer* for certain derivatives

(1) This regulation applies in relation to a financial product that:

(a) is a derivative; and

(b) is entered into, or acquired through a facility conducted in accordance with:

(i) the *Corporations (Exempt Futures Market—National Wholesale Electricity) Declaration 1999*; or

(ii) the *Corporations (Exempt Futures Market) Declaration 2001*.

(2) For paragraph 761E(7)(a) of the Act, each person who is a party to the financial product is taken to be an issuer of the financial product.

(3) For paragraph 761E(7)(a) of the Act, subsections 761E(5) and (6) of the Act do not apply to the financial product.

7.1.04E Issue of a new interest in a superannuation fund

(1) This regulation applies if a member of a superannuation fund, who has a superannuation interest in the growth phase, elects to receive a pension in relation to that interest or part of that interest.

(2) For paragraph 761E(7)(a) of the Act, the superannuation fund is taken to issue a new financial product when:

(a) it acknowledges receipt of the member’s election; or

(b) it makes the first payment of the pension;

whichever occurs first.

(3) For this regulation:

***growth phase*** has the meaning given by regulation 1.03AB of the SIS Regulations.

***pension*** has the meaning given by subregulation 1.06(1) of the SIS Regulations.

7.1.04F Meaning of *class* of financial services (subsections 917A(3), 917C(2) and 917C(3) of the Act)

(1) For section 761CA of the Act, this regulation applies for subsections 917A(3), 917C(2) and 917C(3) of the Act.

(2) Each of the following is a class of financial services:

(a) the provision of financial product advice relating to a general insurance product;

(b) the provision of financial product advice relating to an investment life insurance product;

(c) the provision of financial product advice relating to a life risk insurance product;

(d) dealing in a financial product that is a general insurance product;

(e) dealing in a financial product that is an investment life insurance product;

(f) dealing in a financial product that is a life risk insurance product;

(g) the provision of a claims handling and settling service in relation to a general insurance product;

(h) the provision of a claims handling and settling service in relation to an investment life insurance product;

(i) the provision of a claims handling and settling service in relation to a life risk insurance product.

7.1.04G Meaning of *issuer* for a foreign exchange contract

(1) This regulation applies to a financial product that is a foreign exchange contract that is not entered into, or traded, on a financial market.

(2) For paragraph 761E(7)(a) of the Act, each party to the foreign exchange contract is an issuer of the product.

7.1.04N Specific things that are financial products—litigation funding schemes and arrangements

(1) This regulation is made for the purposes of paragraph 764A(1)(m) of the Act.

(2) The following are declared to be financial products:

(a) an interest in a litigation funding scheme mentioned in regulation 5C.11.01;

(b) an interest in a litigation funding arrangement mentioned in that regulation.

7.1.05 Specific things that are not financial products: superannuation interests

For paragraph 765A(1)(q) of the Act, an exempt public sector superannuation scheme is prescribed.

7.1.06 Specific things that are not financial products: credit facility

(1) For subparagraph 765A(1)(h)(i) of the Act, each of the following is a ***credit facility***:

(a) the provision of credit:

(i) for any period; and

(ii) with or without prior agreement between the credit provider and the debtor; and

(iii) whether or not both credit and debit facilities are available; and

(iv) that is not a financial product mentioned in paragraph 763A(1)(a) of the Act; and

(v) that is not a security, a managed investment product, a foreign passport fund product, an investment life insurance product, a superannuation product or an RSA; and

(va) that is not a financial product mentioned in paragraph 764A(1)(ba), or (j) of the Act; and

(vi) that is not a financial product mentioned in paragraph 764A(1)(i) of the Act, other than a product the whole or predominant purpose of which is, or is intended to be, the provision of credit;

(b) a facility:

(i) known as a bill facility; and

(ii) under which a credit provider provides credit by accepting, drawing, discounting or indorsing a bill of exchange or promissory note;

(c) the provision of credit by a pawnbroker in the ordinary course of a pawnbroker’s business (being a business which is being lawfully conducted by the pawnbroker);

(d) the provision of credit by the trustee of the estate of a deceased person by way of an advance to a beneficiary or prospective beneficiary of the estate;

(e) the provision of credit by an employer, or a related body corporate of an employer, to an employee or former employee (whether or not it is provided to the employee or former employee with another person);

(f) a mortgage:

(i) that secures obligations under a credit contract (other than a lien or charge arising by operation of any law or by custom); and

(ii) that is not a financial product mentioned in paragraph 763A(1)(a) of the Act; and

(iii) that is not a security, a managed investment product, a foreign passport fund product, an investment life insurance product, a superannuation product or an RSA; and

(iiia) that is not a financial product mentioned in paragraph 764A(1)(ba), or (j) of the Act; and

(iv) that is not a financial product mentioned in paragraph 764A(1)(i) of the Act, other than a product the whole or predominant purpose of which is, or is intended to be, the provision of credit;

(g) a guarantee related to a mortgage mentioned in paragraph (f);

(h) a guarantee of obligations under a credit contract.

(2) The provision of consumer credit insurance that includes a contract of general insurance for the *Insurance Contracts Act 1984* is not a credit facility.

(2A) The following are not credit facilities:

(a) a litigation funding scheme mentioned in regulation 5C.11.01;

(b) a litigation funding arrangement mentioned in regulation 5C.11.01.

(3) In this regulation:

***credit*** means a contract, arrangement or understanding:

(a) under which:

(i) payment of a debt owed by one person (a ***debtor***) to another person (a ***credit provider***) is deferred; or

(ii) one person (a ***debtor***) incurs a deferred debt to another person (a ***credit provider***); and

(b) including any of the following:

(i) any form of financial accommodation;

(ii) a hire purchase agreement;

(iii) credit provided for the purchase of goods or services;

(iv) a contract, arrangement or understanding for the hire, lease or rental of goods or services, other than a contract, arrangement or understanding under which:

(A) full payment is made before or when the goods or services are provided; and

(B) for the hire, lease or rental of goods—an amount at least equal to the value of the goods is paid as a deposit in relation to the return of the goods;

(v) an article known as a credit card or charge card;

(vi) an article, other than a credit card or a charge card, intended to be used to obtain cash, goods or services;

(vii) an article, other than a credit card or a charge card, commonly issued to customers or prospective customers by persons who carry on business for the purpose of obtaining goods or services from those persons by way of a loan;

(viii) a liability in respect of redeemable preference shares;

(ix) a financial benefit arising from or as a result of a loan;

(x) assistance in obtaining a financial benefit arising from or as a result of a loan;

(xi) issuing, indorsing or otherwise dealing in a promissory note;

(xii) drawing, accepting, indorsing or otherwise dealing in a negotiable instrument (including a bill of exchange);

(xiii) granting or taking a lease over real or personal property;

(xiv) a letter of credit.

7.1.06A Arrangements for certain financial products that are not credit facilities

(1) This regulation applies in relation to a financial product that would be a credit facility in accordance with regulation 7.1.06 if subparagraphs 7.1.06(1)(a)(iv), (v), (va) and (vi), and 7.1.06(1)(f)(ii), (iii), (iiia) and (iv) did not apply.

(2) For paragraph 761E(7)(a) of the Act, and in relation to the financial product:

(a) the credit provider is not taken to be the issuer of the financial product; and

(b) the debtor is taken to be the issuer of the financial product.

(3) For paragraph 766A(2)(b) of the Act, and in relation to the financial product:

(a) the provision of financial product advice to the debtor, or the debtor’s representative, is taken not to be the provision of a financial service; and

(b) a dealing in the credit facility by the credit provider, or the credit provider’s representative, is taken not to be the provision of a financial service.

(4) In this regulation:

***credit***, ***credit provider*** and ***debtor*** have the same meanings as in subregulation 7.1.06(3).

7.1.07 Specific things that are not financial products: surety bonds

(1) This regulation applies to an arrangement between 2 persons (***person 1*** and ***person 2***) made in the following circumstances:

(a) person 1 enters into the arrangement in order to meet a requirement of another arrangement between person 1 and a person other than person 2 (***person 3***);

(b) under the arrangement, person 2 undertakes to make a payment to, or perform an obligation for the benefit of, person 3 in circumstances specified as part of the arrangement;

(c) under the arrangement, person 1 is liable to person 2 for any payments made, or liabilities, costs or expenses incurred, by person 2 in making the payment to, or performing the obligation for the benefit of, person 3;

(d) the arrangement does not constitute a financial product under section 764A of the Act, other than a derivative.

(2) For paragraph 765A(1)(y) of the Act, the arrangement is not a financial product.

7.1.07A Specific things that are not financial products: rental agreements

(1) This regulation applies to an arrangement between 2 persons (***person 1*** and ***person 2***) made in the following circumstances:

(a) person 1 leases or rents something from person 2;

(b) under the arrangement, person 1 makes a payment to person 2 to reduce the amount that person 1 would otherwise have to pay to person 2 under the leasing or rental agreement;

(c) the payment relates to the event of an accident or other eventuality affecting the thing that is being leased or rented.

Example: Collision damage waiver insurance for a rental car.

(2) For paragraph 765A(1)(y) of the Act, the arrangement is not a financial product.

7.1.07B Specific things that are not financial products: bank drafts

For paragraph 765A(1)(y) of the Act, a bank draft, including (but not limited to):

(a) a cheque drawn by a financial institution on itself; or

(b) a cheque drawn by a financial institution on a financial institution other than itself;

is not a financial product.

7.1.07C Specific things that are not financial products: insurance under an overseas student health insurance contract

(1) For paragraph 765A(1)(y) of the Act, insurance under an overseas student health insurance contract is not a financial product.

(2) In this regulation:

***overseas student health insurance contract*** has the same meaning as in Private Health Insurance Rules made for the purposes of Part 4‑2 of the *Private Health Insurance Act 2007* (which is about health insurance business).

Note: In 2019, the meaning was given by rule 18 of the *Private Health Insurance (Health Insurance Business) Rules 2018*.

7.1.07E Specific things that are not financial products: rights of the holder of a debenture

(1) This regulation applies to a facility that consists of the rights of the holder of a debenture against a trustee under a trust deed entered into under:

(a) section 283AA of the Act; or

(b) Chapter 2L or Division 4 of Part 7.12 of the old Corporations Law.

(2) For paragraph 765A(1)(y) of the Act, the facility is not a financial product.

7.1.07F Specific things that are not financial products: money orders

For paragraph 765A(1)(y) of the Act, a money order issued as a money order by, or for, Australia Post is not a financial product.

7.1.07G Specific things that are not financial products: electronic funds transfers

For paragraph 765A(1)(y) of the Act, a non‑cash payment facility is not a financial product if:

(a) the issuer is:

(i) a body corporate that is an ADI (within the meaning of the *Banking Act 1959*); or

(ii) an operator of a payment system; and

(b) under the facility, as instructed by the client, the issuer makes money available (or causes it to be made available) to a person nominated by the client:

(i) within 2 business days of receiving the client’s instruction; or

(ii) within the time reasonably required to complete the transaction subject to any constraints imposed by law; and

(c) under the facility the funds are transferred by electronic means for collection by, or for the credit of, the payer or another person; and

(d) the issuer and the payer do not have a standing arrangement to transfer funds in this manner.

Example: Telegraphic transfers and international money transfers offered by banks and remittance dealers.

7.1.07H Specific things that are not financial products: ACT insurance

For paragraph 765A(1)(y) of the Act, Australian Capital Territory insurance, including insurance entered into by the Australian Capital Territory and another insurer as joint insurers, is not a financial product.

7.1.07J Specific things that are not financial products—carbon abatement

For paragraph 765A(1)(y) of the Act, a carbon abatement contract is declared not to be a financial product.

Note: For ***carbon abatement contract***, see subregulation 1.0.02(1).

7.1.08AA Meaning of *financial product advice*—advice that is not regarded as a necessary part of providing claims handling and settling services

Advice about how to structure or use insurance claim payouts

(1) For the purposes of paragraph 766B(7B)(b) of the Act, giving a recommendation or statement of opinion, or a report of either of those things, cannot reasonably be regarded as a necessary part of providing a claims handling and settling service if the recommendation, statement or report relates to:

(a) how an amount to be paid to a person in settlement of a claim under an insurance product should be structured; or

(b) the management or use of an amount paid, or to be paid, to a person in settlement of a claim under an insurance product.

Advice about other insurance products or financial products

(2) For the purposes of paragraph 766B(7B)(b) of the Act, giving a recommendation or statement of opinion, or a report of either of those things, cannot reasonably be regarded as a necessary part of providing a claims handling and settling service if the recommendation, statement or report:

(a) is given in response to a claim, or potential claim, made under an insurance product; and

(b) relates to other insurance products not held by the person making the claim or financial products.

7.1.08 Meaning of *financial product advice*: exempt document or statement

(1) For subparagraph (a)(ii) of the definition of ***exempt document or statement*** in subsection 766B(9) of the Act, the following documents and statements are prescribed (and so excluded from the definition):

(a) a Product Disclosure Statement that:

(i) contains personal advice; or

(ii) contains general advice about a financial product other than a financial product to which the Statement relates;

(b) a Financial Services Guide that contains personal advice;

(c) a document or statement that would, but for this regulation, be an exempt document or statement only because it is prepared or given in accordance with section 1018A of the Act;

(d) a record of advice mentioned in subsection 946B(3A) of the Act.

(2) For subregulation (1), if a person:

(a) acquires a financial product (***product 1***); and

(b) will be able, by acquiring product 1, to give the product issuer an instruction to acquire a particular financial product or a financial product of a particular kind (within the meaning of section 1012IA of the Act) under a custodial arrangement (within the meaning of section 1012IA of the Act);

the Product Disclosure Statement for product 1 is taken to relate to the other financial product.

(3) For paragraph (b) of the definition of ***exempt document or statement*** in subsection 766B(9) of the Act, documents, information and statements that:

(a) do not contain personal advice; and

(b) are required by, and prepared as a result of, a requirement under an Australian law; and

(c) are included in a class of documents, information or statements specified by ASIC in a list published in the *Gazette* for this subregulation;

are prescribed (and so included in the definition).

(3A) For the purposes of paragraph (b) of the definition of ***exempt document or statement*** in subsection 766B(9) of the Act, the following documents and statements are prescribed (and so included in the definition):

(a) a CSF offer document that does not contain personal advice;

(b) a document or statement to the extent that it contains or draws information from a CSF offer document and attributes that information to the CSF offer document, if:

(i) the information is published on the platform on which the CSF offer document is published, and does not contain personal advice; or

(ii) the information is a statement made on the communication facility for the CSF offer, and does not contain personal advice;

(c) an advertisement or publication to the extent that the advertisement or publication:

(i) contains or draws information from a CSF offer document and attributes that information to the CSF offer document; and

(ii) does not contravene subsection 738ZG(1) of the Act; and

(iii) does not contain personal advice.

(4) For paragraph (b) of the definition of ***exempt document or statement*** in subsection 766B(9) of the Act:

(a) an assessment under subsection 985E(1) of the Act that a margin lending facility will not be unsuitable for the person to whom the margin lending facility is to be issued is prescribed (and so excluded from the definition); and

(b) an assessment under subsection 985E(1) of the Act that a margin lending facility whose limit is proposed to be increased will not be unsuitable for the person for whom the limit of the margin lending facility is to be increased is prescribed (and so excluded from the definition).

Note: The effect of paragraph (b) of the definition of ***exempt document or statement*** in subsection 766B(9), is that a prescribed document or statement is an exempt document or statement.

7.1.08A Modification of section 766D of the Act—free carbon units

For paragraph 926B(1)(c) of the Act, Part 7.6 of the Act applies in relation to free carbon units (within the meaning of the *Clean Energy Act 2011*) as if section 766D of the Act were modified by inserting after subsection 766D(2) the following subsection:

(3) A person who holds a free carbon unit (within the meaning of the *Clean Energy Act 2011*) that has been issued to the person by the Clean Energy Regulator is taken not to be making a market for a financial product if the person states the price of the free carbon unit.

7.1.09 Obligations related to clearing and settlement facility

(1) For paragraph 768A(1)(b) of the Act, the following obligations are prescribed:

(a) each obligation arising from a contract to transfer a security;

(b) each obligation arising from a contract to transfer a managed investment product;

(c) each obligation arising from acquiring or providing a financial product mentioned in paragraph 764A(1)(c) of the Act;

(d) each obligation arising from a contract to transfer a financial product mentioned in paragraph 764A(1)(j) of the Act;

(e) each obligation arising from a contract to transfer a financial product mentioned in paragraph 764A(1)(ba) of the Act;

(ea) each obligation arising from a contract to transfer a foreign passport fund product;

(f) each obligation arising from a contract to transfer a financial product mentioned in paragraph 764A(1)(k) of the Act;

(fa) each obligation arising from a contract to transfer a carbon unit, an Australian carbon credit unit or an eligible international emissions unit;

Note: See paragraphs 764A(1)(ka) and (kb) of the Act.

(g) each obligation arising from a contract to transfer a right that includes an undertaking by a body to repay, as a debt, money deposited with or lent to the body;

(h) each obligation arising from the entry into a repurchase agreement.

(2) In this regulation, ***repurchase agreement*** means a repurchase transaction, in relation to a financial product, entered into pursuant to:

(a) The Bond Market Association and the International Securities Market Association Global Master Repurchase Agreement (known as the TBMA/ISMA Global Master Repurchase Agreement); or

(b) another commonly used master agreement for repurchase transactions.

7.1.10 Conduct that does not constitute operating a clearing and settlement facility

(2) For paragraph 768A(2)(i) of the Act, the conduct of:

(a) National Stock Exchange of Australia Limited, or an agent of that body; or

(b) a participant of the National Stock Exchange of Australia Limited, or an agent of the participant; or

(c) Bendigo Stock Exchange Limited, or an agent of that body; or

(d) a participant of the Bendigo Stock Exchange Limited, or an agent of the participant;

in operating a facility in accordance with the operating rules of a licensed market does not constitute operating a ***clearing and settlement facility*** if the requirements of subregulation (3) are met.

(3) For subregulation (2), the requirements are:

(a) the market licensee must have, and must be responsible for enforcing, operating rules that apply to a participant of the licensed market in relation to the participant’s obligations arising from transactions carried out on the licensed market; and

(b) a participant mentioned in paragraph (a), or an agent of the participant appointed in accordance with the operating rules of the licensed market, must be responsible for fulfilling the obligations owed to another participant or agent arising from transactions carried out on the licensed market; and

(c) the market licensee is not the operator of any other clearing and settlement facility; and

(d) each participant of the licensed market is not the operator of any other clearing and settlement facility; and

(e) each agent of a participant of the licensed market is not the operator of any other clearing and settlement facility.

Division 2—Retail clients and wholesale clients

7.1.11 Meaning of *retail client* and *wholesale client*: motor vehicle insurance product

(1) For subparagraph 761G(5)(b)(i) of the Act, a ***motor vehicle insurance product*** is a contract or part of a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) in respect of one or more of the following:

(a) loss of, or damage to, a motor vehicle;

(b) liability for loss of, or damage to, property caused by or resulting from impact of a motor vehicle with some other thing.

(2) A motor vehicle insurance product does not include:

(a) insurance to or in relation to which the *Marine Insurance Act 1909* applies; or

(b) insurance entered into, or proposed to be entered into, for the purposes of a law (including a law of a State or Territory) that relates to:

(i) workers’ compensation; or

(ii) compulsory third party compensation.

(3) In this regulation:

***motor vehicle*** means a vehicle that is designed:

(a) to travel by road; and

(b) to use volatile spirit, steam, gas, oil, electricity or any other power (not being human power or animal power) as its principal means of propulsion; and

(c) to carry passengers;

and includes a motor cycle.

(4) However, a motor vehicle does not include:

(a) an omnibus; or

(b) a tram; or

(c) a motor vehicle the carrying capacity of which exceeds 2 tonnes.

7.1.12 Meaning of *retail client* and *wholesale client*: home building insurance product

(1) For subparagraph 761G(5)(b)(ii) of the Act, a ***home building insurance product*** is a contract or part of a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) in respect of destruction of or damage to a home building.

(2) A home building insurance product does not include insurance entered into, or proposed to be entered into, for the purposes of a law (including a law of a State or Territory) that relates to building or construction work in relation to a home building.

(3) In this regulation:

***home building*** means:

(a) a building used, or intended to be used, principally and primarily as a place of residence; and

(b) out‑buildings, fixtures and structural improvements used for domestic purposes, being purposes related to the use of the principal residence;

on the site and, without limiting the generality of the expression, includes:

(c) fixed wall coverings, fixed ceiling coverings and fixed floor coverings (other than carpets); and

(d) services (whether underground or not) that are the property of the insured or that the insured is liable to repair or replace or pay the cost of repairing and replacing; and

(e) fences and gates wholly or partly on the site.

***site***, in relation to a building, means the site specified in the relevant contract of insurance as the site on which the building is situated.

(4) A home building does not include:

(a) a hotel; or

(b) a motel; or

(c) a boarding house; or

(d) a building that:

(i) is in the course of construction; and

(ii) is being constructed by the insured, or an intending insured, in the course of a construction business; or

(e) a temporary building or structure or a demountable or moveable structure; or

(f) a caravan (whether fixed to the site or not).

7.1.13 Meaning of *retail client* and *wholesale client*: home contents insurance product

(1) For subparagraph 761G(5)(b)(iii) of the Act, a ***home contents insurance product*** is a contract or part of a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) in respect of loss of or damage to the contents of a residential building.

(2) A home contents insurance product does not include:

(a) insurance to or in relation to which the *Marine Insurance Act 1909* applies; or

(b) insurance entered into, or proposed to be entered into, for the purposes of a law (including a law of a State or Territory) that relates to:

(i) workers’ compensation; or

(ii) compulsory third party compensation.

(3) In this regulation:

***contents***, in relation to a residential building, means any of the following items:

(a) furniture, furnishings and carpets (whether fixed or unfixed);

(b) household goods;

(c) clothing and other personal effects;

(d) a picture;

(e) a work of art;

(f) a fur;

(g) a piece of jewellery;

(h) a gold or silver article;

(i) a document of any kind;

(j) a collection of any kind;

(k) swimming pools that:

(i) are not fixtures; and

(ii) are owned by the insured or by a member of the insured’s family ordinarily residing with the insured;

but does not include an article or thing to which the definition of ***residential building*** applies.

***residential building*** means:

(a) a building used principally and primarily as a place of residence on the site; and

(b) out‑buildings used for domestic purposes, being purposes related to the use of the principal residence on the site.

(4) A residential building does not include:

(a) a hotel; or

(b) a motel; or

(c) a boarding house; or

(d) a building that is in the course of construction; or

(e) a temporary building or structure or a demountable or moveable structure.

7.1.14 Meaning of *retail client* and *wholesale client*: sickness and accident insurance product

(1) For subparagraph 761G(5)(b)(iv) of the Act, a ***sickness and accident insurance product*** is a contract or part of a contract that has either of the following characteristics:

(a) the contract provides insurance cover (whether the cover is limited or restricted in any way) in respect of the insured person contracting a sickness or disease or a specified sickness or disease or sustaining an injury or a specified injury;

(b) if the insured person dies as a result of the sickness, disease or injury, the contract provides insurance cover (whether the cover is limited or restricted in any way) in respect of the death.

(2) A sickness and accident insurance product does not include:

(a) sickness and accident policies which are guaranteed ‘renewable’ at the option of the insured or where the insurer guarantees not to cancel the policy in response to a change in the risk where such a policy has been effected for a predetermined period of years in excess of 1 year; or

(b) insurance to or in relation to which the *Marine Insurance Act 1909* applies; or

(c) insurance entered into, or proposed to be entered into, for the purposes of a law (including a law of a State or Territory) that relates to:

(i) workers’ compensation; or

(ii) compulsory third party compensation; or

(d) insurance that:

(i) provides cover for the death of, or injury to, a driver of a motor vehicle which is caused by the fault of that person when driving; and

(ii) is provided only in conjunction with, and at no extra cost to, insurance mentioned in subparagraph (c)(ii).

Note: See also regulation 7.9.14B.

7.1.15 Meaning of *retail client* and *wholesale client*: consumer credit insurance product

(1) For subparagraph 761G(5)(b)(v) of the Act, a ***consumer credit insurance product*** is a contract or part of a contract that has the following characteristics:

(a) the contract provides insurance cover (whether the cover is limited or restricted in any way) in respect of:

(i) the death of the insured person; or

(ii) the insured person contracting a sickness or disease; or

(iii) the insured person sustaining an injury; or

(iv) the insured person becoming unemployed;

(b) the amount of the liability of the insurer under the contract is to be ascertained by reference to a liability of the insured person under a specified agreement to which the insured person is a party.

(2) A consumer credit insurance product does not include:

(a) insurance to or in relation to which the *Marine Insurance Act 1909* applies; or

(b) insurance entered into, or proposed to be entered into, for the purposes of a law (including a law of a State or Territory) that relates to:

(i) workers’ compensation; or

(ii) compulsory third party compensation.

7.1.16 Meaning of *retail client* and *wholesale client*: travel insurance product

(1) For subparagraph 761G(5)(b)(vi) of the Act, a ***travel insurance product*** is a contract or part of a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) in respect of one or more of the following:

(a) financial loss in respect of:

(i) fares for any form of transport to be used; or

(ii) accommodation to be used;

in the course of the specified journey in the event that the insured person does not commence or complete the specified journey;

(b) loss of or damage to personal belongings that occurs while the insured person is on the specified journey;

(c) a sickness or disease contracted or an injury sustained by the insured person while on the specified journey;

(d) loss, damage or compensation for an event occurring to the insured person during a specified journey that ordinarily forms a part of insurance commonly regarded as travel insurance, including

(i) loss of cash or credit cards; and

(ii) legal liability; and

(iii) hijack; and

(iv) kidnap; and

(v) ransom.

(2) A travel insurance product does not include:

(a) insurance to or in relation to which the *Marine Insurance Act 1909* applies; or

(b) insurance entered into, or proposed to be entered into, for the purposes of a law (including a law of a State or Territory) that relates to:

(i) workers’ compensation; or

(ii) compulsory third party compensation.

(3) In this regulation:

***specified journey*** means a journey in relation to which insurance cover is provided by the contract.

7.1.17 Meaning of *retail client* and *wholesale client*: personal and domestic property insurance product

(1) For subparagraph 761G(5)(b)(vii) of the Act, a ***personal and domestic property insurance product*** is a contract or part of a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) in respect of loss or damage to property that is:

(a) wholly or predominantly used for personal, domestic or household purposes by:

(i) the insured; or

(ii) a relative of the insured; or

(iii) any person with whom the insured resides; and

(b) ordinarily used for that purpose.

(2) A personal and domestic property insurance product does not include:

(a) insurance to or in relation to which the *Marine Insurance Act 1909* applies; or

(b) insurance entered into, or proposed to be entered into, for the purposes of a law (including a law of a State or Territory) that relates to:

(i) workers’ compensation; or

(ii) compulsory third party compensation.

(3) In this regulation:

***property*** includes any of the following:

(a) moveables;

(b) valuables;

(c) a caravan or mobile home;

(d) an on‑site mobile home;

(e) a trailer;

(f) a marine pleasure craft;

(g) a horse;

(h) a domestic pet;

(i) a mobile phone.

***relative*** means any of the following relatives of an insured person:

(a) mother;

(b) step‑mother;

(c) father;

(d) step‑father;

(e) brother;

(f) half‑brother;

(g) sister;

(h) half‑sister;

(i) spouse (including de facto spouse);

(j) son;

(k) step‑son;

(l) adopted son;

(m) daughter;

(n) step‑daughter;

(o) adopted daughter;

(p) grandparent;

(q) grandchild;

(r) nephew;

(s) niece;

(t) uncle;

(u) aunt;

(v) mother‑in‑law;

(w) father‑in‑law.

(4) For paragraph (1)(a), property is taken to be wholly or predominantly used for personal, domestic or household purposes if the insured gives the insurer a statement, before the insurance product is issued, that the property is intended to be used wholly or predominantly for 1 or more of those purposes.

7.1.17A General insurance products: medical indemnity insurance products

For subparagraph 761G(5)(b)(viii) of the Act, a medical indemnity insurance product is prescribed.

7.1.17B Retail clients and wholesale clients: aggregation of amounts for price or value of financial product

(1) For paragraph 761G(10)(a) of the Act, this regulation applies in relation to a class of financial products that:

(a) are provided by the same product issuer to:

(i) a particular person; or

(ii) an associate of the person; or

(iii) a body corporate controlled and wholly owned by the person; and

(b) are provided at or about the same time.

(2) The price for the provision of the financial products may be calculated by:

(a) calculating the total price for the provision of all of the financial products in the class; and

(b) treating the total price as the price for the provision to the particular person of a single financial product.

(3) The value of the financial products may be calculated by:

(a) calculating the total value of all of the financial products in the class; and

(b) treating the total value as the value of a single financial product provided to the particular person.

7.1.17C Retail clients: traditional trustee company services

For subsection 761G(6A) of the Act, a traditional trustee company service is not provided to a person as a retail client if:

(a) the service is provided to the person for use in relation to a business that is not a small business; or

(b) the person to whom the service is provided is a professional investor.

Note: ***Small business*** is defined in subsection 761G(12) of the Act and ***professional investor*** is defined in section 9 of the Act.

7.1.18 Retail clients and wholesale clients: price of investment‑based financial products

(1) This regulation makes arrangements about the price for the provision of an investment‑based financial product.

Note: Under paragraph 761G(7)(a) of the Act, if a financial product is not, or a financial service provided to a person does not relate to, a general insurance product, a superannuation product or an RSA, the financial product or financial service is provided to the person as a retail client unless the price for the provision of the financial product, or the value of the financial product to which the financial service relates, equals or exceeds the amount specified in regulations made for the purposes of that paragraph as being applicable in the circumstances.

Under paragraph 761G(10)(a) of the Act, the regulations may also deal with how a price or value referred to in that paragraph is to be calculated, either generally or in relation to a specified class of financial products.

In general, the ‘price’ of a product will be the amount that is paid to acquire or be issued with the financial product. The test for the price of the product in paragraph 761G(7)(a) of the Act will be determined at or before the time the client acquires, or is issued with, the financial product. If a client pays over $500 000 to acquire or be issued with the financial product, the client will be a wholesale client in respect of the product.

Price

(2) For paragraph 761G(7)(a) of the Act, the amount applicable in relation to an investment‑based financial product is $500 000.

Working out price: general rule

(3) For paragraph 761G(10)(a) of the Act, the price of an investment‑based financial product:

(a) is the amount that is paid or payable to acquire or purchase the investment‑based financial product; and

(b) does not include any amount paid for or in respect of the investment‑based financial product following its issue or acquisition unless the issue or acquisition would not have taken place without an arrangement to pay the amount.

Note: An amount deposited in a deposit account will not generally be regarded as part of the ‘price’ paid to acquire or purchase the financial product.

(4) For subregulation (3), in calculating any amount payable or paid to acquire or purchase the investment‑based financial product:

(a) disregard any amount payable to the extent to which it is to be paid out of money lent by:

(i) the person offering the investment‑based financial product; or

(ii) an associate of that person; and

(b) disregard any amount paid to the extent to which it was paid out of money lent by:

(i) the person offering the investment‑based financial product; or

(ii) an associate of that person; and

(c) include any amount paid or payable to cover:

(i) fees or charges that are paid to the issuer or any other person that relates to the issue of the investment‑based financial product; and

(ii) fees or charges that are paid to the issuer or any other person that relates to the issue of the investment‑based financial product; and

(d) despite paragraph (c), disregard any amount of remuneration or other benefits paid or payable to a person for the provision of financial product advice or other related services provided directly to:

(i) the client; or

(ii) another person acting on behalf of the client.

Group products

(5) If the investment‑based financial product is a group product covered by section 1012H of the Act:

(a) the amount in subregulation (2) is to be used to determine the status of each person who elects, or may elect, to be covered by the investment‑based financial product; and

(b) subregulation (3) is to be used to determine the amount to be paid for the person to be covered by the investment‑based financial product.

7.1.19 Retail clients and wholesale clients: value of investment‑based financial products

(1) This regulation makes arrangements about the value of an investment‑based financial product to which a financial service relates.

Note: Under paragraph 761G(7)(a) of the Act, if a financial product is not, or a financial service provided to a person does not relate to, a general insurance product, a superannuation product or an RSA, the financial product or financial service is provided to the person as a retail client unless the price for the provision of the financial product, or the value of the financial product to which the financial service relates, equals or exceeds the amount specified in regulations made for the purposes of that paragraph as being applicable in the circumstances.

Under paragraph 761G(10)(a) of the Act, the regulations may also deal with how a price or value referred to in that paragraph is to be calculated, either generally or in relation to a specified class of financial products.

In general, the ‘value’ of a product will be the amount that the product is worth once it is issued or acquired by the client. It is anticipated that the test for the value of the product in paragraph 761G(7)(a) of the Act will usually be used to assess a client’s status as a retail or wholesale client at or before the time that a financial service (eg financial product advice, disposal of the product) is provided to the client in respect of an existing product.

Value

(2) For paragraph 761G(7)(a) of the Act, the amount applicable in relation to an investment‑based financial product is $500 000.

Working out value: general rule

(3) For paragraph 761G(10)(a) of the Act, the value of an investment‑based financial product on a day is:

(a) if the financial product is a security, or a financial product under paragraph 764A(1)(j) of the Act—the market value of the investment‑based financial product; or

(b) if paragraph (a) does not apply—the amount of money that stands to the client’s credit in relation to that investment‑based financial product.

(4) For subregulation (3), in calculating the value of an investment‑based financial product:

(a) disregard any amount standing to the client’s credit in relation to the investment‑based financial product to the extent that it is to be paid, or was paid, out of money lent by:

(i) the person offering the investment‑based financial product; or

(ii) an associate of that person; and

(b) disregard any amount of fees or charges:

(i) that the product issuer has an actual or accrued right to deduct, or otherwise to have access to, from the value of the investment‑based financial product (whether or not the amount has been deducted); or

(ii) that has accrued as at the time that the client’s status as a retail or wholesale client is assessed.

Cumulative value of products

(5) If, at a single point in time:

(a) a financial service that is being provided to a client is:

(i) financial product advice; or

(ii) arranging for a person to engage in conduct in accordance with subsection 766C(2) of the Act; and

(b) the financial service is provided in respect of:

(i) more than 1 investment‑based financial product; or

(ii) more than 1 income financial stream financial product; or

(iii) a combination of investment‑based financial products and income financial stream financial products; and

(c) either:

(i) the total price for the provision of those financial products is at least $500 000; or

(ii) the price or value of all of those financial products is at least $500 000;

the value of the financial products is taken, for subregulation (3), to be greater than the amount mentioned in subregulation (2).

(6) Subregulation (5) does not affect the operation of Part 7.9 of the Act, and Part 7.9 of these Regulations, to the extent that they require the provision of a Product Disclosure Statement in relation to the financial product advice.

Note: Although the effect of subregulation (5) is that the value of the investment‑based financial products is taken to be at least $500 000 in the circumstances mentioned in that subregulation, a client must still be provided with appropriate product disclosure and other requirements in accordance with Part 7.9 of the Act as a retail client in relation to a particular investment‑based financial product where the price of the product is less than $500 000.

In any situation in which a Product Disclosure Statement would be required for a retail client (the situations described in Subdivision B of Division 2 of Part 7.9 of the Act), the limit of $500 000 must be reached for any single investment‑based financial product, or income stream financial product, before the client will be treated as a wholesale client.

Group products

(7) If the investment‑based financial product is a group product covered by subsection 1012H(1) of the Act:

(a) the amount in subregulation (2) is to be used to determine the status of each person who elects, or may elect, to be covered by the investment‑based financial product; and

(b) subregulation (3) is to be used to determine the value of the investment‑based financial product to the extent that it stands, or will stand, to the credit of, each person who elects, or may elect, to be covered by the investment‑based financial product.

Time of assessment

(8) If a financial services provider needs to assess the status of a client as either retail or wholesale at a particular time in order to ensure that the client complies with the Act, or for any related purpose, the value of a financial product may be assessed at any time, whether or not a financial service is being provided at that time in relation to that product.

Note: Subregulation (8) will ensure that a provider of financial services may assess a client’s status at any time (for example, the provider may need to ascertain whether a periodic statement must be sent to the client under section 1017D of the Act because the client is a retail client).

7.1.19A Retail clients and wholesale clients: price of margin lending facilities

(1) This regulation makes arrangements about the price for the provision of a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA(1) of the Act.

Note: Under paragraph 761G(7)(a) of the Act, if a financial product is not, or a financial service provided to a person does not relate to, a general insurance product, a superannuation product or an RSA, the financial product or financial service is provided to the person as a retail client unless the price for the provision of the financial product, or the value of the financial product to which the financial service relates, equals or exceeds the amount specified in regulations made for the purposes of that paragraph as being applicable in the circumstances.

Under paragraph 761G(10)(a) of the Act, the regulations may also deal with how a price or value referred to in that paragraph is to be calculated, either generally or in relation to a specified class of financial products.

In general, the ‘price’ of a product will be the amount that is paid to acquire or be issued with the financial product. The test for the price of the product in paragraph 761G(7)(a) of the Act will be determined at or before the time the client acquires, or is issued with, the financial product. If a client pays $500 000 or more to acquire or be issued with the financial product, the client will be a wholesale client in respect of the product.

Price

(2) For paragraph 761G(7)(a) of the Act, the amount applicable in relation to the margin lending facility is $500 000.

Working out price

(3) For paragraph 761G(10)(a) of the Act, the price of a margin lending facility is to be worked out so that it is the same as the value of the secured property or transferred securities contributed by the client for establishing the facility.

(4) For paragraph 761G(10)(a) of the Act, the price of a margin lending facility whose limit is proposed to be increased is to be worked out so that it is the sum of:

(a) the current value of any secured property or transferred securities previously contributed by a client for establishing the facility or increasing the limit; and

(b) the value of any additional secured property or transferred securities contributed by the client in relation to the latest increase of the limit of the facility.

(5) For subregulations (3) and (4), any secured property or transferred securities contributed by the client that is funded by borrowings from a third party is not to be taken into consideration when working out the price of a margin lending facility.

7.1.20 Retail clients and wholesale clients: price of income stream financial products

(1) This regulation makes arrangements about the price for the provision of an income stream financial product.

Note: Under paragraph 761G(7)(a) of the Act, if a financial product is not, or a financial service provided to a person does not relate to, a general insurance product, a superannuation product or an RSA, the financial product or financial service is provided to the person as a retail client unless the price for the provision of the financial product, or the value of the financial product to which the financial service relates, equals or exceeds the amount specified in regulations made for the purposes of that paragraph as being applicable in the circumstances.

Under paragraph 761G(10)(a) of the Act, the regulations may also deal with how a price or value referred to in that paragraph is to be calculated, either generally or in relation to a specified class of financial products.

In general, the ‘price’ of a product will be the amount that is paid to acquire or be issued with the financial product. The test for the price of the product in paragraph 761G(7)(a) of the Act will be determined at or before the time the client acquires, or is issued with, the financial product. If a client pays over $500 000 to acquire or be issued with the financial product, the client will be a wholesale client in respect of the product.

Price

(2) For paragraph 761G(7)(a) of the Act, the amount applicable in relation to an income stream financial product is $500 000.

Working out price: general rule

(3) The price of an income stream financial product:

(a) is the amount that is paid or payable to acquire or purchase the income stream financial product; and

(b) does not include any amount paid for or in respect of the income stream financial product following its issue or acquisition unless the issue or acquisition would not have taken place without an arrangement to pay the amount.

Note: Additional amounts contributed to an allocated annuity will not generally be regarded as part of the ‘price’ paid to acquire or purchase the financial product.

(4) For subregulation (3), in calculating any amount payable or paid to acquire or purchase the income stream financial product:

(a) disregard any amount payable to the extent to which it is to be paid out of money lent by:

(i) the person offering the income stream financial product; or

(ii) an associate of that person; and

(b) disregard any amount paid to the extent to which it was paid out of money lent by:

(i) the person offering the income stream financial product; or

(ii) an associate of that person; and

(c) include any amount paid or payable to cover:

(i) fees or charges that are paid to the issuer or any other person that relates to the issue of the income stream financial product; and

(ii) fees or charges that are paid to the issuer or any other person that relates to the issue of the income stream financial product; and

(d) despite paragraph (c), disregard any amount of remuneration or other benefits paid or payable to a person for the provision of financial product advice or other related services provided directly to:

(i) the client; or

(ii) another person acting on behalf of the client.

7.1.21 Retail clients and wholesale clients: value of income stream financial products

(1) This regulation makes arrangements about the value of an income stream financial product.

Note: Under paragraph 761G(7)(a) of the Act, if a financial product is not, or a financial service provided to a person does not relate to, a general insurance product, a superannuation product or an RSA, the financial product or financial service is provided to the person as a retail client unless the price for the provision of the financial product, or the value of the financial product to which the financial service relates, equals or exceeds the amount specified in regulations made for the purposes of that paragraph as being applicable in the circumstances.

Under paragraph 761G(10)(a) of the Act, the regulations may also deal with how a price or value referred to in that paragraph is to be calculated, either generally or in relation to a specified class of financial products.

In general, the ‘value’ of a product will be the amount that the product is worth once it is issued or acquired by the client. It is anticipated that the test for the value of the product in paragraph 761G(7)(a) of the Act will usually be used to assess a client’s status as a retail or wholesale client at or before the time that a financial service (eg financial product advice, disposal of the product) is provided to the client in respect of an existing product.

Value

(2) For paragraph 761G(7)(a) of the Act, the amount applicable in relation to an income stream financial product is $500 000.

Working out value: general rule

(3) For paragraph 761G(10)(a) of the Act, the value of an income stream product is the amount worked out in accordance with any of the following paragraphs:

(a) if the terms of the income stream financial product provide for the calculation of a commutation value—the commutation value;

(b) if the terms of the income stream financial product do not permit commutation—the minimum commutation amount calculated in accordance with ordinarily accepted actuarial standards;

(c) if the income stream financial product is of a kind in relation to which money stands to the client’s credit for the income stream financial product—the amount of money standing to the client’s credit.

(4) For subregulation (3), in calculating the value of an income stream financial product:

(a) disregard any amount standing to the client’s credit in relation to the income stream financial product to the extent that it is to be paid, or was to be paid, out of money lent by:

(i) the person offering the income stream financial product; or

(ii) an associate of that person; and

(b) disregard any amount of fees or charges:

(i) that the product issuer has an actual or accrued right to deduct from the value of the income stream financial product (whether or not the amount has been deducted); or

(ii) that has accrued as at the time that the client’s status as a retail or wholesale client is assessed.

(5) If it is not reasonably practicable to ascertain an amount in accordance with subregulation (3), the value of the income stream product is an amount calculated as follows:

(a) identify the price for the provision of the income stream;

(b) subtract the total of any amounts paid out of the income stream (including any regular payments and any capital amounts);

(c) subtract an amount representing the reasonable administrative fees or other expenses of the issuer (including any costs or fees relating to the product that were disclosed to the client at or before the time the product was issued);

(d) add interest on:

(i) the amount paid for the income stream financial product; or

(ii) an amount, or a reasonable notional amount, representing the value of the income stream financial product;

based on movements in the rate of the All Groups Consumer Price Index number (being the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

Group products

(6) If the income stream financial product is a group product covered by subsection 1012H(1) of the Act:

(a) the amount in subregulation (2) is to be used to determine the status of each person who elects, or may elect, to be covered by the income stream financial product; and

(b) subregulation (3) is to be used to determine the value of the income stream financial product to the extent that it stands, or will stand, to the credit of, each person who elects, or may elect, to be covered by the income stream financial product.

Time of assessment

(7) If a financial services provider needs to assess the status of a client as either retail or wholesale at a particular time in order to ensure that the client complies with the Act, or for any related purpose, the value of a financial product may be assessed at any time, whether or not a financial service is being provided at that time in relation to that product.

Note: Subregulation (7) will ensure that a provider of financial services may assess a client’s status at any time (for example, the provider may need to ascertain whether a periodic statement must be sent to the client under section 1017D of the Act because the client is a retail client).

7.1.22 Retail clients and wholesale clients: value of derivatives

(1) This regulation makes arrangements about the value of a derivative:

(a) that is a financial product; and

(b) to which section 765A of the Act does not apply; and

(c) to which regulation 7.1.22AA does not apply.

Note: Under paragraph 761G(7)(a) of the Act, if a financial product is not, or a financial service provided to a person does not relate to, a general insurance product, a superannuation product or an RSA, the financial product or financial service is provided to the person as a retail client unless the price for the provision of the financial product, or the value of the financial product to which the financial service relates, equals or exceeds the amount specified in regulations made for the purposes of that paragraph as being applicable in the circumstances.

Under paragraph 761G(10)(a) of the Act, the regulations may also deal with how a price or value referred to in that paragraph is to be calculated, either generally or in relation to a specified class of financial products.

Value

(2) For paragraph 761G(7)(a) of the Act:

(a) the amount applicable in relation to a single derivative is $500 000; and

(b) if the derivative is included in 2 or more related financial products, the amount applicable in relation to the related financial products is $500 000.

Working out value: general rule

(3) For paragraph 761G(10)(a) of the Act, the value of a derivative is the face value, or the notional amount in respect of, the financial product (in dollar terms) as at the date on which the relevant arrangement is entered into by the parties.

Time of assessment

(4) If a financial services provider needs to assess the status of a client as either retail or wholesale at a particular time in order to ensure that the client complies with the Act, or for any related purpose, the value of a financial product may be assessed at any time, whether or not a financial service is being provided at that time in relation to that product.

Note: Subregulation (4) will ensure that a provider of financial services may assess a client’s status at any time (for example, the provider may need to ascertain whether ongoing disclosure of a significant event must be sent to the client under section 1017B of the Act because the client is a retail client).

7.1.22AA Retail clients and wholesale clients: contract for difference

(1) This regulation makes arrangements about the value of a derivative that:

(a) is a contract for difference; and

(b) is provided by a person who carries on a business of issuing contracts for difference to other persons (***holders***).

(2) Paragraph 761G(7)(a) of the Act does not apply to the derivative.

(3) In this regulation:

***contract for difference*** means a derivative to which all of the following apply:

(a) the value of the derivative, or the amount of consideration to be provided under the derivative, is ultimately determined, derived from or varies by reference to (wholly or in part) the change, between the acquisition and termination of the derivative, in the amount or value of an underlying specified under the terms of the derivative;

Note 1: For example, a derivative under which, at termination, the amount of consideration payable depends (wholly or in part) on the change in the level of a stock market index over the term of the derivative.

Note 2: There may be other factors that affect the value of the derivative. For example, fees and costs.

(b) the derivative is not able to be traded on a licensed market;

(c) the derivative:

(i) does not terminate on a fixed date; or

(ii) if the derivative terminates on a fixed date—it is a derivative of a kind that are typically terminated before the fixed date;

Note 1: For example, the derivative may have a fixed termination date if the underlying has a fixed termination date.

Note 2: This means that options, futures, swaps and forward rate agreements will generally not be contracts for difference.

(d) the holder has the right to terminate the derivative;

Note: The terms of the derivative may provide for its termination in other circumstances. For example, on the occurrence of an event of default or on the issuer (other than the holder) exercising a right to terminate the derivative.

(e) on termination, the obligations of the parties are settled in cash or by set‑off between the parties.

***terminate***, in relation to a derivative, includes the derivative being closed out.

***underlying***, in relation to a derivative, means any thing (of any nature whatsoever and whether or not deliverable) other than the derivative, including, for example, one or more of the following:

(a) an asset;

(b) a rate (including an interest rate or exchange rate);

(c) an index;

(d) a commodity.

7.1.22A Retail clients and wholesale clients: value of foreign exchange contracts

(1) This regulation makes arrangements about the value of a foreign exchange contract that is not a derivative.

Value

(2) For paragraph 761G(7)(a) of the Act, the amount applicable to a foreign exchange contract is $500 000.

Working out value: general rule

(3) For paragraph 761G(10)(a) of the Act, the value of a foreign exchange contract is the amount paid or payable under the foreign exchange contract.

7.1.23 Retail clients and wholesale clients: price of non‑cash payment financial products

(1) This regulation makes arrangements about the price for the provision of a non‑cash payment financial product.

Note: Under paragraph 761G(7)(a) of the Act, if a financial product is not, or a financial service provided to a person does not relate to, a general insurance product, a superannuation product or an RSA, the financial product or financial service is provided to the person as a retail client unless the price for the provision of the financial product, or the value of the financial product to which the financial service relates, equals or exceeds the amount specified in regulations made for the purposes of that paragraph as being applicable in the circumstances.

In general, the ‘price’ of a product will be the amount that is paid to acquire or be issued with the financial product. The test for the price of the product in paragraph 761G(7)(a) of the Act will be determined at or before the time the client acquires, or is issued with, the financial product. If a client pays over $500 000 to acquire or be issued with the financial product, the client will be a wholesale client in respect of the product.

Price

(2) For paragraph 761G(7)(a) of the Act, the amount applicable in relation to a non‑cash payment financial product is $500 000.

Working out price: general rule

(3) The price of a non‑cash payment financial product:

(a) is the amount that is paid or payable to acquire or purchase the non‑cash payment financial product; and

(b) does not include any amount paid for or in respect of the non‑cash payment financial product following its issue or acquisition unless the issue or acquisition would not have taken place without an arrangement to pay the amount.

Note: Additional amounts paid into a smart card or cheque account after its issue will not generally be regarded as part of the ‘price’ paid to acquire or purchase the financial product.

(4) For subregulation (3), in calculating any amount payable or paid to acquire or purchase the non‑cash payment financial product:

(a) include any amount paid or payable to cover:

(i) fees or charges that are paid to the issuer or any other person that relates to the issue of the non‑cash payment financial product; and

(ii) fees or charges that are paid to the issuer or any other person that relates to the issue of the non‑cash payment financial product; and

(b) despite paragraph (a), disregard any amount of remuneration or other benefits paid or payable to a person for the provision of financial product advice or other related services provided directly to:

(i) the client; or

(ii) another person acting on behalf of the client.

7.1.24 Retail clients and wholesale clients: value of non‑cash payment products

(1) This regulation makes arrangements about the value of a non‑cash payment financial product to which a financial service relates.

Note: Under paragraph 761G(7)(a) of the Act, if a financial product is not, or a financial service provided to a person does not relate to, a general insurance product, a superannuation product or an RSA, the financial product or financial service is provided to the person as a retail client unless the price for the provision of the financial product, or the value of the financial product to which the financial service relates, equals or exceeds the amount specified in regulations made for the purposes of that paragraph as being applicable in the circumstances.

In general, the ‘value’ of a product will be the amount that the product is worth once it is issued or acquired by the client. It is anticipated that the test for the value of the product in paragraph 761G(7)(a) of the Act will usually be used to assess a client’s status as a retail or wholesale client at or before the time that a financial service (eg financial product advice, disposal of the product) is provided to the client in respect of an existing product.

Value

(2) For paragraph 761G(7)(a) of the Act, the amount applicable in relation to a non‑cash payment financial product is $500 000.

Working out value: general rule

(3) For paragraph 761G(10)(a) of the Act, the value of a non‑cash payment financial product on a day is the amount of money that stands to the client’s credit in respect of that product.

(4) For subregulation (3), in calculating an amount of money, disregard any amount of fees or charges:

(a) that the product issuer has an actual or accrued right to deduct, or otherwise to have access to, from the value of the non‑cash payment financial product (whether or not the amount has been deducted); or

(b) that has accrued as at the time that the client’s status as a retail or wholesale client is assessed.

Time of assessment

(5) If a financial services provider needs to assess the status of a client as either retail or wholesale at a particular time in order to ensure that the client complies with the Act, or for any related purpose, the value of a financial product may be assessed at any time, whether or not a financial service is being provided at that time in relation to that product.

Note: Subregulation (5) will ensure that a provider of financial services may assess a client’s status at any time (for example, the provider may need to ascertain whether ongoing disclosure of a significant event must be sent to the client under section 1017B of the Act because the client is a retail client).

7.1.25 Retail clients and wholesale clients: life risk insurance and other risk‑based financial products

(1) This regulation makes arrangements about the value of a risk‑based financial product.

(2) Paragraph 761G(7)(a) of the Act does not apply to a risk‑based financial product.

Note: Under paragraph 761G(7)(a) of the Act, if a financial product is not, or a financial service provided to a person does not relate to, a general insurance product, a superannuation product or an RSA, the financial product or financial service is provided to the person as a retail client unless the price for the provision of the financial product, or the value of the financial product to which the financial service relates, equals or exceeds the amount specified in regulations made for the purposes of that paragraph as being applicable in the circumstances.

Under paragraph 761G(10)(a) of the Act, the regulations may also deal with how a price or value referred to in that paragraph is to be calculated, either generally or in relation to a specified class of financial products.

Under paragraph 761G(10)(b) of the Act, the regulations may also modify the way in which paragraph 761G(7)(a) applies in particular circumstances.

7.1.26 Superannuation‑sourced money

For the purpose of assessing the price of a financial product, or the value of a financial product to which a financial service relates, under paragraph 761G(7)(a) of the Act, superannuation‑sourced money is not to be counted if:

(a) the financial service provided to a person is:

(i) financial product advice; or

(ii) if the person was a retail client—the provision of a financial product in circumstances in which a Product Disclosure Statement would need to be given to the client under Part 7.9 of the Act (including section 1012A, 1012B, 1012C or 1012IA);and

(b) the financial product to which the financial service relates is a product other than a non‑cash payment financial product; and

(c) the person who was the holder of the relevant superannuation interest in the regulated superannuation fund was or would have been a retail client under subsection 761G(6) of the Act if they had held or acquired the product after FSR commencement.

Example: If:

(a) the price for an income stream financial product or an investment‑based financial product is $700 000; and

(b) the client uses $400 000 of superannuation‑sourced money and $300 000 of other funds;

then, unless the client is a wholesale client for another reason, the client will be a retail client due to the operation of paragraph 761G(7)(a) of the Act.

Note: Under subsections 761G(5), (6) and (7) of the Act, general insurance products, superannuation products and RSAs are not financial products to which the restriction on counting superannuation‑sourced money towards the price applies. This applies in addition to the exclusion for non‑cash payment products under paragraph (b) of this regulation.

7.1.27 Retail clients and wholesale clients: effect of wholesale status

(1) For subsection 761G(10) of the Act if, at any time, the holder of a financial product is a wholesale client in relation to the product because of paragraph 761G(7)(a) of the Act:

(a) the holder is taken, on and after that time, to be a wholesale client in relation to the product as between the holder and:

(i) the issuer of the product; or

(ii) if a related body corporate of the issuer of the product provides a custodial or depository service to the holder of the product in relation to the product—the related body corporate;

for the period during which the holder holds the product; and

(b) paragraph (a) applies whether or not the holder would, but for that paragraph, have otherwise been or become a retail client in relation to that product at some time.

(2) For subsection 761G(10) of the Act, if:

(a) a person is a wholesale client in relation to the product because of paragraph 761G(7)(a) or paragraph (1)(a); and

(b) another person becomes a holder of the financial product; and

(c) the issuer did not know, and could not reasonably be expected to have known:

(i) whether another person had become the holder of the financial product; or

(ii) whether any subsequent holder of the financial product was a retail client or a wholesale client;

the issuer is taken not to be guilty of any offence, or to be liable under civil penalty or civil liability provisions under the Act, merely because the issuer has not treated any subsequent holder of that financial product as a retail client.

7.1.28 Retail clients and wholesale clients: assets and income

(1) For subparagraph 761G(7)(c)(i) of the Act, $2.5 million is specified.

(2) For subparagraph 761G(7)(c)(ii) of the Act, $250 000 is specified.

Note: Under paragraph 761G(7)(c) of the Act, if a financial product is not, or a financial service provided to a person does not relate to, a general insurance product, a superannuation product or an RSA, the product or service is provided to the person as a retail client unless:

(a) the client is a wholesale client under paragraph 761G(7)(a), (b) or (d) of the Act; or

(b) the person who acquires the product or service gives the provider of the product or service, before the provision of the product or service, a copy of a certificate given within the preceding 6 months by a qualified accountant that states that the person:

(i) has net assets of at least the amount specified in regulations made for the purposes of subparagraph 761G(7)(c)(i) of the Act; or

(ii) has a gross income for each of the last 2 financial years of at least the amount specified in regulations made for the purposes of subparagraph 761G(7)(c)(ii) of the Act a year.

Division 3—When does a person provide a financial service?

7.1.28AA Provision of financial product advice about default funds

For paragraph 766A(1)(f) of the Act, the provision of financial product advice to an employer about the choice of a fund to which to contribute for the benefit of those employees for whom there is no chosen fund (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) is prescribed.

Note: The financial product advice provided to the employer is a financial service provided to a person as a retail client: see paragraph 761G(6)(b) of the Act.

7.1.28A Circumstances in which a person is taken to be provided a traditional trustee company service

For subsection 766A(1B) of the Act, a person who is one of the following:

(a) a person who may request an annual information return under subregulation 5D.2.01(3);

(b) a person who requests the preparation of a will, a trust instrument, a power of attorney or an agency arrangement;

is, in relation to an estate management function, prescribed as the person to whom the service is taken to be provided.

7.1.29 Circumstances in which a person is taken not to provide a financial service

(1) For paragraph 766A(2)(b) of the Act, a person who provides an eligible service is taken not to provide a financial service if:

(a) the person provides the eligible service in the course of conducting an exempt service; and

(b) it is reasonably necessary to provide the eligible service in order to conduct the exempt service; and

(c) the eligible service is provided as an integral part of the exempt service.

(2) For this regulation, a person provides an ***eligible service*** if the person engages in conduct mentioned in paragraphs 766A(1)(a) to (f) of the Act.

(3) For this regulation, a person who does any of the following provides an ***exempt service***:

(a) provides advice in relation to the preparation or auditing of financial reports or audit reports;

(b) provides advice on a risk that another person might be subject to and identifies generic financial products or generic classes of financial product that will mitigate that risk, other than advice for inclusion in an exempt document or statement;

(c) provides advice on the acquisition or disposal, administration, due diligence, establishment, structuring or valuation of an incorporated or unincorporated entity, if the advice:

(i) is given to a person who is, or is likely to become, an interested party in the entity; and

(ii) to the extent that it is financial product advice—is confined to advice on a decision about:

(A) securities of a body corporate, or related body corporate, that carries on or may carry on the business of the entity; or

(B) interests in a trust (other than a superannuation fund, a managed investment scheme that is registered or required to be registered under Part 5C.1 of the Act, or a notified foreign passport fund), the trustee of which carries on or may carry on the business of the entity in the capacity of trustee; and

(iii) does not relate to other financial products that the body corporate or the trustee of the trust may acquire or dispose of; and

(iv) is not advice for inclusion in an exempt document or statement;

(d) provides advice on financial products that are:

(i) securities in a company (other than securities that are to be offered under a disclosure document under Chapter 6D of the Act); or

(ii) interests in a trust (other than a superannuation fund, a managed investment scheme that is registered or required to be registered under Part 5C.1 of the Act, or a notified foreign passport fund);

if the company or trust is not carrying on a business and has not, at any time, carried on a business;

(e) provides advice in relation to the transfer of financial products between associates;

(f) arranges for another person to engage in conduct referred to in subsection 766C(1) in relation to interests in a self managed superannuation fund in the circumstances in paragraphs (5)(b) and (c);

(g) arranges for another person to engage in conduct referred to in subsection 766C(1), by preparing a document of registration or transfer in order to complete administrative tasks on instructions from the person;

(h) provides advice about the provision of financial products as security, other than where the security is provided for the acquisition of other financial products.

(3A) For this regulation, a person also provides an ***exempt service*** if the person:

(a) is registered as an auditor under Part 9.2 of the Act; and

(b) performs any of the functions of a cover pool monitor mentioned in subsection 30(4) of the *Banking Act 1959*.

(4) For this regulation, a person also provides an ***exempt service*** if:

(a) the person provides advice to another person on taxation issues including advice in relation to the taxation implications of financial products; and

(b) the person will not receive a benefit (other than from the person advised or an associate of the person advised) as a result of the person advised acquiring a financial product mentioned in the advice, or a financial product that falls within a class of financial products mentioned in the advice; and

(c) either:

(i) the advice does not constitute financial product advice to a retail client; or

(ii) the advice constitutes financial product advice to a retail client and it includes, or is accompanied by, a written statement that:

(A) the person providing the advice is not licensed to provide financial product advice under the Act; and

(B) taxation is only one of the matters that must be considered when making a decision on a financial product; and

(C) the client should consider taking advice from the holder of an Australian Financial Services Licence before making a decision on a financial product.

(5) For this regulation, a person also provides an ***exempt service*** if:

(a) the person provides advice in relation to the establishment, operation, structuring or valuation of a superannuation fund, other than advice for inclusion in an exempt document or statement; and

(b) the person advised is, or is likely to become:

(i) a trustee; or

(ii) a director of a trustee; or

(iii) an employer‑sponsor; or

(iv) a person who controls the management;

of the superannuation fund; and

(c) except for advice that is given for the sole purpose, and only to the extent reasonably necessary for the purpose, of ensuring compliance by the person advised with the SIS Act (other than paragraph 52(2)(f)), the SIS Regulations (other than regulation 4.09) or the *Superannuation Guarantee (Administration) Act 1992*—the advice:

(i) does not relate to the acquisition or disposal by the superannuation fund of specific financial products or classes of financial products; and

(ii) does not include a recommendation that a person acquire or dispose of a superannuation product; and

(iii) does not include a recommendation in relation to a person’s existing holding in a superannuation product to modify an investment strategy or a contribution level; and

(d) if the advice constitutes financial product advice provided to a retail client—the advice includes, or is accompanied by, a written statement that:

(i) the person providing the advice is not licensed to provide financial product advice under the Act; and

(ii) the client should consider taking advice from the holder of an Australian Financial Services Licence before making a decision on a financial product.

(6) In this regulation:

***exempt document or statement*** has the meaning given by subsection 766B(9) of the Act.

***generic*** means without reference to a particular brand or product issuer.

***interested party*** means:

(a) an associate within the meaning of Division 2 of Part 1.2 of the Act; or

(b) a manager; or

(c) an officer; or

(d) a trustee or director of a trustee.

7.1.30 Information and advice about voting

For paragraph 766A(2)(b) of the Act, a circumstance in which a person is taken not to provide a financial service within the meaning of paragraph 766A(1)(a) of the Act is that:

(a) the service provided by the person consists only of advising another person in relation to the manner in which:

(i) voting rights attaching to securities; or

(ii) voting rights attaching to interests in managed investment schemes;

may or should be exercised; and

(b) the advice is not intended to influence any decision in relation to financial products other than a decision about voting; and

(c) the advice could not be reasonably be regarded as intended to influence a decision in relation to financial products, other than a decision about voting; and

(d) the advice does not relate to a vote that relates to a dealing in financial products.

Note: A service that includes advice which is intended to influence the decision to acquire securities in another company would be not provided in circumstances covered by this regulation.

7.1.31 Passing on prepared documents

For paragraph 766A(2)(b) of the Act, a circumstance in which a person (***person 1***) is taken not to provide a financial service within the meaning of paragraph 766A(1)(a) of the Act is that:

(a) person 1 provides a service to a person; and

(b) the service consists only of passing on, publishing, distributing or otherwise disseminating a document that contains financial product advice; and

(c) the document was provided by another person (***person 2***); and

(d) person 2 is not acting on behalf of person 1; and

(e) person 1 is not the holder of a financial services licence that authorises person 1 to provide financial product advice; and

(f) person 1 does not select the content of the document, modify the content of the document or otherwise exercise control over the content of the document; and

(g) a reasonable person would not consider that person 1 provided, endorsed or otherwise assumed responsibility for the financial product advice contained in the document.

7.1.32 Remuneration packages

For paragraph 766A(2)(b) of the Act, a circumstance in which a person (***person 1***) is taken not to provide a financial service within the meaning of paragraph 766A(1)(a) of the Act is that:

(a) person 1 provides advice to another person; and

(b) the advice relates only to the structuring of remuneration packages for the other person’s employees.

7.1.33A Allocation of funds available for investment

For paragraph 766A(2)(b) of the Act, a circumstance in which a person is taken not to provide a financial service within the meaning of paragraph 766A(1)(a) of the Act is the provision of a service that consists only of a recommendation or statement of opinion provided to a person about the allocation of the person’s funds that are available for investment among 1 or more of the following:

(a) shares;

(b) debentures;

(c) debentures, stocks or bonds issued, or proposed to be issued, by a government;

(d) deposit products;

(e) managed investment products;

(ea) foreign passport fund products;

(f) investment life insurance products;

(g) superannuation products;

(h) other types of asset.

Note: This regulation does not apply to a recommendation or statement of opinion that relates to specific financial products or classes of financial products.

7.1.33B General advice

(1) For paragraph 766A(2)(b) of the Act, this regulation applies in relation to the provision of a service by a person to another person in the following circumstances:

(a) the service consists only of general advice in relation to a financial product or class of financial products;

(b) the advice is prepared by a product issuer of the financial product or class of financial products who is not a financial services licensee;

(c) the advice is provided by a financial services licensee whose financial services licence covers the provision of the advice.

(2) The product issuer is taken not to provide a financial service within the meaning of paragraph 766A(1)(a) of the Act.

(3) The financial services licensee is taken to provide a financial service within the meaning of paragraph 766A(1)(a) of the Act.

7.1.33D Investment‑linked life insurance products

For paragraph 766A(2)(b) of the Act, a person is taken not to provide a financial service if:

(a) the person makes a market for a financial product; and

(b) the person is the issuer of the product; and

(c) the product is an investment‑linked life insurance policy under an investment‑linked contract (within the meaning of subsection 14(4) of the *Life Insurance Act 1995*).

7.1.33E Advice about the existence of a custodial or depository service

For paragraph 766A(2)(b) of the Act, a person is taken not to provide a financial service if:

(a) the person provides advice about a custodial or depository service; and

(b) the advice is not about a financial product; and

(c) the advice is not intended to influence, and could not reasonably be regarded as being intended to influence, a decision about a financial product other than a product that is a financial product only because it is an equitable right or interest in:

(i) a share in a body; or

(ii) a debenture of a body; or

(iii) an interest in a registered scheme; or

(iv) an interest in a notified foreign passport fund.

Note: Paragraph (c) of this regulation refers to financial products described in paragraph 92(5)(c) of the Act and in subparagraphs 764A(1)(b)(ii) and (bb)(ii) of the Act.

7.1.33F School banking

(1) For paragraph 766A(2)(b) of the Act, a person is taken not to provide a financial service if:

(a) the service is:

(i) arranging for the issue, or the acquisition, of a school banking product; or

(ii) the provision of general advice intended to influence a decision in relation to a school banking product; and

(b) the person:

(i) is employed by a school; or

(ii) provides the service on behalf of a school; and

(c) the person does not receive any financial benefit for the provision of the service; and

(d) the Product Disclosure Statement for the product discloses any commissions or other benefits that the school might receive in connection with the issue of the product.

(2) In this regulation:

***school banking product*** means a basic deposit product, issued by an ADI in the following circumstances:

(a) it is offered for issue to pupils at a school;

(b) there is no regular account keeping fee charged for the product.

7.1.33G Certain general advice that does not attract remuneration etc.

For subsection 766A(2) of the Act, a person (the ***advisor***) is taken not to provide a financial service if:

(a) the advisor gives advice to another person; and

(b) the advice:

(i) is not about a particular financial product or an interest in a particular financial product; and

(ii) is not personal advice; and

(c) the advice:

(i) is not intended to influence the other person in making a decision in relation to a particular financial product or an interest in a particular financial product; or

(ii) could not reasonably be regarded as being intended to have such an influence; and

(d) by giving the advice neither the advisor, nor an associate of the advisor, receives any remuneration (including commission) or other benefit that is related to the advice given apart from remuneration (including commission) or other benefit that the advisor or the associate would have received if the advice was not given.

7.1.33H Certain general advice given by a financial product issuer

For subsection 766A(2) of the Act, a financial product issuer is not taken to provide a financial service if:

(a) the issuer gives advice to another person about:

(i) a particular financial product or class of financial products issued by the issuer; or

(ii) an interest in a particular financial product or a class of financial products issued by the issuer; and

(b) the advice is not personal advice; and

(c) the advice is given to the person at the same time as the issuer:

(i) advises the person that the issuer is not licensed to provide financial product advice in relation to the product, class or interest, as the case may be; and

(ii) recommends to the person that the person obtain a Product Disclosure Statement, if appropriate, and read it before making a decision to acquire the product or a product from the class of products, as the case may be; and

(iii) if it is advice about the offer, issue or sale of a financial product—notifies the person about the availability or otherwise of a cooling‑off regime that applies in respect of the acquisition of the product, a product from the class of products or an interest in a product as the case may be (whether the regime is provided for by law or otherwise).

Division 4—Dealings in financial products

7.1.34 Conduct that does not constitute dealing in a financial product

(1) This regulation does not apply in relation to a margin lending facility.

(2) For subsection 766C(7) of the Act, the following conduct does not constitute dealing in a financial product:

(a) the enforcement of rights under a credit facility, including the enforcement of rights by a person acting under a power of attorney;

(b) the disposal of a financial product that is subject to a mortgage or the transfer of such a product to the mortgagor, whether the disposal or transfer is carried out at the direction of the mortgagor or occurs as a result of the mortgagor fulfilling its obligations under the mortgage.

Example for paragraph (a): A mortgagee exercising a power of sale under a mortgage.

7.1.35 Conduct that does not constitute dealing in a financial product

(1) For subsection 766C(7) of the Act, conduct is not taken to be dealing in a financial product if:

(a) the conduct is of a kind:

(i) mentioned in paragraph 766C(1)(a), (d) or (e) of the Act; or

(ii) mentioned in paragraph 766C(1)(b) of the Act, where it is the issue of a beneficial interest in a financial product, that arises from conduct that would constitute providing a custodial or depository service but for the operation of regulation 7.1.40; and

(b) the conduct is carried out by a person (***person 1***) in relation to a product that person 1 holds on trust for, or on behalf of, another person (***person 2***) and the holding of that financial product would not constitute the provision of a custodial or depository service because of paragraphs 7.1.40(a), (b), (c), (d), (g) and (i).

(2) Subregulation (1) does not apply to conduct carried out by person 1 in relation to a financial product that is held under a custodial arrangement as defined in section 1012IA of the Act unless:

(a) person 2 is an associate of person 1; or

(b) the financial product is held in the manner mentioned in paragraph 7.1.40(d).

7.1.35A Conduct that does not constitute dealing in a financial product—lawyers acting on instructions

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

(a) the financial service consists of:

(i) arranging for a person to engage in conduct referred to in subsection 766C(1) of the Act; or

(ii) dealing as an agent or otherwise on behalf of a client, an associate of a client or a relative of a client; and

(b) the lawyer is acting:

(i) on the instructions of the client, an associate of the client or a relative of the client; and

(ii) in his or her professional capacity; and

(iii) in the ordinary course of his or her activities as a lawyer; and

(c) the financial service can reasonably be regarded as a necessary part of those activities; and

(d) the lawyer has not received, and will not receive, a benefit in connection with those activities other than:

(i) the payment of professional charges in relation to those activities; and

(ii) reimbursement for expenses incurred or payment on account of expenses to be incurred on behalf of the client, an associate of the client or a relative of the client;

from the client or from another person on behalf of the client.

7.1.35B Conduct that does not constitute dealing in a financial product—issuing carbon units, Australian carbon credit units or eligible international 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 a carbon unit, an Australian carbon credit unit or an eligible international emissions unit; and

(b) the person is:

(i) the Clean Energy Regulator; or

(ii) the Clean Development Mechanism Executive Board; or

(iii) the government of a country other than Australia; or

(iv) an authority acting on behalf of the government of a country other than Australia; and

(c) the financial service consists of issuing the carbon unit, Australian carbon credit unit or eligible international emissions unit.

7.1.35C Conduct that does not constitute dealing in a financial product—carbon units, Australian carbon credit units or eligible international 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 a carbon unit, an Australian carbon credit unit or an eligible international emissions unit; and

(b) the financial service consists of dealing in the carbon unit, Australian carbon credit unit or eligible international 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 an entity that is a liable entity entered in the information database under section 183 of the *Clean Energy Act 2011*.

Division 5—Custodial or depository services

7.1.40 Conduct that does not constitute the provision of a custodial or depository service

(1) For paragraph 766E(3)(e) of the Act, conduct that is mentioned in subsection 766E(1) of the Act does not constitute providing a custodial or depository service if:

(a) the financial product held by the provider is a basic deposit product or is an account mentioned in subsection 981B(1) of the Act; or

(b) the client is an associate of the provider (within the meaning of Division 2 of Part 1.2 of the Act); or

(c) the provider and its associates have no more than 20 clients in aggregate for all custodial or depository services that they provide; or

(d) the financial product is held as part of the arrangements for securing obligations under:

(i) a credit facility; or

(ii) a debenture that is held as trustee under a trust deed:

(A) entered into under section 283AA of the Act or former section 260FA of the Corporations Law of a State or Territory; or

(B) mentioned in former section 1052 of the Corporations Law of a State or Territory; or

(e) the provider is a participant in a licensed market and the financial product held is a derivative acquired on the licensed market by the provider on behalf of a client; or

(f) the provider is a participant in a licensed clearing and settlement facility and the financial product held is a derivative registered on the licensed clearing and settlement facility by the provider on behalf of the client; or

(g) the financial product is held under:

(i) an order of a court; or

(ii) an order of a board or tribunal established under a law of a State or Territory; or

(iii) a direction by the holder of a statutory office established under a law of a State or Territory; or

(h) the service is provided by a lawyer in the following circumstances:

(i) the financial service consists of acquiring, holding or disposing of a cash management trust interest, being an interest to which a law of a State or Territory relating to the audit of trust or controlled monies applies;

(ii) the lawyer is acting:

(A) on instructions from the client, an associate of the client or a relative of the client; and

(B) in his or her professional capacity; and

(C) in the ordinary course of his or her activities as a lawyer;

(iii) the financial service can reasonably be regarded as a necessary part of those activities;

(iv) the lawyer has not received, and will not receive, a benefit in connection with the activities other than:

(A) the payment of professional charges related to those activities; and

(B) reimbursement for expenses incurred or payment on account of expenses to be incurred on behalf of the client, an associate of the client or a relative of the client;

from the client or from another person on behalf of the client; or

(i) the financial product is held by a trustee appointed under:

(i) a law of a State or Territory to administer monies awarded to a person as compensation; or

(ii) a trust formed for a charitable purpose.

(2) For paragraph 766E(3)(e) of the Act, conduct that is mentioned in subsection 766E(1) of the Act does not constitute providing a custodial or depository service if the financial product is an Australian carbon credit unit that has been issued to:

(a) a special native title account in accordance with section 49 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or

(b) a nominee account in accordance with section 141 of that Act.

Division 6—Operating a financial market

7.1.50 Operating a financial market

For paragraph 767A(2)(a) of the Act, the following circumstances are specified as circumstances in which the conduct of a person making or accepting offers or invitations to acquire or dispose of financial products, on the person’s own behalf or on behalf of one party to the transaction only, constitutes the operating of a financial market:

(a) the Clean Energy Regulator making or accepting offers or invitations to acquire or dispose of carbon units on its own behalf, or on behalf of the Commonwealth only, in the course of conducting an auction of carbon units under the *Clean Energy Act 2011*;

(b) a person making or accepting offers or invitations to acquire or dispose of carbon units on behalf of the Clean Energy Regulator only, in the course of assisting the Clean Energy Regulator to conduct an auction of carbon units under the *Clean Energy Act 2011*.

Part 7.2—Licensing of financial markets

Division 1—Market licensees’ obligations

7.2.01 Obligation to inform ASIC of certain matters: contraventions of licence or Act

For paragraph 792B(3)(b) of the Act, a matter to which that paragraph relates is any matter that, in the opinion of a market licensee, constitutes or may constitute a contravention of:

(a) a condition of a licence held by a financial services licensee; or

(b) Subdivision A or B of Division 2 of Part 7.8 of the Act; or

(c) Division 3 of Part 7.8 of the Act; or

(d) Subdivision B of Division 6 of Part 7.8 of the Act.

7.2.02 Obligation to inform ASIC of certain matters: becoming director, secretary or executive officer of market licensee

(1) This regulation applies if a person becomes a director, secretary or executive officer of a market licensee or of a holding company of a market licensee (including when the person changes from one of those positions to another).

(2) For subsection 792B(5) of the Act, the information to be given to ASIC by the market licensee is:

(a) the person’s name and contact details; and

(b) the date of appointment to the position; and

(c) the person’s educational qualifications and financial market experience; and

(d) if the market licensee is aware of any details of a conviction of the kind mentioned in subsection 206B(1) of the Act—the details; and

(e) whether the market licensee knows whether the person:

(i) is an undischarged bankrupt; or

(ii) has entered into a deed of arrangement or composition of a kind mentioned in subsections 206B(3) and (4) of the Act;

and, if the market licensee knows the information, details of what the market licensee knows.

7.2.03 Obligation to inform ASIC of certain matters: ceasing to be director, secretary or executive officer of market licensee

(1) For subsection 792B(5) of the Act, this regulation applies if a person ceases to be a director, secretary or executive officer of a market licensee or of a holding company of a market licensee (including when the person changes from one of those positions to another).

(2) The information to be given to ASIC by the market licensee is:

(a) the person’s name and contact details; and

(b) the position that the person held; and

(c) the date on which the person ceased to hold the position; and

(d) if the person ceases to be a director, secretary or executive officer because the person is changing from the position to another in the company, the new position; and

(e) if the reason for ceasing to hold the position is:

(i) because of a contravention of the Corporations Act or another law of a State or Territory; or

(ii) because the person has become an undischarged bankrupt;

details of the reason.

7.2.04 Obligation to inform ASIC of certain matters: voting power in market licensee

(1) This regulation applies if a market licensee becomes aware that a person has come to have, or has ceased to have, more than 15% of the voting power in the market licensee or in a holding company of the market licensee.

(2) For subsection 792B(5) of the Act, the information to be given to ASIC by the market licensee is:

(a) the person’s name and contact details; and

(b) if known by the market licensee, the date on which the person came to have, or ceased to have, more than 15% of the voting power; and

(c) if the market licensee knows the voting power that the person had immediately before the person came to have, or ceased to have, more than 15% of the voting power, that voting power; and

(d) whether the market licensee knows the manner in which the person came to have, or ceased to have, more than 15% of the voting power, and, if the market licensee knows the manner, details of what the market licensee knows.

7.2.05 Giving ASIC information about a listed disclosing entity

(1) For subsection 792C(2) of the Act, the following information is prescribed:

(a) a stock exchange automated trading system notification message;

(b) an Australian Stock Exchange voiceline announcement.

(2) In this regulation:

***Australian Stock Exchange voiceline announcement*** means a message from the Australian Stock Exchange that is:

(a) spoken over an announcement system; and

(b) a summary of information lodged with the Australian Stock Exchange by a company or other entity that is included in the official list of a financial market.

***Stock exchange automated trading system notification message*** means a brief message that is:

(a) transmitted to computer terminals of persons linked to the Stock Exchange Automated Trading System; and

(b) a summary of information lodged with the Australian Stock Exchange by a company or other entity that is included in the official list of a financial market.

7.2.06 Annual report of market licensee

For subsection 792F(2) of the Act, if an annual report by a market licensee does not contain any of the following information, the information must accompany the annual report:

(a) a description of the activities the market licensee has undertaken in the financial year;

(b) the resources (including financial, technological and human resources) that the market licensee had available, and used, in order to ensure that it has complied with its obligations in Chapter 7 of the Act, and, in particular, the obligation contained in subparagraph 792A(1)(c)(i) of the Act;

(c) an analysis of the extent to which the market licensee considers that the activities undertaken, and resources used, have resulted in full compliance with all its obligations under Chapter 7 of the Act.

Division 2—The market’s operating rules and procedures

7.2.07 Content of licensed market’s operating rules

For subsection 793A(1) of the Act, the following matters are matters with which the operating rules of a licensed market must deal to the extent that a matter is not dealt with in the market integrity rules:

(a) access to the licensed market, including the criteria for determining persons who are eligible to be participants;

(b) ongoing requirements for participants, including:

(i) the conduct of participants in relation to the licensed market with the objective of promoting honesty and fair practice; and

(ii) provision for the monitoring of participants’ compliance with the operating rules; and

(iv) provision for the expulsion or suspension of, or enforcement action against, a participant for breaches of the operating rules; and

(v) provision for the expulsion or suspension of a participant for breaches of Chapter 7 of the Act, or regulations made under that Chapter; and

(vii) provision for the expulsion or suspension of, or enforcement action against, a participant for a failure or expected failure to meet the participant’s obligations under commitments entered into on the licensed market;

(c) execution of orders;

(d) the way in which disorderly trading conditions are to be dealt with, including disruptions to trading;

(e) the class or classes of financial products that are to be dealt with on the licensed market by participants, including:

(i) a description of the nature of each class of financial product; and

(ii) for a class of derivatives, if most of the terms of the arrangement constituting the derivative are determined in advance by the market operator (including price, if determined in advance):

(A) the standard terms of the arrangement that constitutes the derivative; and

(B) a description of the asset, rate, index, commodity or other thing that is used for the matters mentioned in paragraph 761D(1)(c) of the Act;

(f) the terms of the contract formed between participants that enter into a transaction through the licensed market (to the extent to which paragraph (e) does not require that information);

(g) if appropriate, the listing of entities, including:

(i) admitting an entity to the official list of the licensed market for the purpose of enabling financial products of the entity to be traded on the licensed market, and removing an entity from the official list; and

(ii) the activities or conduct of an entity that is included on the official list of the licensed market, including a description of the arrangements for the disciplining of the entity for a breach of the operating rules;

(h) mechanisms through which market‑related disputes between participants may be settled (for example, arbitration arrangements);

(i) the power to facilitate the assessment and, if appropriate, the investigation of market‑related disputes between participants;

(j) any obligations on participants and listed entities that are necessary to ensure that the market licensee is able to comply with subparagraph 792A(1)(c)(i) of the Act and regulations made under section 798E of the Act.

7.2.08 Content of licensed market’s written procedures

For subsection 793A(2) of the Act, the following matters are matters in respect of which a licensed market must have written procedures to the extent that the market integrity rules do not deal with a matter:

(a) exchange of appropriate information with:

(i) clearing and settlement facilities; and

(ii) other financial markets; and

(iii) ASIC;

(b) arrangements to ensure the integrity and security of systems (including computer systems);

(c) arrangements for the monitoring of compliance by participants and listed entities with the operating rules of the licensed market:

(d) the assessment, investigation (if justified) and settlement of market‑related disputes between participants;

(f) the recording and effective disclosure of transactions;

(g) the provision of information about market processes.

Division 3—Powers of the Minister and ASIC

7.2.09 Agencies for compliance assessment

For paragraph 794C(5)(d) of the Act, the following agencies are prescribed:

(a) the Clean Energy Regulator;

(aa) the Australian Competition and Consumer Commission;

(b) the Australian Prudential Regulation Authority;

(c) the Australian Taxation Office;

(d) the Australian Transaction Reports and Analysis Centre;

(e) an authority of a State or Territory having functions and powers similar to those of the Director of Public Prosecutions;

(f) the police force or service of each State and the Northern Territory;

(g) the Department of Consumer and Employment Protection of Western Australia;

(ga) the Commissioner of State Revenue of Western Australia;

(h) the Department of Fair Trading of New South Wales;

(i) the Office of Fair Trading and Business Affairs of Victoria;

(ia) the State Revenue Office of Victoria;

(j) the Office of Consumer Affairs of Queensland;

(ja) the Office of State Revenue of Queensland;

(k) the Office of Consumer and Business Affairs of South Australia;

(l) the Office of Consumer Affairs and Fair Trading of Tasmania;

(la) the Department of Treasury and Finance of Tasmania;

(m) the Consumer Affairs Bureau of the Australian Capital Territory;

(n) the Fair Trading Group of the Northern Territory.

Division 4—The Australian market licence: applications (general)

7.2.10 Application of Division 4

This Division applies in relation to a body corporate that applies for an Australian market licence that may be granted under subsection 795B(1) of the Act.

7.2.11 Information

For paragraph 795A(1)(a) of the Act, the following information is required as part of an application by the body corporate for an Australian market licence:

(a) the body corporate’s name, address and contact details;

(b) the name, address and contact details of any person who will act on behalf of the body corporate in relation to the application;

(c) details of the body corporate’s major shareholders and organisation, including:

(i) the name, address and contact details of each director; and

(ii) the name, address and contact details of each secretary; and

(iii) the name, address and contact details of each executive officer of the body corporate; and

(iv) whether any director, secretary or executive officer is, or has been, disqualified from managing a corporation under a law of this jurisdiction or another jurisdiction;

(d) a description of the body corporate’s business or functions, other than the operation of the proposed market;

(e) details of the financial products to be traded on the proposed market;

(f) whether the proposed market will involve the provision of a financial product to a person as a retail client;

(g) details of the clearing and settlement arrangements that have been made, or are proposed, for the proposed market;

(h) details of the technological resources that will be used in the operation of the market, including details of:

(i) the purpose of the resources; and

(ii) how the resources are to be supplied, managed, maintained and upgraded; and

(iii) how the security of information technology systems is to be protected;

(i) details of the arrangements for dealing with conflicts between the body corporate’s commercial interests and its obligations to supervise and monitor the market;

(j) details of the arrangements for the supervision of employees of the body corporate who have duties and responsibilities of a kind that supervision of the employees is necessary to protect the integrity of the operation of the proposed market;

(k) if the ACCC has made a decision in relation to the market that the body corporate will operate—details of the decision.

7.2.12 Documents

For paragraph 795A(1)(b) of the Act, the following documents are required as part of an application by the body corporate for an Australian market licence:

(a) the body corporate’s current or proposed operating rules and written procedures;

(b) if applicable—the body corporate’s constitution;

(c) a copy of any agreement material to:

(i) the way in which the proposed market is to be operated; and

(ii) the way in which the financing of the proposed market, and the other resources used to operate it, will be organised; and

(iii) the body corporate’s constitution or governance; and

(iv) the appointment or employment of directors, secretaries and executive officers of the body corporate;

(d) a copy of any agreement, or proposed agreement, relating to the outsourcing or delegation of a function, facility or service in relation to the proposed market by the body corporate to another person;

(e) if the body corporate is a disclosing entity—a copy of each half‑year financial report of the body corporate for:

(i) the period of 3 years immediately before the application was made; or

(ii) the shorter period in which the body corporate has carried on a business;

(f) if the body corporate is not a disclosing entity—a copy of each annual financial report of the body corporate for:

(i) the period of 3 years immediately before the application was made; or

(ii) the shorter period in which the body corporate has carried on a business;

(g) if the body corporate is a related body corporate—a copy of the relevant consolidated annual and half‑year financial reports for:

(i) the period of 3 years immediately before the application was made; or

(ii) the shorter period in which the body corporate has carried on a business;

(h) a report, by a qualified person who is independent of the body corporate, about the anticipated financial resource requirements of the proposed market, including details of:

(i) the total anticipated fixed expenditure and variable expenditure for the first 12 months of operation of the market; and

(ii) the total anticipated revenue for the first 12 months of operation of the market and other sources of financial resources; and

(iii) the body corporate’s contingency arrangements in the event of circumstances occurring that affect the body corporate’s ability to operate the market;

(i) details of the body corporate’s business plan, or other strategic planning, for the first 12 months of operation of the market, that are not included in the other documents mentioned in this regulation.

Division 5—The Australian market licence: applications (financial market in foreign country)

7.2.13 Application of Division 5

This Division applies in relation to a body corporate that applies for an Australian market licence that may be granted under subsection 795B(2) of the Act.

7.2.14 Information

For paragraph 795A(1)(a) of the Act, the following information is required as part of an application by the body corporate for an Australian market licence:

(a) the body corporate’s name, address and contact details in this jurisdiction;

(b) the address and contact details of the body corporate’s principal place of business in the foreign country in which its financial market is located (the ***home country***);

(c) whether the body corporate is registered under Division 2 of Part 5B.2 of the Act;

(d) details of the financial products that are traded on the financial market in the home country;

(e) details of the clearing and settlement arrangements for the financial market in the home country;

(f) details of the body corporate’s major shareholders and organisation, including any details that have not already been given to ASIC in accordance with Division 2 of Part 5B.2 of the Act of:

(i) each person whose duties are comparable to those of a director; and

(ii) each person whose duties are comparable to those of a secretary; and

(iii) each person whose duties are comparable to those of an executive officer of the body corporate.

7.2.15 Documents

For paragraph 795A(1)(b) of the Act, the documents required as part of an application by the body corporate for an Australian market licence are:

(a) the body corporate’s authorisation to operate the financial market in its home country, including a copy of any conditions imposed on the body corporate’s operation of its financial market in the home country; and

(b) sufficient documentation to allow the Minister to be satisfied that the regulation of the financial market in its home country is equivalent to regulation under the Act.

Example for paragraph (b): Copies of the relevant legislation, rules and procedures in the home country.

Division 6—The Australian market licence: other matters

7.2.16 Potential conflict situations

(1) For subsection 798E(1) of the Act, this regulation applies in relation to specific and significant conflicts, or potential conflicts that would be specific and significant, between:

(a) the commercial interests of Australian Stock Exchange Limited (***ASX***) in dealing with a body (the ***competitor***) that operates a business with which:

(i) ASX is in competition; or

(ii) a subsidiary of ASX is in competition; or

(iii) a joint venture (however described) to which ASX is a party is in competition; or

(iv) a joint venture (however described) to which a subsidiary of ASX is a party is in competition; and

(b) the need for ASX to ensure that the market operated by it operates in the way mentioned in paragraph 792A(1)(a) of the Act.

(2) The competitor may lodge with ASIC in the prescribed form, an application for ASIC to decide that ASIC, instead of ASX, will make decisions and take action (or require ASX to take action on ASIC’s behalf) in relation to:

(a) if the competitor is seeking to be listed—the compliance by the competitor with the applicable listing rules of the market operated by ASX; or

(b) if the competitor is listed on the market operated by ASX—the compliance by the competitor with the applicable listing rules of the market operated by ASX.

(3) As soon as practicable after receiving an application under subregulation (2), ASIC must:

(a) consider whether a conflict, or potential conflict, exists as described in subregulation (1); and

(b) if it considers that a conflict, or potential conflict, exists—consider whether, having regard to ASX’s obligations under subparagraph 792A(1)(c)(i) of the Act, the conflict, or potential conflict, would be dealt with more appropriately and efficiently by a means other than taking the action mentioned in subregulation (2); and

(c) decide whether (and to what extent):

(i) to make decisions and take action; or

(ii) to require ASX to take action on ASIC’s behalf;

in relation to the matters mentioned in paragraphs (2)(a) and (b).

(4) If ASIC decides to make decisions and take action (or to require ASX to take action on ASIC’s behalf) as mentioned in subregulation (2), ASIC:

(a) may consult with ASX and the competitor to identify the listing rules of the market operated by ASX for which ASIC needs to make the decisions and take the action; and

(b) must, as soon as practicable, decide the extent of ASIC’s role, having regard to:

(i) the rationale for the listing rules of the market operated by ASX; and

(ii) the desirability of treating the competitor consistently with other entities listed, or seeking to be listed, on that market; and

(iii) the extent to which action taken by ASIC is severable from the wider supervision of the competitor’s compliance with the listing rules; and

(iv) its consultations (if any) with the competitor and ASX.

(5) ASIC must, as soon as practicable, advise ASX and the competitor, in writing, of decisions under paragraphs (3)(c) and (4)(b).

(6) If ASIC decides to make decisions and take action (or to require ASX to take action on ASIC’s behalf) as mentioned in subregulation (2):

(a) the decisions made and actions taken have effect despite anything in the listing rules of the market operated by ASX; and

(b) decisions made and actions taken by ASIC (or action taken by ASX on ASIC’s behalf) have effect as if they were decisions made and actions taken under the listing rules.

Note 1: It is expected that the listing rules of the market will support ASIC’s power to take a supervisory role in relation to compliance with some or all of the listing rules.

Note 2: Under section 246 of the *Australian Securities and Investments Commission Act 2001*, ASIC is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred or expressed to be conferred by or under the corporations legislation.

Note 3: The powers available to ASIC include the power:

(a) to grant, or not to grant, waivers of the listing rules; and

(b) to impose conditions on which the grant of a waiver is made.

(7) If ASIC believes, on reasonable grounds, that:

(a) the period during which decisions will be made and action will be taken in a particular case is likely to be more than 3 months; and

(b) the decisions and actions likely to be required are not adequately reflected in the listing rules of the market operated by ASX;

ASIC must notify ASX, in writing, of its belief.

(8) ASX must, as soon as practicable after being notified under subregulation (7), amend the listing rules of the market operated by ASX to the extent necessary to meet ASIC’s concerns.

Note: Amendments of the listing rules are subject to procedural requirements, including possible disallowance, mentioned in sections 793D and 793E of the Act.

(9) If ASIC decides that it is no longer necessary for decisions to be made and action to be taken in relation to the particular conflict or potential conflict, ASIC must notify ASX and the competitor of its decision as soon as practicable.

(10) ASX may repeal any listing rule or amendment made for subregulation (8) only if:

(a) the repeal or amendment is necessary or convenient to meet ASIC’s concerns more effectively; or

(b) ASIC has notified ASX under subregulation (9).

(11) Paragraph (10)(b) does not prevent ASIC from:

(a) reviewing a particular conflict or potential conflict; and

(b) deciding, at any time (with or without complying with paragraph (4)(a)), that it has again become necessary for ASIC to make decisions and take action (or for ASIC to require ASX to take action on ASIC’s behalf) in relation to the conflict or potential conflict.

(12) If ASIC makes the decision mentioned in paragraph (11)(b), ASIC must notify ASX and the competitor of its decision as soon as practicable.

(13) For this regulation, ASX must:

(a) give ASIC the information and documentation that ASIC reasonably needs to make decisions and take action under this regulation; and

(b) establish administrative and procedural arrangements for that purpose.

(14) A competitor may notify ASIC that the competitor no longer wishes ASIC to make decisions and take action (or for ASIC to require ASX to take action on ASIC’s behalf) in relation to the conflict or potential conflict.

(15) If ASIC is notified under subregulation (14), ASIC must, as soon as practicable:

(a) decide whether it will cease to make the decisions and take the action (or cease to require ASX to take action on ASIC’s behalf); and

(b) notify ASX and the competitor of its decision.

(16) If ASIC decides to cease to make decisions and take action (or to cease to require ASX to take action on ASIC’s behalf), ASIC must cease to make decisions and take action (or must cease to require ASX to take action on ASIC’s behalf) in relation to the conflict or potential conflict.

(17) If ASIC decides not to cease to make decisions and take action (or not to cease to require ASX to take action on ASIC’s behalf), ASIC must continue to make decisions and take action (or must require ASX to take action on ASIC’s behalf) in relation to the conflict or potential conflict.

Part 7.2A—Supervision of financial markets

Division 7.2A.1—Enforceable undertakings

7.2A.01 Enforceable undertakings

(1) For paragraph 798K(1)(d) of the Act, ASIC may accept a written undertaking, entered into by a person who is alleged to have contravened subsection 798H(1) of the Act, as an alternative to civil proceedings.

(2) Without limiting subregulation (1), ASIC may accept an undertaking that includes any of the following:

(a) an undertaking to take specified action within a specified period;

(b) an undertaking to refrain from taking specified action;

(c) an undertaking to pay a specified amount within a specified period to the Commonwealth or to some other specified person.

Note: An undertaking may relate to an infringement notice given under Division 7.2A.2 in relation to the alleged contravention. For example, an infringement notice may require a person to enter into an undertaking; a person may enter into an undertaking to comply with an infringement notice; a person may enter into an undertaking if the person does not comply with an infringement notice or the infringement notice is withdrawn.

(3) If ASIC agrees, in writing, to the withdrawal or variation of the undertaking, the person who entered into the undertaking may withdraw or vary the undertaking.

(4) If ASIC is satisfied that the person who entered into the undertaking has breached a term of the undertaking, ASIC may apply to a Court for an order under subregulation (5).

(5) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make one or more of the following orders:

(a) an order directing the person to comply with the term of the undertaking;

(b) an order directing the person to pay to the Commonwealth an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) an order directing the person to compensate another person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

(6) This regulation does not affect the liability of a person to civil proceedings if ASIC does not accept an undertaking in relation to the alleged contravention of subsection 798H(1) of the Act.

Division 7.2A.2—Infringement notices

7.2A.02 Purpose of Division

(1) For subsection 798K(1) of the Act, the purpose of this Division is to set out a scheme under which a person who is alleged to have contravened subsection 798H(1) of the Act may do one or more of the following as an alternative to civil proceedings:

(a) pay a penalty to the Commonwealth;

(b) undertake or institute remedial measures (including education programs);

(c) accept sanctions other than the payment of a penalty to the Commonwealth (including public censure, suspension for no more than six months from performing certain financial services in relation to a licensed market, or disgorgement of profits);

(d) enter into an undertaking under regulation 7.2A.01, including an undertaking to do an action mentioned in paragraph (a), (b) or (c).

(2) This Division does not require ASIC to give an infringement notice to a person in relation to the alleged contravention of subsection 798H(1) of the Act.

(3) This Division does not affect the liability of a person to civil proceedings if ASIC does not give an infringement notice to the person in relation to the alleged contravention of subsection 798H(1) of the Act.

(4) This Division does not affect the liability of a person to civil proceedings if:

(a) ASIC gives an infringement notice to the person in relation to the alleged contravention of subsection 798H(1) of the Act; and

(b) either:

(i) the notice is withdrawn; or

(ii) the person does not comply with the notice in accordance with regulation 7.2A.08.

(5) This Division does not limit or otherwise affect the penalty that a Court could impose on the person for a contravention of subsection 798H(1) of the Act.

7.2A.03 Definitions for Division 7.2A.2

In this Division:

***compliance period*** has the meaning given by subregulation 7.2A.08(2).

***infringement notice*** means an infringement notice given under regulation 7.2A.04.

***recipient***, in relation to an infringement notice, means the person to whom ASIC gives the infringement notice or intends to give the infringement notice under regulation 7.2A.04.

7.2A.04 When infringement notice can be given

(1) If ASIC has reasonable grounds to believe that a person has contravened subsection 798H(1) of the Act, ASIC may give to the person an infringement notice in relation to the alleged contravention.

(2) ASIC may give a person an infringement notice that is in relation to more than one alleged contravention of subsection 798H(1) of the Act.

(3) If ASIC withdraws an infringement notice given to a person in relation to the alleged contravention of subsection 798H(1) of the Act, ASIC may give the person a new infringement notice in relation to the alleged contravention.

Example for subregulation (3): An infringement notice given to a person in relation to an alleged contravention of subsection 798H(1) of the Act may be withdrawn, and a new infringement notice given to the person in relation to that alleged contravention, if the original infringement notice contained an error.

7.2A.05 Statement of reasons must be given

(1) Before giving a recipient an infringement notice, ASIC must:

(a) give the recipient a written statement that sets out ASIC’s reasons for believing that the recipient has contravened subsection 798H(1) of the Act; and

(b) give the recipient, or a representative of the recipient, an opportunity to:

(i) appear at a private hearing before ASIC; and

(ii) give evidence to ASIC; and

(iii) make submissions to ASIC;

in relation to the alleged contravention of subsection 798H(1) of the Act.

(2) If a recipient, or a representative of a recipient, gives ASIC evidence or information under paragraph (1)(b) in relation to the alleged contravention of subsection 798H(1) of the Act, the evidence or information is not admissible in evidence in any proceedings against the recipient, other than proceedings relating to the evidence or information being false or misleading.

7.2A.06 Contents of infringement notice

An infringement notice:

(a) must state the date on which it is given; and

(b) must be identified by a unique code; and

(c) must state the name and address of the recipient; and

(d) must state that it is being given by ASIC under regulation 7.2A.04; and

(e) must specify details of each alleged contravention of subsection 798H(1) of the Act to which the infringement notice relates, including:

(i) the conduct that made up each alleged contravention (including, to the extent known, the date on which it occurred and the place at which it occurred); and

(ii) each market integrity rule that ASIC alleges the recipient has contravened; and

(f) must, in relation to each market integrity rule that ASIC alleges the recipient has contravened, state the maximum pecuniary penalty that a Court could order the recipient to pay for contravening the market integrity rule; and

(g) must, in relation to each alleged contravention of subsection 798H(1) of the Act to which the infringement notice relates:

(i) specify the penalty (if any) payable for each alleged contravention of subsection 798H(1) of the Act; and

(ii) if subparagraph (i) applies:

(A) specify the total penalty that the recipient must pay to the Commonwealth; and

(B) state that the penalty is payable to ASIC on behalf of the Commonwealth; and

(C) explain how payment of the penalty can be made; and

(iii) specify the remedial measures (if any) that the recipient must undertake or institute; and

(iv) specify the sanctions (if any) that the recipient must accept; and

(v) specify the terms of an undertaking (if any) that the recipient must enter into under regulation 7.2A.01; and

(h) must state that the recipient may choose not to comply with the infringement notice, but that if the recipient does not comply, civil proceedings may be brought against the recipient in relation to the alleged contravention; and

(i) must explain what the recipient must do to comply with the infringement notice and the effect of compliance with the infringement notice; and

(j) must state that the recipient may apply to ASIC:

(i) for withdrawal of the notice under regulation 7.2A.11; and

(ii) for an extension of time under regulation 7.2A.09; and

(k) must state that ASIC may publish details of the infringement notice under regulation 7.2A.15; and

(l) may include any other information that ASIC considers necessary.

Note: For sub‑subparagraph (g)(ii)(A), the total penalty is the sum of the penalties payable under subparagraph (g)(i).

7.2A.07 Amount of penalty payable to the Commonwealth

(1) The penalty payable (if any) for an alleged contravention of subsection 798H(1) of the Act is the amount determined by ASIC.

Note: See subsection 798K(2) of the Act for the maximum penalty payable.

(2) If an infringement notice is in relation to more than one alleged contravention of subsection 798H(1) of the Act, the total penalty payable under the infringement notice is the sum of the penalties payable (if any) for the alleged contraventions.

7.2A.08 Compliance with infringement notice

(1) A recipient complies with an infringement notice if, during the compliance period, the recipient does all of the following:

(a) pays the penalty specified in the infringement notice under sub‑subparagraph 7.2A.06(g)(ii)(A) (if any);

(b) undertakes or institutes the remedial measures specified in the infringement notice under subparagraph 7.2A.06(g)(iii) (if any);

(c) accepts the sanctions specified in the infringement notice under subparagraph 7.2A.06(g)(iv) (if any);

(d) enters into an undertaking (including an undertaking to comply with the infringement notice) with the terms specified in the infringement notice under subparagraph 7.2A.06(g)(v) (if any).

(2) The ***compliance period*** for an infringement notice:

(a) starts on the day on which the infringement notice is given to the recipient; and

(b) ends:

(i) 27 days after the day on which the infringement notice is given to the recipient; or

(ii) on another day permitted by this regulation.

(3) If the recipient applies for a further period of time in which to comply with the infringement notice, and the application is granted, the compliance period ends at the end of the further period allowed.

(4) If the recipient applies for a further period of time in which to comply with the infringement notice, and the application is refused, the compliance period ends on the later of:

(a) 28 days after the day on which the infringement notice was given to the recipient; and

(b) 7 days after the notice of refusal is given to the recipient.

(5) If the recipient applies for the infringement notice to be withdrawn, and the application is refused, the compliance period ends 28 days after the notice of refusal is given to the recipient.

7.2A.09 Extension of compliance period

(1) During the compliance period, a recipient may apply, in writing, to ASIC for a further period of no more than 28 days in which to comply with the infringement notice.

(2) The application must:

(a) specify the infringement notice’s unique identification code; and

(b) set out the reasons for the application.

(3) Within 14 days after receiving the application, ASIC must:

(a) grant or refuse a further period no longer than the period sought (and no more than 28 days); and

(b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.

(4) If ASIC refuses a further period under paragraph (3)(a), the recipient may not make a further application under subregulation (1) in relation to that infringement notice.

(5) If ASIC has not granted or refused a further period under paragraph (3)(a) within 14 days after receiving the application, ASIC is taken to have refused a further period.

7.2A.10 Effect of compliance with infringement notice

(1) Subject to subregulation (3), if:

(a) an infringement notice is given to a recipient in relation to an alleged contravention of subsection 798H(1) of the Act; and

(b) the infringement notice is not withdrawn; and

(c) the recipient complies with the infringement notice;

the effects in subregulation (2) apply.

(2) The effects are:

(a) any liability of the recipient to the Commonwealth for the alleged contravention of subsection 798H(1) of the Act is discharged; and

(b) no civil or criminal proceedings may be brought or continued by the Commonwealth against the recipient for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of subsection 798H(1) of the Act; and

(c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against the recipient for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of subsection 798H(1) of the Act; and

(d) the recipient is not taken to have admitted guilt or liability in relation to the alleged contravention; and

(e) the recipient is not taken to have contravened subsection 798H(1) of the Act.

Note: Third parties are not prevented from commencing civil proceedings against the recipient, including under sections 793C and 1101B of the Act, and under section 1317J of the Act in relation to sections 1317G and 1317HB of the Act. ASIC is not prevented from applying for an order on behalf of a plaintiff in accordance with the Act.

(3) Subregulation (2) does not apply if the recipient has knowingly:

(a) provided false or misleading information to ASIC; or

(b) withheld evidence or information from ASIC;

in relation to the alleged contravention of subsection 798H(1) of the Act.

7.2A.11 Application to withdraw infringement notice

(1) During the compliance period, a recipient of an infringement notice may apply, in writing, to ASIC for the infringement notice to be withdrawn.

(2) The application must:

(a) specify the infringement notice’s unique identification code; and

(b) set out the reasons for the application.

(3) Within 14 days after receiving the application, ASIC must:

(a) withdraw or refuse to withdraw the infringement notice; and

(b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.

(4) Without limiting subregulation (3), ASIC may withdraw the infringement notice after taking into account the following matters:

(a) whether the recipient has previously been found to have contravened subsection 798H(1) of the Act;

(b) the circumstances in which the contravention set out in the infringement notice is alleged to have occurred;

(c) whether an infringement notice has previously been given to the recipient in relation to an alleged contravention of subsection 798H(1) of the Act, and whether the recipient complied with the infringement notice;

(d) any other relevant matter.

(5) If, under paragraph (3)(a), ASIC refuses to withdraw the infringement notice, the recipient may not make a further application under subregulation (1) in relation to that infringement notice.

(6) If ASIC has not withdrawn, or refused to withdraw, the infringement notice within 14 days after receiving the application, ASIC is taken to have refused to withdraw the infringement notice.

7.2A.12 Withdrawal of infringement notice by ASIC

(1) ASIC may withdraw an infringement notice given by ASIC without an application under regulation 7.2A.11 having been made.

(2) Without limiting subregulation (1), ASIC may withdraw the infringement notice after taking into account a matter mentioned in paragraph 7.2A.11(4)(a), (b), (c) or (d).

7.2A.13 Notice of withdrawal of infringement notice

(1) A notice withdrawing an infringement notice must include the following information:

(a) the name and address of the recipient;

(b) the date the infringement notice was given;

(c) the infringement notice’s unique identification code.

(2) The notice must also state that the infringement notice is withdrawn.

7.2A.14 Withdrawal of notice after compliance

(1) ASIC may withdraw an infringement notice after the recipient has complied with the infringement notice only if the recipient agrees, in writing, to the withdrawal.

(2) If an infringement notice is withdrawn after the penalty specified in it (if any) has been paid, the Commonwealth must refund the amount of the penalty to the person who paid it.

(3) If an infringement notice is withdrawn after the recipient has complied with a requirement specified in the infringement notice:

(a) to undertake or institute remedial measures; or

(b) to accept sanctions other than a payment of a penalty to the Commonwealth; or

(c) to enter into an undertaking;

the remedial measures, sanctions or undertaking are taken to no longer be enforceable by ASIC.

7.2A.15 Publication of details of infringement notice

(1) If ASIC gives an infringement notice to a recipient, ASIC may, at the end of the compliance period, publish details of the infringement notice.

(2) If ASIC decides to publish details of the infringement notice, ASIC must publish the details in accordance with either or both of subregulations (3) and (4).

(3) ASIC may publish details of an infringement notice by publishing in the *Gazette*:

(a) a copy of the infringement notice; and

(b) the following statements:

(i) a statement as to whether the recipient has complied with the infringement notice;

(ii) if the recipient has complied with the infringement notice, a statement that:

(A) compliance is not an admission of guilt or liability; and

(B) the recipient is not taken to have contravened subsection 798H(1) of the Act;

(iii) if the recipient has not complied with the infringement notice, a statement that:

(A) the giving of an infringement notice to a recipient is only an allegation that the recipient has contravened subsection 798H(1) of the Act; and

(B) the recipient is not taken to have contravened subsection 798H(1) of the Act.

(4) ASIC may publish details of an infringement notice by issuing a written or oral statement that:

(a) includes an accurate summary of the details of the infringement notice, including:

(i) the name of the recipient; and

(ii) the amount of the penalty specified in the infringement notice (if any); and

(iii) the remedial measures specified in the infringement notice (if any); and

(iv) the sanctions specified in the infringement notice (if any); and

(v) the terms of an undertaking specified in the infringement notice (if any); and

(vi) the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of subsection 798H(1) of the Act; and

(b) includes the following statements:

(i) a statement as to whether the recipient has complied with the infringement notice;

(ii) if the recipient has complied with the infringement notice, a statement that:

(A) compliance is not an admission of guilt or liability; and

(B) the recipient is not taken to have contravened subsection 798H(1) of the Act;

(iii) if the recipient has not complied with the infringement notice, a statement that:

(A) the giving of an infringement notice to a recipient is only an allegation that the recipient has contravened subsection 798H(1) of the Act; and

(B) the recipient is not taken to have contravened subsection 798H(1) of the Act.

Part 7.3—Licensing of clearing and settlement facilities

Division 1—Regulation of CS facility licensees: licensees’ obligations

7.3.01 Obligation to inform ASIC of certain matters: becoming director, secretary or executive officer of CS facility licensee

(1) This regulation applies if a person becomes a director, secretary or executive officer of a market licensee or of a holding company of a CS facility licensee (including when the person changes from one of those positions to another).

(2) For subsection 821B(4) of the Act, the information to be given to ASIC by the CS facility licensee is:

(a) the person’s name and contact details; and

(b) the date of appointment to the position; and

(c) the person’s educational qualifications and financial market experience; and

(d) if the CS facility licensee is aware of any details of a conviction of the kind mentioned in subsection 206B(1) of the Act—the details; and

(e) whether the CS facility licensee knows whether the person:

(i) is an undischarged bankrupt; or

(ii) has entered into a deed of arrangement or composition of a kind mentioned in subsections 206B(3) and (4) of the Act;

and, if the CS facility licensee knows the information, details of what the CS facility licensee knows.

7.3.02 Obligation to inform ASIC of certain matters: ceasing to be director, secretary or executive officer of CS facility licensee

(1) This regulation applies if a person ceases to be a director, secretary or executive officer of a CS facility licensee or of a holding company of a CS facility licensee (including when the person changes from one of those positions to another).

(2) For subsection 821B(4) of the Act, the information to be given to ASIC by the CS facility licensee is:

(a) the name and contact details of the person; and

(b) the position that the person held; and

(c) the date on which the person ceased to hold the position; and

(d) if the person ceases to be a director, secretary or executive officer because the person is changing from the position to another in the company, the new position; and

(e) if the reason for ceasing to hold the position is:

(i) because of a contravention of the Corporations Act or another law of a State or Territory; or

(ii) because the person has become an undischarged bankrupt;

details of the reason.

7.3.03 Obligation to inform ASIC of certain matters: voting power in CS facility licensee

(1) This regulation applies if a CS facility licensee becomes aware that a person has come to have, or has ceased to have, more than 15% of the voting power in the CS facility licensee or in a holding company of the CS facility licensee.

(2) For subsection 821B(4) of the Act, the information to be given to ASIC by the CS facility licensee is:

(a) the person’s name and contact details; and

(b) if known by the CS facility licensee, the date on which the person came to have, or ceased to have, more than 15% of the voting power; and

(c) if the CS facility licensee knows the voting power that the person had immediately before the person came to have, or ceased to have, more than 15% of the voting power, that voting power; and

(d) whether the CS facility licensee knows the manner in which the person came to have, or ceased to have, more than 15% of the voting power, and, if the CS facility licensee knows the manner, details of what the CS facility licensee knows.

7.3.04 Annual report of CS facility licensee

For subsection 821E(2) of the Act, if an annual report by a CS facility licensee does not contain any of the following information, the information must accompany the annual report:

(a) a description of the activities the CS facility licensee has undertaken in the financial year;

(b) the resources (including financial, technological and human resources) that the CS facility licensee had available, and used, in order to ensure that it has complied with its obligations in Chapter 7 of the Act, and, in particular, the obligation contained in subparagraph 821A(1)(c)(i) of the Act;

(c) an analysis of the extent to which the CS facility licensee considers that the activities undertaken, and resources used, have resulted in full compliance with all its obligations under Chapter 7 of the Act.

Division 2—Regulation of CS facility licensees: the facility’s operating rules and procedures

7.3.05 Content of licensed CS facility’s operating rules

For subsection 822A(1) of the Act, the following matters are matters with which the operating rules of a licensed CS facility must deal:

(a) the regulated services provided by the licensed CS facility, including the means by which obligations of parties to transactions relating to financial products will be met through the licensed CS facility;

(b) matters relating to risk in the licensed CS facility;

(c) access to the licensed CS facility, including the criteria for determining persons who are eligible to be participants and the ongoing requirements for participants;

(d) suspension and expulsion of participants from the licensed CS facility;

(e) disciplinary action against participants;

(f) procedures, to be followed by participants, to address risks that are relevant to the licensed CS facility;

(g) requirements to facilitate the monitoring of compliance by participants with the operating rules of the licensed CS facility;

(h) the handling of defaults;

(i) any obligations on participants and issuers that are necessary to ensure that the CS facility licensee is able to comply with subparagraph 821A(1)(c)(i) of the Act;

(j) if the licensed CS facility is a prescribed CS facility—arrangements for the transfer of financial products that are likely to be transferred using the licensed CS facility.

7.3.06 Content of licensed CS facility’s written procedures

For subsection 822A(2) of the Act, the following matters are matters in respect of which a licensed CS facility must have written procedures:

(a) arrangements to ensure the integrity and security of systems (including computer systems);

(b) identifying and monitoring risks that are relevant to the licensed CS facility;

(c) the development of rules and procedures to address those risks;

(d) exchange of appropriate information with:

(i) other clearing and settlement facilities; and

(ii) financial markets; and

(iii) ASIC and the Reserve Bank of Australia;

relating to participants and their activities that are relevant to the licensed CS facility;

(e) the provision of information about the procedures of the licensed CS facility, including rights, obligations and risks relating to the facility;

(f) arrangements for supervising the licensed CS facility, including the monitoring of compliance by participants and issuers with the operating rules of the licensed CS facility.

Division 3—Regulation of CS facility licensees: powers of the Minister and ASIC

7.3.07 Agencies for compliance assessment

For paragraph 823C(5)(d) of the Act, the following agencies are prescribed:

(a) the Clean Energy Regulator;

(aa) the Australian Competition and Consumer Commission;

(b) the Australian Prudential Regulation Authority;

(c) the Australian Taxation Office;

(d) the Australian Transaction Reports and Analysis Centre;

(e) an authority of a State or Territory having functions and powers similar to those of the Director of Public Prosecutions;

(f) the police force or service of each State and the Northern Territory;

(g) the Department of Consumer and Employment Protection of Western Australia;

(ga) the Commissioner of State Revenue of Western Australia;

(h) the Department of Fair Trading of New South Wales;

(i) the Office of Fair Trading and Business Affairs of Victoria;

(ia) the State Revenue Office of Victoria;

(j) the Office of Consumer Affairs of Queensland;

(ja) the Office of State Revenue of Queensland;

(k) the Office of Consumer and Business Affairs of South Australia;

(l) the Office of Consumer Affairs and Fair Trading of Tasmania;

(la) the Department of Treasury and Finance of Tasmania;

(m) the Consumer Affairs Bureau of the Australian Capital Territory;

(n) the Fair Trading Group of the Northern Territory.

7.3.08 Agencies for compliance assessment

For paragraph 823CA(4)(d) of the Act, the following agencies are prescribed:

(a) the Clean Energy Regulator;

(aa) the Australian Competition and Consumer Commission;

(b) the Australian Prudential Regulation Authority;

(c) the Australian Taxation Office;

(d) the Australian Transaction Reports and Analysis Centre;

(e) an authority of a State or Territory having functions and powers similar to those of the Director of Public Prosecutions;

(f) the police force or service of each State and the Northern Territory;

(g) the Department of Consumer and Employment Protection of Western Australia;

(ga) the Commissioner of State Revenue of Western Australia;

(h) the Department of Fair Trading of New South Wales;

(i) the Office of Fair Trading and Business Affairs of Victoria;

(ia) the State Revenue Office of Victoria;

(j) the Office of Consumer Affairs of Queensland;

(ja) the Office of State Revenue of Queensland;

(k) the Office of Consumer and Business Affairs of South Australia;

(l) the Office of Consumer Affairs and Fair Trading of Tasmania;

(la) the Department of Treasury and Finance of Tasmania;

(m) the Consumer Affairs Bureau of the Australian Capital Territory;

(n) the Fair Trading Group of the Northern Territory.

Division 4—The Australian CS facility licence: applications (general)

7.3.09 Application of Division 4

This Division applies in relation to a body corporate that applies for an Australian CS facility licence that may be granted under subsection 824B(1) of the Act.

7.3.10 Information

For paragraph 824A(1)(a) of the Act, the following information is required as part of an application by the body corporate for an Australian CS facility licence:

(a) the body corporate’s name, address and contact details;

(b) the name, address and contact details of any person who will act on behalf of the body corporate in relation to the application;

(c) details of the body corporate’s major shareholders and organisation, including:

(i) the name, address and contact details of each director; and

(ii) the name, address and contact details of each secretary; and

(iii) the name, address and contact details of each executive officer of the body corporate; and

(iv) whether any director, secretary or executive officer is, or has been, disqualified from managing a corporation under a law of this jurisdiction or another jurisdiction;

(d) a description of the body corporate’s business or functions, other than the operation of the clearing and settlement facility;

(e) the services in respect of which the Australian CS facility licence is sought, including details of:

(i) the financial products for which clearing and settlement facilities are to be provided; and

(ii) the nature of each interest in a financial product that is to be transferred using the clearing and settlement facility; and

(iii) the mechanisms to be used by the body corporate to operate the clearing and settlement facility, including (if applicable) arrangements to limit the risk of default by a party to a transaction;

(f) whether the body corporate has applied, or intends to apply, to become a prescribed CS facility;

(g) details of the technological resources that will be used in the operation of the clearing and settlement facility, including details of:

(i) the purpose of the resources; and

(ii) how the resources are to be supplied, managed, maintained and upgraded; and

(iii) how the security of information technology systems is to be protected;

(h) details of the arrangements for dealing with conflicts between the body corporate’s commercial interests and its obligations to supervise and monitor the clearing and settlement facility;

(i) details of the arrangements for the supervision of employees of the body corporate who have duties and responsibilities of a kind that supervision of the employees is necessary to protect the integrity of the operation of the clearing and settlement facility;

(j) details of the arrangements for managing counterparty risk, including the risks arising from a counterparty being unable to meet its obligations arising out of clearing, settlement or clearing and settlement transactions using the facility;

(k) if the ACCC has made a decision in relation to the clearing and settlement facility that the body corporate will operate—details of the decision.

Example of interests in a financial product: Legal title or an equitable interest.

Example of mechanisms to operate the clearing and settlement facility:

1 The way in which transfers are to be effected.

2 The way in which payment obligations are to be settled.

7.3.11 Documents

For paragraph 824A(1)(b) of the Act, the following documents are required as part of an application by the body corporate for an Australian CS facility licence:

(a) the body corporate’s current or proposed operating rules and written procedures;

(b) if applicable—the body corporate’s constitution;

(c) a copy of any agreement material to:

(i) the way in which the clearing and settlement facility is to be operated; and

(ii) the way in which the financing of the clearing and settlement facility, and the other resources used to operate it, will be organised; and

(iii) the body corporate’s constitution or governance; and

(iv) the appointment or employment of directors, secretaries and executive officers of the body corporate;

(d) a copy of any agreement, or proposed agreement, between the body corporate and a market licensee relating to services to be offered to the market licensee;

(e) a copy of any agreement, or proposed agreement, relating to the outsourcing or delegation of a function, facility or service in relation to the facility by the body corporate to another person;

(f) if the body corporate:

(i) uses, or is likely to use, a counterparty; or

(ii) will be operating as a central counterparty;

an assessment by an independent auditor of the adequacy of the body corporate’s arrangements for managing counterparty risk;

(g) if the body corporate is a disclosing entity—a copy of each half‑year financial report of the body corporate for:

(i) the period of 3 years immediately before the application was made; or

(ii) the shorter period in which the body corporate has carried on a business;

(h) if the body corporate is not a disclosing entity—a copy of each annual financial report of the body corporate for:

(i) the period of 3 years immediately before the application was made; or

(ii) the shorter period in which the body corporate has carried on a business;

(i) if the body corporate is a related body corporate—a copy of the relevant consolidated annual and half‑year financial reports for:

(i) the period of 3 years immediately before the application was made; or

(ii) the shorter period in which the body corporate has carried on a business;

(j) a report, by a qualified person who is independent of the body corporate, about the anticipated financial resource requirements of the clearing and settlement facility, including details of:

(i) the total anticipated fixed expenditure and variable expenditure for the first 12 months of operation of the clearing and settlement facility; and

(ii) the total anticipated revenue for the first 12 months of operation of the clearing and settlement facility and other sources of financial resources; and

(iii) the body corporate’s contingency arrangements in the event of circumstances occurring that affect the body corporate’s ability to operate the clearing and settlement facility;

(k) details of the body corporate’s business plan, or other strategic planning, for the first 12 months of operation of the clearing and settlement facility, that are not included in the other documents mentioned in this regulation.

Division 5—The Australian CS facility licence: applications (overseas clearing and settlement facility)

7.3.12 Application of Division 5

This Division applies in relation to a body corporate that applies for an Australian CS facility licence that may be granted under subsection 824B(2) of the Act.

7.3.13 Information

For paragraph 824A(1)(a) of the Act, the following information is required as part of an application by the body corporate for an Australian CS facility licence:

(a) the body corporate’s name, address and contact details in this jurisdiction;

(b) the address and contact details of the body corporate’s principal place of business in the foreign country in which its clearing and settlement facility is located;

(c) whether the body corporate is registered under Division 2 of Part 5B.2 of the Act;

(d) the services in respect of which the Australian CS facility licence is sought, including details of the financial products for which clearing and settlement facilities are to be provided;

(e) details of the body corporate’s major shareholders and organisation, including any details that have not already been given to ASIC in accordance with Division 2 of Part 5B.2 of the Act of:

(i) each person whose duties are comparable to those of a director; and

(ii) each person whose duties are comparable to those of a secretary; and

(iii) each person whose duties are comparable to those of an executive officer of the body corporate.

7.3.14 Documents

For paragraph 824A(1)(b) of the Act, the documents required as part of an application by the body corporate for an Australian CS facility licence are:

(a) the body corporate’s authorisation to operate the clearing and settlement facility in the foreign country in which its clearing and settlement facility is located (the ***home country***), including any conditions imposed on the body corporate’s operation of its clearing and settlement facility in the home country; and

(b) a copy of any agreement, or draft agreement, between the body corporate and a market licensee relating to the clearing and settlement facility services to be provided; and

(c) sufficient documentation to allow the Minister to be satisfied that the regulation of the clearing and settlement facility in its home country is equivalent to regulation under the Act.

Example for paragraph (c): Copies of the relevant legislation, rules and procedures in the home country.

Part 7.4—Limits on involvement with licensees

7.4.01 Meaning of *widely held market body*—prescribed bodies corporate

For the purposes of paragraph 850A(b) of the Act, the following bodies corporate are prescribed:

(a) Australian Stock Exchange Limited (in its capacity as a body corporate that has an Australian market licence or an Australian CS facility licence);

(b) ASX Settlement and Transfer Corporation Pty Limited (also known as ‘ASTC’) (in its capacity as a body corporate that has an Australian CS facility licence);

(c) SFE Corporation Limited, in its capacity as the holding company of the following bodies corporate that have an Australian market licence or an Australian CS facility licence:

(i) Austraclear Limited;

(ii) SFE Clearing Corporation Pty Limited;

(iii) Sydney Futures Exchange Limited;

(d) SFE Clearing Corporation Pty Limited (in its capacity as a body corporate that has an Australian CS facility licence);

(e) Sydney Futures Exchange Limited (in its capacity as a body corporate that has an Australian market licence);

(f) ACH (in its capacity as a body corporate that has an Australian CS facility licence);

(g) Austraclear Limited (in its capacity as a body corporate that has an Australian CS facility licence).

7.4.02 Record‑keeping: market licensee

(1) For paragraph 854A(1)(b) of the Act, a market licensee must keep the following records:

(a) a list of names and contact details of the directors, secretaries and executive officers of the market licensee;

(b) a list of names and contact details of individuals who hold more than 15% of the voting power in the market licensee, prepared in accordance with the information given under regulation 7.4.04.

(2) The market licensee must keep the records for at least 5 years.

7.4.03 Record‑keeping: CS facility licensee

(1) For paragraph 854A(1)(b) of the Act, a CS facility licensee must keep the following records:

(a) a list of names and contact details of the directors, secretaries and executive officers of the CS facility licensee;

(b) a list of names and contact details of individuals who hold more than 15% of the voting power in the CS facility licensee, prepared in accordance with the information given under regulation 7.4.04.

(2) The CS facility licensee must keep the records for at least 5 years.

7.4.04 Information for widely held market body

(1) This regulation applies to a person who has:

(a) a substantial holding in a widely held market body; and

(b) voting power in the widely held market body.

(2) For paragraph 854A(1)(d) of the Act, the person must give that information to the widely held market body.

(3) However, subregulation (2) does not require the person to give information that the person has already given to the widely held market body in accordance with Chapter 6C of the Act.

(4) The person must give the information by the time described in subsection 671B(6) of the Act.

Part 7.5—Compensation regimes for financial markets

Division 1—Preliminary

7.5.01 Definitions for Part 7.5

In this Part:

***becoming insolvent*** has the meaning given by regulation 7.5.02.

***claim*** means a claim against the SEGC.

***dealer*** has the meaning given by regulation 7.5.03.

***discharge***, in relation to an obligation, means:

(a) in the case of a purchase obligation—discharge the whole of the obligation; or

(b) in any other case—discharge the whole or a part of the obligation.

***excluded person*** has the meaning given by regulation 7.5.04.

***obligations***:

(a) in relation to a participant of a participating market licensee, in relation to a person, includes obligations arising under:

(i) a law; or

(ii) the participating market licensee’s operating rules; or

(iv) an agreement between;

(A) in any case—the participant and the person; or

(B) if the participant is a partner in a participant of the participating market licensee—the last‑mentioned participant and the person; and

(b) in relation to a participant of the licensed CS facility operated by ACH, in relation to a person, includes obligations arising under:

(i) a law; or

(ii) the operating rules of ACH; or

(iv) an agreement between;

(A) in any case—the participant and the person; or

(B) if the participant is a partner in a participant of the licensed CS facility operated by ACH—the last‑mentioned participant and the person; and

(c) in relation to a participant of the licensed CS facility operated by ASTC, in relation to a person, includes obligations arising under:

(i) a law; or

(ii) the ASTC operating rules; or

(iii) an agreement between:

(A) in any case—the participant and the person; or

(B) if the participant is a partner in a participant of the licensed CS facility operated by ASTC—the last‑mentioned participant and the person.

***orderly market*** means an orderly market on a financial market of:

(a) a participating market licensee; or

(b) an Exchange body.

***participating market licensee*** means a market licensee that is a member of the SEGC.

***prescribed period***, in relation to a sale or purchase of securities by a dealer, means:

(a) if the operating rules of ACH or a participating market licensee, in which the dealer is a participant, being those operating rules as in force when the agreement for the sale or purchase is made, prescribe a period, for this paragraph, in relation to a class of sales or purchases that includes the sale or purchase—that period; or

(b) in any other case—a period that is reasonable, having regard to all the circumstances relating to the sale or purchase.

***property*** includes money, securities and scrip.

***purchase obligation*** means an obligation to transfer securities under an agreement for the purchase of securities, if the purchase is, for Subdivision 4.3, a reportable transaction.

***purchase price***, in relation to a purchase of securities by a dealer on behalf of a person, means the total of:

(a) the amount of the consideration for the purchase; and

(b) any brokerage fees and other charges, and any stamp duty and other duties and taxes, payable by the person to the dealer in connection with the purchase.

***relative***, in relation to a person, means a parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister, of the person.

***reportable transaction*** means a transaction that is entered into before or after the commencement of this Part in relation to securities, and:

(a) is or has at any time been a sale or purchase, by a participant (the ***first dealer***) of a participating market licensee, of securities, if the securities are quoted on a financial market of a participating market licensee when the agreement for the sale or purchase is made, and:

(i) in any case—the participating market licensee’s operating rules, as in force when the agreement for the sale or purchase is made, require or permit the first dealer to report the sale or purchase to the participating market licensee; or

(ii) if the sale or purchase is to or from, as the case may be, a participant (the ***second dealer***) of a participating market licensee—the last‑mentioned participating market licensee’s operating rules, as in force when the agreement for the sale or purchase is made, require or permit the second dealer to report to the last‑mentioned participating market licensee the purchase or sale of the securities by the second dealer from or to, as the case may be, the first dealer; or

(b) is an agreement to buy or sell securities, because of the exercise of an option contract over securities, if:

(i) the option contract was entered into on the financial market of a participating market licensee; and

(ii) the agreement is required or permitted, by the operating rules of ACH or the participating market licensee, to be reported to the participating market licensee.

***sale******and purchase of securities*** has the meaning given by regulation 7.5.06.

***securities business*** has the meaning given by regulations 7.5.07 and 7.5.08.

***security*** has the meaning given by regulation 7.5.09.

***transfer of securities*** has the meaning given by regulation 7.5.10.

***transferor*** has the meaning given by paragraph 7.5.53(4)(b).

***transferred securities*** has the meaning given by paragraph 7.5.53(4)(c).

***unauthorised execution*** has the meaning given by paragraph 7.5.53(4)(a).

7.5.01A Modification of Act: compensation regimes

For subsection 893A(1) of the Act, Part 7.5 of the Act is modified in relation to a licensed market as set out in Schedule 8C.

7.5.02 Meaning of *becoming insolvent*

(1) A body corporate becomes insolvent at a particular time if, and only if, at that time:

(a) an administrator of the body corporate is appointed under section 436A, 436B or 436C; or

(b) the body corporate commences to be wound up or ceases to carry on business; or

(c) a receiver, or a receiver and manager, of property of the body corporate is appointed, whether by a court or otherwise; or

(d) the body corporate enters into a compromise or arrangement with its creditors or a class of them.

(2) A natural person becomes insolvent at a particular time if, and only if, at that time:

(a) a creditor’s petition or a debtor’s petition is presented under Division 2 or 3 of Part IV of the *Bankruptcy Act 1966* against:

(i) the person; or

(ii) a partnership in which the person is a partner; or

(iii) 2 or more joint debtors who include the person; or

(b) the person’s property becomes subject to control under Division 2 of Part X of the *Bankruptcy Act 1966*; or

(c) the person executes a deed of assignment or deed of arrangement under Part X of the *Bankruptcy Act 1966*; or

(d) the person’s creditors accept a composition under Part X of the *Bankruptcy Act 1966*.

(3) A reference in subregulation (2) to a Division or Part of the *Bankruptcy Act 1966* includes a reference to provisions of a law of an external Territory, or a country other than Australia or an external Territory, that correspond to that Division or Part.

7.5.03 Meaning of *dealer*

(1) For this Part (other than Subdivisions 4.7, 4.9 and 4.10), a person is a dealer if the person is, or has been at any time, a participant of a participating market licensee.

(3) For Subdivisions 4.7, 4.9 and 4.10, a person is a ***dealer*** if the person is:

(a) a participant of a participating market licensee; or

(b) a participant of the licensed CS facility operated by ACH.

7.5.04 Meaning of *excluded person*

(1) For this Part, an ***excluded person***, in relation to a participant of a participating market licensee, or a participant of the licensed CS facility operated by ACH, means:

(a) in any case—the participant; or

(b) if the participant is not a body corporate:

(i) a person who is the spouse, or who is a relative, of the participant; or

(ii) a trustee of a trust in relation to which the participant or a person of a kind mentioned in subparagraph (i) is capable of benefiting; or

(iii) a body corporate of which the participant is an officer; or

(iv) a body corporate in which the participant or a person of a kind mentioned in subparagraph (i) has a controlling interest; or

(v) a body corporate in which the participant, and a person of a kind mentioned in subparagraph (i) have a controlling interest; or

(vi) a body corporate in which the participant and 2 or more persons of a kind mentioned in subparagraph (i) have a controlling interest; or

(vii) a body corporate in which 2 or more persons of a kind mentioned in subparagraph (i) together have a controlling interest; or

(c) if the participant is:

(i) a person who is an officer of the body corporate; or

(ii) a body corporate that is related to the first‑mentioned body corporate; or

(iii) a person who is the spouse, or who is a relative, of a person of a kind mentioned in subparagraph (i); or

(iv) a trustee of a trust in relation to which a person of a kind mentioned in subparagraph (i) or (iii) is capable of benefiting; or

(v) a body corporate in which a person of a kind mentioned in subparagraph (i) or (iii) has, or 2 or more such persons together have, a controlling interest; or

(d) if the participant is a partner in a participant of the participating market licensee or licensed CS facility and is not a body corporate:

(i) a person who is a partner in the participant; or

(ii) a person who is the spouse, or who is a relative, of a partner (not being a body corporate) in the participant; or

(iii) a trustee of a trust in relation to which a person of a kind mentioned in subparagraph (i) or (ii) is capable of benefiting; or

(iv) a person who is an officer of a body corporate that is a partner in the participant; or

(v) a body corporate of which a person of a kind mentioned in subparagraph (i), (ii) or (iii) is an officer, or in which such a person has, or 2 or more such persons together have, a controlling interest; or

(vi) a person who is a participant of the licensed CS facility operated by ACH; or

(e) if the participant is a partner in a participant of the participating market licensee or licensed CS facility and is a body corporate:

(i) a person who is an officer of a body corporate that is a partner in the participant; or

(ii) a body corporate that is related to the first‑mentioned body corporate; or

(iii) a person who is a partner in the participant; or

(iv) a person who is the spouse, or who is a relative, of a person (other than a body corporate) of a kind mentioned in subparagraph (i) or (iii); or

(v) a trustee of a trust in relation to which a person of a kind mentioned in subparagraph (i), (iii) or (iv) is capable of benefiting; or

(vi) a body corporate in which a person of a kind mentioned in subparagraph (i), (iii) or (iv) has, or 2 or more such persons together have, a controlling interest; or

(vii) a person who is a participant of the licensed CS facility operated by ACH.

(2) A reference in subregulation (1) or (1A) to a relative of a person includes a reference to a relative of the spouse (if any) of the person.

(3) A reference in subregulation (1) or (1A) to an officer of a body corporate is a reference to:

(a) a director, secretary or executive officer of the body corporate; or

(b) a person who is an officer of the body corporate by virtue of paragraph (b), (c), (d) or (e) of the definition of ***officer*** in section 9 of the Act.

7.5.06 Meaning of *sale and purchase of securities*

(1) A ***sale and purchase of securities*** are taken to consist of 2 distinct transactions:

(a) the sale of the securities by the seller to the buyer; and

(b) the purchase of the securities by the buyer from the seller.

(2) Except so far as the contrary intention appears, a reference in this Part to a sale, or to a purchase, includes a reference to a sale or purchase the agreement for which is made outside this jurisdiction.

(3) For this Part, an agreement to buy or sell securities, because of the exercise of an option contract over securities, if:

(a) the option contract was entered into on the financial market of a participating market licensee; and

(b) the agreement is required, by the operating rules of ACH or the participating market licensee, to be reported to the participating market licensee;

is taken to be a ***sale and purchase of securities***.

7.5.07 Meaning of *securities business*: general

(1) For this Part (other than Subdivision 4.9), a ***securities business*** is a financial services business of dealing in securities.

(2) Subregulations (4), (5) and (6) apply for the purposes of determining:

(a) whether or not a person carries on, or holds himself, herself or itself out as carrying on, a securities business; and

(b) what constitutes such a business carried on by a person.

(3) Subregulation (6) also applies for the purposes of determining whether or not a person deals in securities.

(4) An act done on behalf of the person by:

(a) the holder of a dealers licence; or

(b) an exempt dealer; or

(c) the holder of an Australian financial services licence; or

(d) a person who is exempted from holding an Australian financial services licence by virtue of subsection 911A(2), (2A), (2B), (2C), (2D) or (2E) of the Act;

must be disregarded.

(5) An act that the person does:

(a) while employed by, or acting for or by arrangement with, a dealer; and

(b) as an employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the dealer; and

(c) in connection with a securities business carried on by the dealer;

is to be disregarded.

(6) An act or acts done by the person that constitutes or together constitute a dealing by the person in a futures contract (within the meaning of the old Corporations Act) is or are to be disregarded.

7.5.08 Meaning of *securities business*: Subdivision 4.9

For Subdivision 4.9, each of the following is a ***securities business***:

(a) a financial services business of dealing in securities;

(b) a financial services business of dealing in financial products that were option contracts within the meaning of paragraph 92(1)(e) of the old Corporations Act.

7.5.09 Meaning of *security*

(1) For this Part (other than Subdivision 4.7), each of the following is a ***security***:

(a) a security mentioned in section 761A of the Act;

(b) Division 3 securities;

(c) non‑Division 3 securities;

(d) an interest in a notified foreign passport fund that is quoted on the financial market of the Australian Stock Exchange Limited;

(e) rights (whether existing or future, and whether contingent or not) to acquire, by way of issue, an interest referred to in paragraph (d) (whether or not on payment of any money or for any other consideration).

(2) For Subdivision 4.7, each of the following is a ***security***:

(a) Division 3 securities;

(b) non‑Division 3 securities;

(c) an interest in a notified foreign passport fund that is quoted on the financial market of the Australian Stock Exchange Limited;

(d) rights (whether existing or future, and whether contingent or not) to acquire, by way of issue, an interest referred to in paragraph (c) (whether or not on payment of any money or for any other consideration).

7.5.10 Meaning of *transfer of securities*

(1) A ***transfer of securities*** takes place between a person (the***transferor***) and another person (the***transferee***) only if:

(a) in the case of an ASTC‑regulated transfer—the transferor does, or causes to be done, all things that the ASTC operating rules require to be done by or on behalf of the transferor to effect the transfer; or

(b) in any other case—the transferor delivers, or causes to be delivered, to the transferee documents (***transfer documents***) that are sufficient to enable the transferee:

(i) except in the case of Division 3 rights—to become registered as the holder of the securities; or

(ii) in the case of Division 3 rights—to obtain the issue to the transferee of the securities to which the Division 3 rights relate;

without the transferor doing anything more, or causing anything more to be done, by way of executing or supplying documents.

(2) If a person:

(a) causes property (other than securities or money) to be transferred to another person; or

(b) causes documents that are sufficient to enable another person to become the legal owner of property (other than securities or money) to be delivered to another person;

the first‑mentioned person is taken to have transferred the property to the other person.

(3) If a person causes money to be paid to another person, the first‑mentioned person is taken to have paid the money to the other person.

7.5.13 Effect of contravention of Part 7.5

A contravention of a provision of this Part does not constitute an offence.

Division 2—When there must be a compensation regime

7.5.14 Application for Australian market licence: information about compensation arrangements

For paragraph 881B(2)(c) of the Act, the following information, relating to proposed compensation arrangements, is prescribed:

(a) the services and products provided by the financial market, and participants connected with the financial market;

(b) the sources of all funds to be used for compensation;

(c) the proposed minimum amount of cover, and how that amount has been calculated;

(d) the number of markets to which the compensation arrangements are intended to apply;

(e) details of any arrangement between the market operator and any other person associated with the operation of the compensation arrangement;

(f) details of the payments that will be able to be made, in accordance with the compensation arrangements, that will not be payments required by the Act or another law;

(g) the names of the persons responsible for the administration and monitoring functions mentioned in paragraphs 885I(1)(a), (b) and (c) of the Act, and details of the financial, technological and other resources to be used for those purposes;

(h) the name of the proposed auditor of the accounts relating to the compensation arrangements;

(i) the way in which the compensation arrangements will be monitored to ensure that they comply with the Act and these Regulations;

(j) the way in which the compensation arrangements will be monitored to ensure that they are adequate.

Division 3—Approved compensation arrangements

7.5.15 Application for approval of compensation arrangements after grant of Australian market licence: information about compensation arrangements

For paragraph 882B(2)(a) of the Act, the following information, relating to proposed compensation arrangements, is prescribed:

(a) the services and products provided by the financial market, and participants connected with the financial market;

(b) the sources of all funds to be used for compensation;

(c) the proposed minimum amount of cover, and how that amount has been calculated;

(d) the number of markets to which the compensation arrangements are intended to apply;

(e) details of any arrangement between the market operator and any other person associated with the operation of the compensation arrangement;

(f) details of the payments that will be able to be made, in accordance with the compensation arrangements, that will not be payments required by the Act or another law;

(g) the names of the persons responsible for the administration and monitoring functions mentioned in paragraphs 885I(1)(a), (b) and (c) of the Act, and details of the financial, technological and other resources to be used for those purposes;

(h) the name of the proposed auditor of the accounts relating to the compensation arrangements;

(i) the way in which the compensation arrangements will be monitored to ensure that they comply with the Act and these Regulations;

(j) the way in which the compensation arrangements will be monitored to ensure that they are adequate.

7.5.16 Notification of payment of levies

For subsection 883D(6) of the Act, a notification to the Commonwealth of payments of levy received by the operator of a market as agent for the Commonwealth must:

(a) be given for each period of 6 months ending on 31 December and 30 June; and

(b) be given in writing to:

(i) the Secretary of the Department of the Treasury; or

(ii) another officer of that Department notified in writing by the Secretary to the receiver of the levy; and

(c) set out the total of the levies (if any) that became payable in the period; and

(d) set out the total of the levies (if any) received in the period; and

(e) be given not later than 2 weeks after the end of the period.

7.5.17 Amount of compensation

For subsection 885E(5) of the Act, the rate of interest is 5%.

Division 4—NGF Compensation regime

Subdivision 4.1—Preliminary

7.5.18 Application of Division 4

For sections 888A, 888B, 888C, 888D and 888E of the Act, this Division sets out arrangements relating to compensation in respect of a loss that is connected with a financial market to which Division 4 of Part 7.5 of the Act applies.

Note: The financial markets to which Division 4 of Part 7.5 of the Act applies are set out in section 887A of the Act.

7.5.18A Caps on compensation

A liability of the SEGC under Subdivision 4.3, 4.7, 4.8 or 4.9 to pay an amount in relation to a claim allowed under that Subdivision is subject to regulations 7.5.72A (participant‑related limits of compensation) and 7.5.72B (claimant‑related limits of compensation).

Note: A liability of the SEGC arising under other provisions of Subdivision 4.10 is also subject to regulations 7.5.72A and 7.5.72B.

Subdivision 4.2—Third party clearing arrangements

7.5.19 Clearing arrangements

(1) For Subdivision 4.3, if:

(a) a participant of Australian Stock Exchange Limited (the ***transacting participant***) enters into a reportable transaction; and

(b) under Australian Stock Exchange Limited’s operating rules or under ACH’s operating rules, another participant (the ***clearing participant***) has the obligation to complete the transaction and all obligations ancillary to that completion;

regulations 7.5.24 to 7.5.27 (inclusive) apply in relation to the function of completing the transaction, as if the clearing participant, and not the transacting participant, had entered into the transaction.

(2) For Subdivision 4.9, if:

(a) a participant of Australian Stock Exchange Limited (the ***transacting member***) enters into a reportable transaction; and

(b) under Australian Stock Exchange Limited’s operating rules or under ACH’s operating rules, another participant (the ***clearing participant***) has the obligation to complete the transaction and all obligations ancillary to that completion;

regulation 7.5.66 applies in relation to the function of completing the transaction as if the clearing participant, and not the transacting participant, had entered into the transaction.

(3) For Subdivision 4.3, if:

(a) a participant of the licensed CS facility operated by ACH (the ***transacting participant***) enters into a reportable transaction; and

(b) under the operating rules of ACH, another participant (the ***clearing participant***) has the obligation to complete the transaction and all obligations ancillary to that completion;

regulations 7.5.24 to 7.5.27 (inclusive) apply in relation to the function of completing the transaction, as if the clearing participant, and not the transacting participant, had entered into the transaction.

(3A) For Subdivision 4.3, if:

(a) a participant of Australian Stock Exchange Limited (the ***transacting participant***) enters into a reportable transaction; and

(b) under the operating rules of Australian Stock Exchange Limited or ACH, a participant of the licensed CS facility operated by ACH (the ***clearing participant***) has the obligation to complete the transaction and all obligations ancillary to that completion;

regulations 7.5.24 to 7.5.27 (inclusive) apply in relation to the function of completing the transaction, as if the clearing participant, and not the transacting participant, had entered into the transaction.

(4) For Subdivision 4.9, if:

(a) a participant of the licensed CS facility operated by ACH (the ***transacting member***) enters into a reportable transaction; and

(b) under the operating rules of ACH, another participant (the ***clearing participant***) has the obligation to complete the transaction and all obligations ancillary to that completion;

regulation 7.5.66 applies in relation to the function of completing the transaction as if the clearing participant, and not the transacting participant, had entered into the transaction.

(5) For Subdivision 4.9, if:

(a) a participant of Australian Stock Exchange Limited (the ***transacting participant***) enters into a reportable transaction; and

(b) under the operating rules of Australian Stock Exchange Limited or ACH, a participant of the licensed CS facility operated by ACH (the ***clearing participant***) has the obligation to complete the transaction and all obligations ancillary to that completion;

regulation 7.5.66 applies in relation to the function of completing the transaction, as if the clearing participant, and not the transacting participant, had entered into the transaction.

Subdivision 4.3—Contract guarantees

7.5.24 Claim by selling client in respect of default by selling dealer: ASTC‑regulated transfer

(1) This regulation applies to a person (the ***selling client***) if:

(a) a dealer enters into a reportable transaction on behalf of the selling client; and

(b) the reportable transaction is a sale of securities; and

(c) a transfer of the securities concerned pursuant to the sale would be an ASTC‑regulated transfer; and

(d) at the end of the prescribed period for the transaction:

(i) if subparagraph (ii) does not apply—the selling client has done all things necessary to enable the dealer to do all things that the dealer is required to do under the operating rules of a participating market licensee or ACH to effect a transfer of the securities pursuant to the sale; and

(ii) the dealer has been suspended by the participating market licensee concerned or ACH, that suspension has not been removed and the selling client has done, or is ready, willing and able to do, all things necessary to enable the dealer to do all things that the dealer is required to do under the operating rules of the participating market licensee or ACH to effect a transfer of the securities pursuant to the sale; and

(iii) the dealer’s obligations to the selling client in respect of the sale, in so far as they relate to the consideration for the sale, have not been discharged.

(2) The selling client may make a claim in respect of the sale.

(3) The selling client may make a single claim under this regulation in respect of 2 or more sales.

(4) A claim made under subregulation (3) is to be treated for subregulation (5) as if it consisted of a separate claim in respect of each of the sales to which it relates.

(5) The SEGC must allow the claim if the SEGC is satisfied that:

(a) subregulation (1) entitles the selling client to make the claim; and

(b) the selling client:

(i) has done all things necessary to enable the dealer to do all things that the dealer is required to do under the operating rules of ACH to effect a transfer of the securities pursuant to the sale; or

(ii) has, for the purposes of the claim, in accordance with the operating rules of ACH, transferred to the SEGC or to an Exchange body securities of the same kind and number as the first‑mentioned securities; and

(c) the dealer’s obligations to the selling client in respect of the sale, in so far as they relate to the consideration for the sale, have not been discharged.

(6) If the SEGC allows a claim, the SEGC must pay to the selling client the amount of the consideration less so much (if any) of the total of any brokerage fees and other charges, and any stamp duty and other duties and taxes, payable by the selling client in connection with the sale as has not already been paid by the selling client.

(7) If a selling client transfers securities to an Exchange body as mentioned in subparagraph (5)(b)(ii), the Exchange body must account to the SEGC for those securities in accordance with the operating rules of ACH.

7.5.25 Claim by selling client in respect of default by selling dealer: transaction other than ASTC‑regulated transfer

(1) This regulation applies to a person (the ***selling client***) if:

(a) a dealer enters into a reportable transaction on behalf of the selling client; and

(b) the reportable transaction is a sale of securities; and

(c) a transfer of the securities concerned pursuant to the sale would not be an ASTC‑regulated transfer; and

(d) at the end of the prescribed period for the transaction:

(i) if subparagraph (ii) does not apply—the selling client has supplied to the dealer settlement documents for the purposes of the sale; and

(ii) if the dealer has been suspended by the participating market licensee concerned or ACH, and that suspension has not been removed—the selling client has supplied, or is ready, willing and able to supply, to the dealer settlement documents for the purposes of the sale; and

(iii) the dealer’s obligations to the selling client in respect of the sale, in so far as they relate to the consideration for the sale, have not been discharged.

(2) The selling client may make a claim in respect of the sale.

(3) The selling client may make a single claim under this regulation in respect of 2 or more sales.

(4) A claim made under subregulation (3) is to be treated for subregulation (5) as if it consisted of a separate claim in respect of each of the sales to which it relates.

(5) The SEGC must allow the claim if the SEGC is satisfied that:

(a) subregulation (1) entitles the selling client to make the claim; and

(b) the selling client has:

(i) supplied to the dealer settlement documents in relation to the sale under the agreement for the sale; or

(ii) supplied to the SEGC settlement documents in relation to the sale for the purposes of the claim; and

(c) the dealer’s obligations to the selling client in respect of the sale, in so far as they relate to the consideration for the sale, have not been discharged.

(6) If the SEGC allows a claim, the SEGC must pay to the selling client the amount of the consideration less so much (if any) of the total of any brokerage fees and other charges, and any stamp duty and other duties and taxes, payable by the selling client in connection with the sale as has not already been paid by the selling client.

7.5.26 Claim by buying client in respect of default by buying dealer: ASTC‑regulated transfer

(1) This regulation applies to a person (the ***buying client***) if:

(a) a dealer enters into a reportable transaction on behalf of the buying client; and

(b) the reportable transaction is a purchase of securities; and

(c) a transfer of the securities concerned pursuant to the purchase would be an ASTC‑regulated transfer; and

(d) at the end of the prescribed period for the transaction:

(i) if subparagraph (ii) does not apply, the buying client has paid to the dealer the purchase price in relation to the purchase; and

(ii) the dealer has been suspended by the participating market licensee concerned or ACH, that suspension has not been removed and the buying client has paid, or is ready, willing and able to pay, to the dealer the purchase price in relation to the purchase; and

(iii) the dealer’s obligations to the buying client in respect of the purchase, in so far as they relate to the transfer of securities to the person, have not been discharged.

(2) The buying client may make a claim in respect of the purchase.

(3) The buying client may make a single claim under this regulation in respect of 2 or more purchases.

(4) A claim made under subregulation (3) is to be treated for subregulation (5) as if it consisted of a separate claim in respect of each of the purchases to which it relates.

(5) The SEGC must allow the claim if the SEGC is satisfied that:

(a) subregulation (1) entitles the buying client to make the claim; and

(b) either:

(i) the buying client has paid to the dealer the amount of the consideration for the purchase under the agreement for the purchase; or

(ii) the buying client has paid to the SEGC the amount of the consideration for the purchase for the purposes of the claim; and

(c) the dealer’s obligations to the buying client in respect of the purchase, in so far as they relate to the transfer of securities to the buying client, have not been discharged.

(6) If the SEGC allows a claim in respect of a purchase of securities, the SEGC must, subject to regulation 7.5.28, transfer to the buying client securities of the same kind and number as the first‑mentioned securities.

7.5.27 Claim by buying client in respect of default by buying dealer: transaction other than ASTC‑regulated transfer

(1) This regulation applies to a person (the ***buying client***) if:

(a) a dealer enters into a reportable transaction on behalf of the buying client; and

(b) the reportable transaction is a purchase of securities; and

(c) a transfer of the securities concerned pursuant to the purchase would not be an ASTC‑regulated transfer; and

(d) at the end of the prescribed period for the transaction:

(i) if subparagraph (ii) does not apply, the buying client has paid to the dealer the purchase price in relation to the purchase; and

(ii) the dealer has been suspended by the participating market licensee concerned or ACH, that suspension has not been removed and the buying client has paid, or is ready, willing and able to pay, to the dealer the purchase price in relation to the purchase; and

(iii) the dealer’s obligations to the buying client in respect of the purchase, in so far as they relate to settlement documents in relation to the purchase, have not been discharged.

(2) The buying client may make a claim in respect of the purchase.

(3) The buying client may make a single claim under this regulation in respect of 2 or more purchases.

(4) A claim made under subregulation (3) is to be treated for subregulation (5) as if it consisted of a separate claim in respect of each of the purchases to which it relates.

(5) The SEGC must allow the claim if the SEGC is satisfied that:

(a) subregulation (1) entitles the buying client to make the claim; and

(b) either:

(i) the buying client has paid to the dealer the amount of the consideration for the purchase under the agreement for the purchase; or

(ii) the buying client has paid to the SEGC the amount of the consideration for the purchase for the purposes of the claim; and

(c) the dealer’s obligations to the buying client in respect of the purchase, in so far as they relate to settlement documents in relation to the purchase, have not been discharged.

(6) If the SEGC allows a claim in respect of a purchase of securities, the SEGC must, subject to regulation 7.5.29, supply to the buying client settlement documents in relation to the purchase.

7.5.28 Cash settlement of claim: ASTC‑regulated transfer

(1) This regulation applies if:

(a) the SEGC allows a claim under subregulation 7.5.26(5) in respect of a purchase of securities by a dealer on behalf of a buying client; and

(b) it is not reasonably practicable for the SEGC to obtain securities of the same kind and number as the first‑mentioned securities from the dealer before the end of:

(i) if the ASTC operating rules, as in force when the SEGC allows the claim, prescribe a period, for this regulation, in relation to a class of claims that includes the claim—that period; or

(ii) in any other case—such period as the SEGC, having regard to all the circumstances of the claim, considers reasonable; and

(c) it is not reasonably practicable for the SEGC to obtain, otherwise than from the dealer, securities of that kind and number before the end of that period because:

(i) that dealing in those securities is suspended or for any other reason, there exists at no time during that period an orderly market in those securities; or

(ii) the total number of those securities offered for sale on financial markets of participating market licensees or Exchange bodies at times during that period when there exists an orderly market in those securities is insufficient.

(2) The SEGC must satisfy the claim by paying to the claimant the amount that, when the claimant became entitled to make the claim, was the amount of the actual pecuniary loss suffered by the claimant in respect of the purchase.

7.5.29 Cash settlement of claim: transfer other than ASTC‑regulated transfer

(1) This regulation applies if:

(a) the SEGC allows a claim under subregulation 7.5.27(5) in respect of a purchase of securities by a dealer on behalf of a buying client; and

(b) it is not reasonably practicable for the SEGC to obtain from the dealer settlement documents in relation to the purchase before the end of:

(i) if the operating rules of a participating market licensee of which the dealer is a participant, being those operating rules as in force when the SEGC allows the claim, prescribe a period, for this regulation, in relation to a class of claims that includes the claim—that period; or

(ii) in any other case—such period as the SEGC, having regard to all the circumstances of the claim, considers reasonable; and

(c) it is not reasonably practicable for the SEGC to obtain otherwise than from the dealer settlement documents in relation to the purchase before the end of that period because:

(i) there exists at no time during that period an orderly market in those securities, whether because that dealing in those securities is suspended or for any other reason; or

(ii) the total number of those securities offered for sale on financial markets of participating market licensees or Exchange bodies at times during that period when there exists an orderly market in those securities is insufficient.

(2) The SEGC must satisfy the claim by paying to the claimant the amount that, when the claimant became entitled to make the claim, was the amount of the actual pecuniary loss suffered by the claimant in respect of the purchase.

7.5.30 Making of claims

(2) Subregulations 7.5.24(1), 7.5.25(1), 7.5.26(1) and 7.5.27(1) do not entitle a person (***person 1***) to make a claim in respect of:

(a) a sale of securities by another person on behalf of person 1; or

(b) a purchase of securities by another person on behalf of person 1;

as the case may be, unless, on the day on which the agreement for the sale or purchase was entered into, the other person was a participant and carried on a securities business in Australia.

(3) A claim must be in writing and must be served on the SEGC within 6 months after the day on which the claimant became entitled to make the claim.

(4) A claim that is not made within the period prescribed by subregulation (3) is barred unless the SEGC otherwise determines.

(5) The SEGC may publish, in each State and Territory in a daily newspaper circulating in that State or Territory, a notice that:

(b) names a particular dealer; and

(c) requires that all claims under this Subdivision, by the named dealer, during a period (the ***applicable period***) specified in the notice in accordance with subregulation (6) must be served on the SEGC before the day (the ***last application day***) specified in the notice in accordance with subregulation (7).

(6) The applicable period must be a period that starts and ends before:

(a) if each publication of the notice occurs on the same day—the day on which the notice is published; or

(b) in any other case—the first day on which the notice is published.

(7) The last application day must be at least 3 months after:

(a) if each publication of the notice occurs on the same day—the day on which the notice is published; or

(b) in any other case—the last day on which the notice is published.

(8) The SEGC, a member of the Board and any employee of, or person acting on behalf of, the SEGC each has qualified privilege in respect of the publication of a notice under subregulation (5).

Subdivision 4.7—Unauthorised transfer

7.5.53 Application of Subdivision 4.7

(1) This Subdivision applies if:

(a) a dealer executes a document of transfer of securities on behalf of a person as transferor of the securities; and

(b) the transfer is not an ASTC‑regulated transfer; and

(c) apart from the effect of subregulation 7.11.17(3), the person did not authorise the dealer to execute the document.

(2) For subregulation (1), a dealer is taken to have executed a document of transfer in relation to securities on behalf of a person as transferor of the securities if the document states that the person is the transferor of the securities and purports to have been stamped with the dealer’s stamp as the transferor’s broker.

(3) This Subdivision also applies if:

(a) a dealer effects, or purports to effect, a proper ASTC transfer of securities on behalf of a person; and

(b) apart from the effect of regulation 7.11.26, the person did not authorise the dealer to effect the transfer.

(4) In this Subdivision:

(a) the dealer’s action mentioned in whichever of paragraphs (1)(a) and (3)(a) is applicable is an ***unauthorised execution***; and

(b) the person mentioned in whichever of those paragraphs is applicable is the ***transferor***; and

(c) the securities mentioned in whichever of those paragraphs is applicable are the ***transferred securities***.

7.5.54 Claim by transferor

If, as a result of the unauthorised execution, the transferor suffers loss in respect of any of the transferred securities, the transferor may make a claim in respect of the loss.

7.5.55 Claim by transferee or sub‑transferee

(1) If, as a result of the unauthorised execution, a person (the ***claimant***), being:

(a) in any case:

(i) if subregulation 7.5.53(1) applies—the person stated in the document as the transferee of the transferred securities; or

(ii) if subregulation 7.5.53(3) applies—the person in whose favour the proper ASTC transfer was effected, or purported to be effected; or

(b) if that person has disposed of any of the transferred securities—a successor in title of that person to any of the transferred securities;

suffers loss in respect of any of the transferred securities, the claimant may make a claim in respect of that loss.

(2) A person is not entitled to make a claim under this regulation if the person:

(a) had actual knowledge that the transferor did not in fact authorise the unauthorised execution; or

(b) is an excluded person in relation to the dealer.

7.5.56 How and when claim may be made

(1) A claim must:

(a) be in writing; and

(b) be served on the SEGC:

(i) if a notice under subregulation (4) applies to the claim—before the end of the last application day specified in the notice; or

(ii) in any other case—within 6 months after the day on which the claimant first became aware that the claimant had suffered loss as a result of the unauthorised execution.

(2) For subregulation (1), a notice under subregulation (4) applies to a claim if the claim is in respect of an unauthorised execution, by the dealer named in the notice, during the applicable period specified in the notice.

(3) A claim that is not served on the SEGC by the time required by paragraph (1)(b) is barred unless the SEGC otherwise determines.

(4) The SEGC may publish, in each State and Territory in a daily newspaper circulating in that State or Territory, a notice, using Form 719A, that:

(a) names a particular dealer; and

(b) requires that all claims in respect of unauthorised executions, by the named dealer, during a period (the ***applicable period***) specified in the notice in accordance with subregulation (5) must be served on the SEGC before the day (the ***last application day***) specified in the notice in accordance with subregulation (6).

(5) The applicable period must be a period that starts and ends before:

(a) if each publication of the notice occurs on the same day—the day on which the notice is published; or

(b) in any other case—the first day on which the notice is published.

(6) The last application day must be at least 3 months after:

(a) if each publication of the notice occurs on the same day—the day on which the notice is published; or

(b) in any other case—the last day on which the notice is published.

(7) The SEGC, a member of the Board and any employee of, or person acting on behalf of, the SEGC each has qualified privilege in respect of the publication of a notice under subregulation (4).

7.5.57 How claim is to be satisfied

(1) The SEGC must allow a claim if the SEGC is satisfied that regulation 7.5.54 or 7.5.55 entitles the claimant to make the claim.

(2) If the SEGC allows the claim, and the claimant has, as a result of the unauthorised execution, ceased to hold some or all of the transferred securities, the SEGC must:

(a) subject to paragraph (b), supply to the claimant securities of the same kind and number as those of the transferred securities that the claimant has so ceased to hold; or

(b) if the SEGC is satisfied that it is not practicable for the SEGC to obtain such securities, or to obtain such securities within a reasonable time—pay to the claimant the amount that, as at the time when the SEGC decides that it is so satisfied, is the actual pecuniary loss suffered by the claimant, in respect of the transferred securities, as a result of the unauthorised execution (other than loss suffered as mentioned in subregulation (3)).

(3) If the SEGC allows the claim, it must pay to the claimant the amount that, as at the time when the claim is allowed, or when the SEGC decides as mentioned in paragraph (2)(b), as the case requires, is the actual pecuniary loss suffered by the claimant, as a result of the unauthorised execution, in respect of payments or other benefits:

(a) in any case—to which the claimant would have become entitled, as the holder of such of the transferred securities as the claimant has, as a result of the unauthorised execution, ceased to hold, if the claimant had continued to hold the securities concerned until that time; or

(b) if the claim was made under regulation 7.5.55—that the claimant has received as holder of any of the transferred securities.

(4) For this regulation, if securities are purportedly transferred from a person to another person, the first‑mentioned person is taken to cease to hold, and the other person is taken to hold, the securities even if the other person did not by virtue of the transfer get a good title to the securities.

7.5.58 Discretionary further compensation to transferor

(1) If:

(a) the SEGC allows a claim made under regulation 7.5.54; and

(b) the SEGC is satisfied that the supply of securities, or the payment of money, or both, as the case requires, to the claimant under regulation 7.5.57 will not adequately compensate the claimant for a pecuniary or other gain that the claimant might, if the claimant had continued to hold the transferred securities, have made but did not in fact make;

the SEGC may determine in writing that there be paid to the claimant in respect of that gain a specified amount that the SEGC considers to be fair and reasonable in all the circumstances.

(2) If a determination is made under subregulation (1), the SEGC must pay to the claimant the amount specified in the determination.

7.5.59 Nexus with Australia

Regulations 7.5.54 and 7.5.55 do not entitle a person to make a claim unless the dealer was on the day of the unauthorised execution a participant of a participating market licensee and:

(a) the dealer was carrying on a securities business in Australia on that day; or

(b) if the dealer was not so carrying on such a business and was not carrying on a securities business outside Australia on that day—the last securities business that the dealer carried on before that day was carried on in Australia.

Subdivision 4.8—Contraventions of ASTC certificate cancellation provisions

7.5.60 Claim in respect of contravention of ASTC certificate cancellation provisions

(1) A person who suffers pecuniary loss in respect of a contravention, by a dealer, of the ASTC certificate cancellation provisions may make a claim in respect of the loss.

(2) The loss must not be a loss in respect of an unauthorised execution (within the meaning of paragraph 7.5.53(4)(a)) in respect of which the person has made, or is entitled to make, a claim under Subdivision 4.7.

(3) The person must not have been involved in the contravention.

(4) The following paragraphs must be satisfied in relation to the dealer:

(a) the dealer was a participant of a participating market licensee on the day of the contravention;

(b) either:

(i) the dealer was carrying on a securities business in Australia on that day; or

(ii) if the dealer was not so carrying on such a business on that day—the last securities business that the dealer carried on before that day was carried on in Australia.

7.5.61 How and when claim may be made

(1) A claim must:

(a) be in writing; and

(b) be served on the SEGC:

(i) if a notice under subregulation (4) applies to the claim—before the end of the last application day specified in the notice; or

(ii) in any other case—within 6 months after the day on which the claimant first became aware that the claimant had suffered loss as a result of the dealer’s contravention of the ASTC certificate cancellation provisions.

(2) For subregulation (1), a notice under subregulation (4) applies to a claim if the claim is in respect of a contravention of the ASTC certificate cancellation provisions, by the dealer named in the notice, during the applicable period specified in the notice.

(3) A claim that is not served on the SEGC by the time required by paragraph (1)(b) is barred unless the SEGC otherwise determines.

(4) The SEGC may publish, in each State and Territory in a daily newspaper circulating in that State or Territory, a notice, using Form 719B, that:

(a) names a particular dealer; and

(b) requires that all claims in respect of contraventions of the ASTC certificate cancellation provisions, by the named dealer, during a period (the ***applicable period***) specified in the notice in accordance with subregulation (5) must be served on the SEGC before the day (the ***last application day***) specified in the notice in accordance with subregulation (6).

(5) The applicable period must be a period that starts and ends before:

(a) if each publication of the notice occurs on the same day—the day on which the notice is published; or

(b) in any other case—the first day on which the notice is published.

(6) The last application day must be at least 3 months after:

(a) if each publication of the notice occurs on the same day—the day on which the notice is published; or

(b) in any other case—the last day on which the notice is published.

(7) The SEGC, a member of the Board and any employee of, or person acting on behalf of, the SEGC each has qualified privilege in respect of the publication of a notice under subregulation (4).

7.5.62 How claim is to be satisfied

(1) The SEGC must allow a claim if the SEGC is satisfied that regulation 7.5.60 entitles the claimant to make the claim.

(2) If the SEGC allows the claim, it must pay to the claimant the amount that, when the claim is allowed, is the actual pecuniary loss suffered by the claimant because of the contravention in respect of which the claim was made.

(3) For subregulation (2), the actual pecuniary loss suffered by the claimant does not include any loss in respect of an unauthorised execution (within the meaning of paragraph 7.5.53(4)(a)) in respect of which the claimant has made, or is entitled to make, a claim under Subdivision 4.7.

7.5.63 Discretionary further compensation

(1) If:

(a) the SEGC allows a claim made under regulation 7.5.60; and

(b) the SEGC is satisfied that the payment of money to the claimant under regulation 7.5.62 will not adequately compensate the claimant for a pecuniary or other gain that the claimant did not make, but might have made, were it not for the contravention in respect of which the claim was made;

the SEGC may determine in writing that the claimant should be paid in respect of that gain a specified amount that the SEGC considers to be fair and reasonable in all the circumstances.

(2) If a determination is made under subregulation (1), the SEGC must pay the claimant the amount specified in the determination.

Subdivision 4.9—Claims in respect of insolvent participants

7.5.64 Claim in respect of property entrusted to, or received by, dealer before dealer became insolvent

(1) A person may make a claim in respect of property if:

(a) a dealer has become insolvent at a particular time (whether before or after the commencement of this regulation); and

(b) at an earlier time (whether before or after that commencement), the property was, in the course of, or in connection with, the dealer’s securities business entrusted to, or received by:

(i) if the dealer was, at the earlier time, a partner in a participant—the participant, or a partner in, or an employee of, the participant; or

(ii) in any other case—the dealer or an employee of the dealer;

and was so entrusted or received on behalf of, or because the dealer was a trustee of the property for, the person (other than an excluded person in relation to the dealer); and

(c) at the time the dealer became insolvent, the obligations of the dealer, or of a participant of which the dealer is a partner, as the case requires, to the person in respect of the property have not been discharged.

(2) The SEGC must allow the claim if the SEGC is satisfied that:

(a) subregulation (1) entitles the claimant to make the claim; and

(b) at the time the SEGC considers the claim, the obligations of the dealer, or of a participant of which the dealer is a partner, as the case requires, to the claimant in respect of the property have not been discharged.

(3) If the property is, or includes, money, the SEGC must pay to the claimant an amount equal to the amount of that money.

(4) If the property is, or includes, property other than money, the SEGC must, subject to subregulation (5) and regulation 7.5.65, supply the property other than money to the claimant.

(5) If:

(a) the SEGC allows a claim in respect of property that is, or includes:

(i) a number of securities of a particular kind; or

(ii) documents of title to a number of securities of a particular kind; and

(b) it is not reasonably practicable for the SEGC to obtain those securities, or those documents of title to securities, as the case may be, from the dealer or, if the dealer has disposed of them, from the dealer’s successor in title, before the end of:

(i) if the operating rules of a participating market licensee or licensed CS facility of which the dealer is a participant, being those operating rules as in force when the SEGC allows the claim, prescribe a period, for this regulation, in relation to a class of claims that includes that claim—that period; or

(ii) in any other case—such period as the SEGC, having regard to all the circumstances relating to the claim, considers reasonable;

the SEGC must, subject to regulation 7.5.65, supply to the person, instead of those securities, or those documents of title to securities, the number of securities of that kind, or documents of title to the number of securities of that kind, as the case may be.

7.5.65 Cash settlement of claims if property unobtainable

(1) If:

(a) the SEGC allows a claim in respect of property that is, or includes, a number of securities of a particular kind or documents of title to a number of securities of a particular kind; and

(b) it is not reasonably practicable for the SEGC to obtain those securities, or those documents of title to securities, as the case may be, from the dealer or, if the dealer has disposed of them, from the dealer’s successor in title, before the end of:

(i) if the operating rules of a participating market licensee or licensed CS facility of which the dealer is a participant, being those operating rules as in force when the SEGC allows the claim, prescribe a period, for this regulation, in relation to a class of claims that includes the claim—that period; or

(ii) in any other case—such period as the SEGC, having regard to all the circumstances relating to the claim, considers reasonable; and

(c) it is not reasonably practicable for the SEGC to obtain that number of securities of that kind, or documents of title to that number of securities of that kind, as the case may be, before the end of that period because:

(i) whether by reason that dealing in securities of that kind is suspended or for any other reason, there exists at no time during that period an orderly market in such securities; or

(ii) the total number of securities of that kind offered for sale on financial markets of market licensees or Exchange bodies at times during that period when there exists an orderly market in such securities is insufficient;

the SEGC may decide to pay to the claimant the amount that, when the decision is made, is the actual pecuniary loss suffered by the claimant in respect of the first‑mentioned securities, or the first‑mentioned documents of title, as the case may be, and if the SEGC does so, the SEGC must pay that amount to the claimant.

(2) If:

(a) the SEGC allows a claim that, because of a dealer having become insolvent, this Division entitles a person to make in respect of property that is, or includes, property (the ***relevant property***) other than money, securities or documents of title to securities; and

(b) it is not reasonably practicable for the SEGC to obtain the relevant property from the dealer or, if the dealer has disposed of it, from the dealer’s successor in title, before the end of such period as the SEGC considers reasonable;

the SEGC may decide to pay to the claimant the amount that, when the decision is made, is the actual pecuniary loss suffered by the claimant in respect of the relevant property, and if the SEGC does so, the SEGC must pay that amount to the claimant.

7.5.66 Ordering of alternative claims and prevention of double recovery

(1) Subregulation (2) applies if:

(a) a participant has received under the agreement for a sale or purchase of securities by the participant on behalf of a person, the consideration for the sale or settlement documents in relation to the purchase, as the case may be; and

(b) subregulation 7.5.24(1), 7.5.25(1), 7.5.26(1) or 7.5.27(1) entitles the person to make a claim against the SEGC under Subdivision 4.3 in respect of the sale or purchase.

(2) This Subdivision does not, because of:

(a) a dealer, being the participant or a partner in the participant, having become insolvent at a particular time; and

(b) the participant having received, under the agreement, the consideration or the settlement documents;

entitle the person to make a claim in respect of the consideration or the settlement documents, as the case may be, unless the participant’s obligations to the person in respect of the sale or purchase, as the case may be, in so far as those obligations related to the consideration or the settlement documents, were discharged before that time.

(3) If:

(a) because of a dealer having become insolvent on a particular day, this Subdivision entitles a person to make a claim (the ***first claim***) in respect of property; and

(b) because of a dealer having become insolvent on a later day, this Subdivision entitles a person to make another claim in respect of the property;

the SEGC must not allow the other claim unless:

(c) the person has made the first claim and the SEGC has allowed or disallowed it; or

(d) the SEGC is satisfied that if the first claim had been made the SEGC would have disallowed it; or

(e) the SEGC is satisfied that, when the person first became aware of the dealer mentioned in paragraph (b) having become insolvent on the later day:

(i) the first claim was barred; or

(ii) it was no longer reasonably practicable for the person to make the first claim before it became barred.

(4) If:

(a) at a particular time, the SEGC allows a claim in respect of property; and

(b) because of:

(i) a dealer having become insolvent (whether before, at or after that time); and

(ii) the property having, before that time, been entrusted or received as mentioned in paragraph 7.5.64(1)(b);

this Subdivision entitles the claimant to make another claim in respect of the property;

the SEGC must not allow the other claim.

7.5.67 No claim in respect of money lent to dealer

If, at the time when a dealer becomes insolvent:

(a) a person has lent money to the dealer; and

(b) the liability of the dealer to repay the money remains undischarged;

this Subdivision does not, because of the dealer having become insolvent at that time, entitle the person to make a claim in respect of the money.

7.5.68 Nexus with Australia

This Subdivision does not, because of a person (the ***dealer***) having become insolvent at a particular time, entitle a person to make a claim in respect of property unless:

(a) the dealer was at that time a participant of at least 1 of the following:

(i) a participating market licensee;

(ii) the licensed CS facility operated by ACH; and

(b) either:

(i) the dealer was carrying on a securities business in Australia at that time; or

(ii) the last business that the dealer carried on in Australia before that time was a securities business, and the person’s claim relates to that business as it was carried on in Australia.

7.5.69 No claim in certain other cases

This Subdivision does not, because of a dealer having become insolvent on a particular day, entitle a person to make a claim in respect of property if:

(a) before that day the property had, in due course of the administration of a trust, ceased to be under the sole control of the dealer; or

(b) the SEGC, or the Court, is satisfied that circumstances that materially contributed to the dealer becoming insolvent on that day were due to, or caused directly or indirectly by, an act or omission of the person.

7.5.70 Making of claims

(1) The SEGC may publish, in each State and Territory, in a daily newspaper circulating generally in that State or Territory, a notice, using Form 720, specifying a day, not being earlier than 3 months after the publication of the notice, on or before which claims against the SEGC may be made, being claims that, because of a dealer specified in the notice having become insolvent, this Subdivision entitles persons to make.

(2) If this Subdivision entitles a person to make a claim, the claim must be in writing and must be served on the SEGC:

(a) if there has been published in accordance with subregulation (1) a notice specifying a day on or before which claims may be made, being claims that, because of the dealer having become insolvent on that day, this Subdivision entitles persons to make—on or before that day; or

(b) in any other case—within 6 months after the person becomes aware of the dealer having become insolvent on that day.

(3) A claim that is not made in accordance with subregulation (2) is barred unless the SEGC otherwise determines.

(4) The SEGC, a member of the Board and any employee of, or person acting on behalf of, the SEGC each has qualified privilege in respect of the publication of a notice under subregulation (1).

Subdivision 4.10—General

7.5.72 Power of SEGC to allow and settle claim

(1) The SEGC may, at any time after a person becomes entitled to make a claim, allow and settle the claim.

(2) Subregulation (1) authorises the SEGC to partially allow a claim (including, for example, in a case where the SEGC considers that the claimant’s conduct contributed to the loss).

7.5.72A Participant‑related limits of compensation

(1) If:

(a) a claim made under this Division relates to a loss connected with a particular participant, or past participant, in a financial market; and

(b) the participant or past participant becomes insolvent on a day before the claim is settled by the SEGC (whether or not the insolvency is the cause of the loss mentioned in paragraph (a));

the total amounts paid out of the Fund in connection with claims relating to losses connected with the participant or past participant must not exceed an amount equal to 15% of the minimum amount of the Fund as at the end of that day.

(2) For the purposes of subregulation (1):

(a) the SEGC must disregard an amount paid out of the Fund in connection with a claim to the extent to which the amount has been repaid to the Fund; and

(b) if money or other property has been recovered by, or on behalf, of the SEGC because of the exercise of a right or remedy in relation to the loss to which a claim relates, being a right or remedy of the claimant who makes the claim to which the SEGC is subrogated, the SEGC must disregard so much of the amount, or of the total of the amounts, paid out of the Fund in connection with the claim as does not exceed the sum of:

(i) the amount of that money; and

(ii) the value of so much (if any) of that other property as has not been, and is not required to be, supplied in respect of the claim.

(3) The SEGC may, in relation to each claim, determine in writing:

(a) whether the claim meets the requirements of paragraphs (1)(a) and (b); and

(b) an amount to be the maximum amount in relation to the claim.

(4) If the SEGC makes determinations under paragraph (3)(b) in relation to 2 or more claimants, the SEGC must ensure that, as far as practicable, the proportion of any claimant’s claim for which compensation is received is the same for each claimant.

(5) For the purposes of subregulation (4):

(a) the amount of a claimant’s claim is taken to be reduced by any reduction under subregulation 7.5.72B(3) of the maximum amount in relation to the claimant; and

(b) the compensation received by a claimant is the amount of compensation received by the claimant from all sources (including the Fund).

(6) If a determination is in force under paragraph (3)(b), the amount paid out of the Fund in connection with the claim must not exceed the amount that has been determined.

7.5.72B Claimant‑related limits of compensation

(1) If:

(a) a claim made by a claimant under this Division relates to a loss connected with a particular participant, or past participant, in a financial market; and

(b) the loss is referable to a particular event or circumstance;

the sum of the amounts paid out of the Fund to the claimant (the ***maximum amount***) in connection with claims relating to losses connected with the participant or past participant that are referable to the event or circumstance (the ***eligible claims***):

(c) must not exceed $1 million; and

(d) to the extent that the eligible claims relate to cash held with the participant or past participant immediately before the event or circumstance—must not exceed $250,000.

(2) For the purposes of subregulation (1):

(a) the SEGC must disregard an amount paid out of the Fund in connection with a claim to the extent to which the amount has been repaid to the Fund; and

(b) if money or other property has been recovered by, or on behalf, of the SEGC because of the exercise of a right or remedy in relation to the loss to which a claim relates, being a right or remedy of the claimant who makes the claim to which the SEGC is subrogated, the SEGC must disregard so much of the amount, or of the total of the amounts, paid out of the Fund in connection with the claim as does not exceed the sum of:

(i) the amount of that money; and

(ii) the value of so much (if any) of that other property as has not been, and is not required to be, supplied in respect of the claim.

(3) If:

(a) the participant or past participant becomes insolvent on a day before the eligible claims are settled by the SEGC (whether or not the insolvency is connected with the loss mentioned in paragraph (1)(a)); and

(b) the sum of what would, apart from this subregulation, be the maximum amounts in relation to all claimants in connection with eligible claims (the ***total claimants’ amounts***) exceeds the amount worked out under subregulations 7.5.72A(1) and (2);

the maximum amount in relation to the claimant is reduced by an amount worked out as follows:

start formula start fraction Claimant's amount times Excess over Total claimants' amounts end fraction end formula

where:

***claimant’s amount*** means the amount that would, apart from this subregulation, be the claimant’s maximum amount.

***excess*** means the amount of the excess mentioned in paragraph (b).

(4) The SEGC may determine in writing:

(a) whether the claimant’s claims are eligible claims; and

(b) an amount to be the maximum amount in relation to the eligible claims.

(5) If a determination is in force under paragraph (4)(b), the amount paid out of the Fund to the claimant must not exceed the amount that has been determined.

7.5.73 Application of Fund in respect of certain claims

(1) This regulation applies if the SEGC acquires financial products in accordance with section 888K of the Act for the purpose of providing compensation.

(2) The financial products form part of the Fund until they are supplied in accordance with this Part to a claimant or sold in accordance with subregulation (3).

(3) If the SEGC:

(a) acquires the financial products; and

(b) satisfies the claim by paying an amount to the claimant;

the SEGC must, as soon as practicable after satisfying the claim, sell the financial products and pay the proceeds of the sale into the Fund.

7.5.74 Discretion to pay amounts not received etc because of failure to transfer securities

(1) This regulation applies if the SEGC is satisfied that:

(a) a person (the ***defaulter***) has failed to discharge an obligation to transfer securities to another person (the ***entitled entity***); and

(b) the entitled entity:

(i) has made a claim in respect of the failure and has had securities transferred to it, or an amount paid to it, in satisfaction of the claim; or

(ii) would have been entitled to make a claim in respect of the failure if securities had not been transferred to it for the purpose of remedying the failure; and

(c) if the defaulter had duly transferred securities in accordance with the obligation, an amount would have been paid, or property would have been transferred, to the entitled entity as the holder of the securities; and

(d) the entitled entity has not received, and is not entitled to receive (otherwise than from the defaulter):

(i) the amount or property; or

(ii) an equivalent amount or equivalent property in respect of securities transferred or obtained as mentioned in paragraph (b); and

(e) if subparagraph (b)(i) applies, and an amount has been paid in satisfaction of the claim, the amount paid does not adequately compensate the entitled entity for the loss of the amount or property mentioned in paragraph (c).

(2) The SEGC may determine in writing that the entitled entity is to be paid, in respect of the loss of the amount or property mentioned in paragraph (1)(c), a specified amount that the SEGC considers to be fair and reasonable in the circumstances.

(3) If a determination is made under subregulation (1), the SEGC must pay to the entitled entity the amount specified in the determination.

7.5.75 Reduction in compensation

(1) The SEGC may reduce an amount of compensation by reference to 1 or more of the following:

(a) a right of set‑off available to the claimant;

(b) the extent to which the claimant was responsible for causing the loss.

(2) If:

(a) the claimant has assigned any of its rights or remedies in relation to the loss; and

(aa) the claimant has received a benefit from any person for assigning the right or remedy; and

(b) the claimant assigned rights or remedies as mentioned in paragraph (a) without the written consent of the SEGC; and

(c) the claimant continues to suffer a loss at the date of the determination of the claim;

the SEGC may reduce the amount of compensation by the amount that fairly represents the extent to which the claimant has, without the written consent of the SEGC, adversely affected the SEGC’s ability under section 892F of the Act to recover the amount of the compensation that would otherwise be payable to the claimant in respect of the claimant’s claim.

(3) In determining an amount of compensation payable to a claimant in respect of a claim, the SEGC may reduce the amount by reference to any money or other property that the claimant has received, or is likely to receive, from sources other than the Fund as compensation for money or property to which the claim relates.

7.5.76 Claimant may be required to exercise right of set‑off

(1) If:

(a) a person (the ***claimant***) has made a claim in respect of a liability of another person (the ***defaulter***); and

(b) the claimant has a right, whether under an agreement or otherwise, to set off a liability of the claimant to the defaulter against the liability mentioned in paragraph (a);

the SEGC may refuse to allow the claim until the claimant has exercised the right.

(2) The SEGC may, by notice in writing served on a person, require the person to give the SEGC specified information relating to the existence or exercise of rights of set‑off.

7.5.77 Effect of set‑off on claim

(1) If:

(a) the SEGC allows a claim by a person (the ***claimant***) in respect of a liability of another person (the ***defaulter***); and

(b) the liability of the defaulter to the claimant has been reduced, by an amount of money or a number of securities (the ***set‑off reduction***), because of:

(i) the exercise by the claimant or the defaulter of a right of set‑off, whether under an agreement or otherwise; or

(ii) the operation of an agreement so far as it provides for the automatic set‑off of liabilities; and

(c) but for this regulation, the reduction of the defaulter’s liability would not be taken into account when working out the obligations of the SEGC in respect of the claim;

this regulation applies for the purposes of working out those obligations.

(2) If:

(a) the SEGC is required to satisfy the claim by paying an amount; and

(b) the set‑off reduction consists of an amount;

the amount the SEGC must pay in respect of the claim is reduced by the amount of the set‑off reduction.

(3) If:

(a) the SEGC is required to satisfy the claim by paying an amount; and

(b) the set‑off reduction consists of a number of securities;

then:

(c) the SEGC must work out the value of the securities; and

(d) the amount the SEGC must pay in respect of the claim is reduced by the value worked out under paragraph (c).

(4) If:

(a) the SEGC is required to satisfy the claim by transferring securities of a particular kind; and

(b) the set‑off reduction consists of a number of securities of that kind;

the number of securities that the SEGC must transfer in respect of the claim is reduced by the number mentioned in paragraph (b).

(5) If:

(a) the SEGC is required to satisfy the claim by transferring securities of a particular kind; and

(b) the set‑off reduction consists of a number of securities that are not of that kind;

then:

(c) the SEGC must work out:

(i) the value of the securities that constitute the set‑off reduction; and

(ii) the number of securities of the kind mentioned in paragraph (a) that are equal in value to the value worked out under subparagraph (i); and

(d) the number of securities that the SEGC is required to transfer in respect of the claim is reduced by the number worked out under subparagraph (c)(ii).

(6) If:

(a) the SEGC is required to satisfy the claim by transferring securities of a particular kind; and

(b) the set‑off reduction consists of an amount of money;

then:

(c) the SEGC must work out the number of securities of that kind that are equal in value to that amount; and

(d) the number of securities that the SEGC must transfer in respect of the claim is reduced by the number worked out under paragraph (c).

7.5.78 Claimant entitled to costs and disbursements

(1) This regulation applies if the SEGC:

(a) allows a claim in whole or in part; or

(b) disallows a claim in whole in the following circumstances:

(i) the dealer compensated the claimant before the claim was determined;

(ii) the claim would have been allowed if the dealer had not compensated the claimant.

(2) The claimant is entitled to be paid out of the Fund an amount equal to the total of the reasonable costs of, and the reasonable disbursements incidental to, the making and proof of the claim.

(3) The claimant is also entitled to be paid out of the Fund an amount in respect of the claimant’s reasonable costs of, and disbursements incidental to, attempting to recover the loss.

(4) Subregulations (2) and (3) apply in addition to the claimant’s other rights under this Division.

7.5.79 Interest

(1) In addition to an amount that is payable to a person out of the Fund in respect of a claim, interest at the rate of 5% per annum or, if another rate is determined in writing by the SEGC, at that other rate, is payable to the person out of the Fund, on so much of that amount as is not attributable to costs and disbursements, in respect of the period beginning on the day on which the person became entitled to make the claim and ending on:

(a) if the SEGC has made a determination under subregulation 7.5.82(1) to pay that amount in instalments—the day on which that amount would, if no such determination had been made and the money in the Fund were unlimited, have been paid to the person; or

(b) if, because of insufficiency of the Fund, no part of that amount is paid to the person on the day on which that amount would, if the money in the Fund were unlimited, have been so paid—that day; or

(c) in any other case—the day on which that amount is paid to the person.

(2) A rate of interest determined by the SEGC for subregulation (1):

(a) must not exceed the rate that, when the determination is made, is fixed by Rules of Court for the purposes of paragraph 52(2)(a) of the *Federal Court of Australia Act 1976*; and

(b) must not be less than 5% per year.

(3) As soon as practicable after determining a rate of interest, the SEGC must publish a copy of the determination in the *Gazette*.

(4) If:

(a) under subregulation (1), interest is payable to a person on an amount in respect of a period; and

(b) that amount, or a part of that amount, remains unpaid throughout a period beginning immediately after the period mentioned in paragraph (a);

interest, in addition to that amount and that interest, is payable to the person, at the rate of 5% per annum, out of the Fund on that amount, or on that part of that amount, as the case may be, in respect of that period first mentioned in paragraph (b).

7.5.80 SEGC to notify claimant if claim disallowed

The SEGC must, after wholly or partly disallowing a claim, serve on the claimant, or on the claimant’s solicitor, notice of the disallowance using Form 721.

7.5.81 Arbitration of amount of cash settlement of certain claims

(1) If:

(a) a cash settlement provision requires the SEGC to pay an amount in respect of a claim; and

(b) the amount cannot be determined by agreement between the SEGC and the claimant;

the amount must be determined by arbitration in accordance with this regulation.

(2) If:

(a) in relation to a claim, paragraph 7.5.77(3)(c), (5)(c) or (6)(c) requires the SEGC to work out the value of securities, or the number of securities that are equal in value to another value or amount; and

(b) the value or number cannot be determined by agreement between the SEGC and the claimant;

the value or number is to be determined by arbitration in accordance with this regulation.

(3) The reference to arbitration is a reference to persons appointed, in accordance with subregulation (4), for the purposes of the reference.

(4) For the purposes of the reference to arbitration:

(a) if the claim relates to a participating market licensee—the participating market licensee must make the appointment, or the participating market licensees must jointly make the appointment; and

(aa) if the claim relates to the licensed CS facility operated by ACH—ACH must make the appointment; and

(ab) if the claim relates to a participating market licensee and to the licensed CS facility operated by ACH—the participating market licensee and ACH must jointly make the appointment; and

(b) 3 persons must be appointed; and

(c) the Minister must have approved the appointment of each person in writing; and

(d) at least 2 of the persons must not be any of the following:

(i) if the claim relates to a participating market licensee:

(A) a representative of the participating market licensee;

(B) a participant of the participating market licensee;

(C) a representative of a participant of the participating market licensee;

(ii) if the claim relates to the licensed CS facility operated by ACH:

(A) a representative of ACH;

(B) a participant of the licensed CS facility;

(C) a representative of a participant of the licensed CS facility;

(iii) if the claim relates to a participating market licensee and to the licensed CS facility operated by ACH:

(A) a representative of the participating market licensee;

(B) a participant of the participating market licensee;

(C) a representative of a participant of the participating market licensee;

(D) a representative of ACH;

(E) a participant of the licensed CS facility;

(F) a representative of a participant of the licensed CS facility;

(iv) in any case—a representative of the SEGC.

(5) If, before the commencement of this regulation, an arbitration:

(a) was to take place but had not begun; or

(b) had begun but had not been concluded;

the arbitration must take place, or continue, as if it were an arbitration under this regulation.

(6) In this regulation:

***cash settlement provision*** means any of the following provisions:

(a) regulation 7.5.28;

(b) regulation 7.5.29;

(j) regulation 7.5.57;

(k) regulation 7.5.62;

(l) subregulation 7.5.65(1);

(m) subregulation 7.5.65(2).

7.5.82 Instalment payments

(1) This regulation applies if, at a particular time, the SEGC is of the opinion that, if all the amounts that, as at that time, are payable out of the Fund in connection with claims were so paid, the Fund would be exhausted or substantially depleted.

(2) The SEGC may determine in writing that amounts so payable as at that time must be so paid in instalments of specified amounts payable on specified days.

7.5.83 Notification of payment of levies

For subsection 889J(7) of the Act, a notification to the Commonwealth of payments of levy received by the operator of a financial market as agent for the Commonwealth must:

(a) be given for each period of 6 months ending on 31 December and 30 June; and

(b) be given in writing to:

(i) the Secretary of the Department of the Treasury; or

(ii) another officer of that Department notified in writing by the Secretary to the receiver of the levy; and

(c) set out the total of the levies (if any) that became payable in the period; and

(d) set out the total of the levies (if any) received in the period; and

(e) be given not later than 2 weeks after the end of the period.

7.5.84 Notification of payment of levies

For subsection 889K(6) of the Act, a notification to the Commonwealth of payments of levy received by an operator of a financial market as agent for the Commonwealth must:

(a) be given for each period of 6 months ending on 31 December and 30 June; and

(b) be given in writing to:

(i) the Secretary of the Department of the Treasury; or

(ii) another officer of that Department notified in writing by the Secretary to the receiver of the levy; and

(c) set out the total of the levies (if any) that became payable in the period; and

(d) set out the total of the levies (if any) received in the period; and

(e) be given not later than 2 weeks after the end of the period.

Subdivision 4.11—Other provisions relating to compensation

7.5.85 Prescribed body corporate with arrangements covering clearing and settlement facility support

For subsection 891A(1) of the Act, each of the following bodies is a prescribed body corporate:

(a) ASX Settlement and Transfer Corporation Pty Limited (also known as ‘ASTC’);

(b) ACH.

7.5.85A Transitional provision for joining of Chi‑X

(1) This regulation is made for the purposes of section 891B of the Act.

(2) This regulation applies in relation to a joining market (within the meaning of that section) if:

(a) the market is operated by Chi‑X Australia Pty Ltd, or by a subsidiary of Chi‑X Australia Pty Ltd; and

(b) the day on which Chi‑X Australia Pty Ltd becomes a member of the SEGC (the ***joining day***) is on or after the commencement of this regulation.

(3) Compensation may be claimed under a provision of these Regulations set out in column 1 of the following table in respect of a loss that is:

(a) connected with the joining market; and

(b) not connected with any other financial market to which Division 4 of Part 7.5 of the Act applies;

only if the loss meets the transitional condition set out in column 2 of that table item.

| Joining of Chi‑X—transitional conditions for compensation claims | | |
| --- | --- | --- |
| Item | Column 1 Provision | Column 2 Transitional condition |
| 1 | Regulation 7.5.24, 7.5.25, 7.5.26 or 7.5.27 (about contract guarantees) | The prescribed period for the relevant reportable transaction ends on or after the joining day. |
| 2 | Regulation 7.5.54 or 7.5.55 (about unauthorised transfers) | The unauthorised execution occurs on or after the joining day. |
| 3 | Regulation 7.5.64 (about claims in respect of insolvent participants) | The time at which the dealer becomes insolvent is on or after the joining day. |

Division 5—Provisions common to both kinds of compensation arrangements

7.5.86 Excess money in National Guarantee Fund

(1) The Minister may notify the SEGC that the Minister is satisfied that:

(a) a market licensee specified in the notification is operating a financial market to which Division 4 of Part 7.5 of the Act applies; or

(b) each market licensee specified in the notification is operating a financial market to which Division 4 of Part 7.5 of the Act applies.

(2) For section 892G of the Act, if, on a day, the amount in the NGF is greater than the minimum amount identified in accordance with section 889I of the Act, the amount by which it is greater is excess money.

7.5.87 Excess money in fidelity fund

(1) For section 892G of the Act, if, on a day:

(a) a fidelity fund (other than the NGF) is the sole source of funds available to cover claims for the purposes of Division 3 arrangements; and

(b) the amount in the fidelity fund is greater than the minimum amount of cover identified in accordance with paragraph 882A(4)(a) of the Act;

the amount by which it is greater is excess money.

(2) For section 892G of the Act, if, on a day:

(a) a fidelity fund (other than the NGF) is not the sole source of funds available to cover claims for the purposes of Division 3 arrangements; and

(b) the amount in the fidelity fund is greater than the minimum amount of cover specified in accordance with paragraph 882A(4)(a) of the Act, reduced by the sum of the amounts of cover from each other source of funds available for the purposes of the same Division 3 arrangements;

the amount by which it is greater is excess money.

7.5.88 Minister’s arrangements for use of excess money from compensation funds

(1) The Minister may approve, in writing, a matter as an approved purpose for which excess money may be used by a market licensee.

(2) The matter must relate to:

(a) the creation of, or participation in, a program for the development of the financial industry that:

(i) is conducted primarily for a public benefit; and

(ii) is not conducted primarily to promote the profitability of the commercial operations of any market; or

(b) the payment of premiums for fidelity insurance or other compensation arrangements for the financial market as part of an approved compensation arrangement for Division 3 of Part 7.5 of the Act; or

(c) costs paid by the market licensee in relation to ASIC’s responsibilities for market supervision created by the *Corporations Amendment (Financial Market Supervision) Act 2010*; or

(d) the making of payments to ASIC by the market licensee in relation to ASIC’s responsibilities for market supervision created by the *Corporations Amendment (Financial Market Supervision) Act 2010*.

Examples for paragraph (2)(a):

1 Public education activities.

2 Research into future product or service needs.

3 Research and consulting services intended to improve the international performance of Australian financial markets.

4 Improvement of Australia’s role as a financial centre.

(3) The Minister may, in relation to an approved purpose, determine conditions to which the use of excess money for the approved purpose must be subject.

7.5.89 Payment of excess money from NGF

(1) If the Minister notifies the SEGC in accordance with subregulation 7.5.86(1), the SEGC may determine, in writing, that an amount of excess money specified in the determination be paid to 1 or more of the market licensees specified in the Minister’s notification.

(2) The amount must be paid in accordance with the SEGC’s determination.

(3) A market licensee that receives a payment of excess money from the NGF must pay the excess money into an account that:

(a) is kept separately from other accounts used by the market licensee; and

(b) is designated as a ‘financial industry development account’.

7.5.90 Use of excess money from NGF

(1) A market licensee that receives a payment of excess money from the NGF must use the money only:

(a) for a purpose approved under subregulation 7.5.88(1), and in accordance with any conditions to which the use of the money is subject under subregulation 7.5.88(3); or

(b) in accordance with subregulation (3); or

(c) to make a repayment to the NGF.

(2) If the market licensee contravenes subregulation (1), the market licensee must:

(a) notify the SEGC of the contravention as soon as practicable; and

(b) repay the amount involved into its financial industry development account.

(3) If there is no immediate requirement for the market licensee to use an amount of excess money in its financial industry development account:

(a) the market licensee may invest the amount in a way authorised by section 892C of the Act; and

(b) if the market licensee invests excess money during a financial year, the market licensee must pay any interest or profit from the investment into its financial industry development account.

(4) The market licensee must, in respect of each financial year during which, at any time, there is money in its financial industry development account, lodge a completed Form 719 with ASIC not later than 3 months after the end of the financial year.

7.5.91 Payment of excess money from fidelity fund

If there is excess money in a fidelity fund (other than the NGF), the market licensee to which the excess money relates may pay an amount of the excess money into an account that:

(a) is kept separately from other accounts used by the market licensee; and

(b) is designated as a ‘financial industry development account’.

7.5.92 Use of excess money from fidelity fund

(1) A market licensee that receives a payment of excess money from a fidelity fund must use the money only:

(a) for a purpose approved under subregulation 7.5.88(1), and in accordance with any conditions to which the use of the money is subject under subregulation 7.5.88(3); or

(b) in accordance with subregulation (3); or

(c) to make a repayment to the fidelity fund.

(2) If the market licensee contravenes subregulation (1), the market licensee must repay the amount involved into its financial industry development account.

(3) If there is no immediate requirement for the market licensee to use an amount of excess money in its financial industry development account:

(a) the market licensee may invest the amount in a way authorised by section 892C of the Act; and

(b) if the market licensee invests excess money during a financial year, the market licensee must pay any interest or profit from the investment into its financial industry development account.

(4) The market licensee must, in respect of each financial year during which, at any time, there is money in its financial industry development account, lodge a completed Form 719 with ASIC not later than 3 months after the end of the financial year.

7.5.93 Qualified privilege

(1) For section 892J of the Act, the following persons each have qualified privilege in respect of the publication of a statement, in accordance with Division 3 of Part 7.5 of the Act, that a contract of insurance does, or does not cover a particular participant:

(a) a market licensee;

(b) the board of the market licensee;

(c) an agent of the board of the market licensee;

(d) an employee of a market licensee.

(2) For section 892J of the Act, the following persons each have qualified privilege in respect of a notice, in accordance with Division 3 of Part 7.5 of the Act, seeking claims in relation to a particular participant of a financial market:

(a) a market licensee;

(b) the board of the market licensee;

(c) an agent of the board of the market licensee;

(d) an employee of a market licensee.

Part 7.5A~~—~~Regulation of derivative transactions and derivative trade repositories

Division 2—Regulation of derivative transactions: derivative transaction rules

Subdivision 2.1~~—~~Power to make derivative transaction rules

7.5A.30 Reporting requirements—prescribed facilities

(1) This regulation is made for paragraph 901A(6)(b) of the Act.

(2) Each facility in the following list is prescribed in relation to a class of derivatives if the facility is licensed, authorised or registered to operate as a derivative trade repository for that class of derivatives under a law of a foreign jurisdiction:

(a) DTCC Data Repository (U.S.) LLC;

(b) DTCC Derivatives Repository Ltd.;

(c) DTCC Data Repository (Japan) KK;

(d) DTCC Data Repository (Singapore) Pte Ltd;

(e) Chicago Mercantile Exchange Inc.;

(f) INFX SDR, Inc.;

(g) ICE Trade Vault, LLC;

(h) the Monetary Authority appointed under section 5A of the *Exchange Fund Ordinance* of Hong Kong;

(i) UnaVista Limited;

(j) a facility determined by ASIC for the purposes of this paragraph.

(2A) ASIC must not determine a facility under paragraph (2)(j), unless ASIC is satisfied that:

(a) either:

(i) the facility has adopted rules, procedures or processes that substantially implement the CPSS‑IOSCO Principles applicable to the regulation of derivative trade repositories; or

(ii) the foreign jurisdiction concerned has adopted legislation, policies, standards or practices that substantially implement the CPSS‑IOSCO Principles applicable to the regulation of derivative trade repositories; and

(b) adequate arrangements exist for cooperation between ASIC and an appropriate authority responsible for licensing, authorising or registering the facility as a derivative trade repository in the foreign jurisdiction.

(2B) A determination made under paragraph (2)(j):

(a) must be published by ASIC in the Gazette; and

(b) is not a legislative instrument.

(3) Paragraphs (2)(a) to (i) cease to have effect at the end of 30 June 2015.

(4) In this regulation:

***CPSS‑IOSCO Principles*** means the principles for financial market infrastructures:

(a) issued in April 2012 by the Committee on Payment and Settlement Systems (the ***CPSS***) and the International Organization of Securities Commissions (the ***IOSCO***); and

(b) as supplemented, superseded or modified from time to time by principles, recommendations or standards issued by the CPSS or IOSCO (or a successor of the CPSS or IOSCO).

7.5A.50 Persons on whom requirements cannot be imposed

(1) This regulation is made for paragraph 901D(a) of the Act.

(2) The class of persons on whom the derivative transaction rules cannot impose requirements consists of end users.

(2A) Also, the derivative transaction rules cannot impose requirements relating to a class of derivatives on financial services licensees:

(a) who are taken not to be end users only because of paragraph (3)(c); and

(b) whose Australian financial services licences do not authorise them to provide financial services in relation to that class of derivatives.

(3) An ***end user*** is a person who is not:

(a) an Australian ADI; or

(b) a CS facility licensee; or

(c) a financial services licensee; or

(d) a person:

(i) who, in this jurisdiction, provides financial services relating to derivatives to wholesale clients only; and

(ii) whose activities, relating to derivatives, are regulated by an overseas regulatory authority.

(4) This regulation does not apply to a provision of any derivative transaction rules to the extent that the provision imposes clearing requirements or requirements that are incidental or related to clearing requirements.

Subdivision 2.1A—Derivative transaction rules imposing clearing requirements

7.5A.60 Definitions for Subdivision 2.1A

(1) In this Subdivision:

***Australian clearing entity***, in relation to a derivative transaction, has the meaning given by regulation 7.5A.61.

***Derivative Transaction Rules (Reporting)*** means the *ASIC Derivative Transaction Rules (Reporting) 2013*.

***foreign clearing entity***, in relation to a derivative transaction, has the meaning given by regulation 7.5A.62.

***representative capacity***: an entity is a party to a derivative transaction, or holds a position relating to a derivative transaction, in a ***representative capacity*** if the entity is such a party, or holds such a position, in a capacity as:

(a) the responsible entity of a registered scheme; or

(b) the operator of a notified foreign passport fund; or

(c) the responsible holding party for a notified foreign passport fund; or

(d) the trustee of a trust; or

(e) the corporate director of a CCIV.

***total gross notional outstanding positions***, in relation to an entity, means an amount worked out for the entity under derivative transaction rules, in accordance with subregulation (2).

(2) For the purposes of this Subdivision, derivative transaction rules may:

(a) set out a method for working out the total gross notional outstanding positions held by an entity in a representative capacity, or otherwise; and

(b) provide for an entity that starts, or stops, meeting a threshold referred to in subparagraph 7.5A.61(1)(a)(ii), 7.5A.62(1)(a)(ii) or (b)(iv) to be taken to meet, or not to meet, the threshold for transitional purposes specified by the rules.

7.5A.61 Meaning of *Australian clearing entity*

(1) An entity is an ***Australian clearing entity***, in relation to a derivative transaction to which it is a party otherwise than in a representative capacity, if:

(a) the entity is an Australian ADI, or a financial services licensee, that:

(i) is incorporated or formed in Australia; and

(ii) holds $100 billion or more in total gross notional outstanding positions otherwise than in a representative capacity; or

(b) the entity is any other entity that:

(i) is incorporated or formed in Australia; and

(ii) has, in accordance with any derivative transaction rules, opted to be treated, for the purposes of those rules, as an Australian clearing entity in relation to derivative transactions to which the entity is a party otherwise than in a representative capacity.

(2) An entity is an ***Australian clearing entity*** in relation to a derivative transaction to which it is a party in a representative capacity in the circumstances set out in derivative transaction rules.

7.5A.62 Meaning of *foreign clearing entity*

(1) An entity is a ***foreign clearing entity***, in relation to a derivative transaction to which it is a party otherwise than in a representative capacity, if:

(a) the entity is an ADI, or a financial services licensee, that:

(i) is incorporated or formed outside Australia; and

(ii) holds $100 billion or more in total gross notional outstanding positions otherwise than in a representative capacity; or

(b) the entity:

(i) is incorporated or formed outside Australia; and

(ii) in this jurisdiction, provides financial services relating to derivatives to wholesale clients only; and

(iii) is exempt under the Act (including these Regulations, or another instrument made under or for the purposes of the Act) from the requirement to hold a financial services licence for those financial services; and

(iv) is an entity whose activities relating to derivatives are regulated by an overseas regulatory authority; and

(v) holds $100 billion or more in total gross notional outstanding positions otherwise than in a representative capacity; or

(c) the entity is any other entity that:

(i) is incorporated or formed outside Australia; and

(ii) has, in accordance with any derivative transaction rules, opted to be treated, for the purposes of those rules, as a foreign clearing entity in relation to derivative transactions to which it is a party otherwise than in a representative capacity.

(2) An entity is a ***foreign clearing entity*** in relation to a derivative transaction to which it is a party in a representative capacity in the circumstances set out in the derivative transaction rules.

7.5A.63 Clearing requirements—prescribed facilities

(1) This regulation is made for paragraph 901A(7)(b) of the Act.

(2) Each facility in the following list is prescribed in relation to all derivatives:

(a) CME Clearing Europe Limited;

(b) Eurex Clearing AG;

(c) Japan Securities Clearing Corporation;

(d) NASDAQ OMX Clearing AB;

(e) OTC Clearing Hong Kong Limited.

(3) A facility determined by ASIC for the purposes of this subregulation is prescribed in relation to the class of derivatives specified in the determination.

(4) ASIC may, by notifiable instrument, determine a facility for the purposes of subregulation (3) in relation to a specified class of derivatives, but only if ASIC is satisfied that:

(a) the facility’s principal place of business is located in a foreign country; and

(b) the facility is authorised to operate as a central counterparty for the specified class of derivatives in that country; and

(c) the regulatory regime in the facility’s principal place of business has substantially implemented the CPSS‑IOSCO Principles applicable to the regulation of central counterparties; and

(d) adequate arrangements exist for ASIC and the Reserve Bank of Australia to have access to information about the level of clearing activity by participants that are incorporated or formed in Australia, in relation to derivatives that are subject to clearing requirements under the derivative transaction rules.

(6) In this regulation:

***CPSS‑IOSCO Principles*** means the principles for financial market infrastructures:

(a) issued in April 2012 by the Committee on Payment and Settlement Systems (the CPSS) and the International Organization of Securities Commissions (the IOSCO); and

(b) as supplemented, superseded or modified from time to time by principles, recommendations or standards issued by the CPSS or IOSCO (or a successor of the CPSS or IOSCO).

7.5A.64 Persons on whom clearing requirements cannot be imposed

(1) This regulation is made for paragraph 901D(a) of the Act.

(2) The derivative transaction rules cannot impose clearing requirements in relation to a derivative transaction on a person who is not:

(a) an Australian clearing entity in relation to the transaction; or

(b) a foreign clearing entity in relation to the transaction.

Example: This regulation prevents the derivative transaction rules imposing clearing requirements on, among other things, a range of foreign public entities including the following (subject to paragraphs (2)(a) and (b)):

(a) central banks;

(b) Government debt offices;

(c) multilateral development banks;

(d) the Bank for International Settlements and other similar international organisations.

7.5A.65 Circumstances in which clearing requirements can be imposed

(1) This regulation is made for paragraph 901D(b) of the Act.

(2) The derivative transaction rules can only impose clearing requirements in relation to a derivative transaction on an entity that is an Australian clearing entity in relation to the transaction if the other party to the transaction is:

(a) an Australian clearing entity in relation to the transaction; or

(b) a foreign clearing entity in relation to the transaction; or

(c) a foreign internationally active dealer.

(3) The derivative transaction rules can only impose clearing requirements in relation to a derivative transaction on an entity that is a foreign clearing entity in relation to the transaction if the other party to the transaction is:

(a) an Australian clearing entity in relation to the transaction; or

(b) a foreign clearing entity in relation to the transaction; or

(c) a foreign internationally active dealer.

(4) In this regulation:

***foreign internationally active dealer*** means any foreign entity, other than a foreign clearing entity, that is registered or provisionally registered as:

(a) a swap dealer with the Commodity Futures Trading Commission of the United States of America; or

(b) a securities‑based swap dealer with the Securities and Exchange Commission of the United States of America.

Subdivision 2.1B—Phase 3 reporting entities—exemption from OTC derivative reporting requirements

7.5A.70 Definitions for Subdivision 2.1B

In this Subdivision:

***ASIC exemption instrument*** means *ASIC Instrument [14/0633]*.

***Derivative Transaction Rules (Reporting)*** means the *ASIC Derivative Transaction Rules (Reporting) 2013*.

***OTC derivative*** (short for over‑the‑counter derivative) means an OTC Derivative within the meaning of the Derivative Transaction Rules (Reporting).

***OTC derivative position*** means a position relating to an OTC derivative transaction.

***OTC derivative position information*** means Derivative Position Information within the meaning of the Derivative Transaction Rules (Reporting), as in force on 1 October 2015, about OTC derivative positions.

***OTC derivative transaction*** means a derivative transaction relating to an OTC derivative.

***phase 3 reporting entity*** means a Phase 3 Reporting Entity within the meaning of the ASIC exemption instrument as in force on 1 October 2015.

***reporting counterparty***: see regulation 7.5A.72.

***reporting entity*** means a Reporting Entity within the meaning of the Derivative Transaction Rules (Reporting), as in force on 1 October 2015.

***representative capacity***: an entity is a party to an OTC derivative transaction, or holds an OTC derivative position, in a ***representative capacity*** if the entity is such a party, or holds such a position, in a capacity as:

(a) the responsible entity of a registered scheme; or

(b) the operator of a notified foreign passport fund; or

(c) the responsible holding party for a notified foreign passport fund; or

(d) the trustee of a trust; or

(e) the corporate director of a CCIV.

***total gross notional outstanding positions***, in relation to a phase 3 reporting entity, has a meaning affected by the ASIC exemption instrument, as in force on 1 October 2015.

7.5A.71 Exemption—single‑sided transaction and position reporting

(1) This regulation is made for paragraph 907E(2)(a) of the Act.

Exemptions

(2) A phase 3 reporting entity is exempt from a provision of the Derivative Transaction Rules (Reporting) requiring the entity, at a particular time, to report information about an OTC derivative transaction to which the entity is a party if, at that time:

(a) regulation 7.5A.73 applies to the entity in relation to the transaction; and

(b) the other party to the transaction is a reporting counterparty in relation to the phase 3 reporting entity and the information.

(3) A phase 3 reporting entity is exempt from a provision of the Derivative Transaction Rules (Reporting) requiring the entity, at a particular time, to report OTC derivative position information in relation to an OTC derivative position to which the entity is a party if, at that time:

(a) regulation 7.5A.73 applies to the entity in relation to the position; and

(b) the other party to the position is a reporting counterparty in relation to the phase 3 reporting entity and the information.

Effect of exemption on ASIC exemption instrument

(4) Subregulation (5) applies if a phase 3 reporting entity is exempt under this regulation from a provision of the Derivative Transaction Rules (Reporting) requiring the entity to report information about a particular OTC derivative transaction or OTC derivative position.

(5) The entity is also exempt from subsection 907D(3) of the Act in relation to a provision of the ASIC exemption instrument that imposes a requirement to report information about the transaction or position as a condition of an exemption under that instrument.

7.5A.72 Reporting counterparties

(1) This regulation sets out, for the purposes of regulation 7.5A.71, the circumstances in which an entity (the ***other entity***) is a ***reporting counterparty*** in relation to:

(a) a phase 3 reporting entity that proposes to rely on an exemption in that regulation (the ***exempt entity***); and

(b) information that is:

(i) information about an OTC derivative transaction; or

(ii) OTC derivative position information.

Reporting entities

(2) The other entity is a ***reporting counterparty*** in relation to the exempt entity and the information if:

(a) the other entity has made a representation to the exempt entity:

(i) that the other entity is a reporting entity, other than a phase 3 reporting entity, that is required to report such information under the Derivative Transaction Rules (Reporting); or

(ii) that the other entity is a phase 3 reporting entity that is required to report such information under the Derivative Transaction Rules (Reporting), and that regulation 7.5A.73 does not apply to the other entity in relation to such OTC derivative transactions or OTC derivative positions; and

(b) the exempt entity makes regular enquiries reasonably designed to determine whether the representation is correct; and

(c) the exempt entity has no reason to suspect that the representation is incorrect.

(3) The other entity is a ***reporting counterparty*** in relation to the exempt entity and the information if:

(a) the other entity has made the following representations to the exempt entity:

(i) that the other entity is a reporting entity;

(ii) that the other entity will report such information in accordance with the Derivative Transaction Rules (Reporting); and

(b) the exempt entity makes regular enquiries reasonably designed to determine whether the other entity has been making reports in accordance with the representation referred to in subparagraph (a)(ii); and

(c) the exempt entity has no reason to suspect that the other entity has not been making such reports.

Foreign entities

(4) The other entity is a ***reporting counterparty*** in relation to the exempt entity and the information if:

(a) the other entity is a foreign entity; and

(b) the other entity has made the following representations to the exempt entity:

(i) that the other entity is subject to reporting requirements (***alternative reporting requirements***) in one or more foreign jurisdictions that are substantially equivalent to requirements under the Derivative Transaction Rules (Reporting);

(ii) that the other entity will report such information to a facility prescribed by or under subregulation 7.5A.30(2), in accordance with the alternative reporting requirements;

(iii) that the other entity will designate such information reported to that facility as information that has been reported in accordance with the Derivative Transaction Rules (Reporting); and

(c) the exempt entity makes regular enquiries reasonably designed to determine whether the other entity has been making reports in accordance with the representations referred to in subparagraphs (b)(ii) and (iii); and

(d) the exempt entity has no reason to suspect that the other entity has not been making such reports.

(5) The other entity is a ***reporting counterparty*** in relation to the exempt entity and the information if:

(a) the other entity is a foreign entity; and

(b) the other entity has made the following representations to the exempt entity:

(i) that the other entity will report such information to a licensed derivative trade repository in accordance with the Derivative Transaction Rules (Reporting);

(ii) that the other entity will designate such information reported to that repository as information that has been reported in accordance with the Derivative Transaction Rules (Reporting); and

(c) the exempt entity makes regular enquiries reasonably designed to determine whether the other entity has been making reports in accordance with the representations referred to in paragraph (b); and

(d) the exempt entity has no reason to suspect that the other entity has not been making such reports.

Subregulations do not limit each other

(6) Subregulations (2), (3), (4) and (5) do not limit each other.

7.5A.73 Application of exemptions

New phase 3 reporting entities

(1) For the purposes of regulations 7.5A.71 and 7.5A.72, this regulation applies to a new phase 3 reporting entity, in relation to an OTC derivative transaction or an OTC derivative position, at all times during a period:

(a) starting on the day the entity becomes a phase 3 reporting entity; and

(b) ending at the end of the quarter day that next follows 2 successive disqualifying quarter days for the entity.

Example: An entity becomes a phase 3 reporting entity on 1 November 2015. However, 31 December 2015 and 31 March 2016 are both disqualifying quarter days for the entity.

This regulation applies to the entity during a period starting on 1 November 2015 and ending at the end of 30 June 2016 (the quarter day that next follows the disqualifying quarter days on 31 December 2015 and 31 March 2016).

Continuing phase 3 reporting entities

(2) For the purposes of regulations 7.5A.71 and 7.5A.72, this regulation applies to a continuing phase 3 reporting entity, in relation to an OTC derivative transaction or an OTC derivative position, at all times during a period:

(a) starting on the day after the quarter day that next follows 2 successive qualifying quarter days for the entity; and

(b) ending at the end of the quarter day that next follows 2 successive disqualifying quarter days for the entity.

Example: An entity becomes a phase 3 reporting entity on 1 November 2015. However, 31 December 2015 and 31 March 2016 are both disqualifying quarter days for the entity, so this regulation stops applying under subregulation (1) at the end of 30 June 2016.

30 June 2016 and 30 September 2016 are qualifying quarter days for the entity. This regulation applies to the entity again during the period starting on 1 January 2017 (the day after the quarter day that next follows the qualifying quarter days) and ending as provided for by paragraph (2)(b).

(3) In this regulation:

***continuing phase 3 reporting entity*** means:

(a) an entity that was a phase 3 reporting entity on 30 September 2015; or

(b) a new phase 3 reporting entity for which the period mentioned in subregulation (1) has ended.

Note: For when this regulation first applies to an entity that was a phase 3 entity on 30 September 2015, see regulation 10.21.01.

***disqualifying quarter day***, for an entity, means a quarter day at the end of which the total gross notional outstanding positions held by the entity in the relevant capacity is 5 billion Australian dollars or more.

***new phase 3 reporting entity*** means an entity that becomes a phase 3 reporting entity on or after 1 October 2015.

***qualifying quarter day***, for an entity, means a quarter day at the end of which the total gross notional outstanding positions held by the entity in the relevant capacity is less than 5 billion Australian dollars.

***relevant capacity***: a position is held by the entity in the ***relevant capacity***, for the purpose of the definition of ***qualifying quarter day*** or ***disqualifying quarter day*** in this subregulation, if:

(a) the position is held by the entity otherwise than in a representative capacity, in the following circumstances:

(i) in a case in which the relevant definition is applied in relation to an OTC derivative transaction to which the entity is a party otherwise than in a representative capacity;

(ii) in a case in which the relevant definition is applied in relation to an OTC derivative held by the entity otherwise than in a representative capacity; or

(b) the position is held by the entity in a representative capacity in relation to a particular registered scheme, notified foreign passport fund, trust or CCIV, in the following circumstances:

(i) in a case in which the relevant definition is applied in relation to an OTC derivative transaction to which the entity is a party in that capacity;

(ii) in a case in which the relevant definition is applied in relation to an OTC derivative held by the entity in that capacity.

7.5A.74 Reporting requirement—exemption stops applying

Scope

(1) This regulation applies to a phase 3 reporting entity, in relation to an OTC derivative transaction or an OTC derivative position, if:

(a) regulation 7.5A.73 applies in relation to the entity, in relation to the transaction or position, during a particular period, and the period has ended (at the ***exemption end time*)**; and

(b) the entity is a counterparty to the relevant OTC derivative (including the derivative as modified) at the exemption end time; and

(c) in reliance on an exemption under regulation 7.5A.71 (the ***applicable exemption***), the entity does not report OTC derivative position information (the ***exempt information***) in relation to the transaction or position during that period; and

(d) if it were not for the applicable exemption, the entity would have been required to report the exempt information under:

(i) the Derivative Transaction Rules (Reporting); or

(ii) subsection 907D(3) of the Act, in relation to a provision of the ASIC exemption instrument that imposes a requirement, as a condition of an exemption under that instrument, to report that information.

Single‑sided reporting requirement

(2) Despite the applicable exemption, the entity must report OTC derivative position information in relation to the OTC derivative, as at the exemption end time, in accordance with the Derivative Transaction Rules (Reporting), within 6 months after the exemption end time.

(3) If the entity fails to comply with subregulation (2), the applicable exemption is taken never to have applied to the entity in relation to the transaction or position.

Subdivision 2.2—Enforceable undertakings

7.5A.101 Enforceable undertakings

(1) This regulation is made for paragraphs 901F(1)(d) and 903E(1)(d) of the Act.

(2) ASIC may accept a written undertaking, entered into by a person who is alleged to have contravened section 901E or 903D of the Act, as an alternative to civil proceedings.

(3) Without limiting subregulation (2), ASIC may accept an undertaking that includes any of the following:

(a) an undertaking to take specified action within a specified period;

(b) an undertaking to refrain from taking specified action;

(c) an undertaking to pay a specified amount within a specified period to the Commonwealth or to some other specified person.

Note:An undertaking may relate to an infringement notice given in relation to the alleged contravention. For example, an infringement notice may require a person to enter into an undertaking; a person may enter into an undertaking to comply with an infringement notice; a person may enter into an undertaking if the person does not comply with an infringement notice or the infringement notice is withdrawn.

(4) If ASIC agrees, in writing, to the withdrawal or variation of the undertaking, the person who entered into the undertaking may withdraw or vary the undertaking.

(5) If ASIC is satisfied that the person who entered into the undertaking has breached a term of the undertaking, ASIC may apply to a Court for an order under subregulation (6).

(6) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make one or more of the following orders:

(a) an order directing the person to comply with the term of the undertaking;

(b) an order directing the person to pay to the Commonwealth an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) an order directing the person to compensate another person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

(7) This regulation does not affect the liability of a person to civil proceedings if ASIC does not accept an undertaking in relation to the alleged contravention of section 901E or 903D of the Act.

Subdivision 2.3—Infringement notices

7.5A.102 Infringement notices

(1) This Subdivision is made for sections 901F and 903E of the Act.

(2) This Subdivision does not require ASIC to give an infringement notice to a person in relation to the alleged contravention of those sections.

(3) This Subdivision does not affect the liability of a person to civil proceedings if ASIC does not give an infringement notice to the person in relation to the alleged contravention of those sections.

(4) This Subdivision does not affect the liability of a person to civil proceedings if:

(a) ASIC gives an infringement notice to the person in relation to the alleged contravention of those sections; and

(b) either:

(i) the notice is withdrawn; or

(ii) the person does not comply with the notice in accordance with regulation 7.5A.108.

(5) This Subdivision does not limit or otherwise affect the penalty that a Court could impose on the person for a contravention of those sections.

7.5A.103 Definitions for Subdivision

In this Subdivision:

***compliance period*** has the meaning given by subregulation 7.5A.108(2).

***infringement notice*** means an infringement notice given under regulation 7.5A.104.

***recipient***, in relation to an infringement notice, means the person to whom ASIC gives the infringement notice or intends to give the infringement notice under regulation 7.5A.104.

***rule*** means a provision of:

(a) the derivative transaction rules mentioned in section 901E of the Act; or

(b) derivative trade repository rules mentioned in section 903D of the Act.

7.5A.104 When infringement notice can be given

(1) If ASIC has reasonable grounds to believe that a person has contravened a rule, ASIC may give the person an infringement notice in relation to the alleged contravention.

(2) ASIC may give a person an infringement notice that is in relation to more than one alleged contravention of a rule.

(3) If ASIC withdraws an infringement notice given to a person in relation to the alleged contravention of a rule, ASIC may give the person a new infringement notice in relation to the alleged contravention.

Example: An infringement notice given to a person in relation to an alleged contravention of a rule may be withdrawn, and a new infringement notice given to the person in relation to that alleged contravention, if the original infringement notice contained an error.

7.5A.105 Statement of reasons must be given

(1) Before giving a recipient an infringement notice, ASIC must:

(a) give the recipient a written statement that sets out ASIC’s reasons for believing that the recipient has contravened a rule; and

(b) give the recipient, or a representative of the recipient, an opportunity to:

(i) appear at a private hearing before ASIC; and

(ii) give evidence to ASIC; and

(iii) make submissions to ASIC;

in relation to the alleged contravention of the rule.

(2) If a recipient, or a representative of a recipient, gives ASIC evidence or information under paragraph (1)(b), the evidence or information is not admissible in evidence in any proceedings against the recipient, other than proceedings relating to the evidence or information being false or misleading.

7.5A.106 Contents of infringement notice

An infringement notice:

(a) must state the date on which it is given; and

(b) must be identified by a unique code; and

(c) must state the name and address of the recipient; and

(d) must state that it is being given by ASIC under regulation 7.5A.104; and

(e) must specify details of each alleged contravention of the rule to which the infringement notice relates, including:

(i) the conduct that made up each alleged contravention (including, to the extent known, the date on which it occurred and the place at which it occurred); and

(ii) each rule that ASIC alleges the recipient has contravened; and

(f) must, in relation to each rule that ASIC alleges the recipient has contravened, state the maximum pecuniary penalty that a Court could order the recipient to pay for contravening the rule; and

(g) must, in relation to each alleged contravention of the rule to which the infringement notice relates:

(i) specify the penalty (if any) payable for each alleged contravention of the rule; and

(ii) if subparagraph (i) applies:

(A) specify the total penalty that the recipient must pay to the Commonwealth; and

(B) state that the penalty is payable to ASIC on behalf of the Commonwealth; and

(C) explain how payment of the penalty can be made; and

(iii) specify the remedial measures (if any) that the recipient must undertake or institute; and

(iv) specify the sanctions (if any) that the recipient must accept; and

(v) specify the terms of an undertaking (if any) that the recipient must enter into under regulation 7.5A.101; and

(h) must state that the recipient may choose not to comply with the infringement notice, but that if the recipient does not comply, civil proceedings may be brought against the recipient in relation to the alleged contravention; and

(i) must explain what the recipient must do to comply with the infringement notice and the effect of compliance with the infringement notice; and

(j) must state that the recipient may apply to ASIC:

(i) for withdrawal of the notice under regulation 7.5A.111; or

(ii) for an extension of time under regulation 7.5A.109; and

(k) must state that ASIC may publish details of the infringement notice under regulation 7.5A.115; and

(l) may include any other information that ASIC considers necessary.

Note: For sub‑subparagraph (g)(ii)(A), the total penalty is the sum of the penalties payable under subparagraph (g)(i).

7.5A.107 Amount of penalty payable to the Commonwealth

(1) The penalty payable (if any) for an alleged contravention of a rule is the amount determined by ASIC.

Note: See subsections 901F(2) and 903E(2) of the Act for the maximum penalty payable.

(2) If an infringement notice is in relation to more than one alleged contravention of a rule, the total penalty payable under the infringement notice is the sum of the penalties payable (if any) for the alleged contraventions.

7.5A.108 Compliance with infringement notice

(1) A recipient complies with an infringement notice if, during the compliance period, the recipient does all of the following:

(a) pays the penalty specified in the infringement notice under sub‑subparagraph 7.5A.106(g)(ii)(A) (if any);

(b) undertakes or institutes the remedial measures specified in the infringement notice under subparagraph 7.5A.106(g)(iii) (if any);

(c) accepts the sanctions specified in the infringement notice under subparagraph 7.5A.106(g)(iv) (if any);

(d) enters into an undertaking (including an undertaking to comply with the infringement notice) with the terms specified in the infringement notice under subparagraph 7.5A.106(g)(v) (if any).

(2) The ***compliance period*** for an infringement notice:

(a) starts on the day on which the infringement notice is given to the recipient; and

(b) ends:

(i) 27 days after the day on which the infringement notice is given to the recipient; or

(ii) on another day permitted by this regulation.

(3) If the recipient applies for a further period of time in which to comply with the infringement notice, and the application is granted, the compliance period ends at the end of the further period allowed.

(4) If the recipient applies for a further period of time in which to comply with the infringement notice, and the application is refused, the compliance period ends on the later of:

(a) 28 days after the day on which the infringement notice was given to the recipient; and

(b) 7 days after the notice of refusal is given to the recipient.

(5) If the recipient applies for the infringement notice to be withdrawn, and the application is refused, the compliance period ends 28 days after the notice of refusal is given to the recipient.

7.5A.109 Extension of compliance period

(1) During the compliance period, a recipient may apply, in writing, to ASIC for a further period of no more than 28 days in which to comply with the infringement notice.

(2) The application must:

(a) specify the infringement notice’s unique code; and

(b) set out the reasons for the application.

(3) Within 14 days after receiving the application, ASIC must:

(a) grant or refuse a further period no longer than the period sought (and no more than 28 days); and

(b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.

(4) If ASIC refuses a further period under paragraph (3)(a), the recipient may not make a further application under subregulation (1) in relation to that infringement notice.

(5) If ASIC has not granted or refused a further period under paragraph (3)(a) within 14 days after receiving the application, ASIC is taken to have refused the further period.

7.5A.110 Effect of compliance with infringement notice

(1) Subject to subregulation (3), if:

(a) an infringement notice is given to a recipient in relation to an alleged contravention of a rule; and

(b) the infringement notice is not withdrawn; and

(c) the recipient complies with the infringement notice;

the effects in subregulation (2) apply.

(2) The effects are:

(a) any liability of the recipient to the Commonwealth for the alleged contravention of the rule is discharged; and

(b) no civil or criminal proceedings may be brought or continued by the Commonwealth against the recipient for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of the rule; and

(c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against the recipient for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of the rule; and

(d) the recipient is not taken to have admitted guilt or liability in relation to the alleged contravention; and

(e) the recipient is not taken to have contravened the rule.

Note: Third parties are not prevented from commencing civil proceedings against the recipient, including under section 1101B of the Act. ASIC is not prevented from applying for an order on behalf of a plaintiff in accordance with the Act.

(3) Subregulation (2) does not apply if the recipient has knowingly:

(a) provided false or misleading information to ASIC; or

(b) withheld evidence or information from ASIC;

in relation to the alleged contravention of the rule.

7.5A.111 Application to withdraw infringement notice

(1) During the compliance period, a recipient of an infringement notice may apply, in writing, to ASIC for the infringement notice to be withdrawn.

(2) The application must:

(a) specify the infringement notice’s unique code; and

(b) set out the reasons for the application.

(3) Within 14 days after receiving the application, ASIC must:

(a) withdraw or refuse to withdraw the infringement notice; and

(b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.

(4) Without limiting subregulation (3), ASIC may withdraw the infringement notice after taking into account the following matters:

(a) whether the recipient has previously been found to have contravened the rule to which the notice relates;

(b) the circumstances in which the contravention set out in the infringement notice is alleged to have occurred;

(c) whether an infringement notice has previously been given to the recipient in relation to an alleged contravention of the rule to which the notice relates, and whether the recipient complied with the infringement notice;

(d) any other relevant matter.

(5) If, under paragraph (3)(a), ASIC refuses to withdraw the infringement notice, the recipient may not make a further application under subregulation (1) in relation to that infringement notice.

(6) If ASIC has not withdrawn, or refused to withdraw, the infringement notice within 14 days after receiving the application, ASIC is taken to have refused to withdraw the infringement notice.

7.5A.112 Withdrawal of infringement notice by ASIC

(1) ASIC may withdraw an infringement notice given by ASIC without an application under regulation 7.5A.111 having been made.

(2) Without limiting subregulation (1), ASIC may withdraw the infringement notice after taking into account a matter mentioned in paragraph 7.5A.111(4)(a), (b), (c) or (d).

7.5A.113 Notice of withdrawal of infringement notice

(1) A notice withdrawing an infringement notice must include the following information:

(a) the name and address of the recipient;

(b) the date the infringement notice was given;

(c) the infringement notice’s unique code.

(2) The notice must also state that the infringement notice is withdrawn.

7.5A.114 Withdrawal of notice after compliance

(1) ASIC may withdraw an infringement notice after the recipient has complied with the infringement notice only if the recipient agrees, in writing, to the withdrawal.

(2) If an infringement notice is withdrawn after the penalty specified in it (if any) has been paid, the Commonwealth must refund the amount of the penalty to the person who paid it.

(3) If an infringement notice is withdrawn after the recipient has complied with a requirement specified in the infringement notice:

(a) to undertake or institute remedial measures; or

(b) to accept sanctions other than a payment of a penalty to the Commonwealth; or

(c) to enter into an undertaking;

the remedial measures, sanctions or undertaking are taken to no longer be enforceable by ASIC.

7.5A.115 Publication of details of infringement notice

(1) If ASIC gives an infringement notice to a recipient, ASIC may, at the end of the compliance period, publish details of the infringement notice.

(2) If ASIC decides to publish details of the infringement notice, ASIC must publish the details in accordance with either or both of subregulations (3) and (4).

(3) ASIC may publish details of an infringement notice by publishing in the *Gazette*:

(a) a copy of the infringement notice; and

(b) the following statements:

(i) a statement as to whether the recipient has complied with the infringement notice;

(ii) if the recipient has complied with the infringement notice, a statement that:

(A) compliance is not an admission of guilt or liability; and

(B) the recipient is not taken to have contravened the rule;

(iii) if the recipient has not complied with the infringement notice, a statement that:

(A) the giving of an infringement notice to a recipient is only an allegation that the recipient has contravened the rule; and

(B) the recipient is not taken to have contravened the rule.

(4) ASIC may publish details of an infringement notice by issuing a written or oral statement that:

(a) includes an accurate summary of the details of the infringement notice, including:

(i) the name of the recipient; and

(ii) the amount of the penalty specified in the infringement notice (if any); and

(iii) the remedial measures specified in the infringement notice (if any); and

(iv) the sanctions specified in the infringement notice (if any); and

(v) the terms of an undertaking specified in the infringement notice (if any); and

(vi) the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of the rule; and

(b) includes the following statements:

(i) a statement as to whether the recipient has complied with the infringement notice;

(ii) if the recipient has complied with the infringement notice, a statement that:

(A) compliance is not an admission of guilt or liability; and

(B) the recipient is not taken to have contravened the rule;

(iii) if the recipient has not complied with the infringement notice, a statement that:

(A) the giving of an infringement notice to a recipient is only an allegation that the recipient has contravened the rule; and

(B) the recipient is not taken to have contravened the rule.

Division 5—Regulation of licensed derivative trade repositories: other obligations and powers

7.5A.150 Obligations and powers—confidential information

(1) This regulation is made for subsection 903A(5) of the Act and applies to information given to ASIC, by the operator (or an officer of the operator) of a licensed derivative trade repository, under a provision of:

(a) Part 7.5A of the Act; or

(b) the regulations made for that Part; or

(c) the derivative transaction rules or derivative trade repository rules.

(2) The information is taken, for the purpose of section 127 (confidentiality) of the ASIC Act, to be given to ASIC in confidence in connection with the performance of ASIC’s functions under the Act, unless:

(a) the information has been made publicly available in accordance with the provisions mentioned in paragraph (1)(a), (b) or (c); or

(b) a law requires or permits the information to be released.

7.5A.150A European Union requests for derivative trade data

(1) For paragraph 904B(2)(d) of the Act, the persons or bodies mentioned in Article 81(3)(a) to (e), (g), (h) and (j) of Regulation (EU) No 648/2012 of the European Parliament and the Council of the European Union, dated 4 July 2012, may request a derivative trade repository licensee to provide the person or body with derivative trade data that is retained in the derivative trade repository.

(2) For subsection 904B(4) of the Act, information must not be included in derivative trade data provided in response to a request under subregulation (1) unless:

(a) the information relates to a transaction or position that is required to be reported under either of the following:

(i) rules made under paragraph 901A(2)(b) of the *Corporations Act 2001*;

(ii) the conditions of an exemption given under section 907D of the *Corporations Act 2001*; and

(b) subregulation (3) or (4) applies.

(3) This subregulation applies if the information relates to a transaction or position that would, but for mutual regulatory recognition arrangements, be required to be reported under one or more of the following:

(a) Regulation (EU) No 648/2012 of the European Parliament and the Council of the European Union dated 4 July 2012;

(b) Commission Implementing Regulation (EU) No 1247/2012 of the European Parliament and the Council of the European Union, dated 19 December 2012;

(c) Commission Delegated Regulation (EU) No 148/2013 of the European Commission, dated 19 December 2012.

(4) This subregulation applies if the information:

(a) relates to a European Union or European Economic Area underlying asset, index, rate or currency; and

(b) is not covered by subregulation (3).

7.5A.150B Other requests for derivative trade data

(1) For paragraph 904B(2)(d) of the Act, each of the following persons or bodies may request a derivative trade repository licensee to provide it with derivative trade data that is retained in the derivative trade repository:

(a) the Bank of England;

(b) the Financial Conduct Authority of the United Kingdom;

(c) the Monetary Authority of Singapore.

(2) A request under subregulation (1) must be made in accordance with the standards set out in the report “Authorities’ access to trade repository data”:

(a) issued jointly by the Committee on Payment and Settlement Systems (the ***CPSS***) and the International Organization of Securities Commissions (the ***IOSCO***); and

(b) as supplemented, superseded or modified from time to time by principles, recommendations or standards issued by the CPSS or IOSCO (or a successor of the CPSS or IOSCO).

(3) If part of a request under subregulation (1) is made in accordance with the standards mentioned in subregulation (2), the part is taken to be a request for the purpose of this regulation.

(4) For subsection 904B(4) of the Act, information must not be included in derivative trade data provided to a person or body in response to a request under subregulation (1) unless:

(a) the information relates to a transaction or position that is required to be reported under either of the following:

(i) rules made under paragraph 901A(2)(b) of the *Corporations Act 2001*;

(ii) the conditions of an exemption given under section 907D of the *Corporations Act 2001*; and

(b) subregulation (5) or (6) applies.

(5) This subregulation applies if the information:

(a) relates to a transaction or position that is, or would be, but for mutual regulatory recognition arrangements, required to be reported under the laws of the jurisdiction in which the person or body is located; and

(b) is required by the person or body as part of the performance of its functions or exercise of its powers.

(6) This subregulation applies if the information:

(a) either:

(i) relates to an underlying asset, index, rate or currency of the jurisdiction in which the person or body is located; or

(ii) relates to a counterparty located in the jurisdiction in which the person or body is located; and

(b) is required by the person or body as part of the performance of its functions or exercise of its powers; and

(c) is not covered by subregulation (5).

7.5A.151 Obligations relating to derivative trade data

For subparagraph 904B(5)(b)(i) of the Act, every derivative trade repository licensee is excused from complying with a request for derivative trade data under paragraph 904B(2)(e) of the Act.

7.5A.200 ASIC may assess licensee’s compliance

(1) This regulation is made for paragraph 904J(4)(d) of the Act.

(2) The following persons or bodies are prescribed for that paragraph:

(a) the Clean Energy Regulator;

(b) the Australian Competition and Consumer Commission;

(c) the Australian Prudential Regulation Authority;

(d) the Australian Taxation Office;

(e) the Australian Transaction Reports and Analysis Centre;

(f) an authority of a State or Territory having functions and powers similar to those of the Director of Public Prosecutions;

(g) the police force or service of each State and the Northern Territory;

(h) Consumer Protection, Western Australia;

(i) the Commissioner of State Revenue of Western Australia;

(j) NSW Fair Trading;

(k) Consumer Affairs Victoria;

(l) the State Revenue Office of Victoria;

(m) the Office of Fair Trading of Queensland;

(n) the Office of State Revenue of Queensland;

(o) Consumer and Business Services, South Australia;

(p) Consumer Affairs and Fair Trading, Tasmania;

(q) the Department of Treasury and Finance of Tasmania;

(r) the Office of Regulatory Services of the Australian Capital Territory;

(s) Consumer Affairs, the Northern Territory.

Division 7—Regulation of prescribed derivative trade repositories

7.5A.250 Obligations and powers—confidential information

(1) This regulation is made for subsection 906A(3) of the Act and applies to information given to ASIC, by the operator (or an officer of the operator) of a prescribed derivative trade repository, under a provision of:

(a) Part 7.5A of the Act; or

(b) the regulations made for that Part; or

(c) the derivative transaction rules or derivative trade repository rules.

(2) The information is taken, for the purpose of section 127 (confidentiality) of the ASIC Act, to be given to ASIC in confidence in connection with the performance of ASIC’s functions under the Act, unless:

(a) the information has been made publicly available in accordance with the provisions mentioned in paragraph (1)(a), (b) or (c); or

(b) a law requires or permits the information to be released.

Division 8—Other matters

7.5A.270 Record‑keeping

(1) This regulation is made for paragraph 854A(1)(b) of the Act.

(2) A derivative trade repository licensee must keep the following records:

(a) a list of names and contact details of each director, secretary and senior manager of the licensee;

(b) a list of names and contact details of individuals who hold more than 15% of the voting power in the licensee.

(3) The licensee must keep the records for at least 5 years.

Part 7.6—Licensing of providers of financial services

7.6.01 Need for Australian financial services licence: general

(1) For paragraph 911A(2)(k) of the Act, the provision of the following services is covered by an exemption from the requirement to hold an Australian financial services licence:

(b) dealing in a financial product by a person in the capacity of the trustee of a pooled superannuation trust in the following circumstances:

(i) the pooled superannuation trust is used for investment of the assets of a regulated superannuation fund;

(ii) the regulated superannuation fund has net assets of at least $10 million on the date that it first invests in the pooled superannuation trust;

(ba) a superannuation trustee service provided by the trustee of a pooled superannuation trust in the circumstances set out in paragraph (b);

(c) dealing in a financial product by a person in the capacity of the trustee of a pooled superannuation trust in the following circumstances:

(i) the pooled superannuation trust is used for investment of the assets of a regulated superannuation fund;

(ii) the regulated superannuation fund has net assets of at least $5 million, but less than $10 million, on the date that it first invests in the pooled superannuation trust (whether that date is before or after the FSR commencement);

(iii) the trustee has a reasonable expectation that the net assets of the regulated superannuation fund will equal or exceed $10 million not later than 3 months of the date on which it first invests in the pooled superannuation trust (whether that date is before or after the FSR commencement);

(ca) a superannuation trustee service provided by the trustee of a pooled superannuation trust in the circumstances set out in paragraph (c);

(d) dealing in a financial product by a person in the capacity of the trustee of a pooled superannuation trust in circumstances in which the pooled superannuation trust is not used for the investment of the assets of a regulated superannuation fund;

(da) a superannuation trustee service provided by the trustee of a pooled superannuation trust in the circumstances set out in paragraph (d);

(db) dealing in a financial product by a person in the capacity of the trustee of a registrable superannuation entity in the ordinary course of operation of the registrable superannuation entity (other than a financial product that is an interest in the registrable superannuation entity);

(e) a financial service provided by a person (***person 1***) in the following circumstances:

(i) the service consists only of:

(A) informing a person (***person 2***) that a financial services licensee, or a representative of the financial services licensee, is able to provide a particular financial service, or a class of financial services; and

(B) giving person 2 information about how person 2 may contact the financial services licensee or representative;

(ii) person 1 is not a representative of the financial service licensee, or of a related body corporate of the financial services licensee;

(iii) person 1 discloses to person 2, when the service is provided:

(A) any benefits (including commission) that person 1, or an associate of person 1, may receive in respect of the service; and

(B) any benefits (including commission) that person 1, or an associate of person 1, may receive that are attributable to the service;

(iv) the disclosure mentioned in subparagraph (iii) is provided in the same form as the information mentioned in subparagraph (i);

(ea) a financial service provided by a person (***person 1***) in the following circumstances:

(i) the service consists only of:

(A) informing a person (***person 2***) that a financial services licensee, or a representative of the financial services licensee, is able to provide a particular financial service, or a class of financial services; and

(B) giving person 2 information about how person 2 may contact the financial services licensee or representative;

(ii) person 1 is a representative of the financial service licensee, or of a related body corporate of the financial services licensee;

(f) a financial service provided in the following circumstances:

(i) a person (***person 1***) is a person that is not in the jurisdiction;

(ii) person 1 arranges, on behalf of another person (***person 2***), for a holder of an Australian financial services licence to deal in a financial product;

(iii) person 1 believes on reasonable grounds that person 2 is not in the jurisdiction;

(fa) a financial service is provided in the following circumstances:

(i) a person (***person 1***) is a person that is not in the jurisdiction;

(ii) person 1 enters into an arrangement with the holder of an Australian financial services licence under which a financial product, or a beneficial interest in a financial product, is to be held on trust for, or on behalf of, another person (***person 2***);

(iii) person 1 believes on reasonable grounds that person 2 is not in the jurisdiction;

(g) a financial service provided in the following circumstances:

(i) a person (***person 1***) is a person that is not in the jurisdiction;

(ii) person 1 believes on reasonable grounds that another person (***person 2***) is not in the jurisdiction;

(iii) person 1 deals on behalf of person 2 in a financial product that cannot be traded on a licensed market;

(iv) person 1 believes on reasonable grounds that each person who is a party to the dealing or any transaction to which the dealing relates is a person that is not in the jurisdiction;

(h) a dealing in a financial product that consists only of an employer‑sponsor paying contributions on behalf of an employee into a superannuation product or RSA;

(hb) a dealing in a financial product that consists only of an RSA provider paying the benefits of an RSA holder into a superannuation product or RSA;

(hc) a dealing in a financial product that consists only of an employer‑sponsor arranging for the issue of a superannuation product to an employee;

(k) a financial service provided in the following circumstances:

(i) the financial service is provided in respect of a financial product by a person (who may be described as a ‘sub‑custodian’) under an arrangement with a financial services licensee (the ***master‑custodian***);

(ii) the master‑custodian is authorised by its Australian financial services licence to provide a custodial or depository service;

(iii) a beneficial interest in the financial product is held by the master‑custodian on trust for or on behalf of a client as part of providing a custodial or depository service authorised by its Australian financial services licence;

(l) a financial service provided by a person (***person 1***) in the following circumstances:

(i) the financial service is provided to another person (***person 2***) in the ordinary course of person 1’s business;

(ii) person 1 does not provide financial services as a significant part of person 1’s business;

(iii) the financial service consists only of either or both of:

(A) advising person 2 in relation to a non‑cash payments facility that person 2 may use or has used to pay person 1 for goods or services; and

(B) arranging to deal in a non‑cash payments facility that person 2 will use to pay person 1 for goods or services;

(iv) the goods and services do not include any financial products or financial services;

Example:

A retailer might offer its customers a variety of payment methods for payment for goods and services, such as a credit card, Bpay, or direct debit.

A recommendation of a particular payment method, or the expression of an opinion about the payment methods available to the customer, should not require an Australian financial services licence.

(la) a financial service provided by a person (***person 1***) to another person (***person 2***), if:

(i) the financial service is provided in the ordinary course of person 1’s business; and

(ii) person 1:

(A) holds an Australian financial services licence authorising the provision of financial services other than the financial service mentioned in subparagraph (i); or

(B) does not hold an Australian financial services licence; and

(iii) the financial service consists of either or both of the following:

(A) advising person 2 in relation to a non‑cash payments facility that person 2 may use, or has used, to pay person 1 for a financial product or a financial service;

(B) arranging to deal in a non‑cash payments facility that person 2 will use to pay person 1 for a financial product or a financial service;

(lb) a financial service that is the issue of a non‑cash payment facility if:

(i) it is a facility for making non‑cash payments; and

(ii) under the facility, payments may be made only to the issuer of the facility or a related body corporate of the issuer;

(lc) an Australia Post presentment and payment processing facility known as POSTbillpay or billmanager;

(m) 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; and

(B) dealing in foreign exchange contracts;

(ii) the service does not involve the making of a market for derivatives or foreign exchange contracts;

(iii) the dealing is entered into for the purpose of managing a financial risk that arises in the ordinary course of a business;

(iv) the person does not deal in derivatives or foreign exchange contracts as a significant part of the person’s business;

(v) the dealing is entered into on the person’s own behalf;

Example of financial service to which paragraph (m) applies:

A series of forward foreign exchange contracts entered into by a gold mining company to hedge against the risk of a fall in the price of gold.

Example of financial service to which paragraph (m) does not apply:

The issue and disposal of derivatives relating to the wholesale price of electricity are not transactions to which this paragraph applies.

(ma) a financial service provided by a person in the following circumstances:

(i) the service consists only of 1 or more of the following:

(A) dealing in derivatives over carbon units, Australian carbon credit units or eligible international emissions units;

(B) dealing in a carbon unit, an Australian carbon credit unit or an eligible international emissions unit;

(C) dealing in foreign exchange contracts for carbon units, Australian carbon credit units or eligible international emissions units;

(ii) the service does not involve the making of a market for those derivatives, units or foreign exchange contracts;

(iii) the dealing is entered into for the purpose of managing financial risk in relation to the surrender, cancellation or relinquishment of carbon units, Australian carbon credit units or eligible international emissions units by:

(A) the person; or

(B) a related body corporate of the person; or

(C) an associated entity of the person;

Note: Section 175 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* deals with the relinquishment of Australian carbon credit units. Section 210 of the *Clean Energy Act 2011* deals with the relinquishment of carbon units.

(iv) the person does not deal in those derivatives, units or foreign exchange contracts as the principal activity 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;

(mb) a financial service that a person is engaged by the Clean Energy Regulator to provide to the Clean Energy Regulator, or on behalf of the Clean Energy Regulator, that relates to the conduct of an auction of carbon units under the *Clean Energy Act 2011*, other than a financial service that arises in the course of the following activities:

(i) the management of any deposit lodged to participate in an auction under the *Clean Energy Act 2011*;

(ii) direct participation in an auction under the *Clean Energy Act 2011*, whether on the person’s own behalf or on behalf of a person other than the Clean Energy Regulator;

(n) a financial service provided by a person (***person 1***) to another person (***person 2***) in the following circumstances:

(i) person 1 is not in this jurisdiction;

(ii) person 2 is in this jurisdiction;

(iii) the service consists only of dealing in a financial product or class of financial products;

(iv) a financial services licensee whose financial services licence covers the provision of the service arranges for person 1 to provide the service to person 2;

(na) a financial service provided by a person (***person 1***) to another person (***person 2***) in the following circumstances:

(i) person 1 is not in this jurisdiction;

(ii) person 2 is in this jurisdiction;

(iii) the service consists only of 1 or more of:

(A) the provision of financial product advice to person 2; and

(B) person 1 making a market; and

(C) the provision of a custodial or depositary service to person 2;

(iv) person 1 is:

(A) a related body corporate of a financial services licensee whose financial services licence covers the provision of the service; or

(B) a party to a business joint venture with a financial services licensee whose financial services licence covers the provision of the service;

(v) the financial services licensee arranges for person 1 to provide the service;

(vi) the financial service licensee’s licence is subject to a condition requiring it to assume responsibility for the conduct of person 1 in the provision of the financial service mentioned in this paragraph;

(o) a financial service that is the provision of financial product advice in the following circumstances:

(i) the advice is only general advice in relation to a financial product or class of financial products;

(ii) the advice is provided by the product issuer of the financial product or class of financial products;

(iii) the advice is provided in the media;

(iv) the product issuer provides the following information:

(A) the advice has been prepared without taking account of the client’s objectives, financial situation or needs;

(B) for that reason, the client should, before acting on the advice, consider the appropriateness of the advice, having regard to the client’s objectives, financial situation and needs;

(C) if the advice relates to the acquisition, or possible acquisition, of a particular financial product, the client should obtain a Product Disclosure Statement relating to the product and consider the Statement before making any decision about whether to acquire the product;

(oa) the provision of financial product advice if the advice:

(i) is provided by an actuary in the ordinary course of providing actuarial services; and

(ii) could not reasonably be expected to be included in a document that is to be given to a retail client; and

(iii) is provided to:

(A) a wholesale client; or

(B) the Commonwealth, a State or a Territory; or

(C) an exempt public authority;

(p) a financial service provided by a person in the following circumstances:

(i) the financial service relates to insurance entered into, or proposed to be entered into, for the purposes of a law (including a law of a State or Territory) that relates to workers compensation;

(ii) the person is licensed to provide the service under the law of the State or Territory in which the service is provided;

Example: The activities of a licensed insurer under the *Workers Compensation Act 1987* of New South Wales.

Note: A licensed insurer would require an Australian financial services licence to the extent that the licensed insurer provides a financial service in respect of a non‑workers compensation product or a non‑workers compensation component of a product.

(pa) a financial service provided to a wholesale client by a body that:

(i) is not a company; and

(ii) is established or constituted under a law of the Commonwealth or a State or Territory; and

(iii) is required under a law of the Commonwealth or a State or Territory to carry on the business of insurance or to undertake liability under a contract of insurance; and

(iv) is regulated for the provision of insurance under a law of the Commonwealth or a State or Territory;

(q) a financial service provided by a person in the following circumstances:

(i) the financial service consists only of the variation or disposal of a financial product by the person;

(ii) the person also issued the original product;

(iii) the person provides the financial service under the terms of the financial product;

(r) a financial service that is a dealing (or arranging for a dealing) in:

(i) a debenture; or

(ii) a legal or equitable right or interest in a debenture; or

(iii) an option to acquire, by way of issue or transfer, a debenture or a legal or equitable right or interest in a debenture;

by the issuer of the debenture, the legal or equitable right or interest or the option;

(s) the provision of financial product advice if the advice:

(i) is provided to a financial services licensee; and

(ii) is only general advice in relation to a financial product or a class of financial products; and

(iii) is advice that the financial services licensee is authorised to provide; and

(iv) is provided by:

(A) the product issuer; or

(B) a related body corporate of the product issuer;

(t) advising in relation to, or dealing in, a medical indemnity insurance product;

(ta) a financial service provided by a person in the following circumstances:

(i) the financial service is providing financial product advice in relation to a friendly society funeral product, or dealing in a friendly society funeral product;

(ii) the person is a funeral services entity, or an employee, director or other officer of a funeral services entity;

(iii) the financial service is provided in the funeral services entity’s ordinary course of business as a funeral services entity;

(u) a financial service provided by a person in the following circumstances:

(i) the financial service is advice included in a document issued in connection with a takeover bid or an offer of a financial product;

(ii) the advice is an opinion on matters other than financial products and does not include advice on a financial product;

(iii) the document includes a statement that the person is not operating under an Australian financial services licence when giving the advice;

(iv) the person discloses, in the document, the information mentioned in paragraphs 947B(2)(d) and (e) of the Act;

Example: A geologist’s report on a mining lease included in a PDS.

(v) a financial service provided by a person (the ***nominee***) in the following circumstances:

(i) the nominee holds a financial product or a beneficial interest in a financial product on trust for or on behalf of a client of a financial services licensee who is a participant in a licensed market (the ***participant***);

(ii) the financial product:

(A) was acquired on the licensed market by the participant on behalf of the client; or

(B) is to be disposed of on the licensed market by the participant on behalf of the client;

(iii) the participant is authorised by an Australian financial services licence to provide a custodial or depository service;

(iv) the participant’s licence is subject to a condition requiring it to assume responsibility for the conduct of the nominee in relation to the provision of a financial service mentioned in this paragraph;

(v) the nominee is a wholly‑owned subsidiary of the participant;

(w) a financial service that is provided:

(i) by the Export Finance and Insurance Corporation established by the *Export Finance and Insurance Corporation Act 1991*; and

(ii) only to a wholesale client;

(x) a service in relation to a litigation funding scheme mentioned in regulation 5C.11.01;

(y) a service in relation to a litigation funding arrangement mentioned in regulation 5C.11.01;

(z) a financial service provided by a person in the following circumstances:

(i) the person is:

(A) the operator of a qualifying gas trading exchange; or

(B) a participant in relation to a qualifying gas trading exchange;

(ii) the service is provided in relation to a qualifying gas exchange product traded on the qualifying gas trading exchange.

(za) the provision of financial product advice to a client by a financial capability service provider as part of the provision of a financial capability service in the following circumstances:

(i) the advice relates to a basic deposit product;

(ii) no fees or charges (however described) are payable by or on behalf of the client in relation to the financial capability service;

(iii) no remuneration (whether by way of commission or otherwise) is payable to, or for the benefit of, the financial capability service provider, its representatives or its associates in relation to any action by or on behalf of the client arising from the financial capability service (including the advice);

(iv) the financial capability service provider does not carry on or otherwise participate in a financial services business involving the provision of a financial service, other than a financial service of the kind to which this paragraph applies;

(v) the financial capability service provider takes all reasonable steps to ensure that none of its representatives provides or participates in the provision of a financial service, other than a financial service of the kind to which this paragraph applies;

(vi) the financial capability service provider takes all reasonable steps to ensure that each person who provides the financial capability service (including the advice) on its behalf has undertaken appropriate training to ensure that they have adequate skills and knowledge to satisfactorily provide that service (including that advice);

(zb) the provision of financial product advice to a client by a financial counselling agency as part of the provision of a financial counselling service if the advice:

(i) relates to a deposit product, a facility for making non‑cash payments, an insurance product, an RSA or a superannuation product; or

(ii) is to the effect that the client should or may dispose of a security, a managed investment product, a financial product referred to in paragraph 764A(1)(ba) of the Act, or a debenture, stock or bond issued by a government;

and the following circumstances apply:

(iii) no fees or charges (however described) are payable by or on behalf of the client in relation to the financial counselling service, other than any fees or charges payable on behalf of the client by the Commonwealth, a State or a Territory;

(iv) no remuneration (whether by way of commission or otherwise) is payable to, or for the benefit of, the financial counselling agency, its representatives or its associates in relation to any action by or on behalf of the client arising from the financial counselling service (including the advice);

(v) the financial counselling agency does not carry on or otherwise participate in a financial services business involving the provision of a financial service, other than a financial service of the kind to which this paragraph applies or a claims handling and settling service;

(vi) the financial counselling agency takes all reasonable steps to ensure that none of its representatives provides or participates in the provision of a financial service, other than a financial service of the kind to which this paragraph applies or a claims handling and settling service;

(vii) the financial counselling agency takes all reasonable steps to ensure that each person who provides the financial counselling service (including the advice) on its behalf is a member of, or is eligible to be a member of, a financial counselling association;

(viii) the financial counselling agency takes all reasonable steps to ensure that each person who provides the financial counselling service (including the advice) on its behalf has undertaken appropriate training to ensure that they have adequate skills and knowledge to satisfactorily provide that service (including that advice).

(2) If paragraph (1)(c) or (ca) applies, and the net assets of the regulated superannuation fund do not equal or exceed $10 million at the end of the 3 month period mentioned in subparagraph (1)(c)(ii):

(a) the trustee of the pooled superannuation trust must offer to redeem the investment of the regulated superannuation fund as soon as practicable after the end of the period; and

(b) the regulated superannuation fund has not accepted the redemption offer within 3 months after the offer was made; and

(c) the net assets of the regulated superannuation fund do not equal or exceed $10 million by the end of the 3 month period mentioned in paragraph (b);

the trustee of the pooled superannuation trust must apply for an Australian financial services licence.

(3) Subregulation (1) is not intended to affect the determination of whether the provision of a service that is not described by that paragraph is, or is not, the provision of a financial service.

(4) In relation to a regulated principal under Division 1 of Part 10.2 of the Act:

(a) a reference in paragraph (1)(e) or (ea) to a financial services licensee includes the regulated principal; and

(b) paragraph (a) ceases to apply at the end of the transition period in relation to the regulated principal.

(5) For paragraphs (1)(b), (ba), (c) and (ca), if a pooled superannuation trust is used for investment of the assets of more than 1 regulated superannuation fund:

(a) each of the regulated superannuation funds must comply with paragraph (1)(b) or (c); and

(b) it is not necessary for each of the regulated superannuation funds to comply with the same paragraph in relation to a particular pooled superannuation trust.

(6) Paragraph (1)(r) ceases to have effect at the end of 2 years after the FSR commencement.

(6A) Paragraph (1)(t) ceases to have effect in respect of a person advising in relation to, or dealing in, a medical indemnity insurance product, on the earlier of:

(a) the date on which the person obtains an Australian financial services licence in respect of the product; and

(b) 11 March 2004.

(7) In this regulation:

***business joint venture*** means a contractual agreement between 2 or more parties for the purpose of carrying on a business undertaking.

***financial capability service*** means a financial literacy and capacity building service provided mainly to improve the financial knowledge and skills of persons.

***financial capability service provider***means a body that is funded wholly or partly by the Commonwealth to provide a financial capability service.

***financial counselling agency*** means a person that provides a financial counselling service.

***financial counselling association*** means each of the following:

(a) Financial Counselling Australia Ltd;

(b) Financial Counsellors Association of New South Wales Inc;

(c) Financial Counselling Victoria Inc;

(d) Financial Counsellors Association of Queensland Inc.;

(e) Financial Counsellors Association of Western Australia Inc;

(f) The South Australian Financial Counsellors’ Association Incorporated;

(g) Financial Counselling Tasmania Inc.;

(h) Financial Counsellors ACT.

***financial counselling service*** means a counselling and advocacy service provided mainly for the purposes of assisting individuals or small businesses who are in financial difficulty to resolve their problems.

***friendly society funeral product*** means a financial product that is an account (however described):

(a) provided by:

(i) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or

(ii) a body that is registered or incorporated as a friendly society under a law of a State or Territory; or

(iii) a body that is permitted, by a law of a State or Territory, to assume or use the expression ***friendly society***; or

(iv) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a law of a State or Territory; and

(b) the sole purpose of which is to save money for the purpose of meeting the whole or a part of the expenses of and incidental to the funeral, burial or cremation of a person on the death of that person.

***funeral services entity*** means an entity of one of the following kinds:

(a) a body corporate;

(b) a partnership;

(c) an unincorporated body;

(d) an individual;

(e) for a trust that has only one trustee—a trustee;

(f) for a trust that has more than one trustee—the trustees together;

that carries on a business in this jurisdiction of supplying:

(g) services for the care and preparation of human bodies for burial or cremation; and

(h) services for the arrangement, supervision or conduct of a funeral, burial or cremation; and

(i) products in connection with the services mentioned in paragraphs (g) and (h).

***media*** means any of the following:

(a) a newspaper, magazine, journal or other periodical;

(b) a radio or television broadcasting service;

(c) an electronic service (including a service provided by the Internet) that is:

(i) operated on a commercial basis; and

(ii) similar to a newspaper, a magazine, a radio broadcast or a television broadcast.

***small business*** means a business with less than 100 employees.

7.6.01AAAA Need for Australian financial services licence: prescribed insurance products in relation to claimant intermediaries

For the purposes of subparagraph 911A(2)(ek)(vi) of the Act, general insurance products are prescribed.

7.6.01AAAB Need for Australian financial services licence: issuers of insurance products

For the purposes of subparagraph 911A(2)(el)(ii) of the Act, the following issuers of insurance products are prescribed:

(a) Lloyd’s underwriters (within the meaning of the *Insurance Act 1973*);

(b) unauthorised foreign insurers (within the meaning of the *Insurance Regulations 2002*).

7.6.01AAA Particular financial products not exempted

For subsection 911A(5A) of the Act, the exemption under paragraph 911A(2)(b) of the Act does not apply in relation to a margin lending facility.

7.6.01AB Obligation on persons providing exempt financial service

(1) For paragraph 926B(1)(c) of the Act, Part 7.6 of the Act applies as if section 911A of the Act were modified to insert the following subsection after subsection (5B):

‘(5C) If the regulations prescribe an exemption under paragraph (2)(k) that covers the provision of a service by a person in relation to:

(a) a litigation funding scheme mentioned in regulation 5C.11.01 of the *Corporations Regulations 2001*; or

(b) a litigation funding arrangement mentioned in that regulation;

the regulations may require the person to have adequate practices, and follow certain procedures, for managing conflicts of interest in relation to the scheme or arrangement.’

(2) For subsection 911A(5C) of the Act, if a person is providing, or has provided, a financial service covered by the exemption mentioned in paragraph 7.6.01(1)(x) or (y), the person must:

(a) maintain, for the duration of the litigation funding scheme or litigation funding arrangement, adequate practices for:

(i) managing any conflict of interest that may arise in relation to activities undertaken by the person, or an agent of the person, in relation to the scheme or arrangement; and

(ii) ensuring that a lawyer providing services in relation to the scheme or arrangement, and any immediate family member of such a lawyer, do not have or obtain a direct or indirect material financial interest in the person; and

(b) follow the written procedures mentioned in subregulation (4) for the duration of the scheme or arrangement.

Note: The exemption mentioned in paragraph 7.6.01(1)(x) relates to a litigation funding scheme mentioned in regulation 5C.11.01. The exemption mentioned in paragraph 7.6.01(1)(y) relates to a litigation funding arrangement mentioned in that regulation.

(3) A person commits an offence if the person contravenes subregulation (2).

Penalty:

(a) for an individual—50 penalty units; and

(b) for a body corporate—500 penalty units.

(4) For subregulation (2), a person has adequate practices for managing a conflict of interest that may arise if the person can show through documentation that:

(a) the person has conducted a review of the person’s business operations that relate to the scheme or arrangement to identify and assess potential conflicting interests; and

(b) the person:

(i) has written procedures for identifying and managing conflicts of interest; and

(ii) has implemented the procedures; and

(c) the written procedures are reviewed at intervals no greater than 12 months; and

(d) the written procedures include procedures about the following:

(i) monitoring the person’s operations to identify potential conflicting interests;

(ii) how to disclose conflicts of interest to general members and prospective general members;

(iii) managing situations in which interests may conflict;

(iv) protecting the interests of general members and prospective general members;

(v) how to deal with situations in which a lawyer acts for both the funder and general members;

(vi) how to deal with a situation in which there is a pre‑existing relationship between any of a funder, a lawyer and a general member;

(vii) reviewing the terms of a funding agreement to ensure the terms are consistent with Division 2 of Part 2 of the *Australian Securities and Investments Commission Act 2001*;

(viii) recruiting prospective general members; and

(e) the terms of the funding agreement are reviewed to ensure the terms are consistent with Division 2 of Part 2 of the *Australian Securities and Investments Commission Act 2001*; and

(f) the matters mentioned in paragraphs (a) to (e) are implemented, monitored and managed by:

(i) if the person is an entity other than an individual—the senior management or partners of the person; or

(ii) if the person is an individual that represents an entity—the senior management or partners of the entity.

7.6.01A Providing financial services on behalf of a person who carries on a financial services business

For subparagraph 911B(1)(c)(iv) of the Act, travellers’ cheques are prescribed.

7.6.01B Need for Australian financial services licence: financial product advice provided by the media

(1) For paragraph 911A(5)(a) of the Act, the exemptions from the requirement to hold an Australian financial services licence provided for in paragraphs 911A(2)(ea), (eb) and (ec) apply subject to the condition that a person mentioned in any of those paragraphs, or a representative of a person mentioned in any of those paragraphs, who provides financial product advice states the following matters, to the extent to which they would reasonably be expected to influence, or be capable of influencing, the provision of the financial product advice:

(a) any remuneration the person or the person’s representative is to receive for providing the advice;

(b) any pecuniary or other interest that the provider of the advice, or an associate of the provider, has in relation to the advice, if the provider of the advice, or an associate of the provider, would be likely to obtain a material financial benefit, or avoid a material financial loss, if the advice were acted upon.

(2) The statement mentioned in subregulation (1) must be presented in a way that:

(a) will adequately bring it to the attention of a reasonable person who may read or hear the financial product advice to which the statement relates; and

(b) is easy for a reasonable person to understand.

(3) Subregulation (1) does not apply if:

(a) a person mentioned in paragraph 911A(2)(ea), (eb) or (ec) of the Act, and the person’s representatives:

(i) comply with an industry code of practice; or

(ii) comply with the Statement of Principles laid down by the Australian Press Council; or

(iii) are subject to an internal policy that is approved by the board or governing body of the person; and

(b) the code, Statement of Principles or policy contains requirements relating to:

(i) the manner in which financial conflicts of interest are dealt with; or

(ii) the prevention of financial conflicts of interest.

(4) Subregulation (1) does not apply in relation to:

(a) a newspaper or periodical, a transmission made by means of an information service, or a sound recording, video recording or data recording, the principal purpose of which is to report and provide comment on news, and not to provide financial product advice; and

(b) paid advertising in relation to which a reasonable person is able to distinguish the advertising from other material in the newspaper, periodical, transmission, sound recording, video recording or data recording.

(5) A reference in subparagraph 911A(2)(eb)(ii) of the Act to transmissions that are generally available to the public includes transmissions provided as part of a subscription broadcasting service within the meaning of the *Broadcasting Services Act 1992*.

(6) For paragraph 911A(6)(d) of the Act, each of the following services is an information service:

(a) a broadcasting service within the meaning of the *Broadcasting Services Act 1992*;

(b) a datacasting service within the meaning of the *Broadcasting Services Act 1992*;

(c) a service provided by the Internet.

(7) In this regulation:

***associate*** means:

(a) in relation to a body corporate—a related body corporate; and

(b) in relation to an individual—a spouse (including a de facto partner), child, step‑child, parent, step‑parent, brother, half‑brother, sister or half‑sister of the individual.

***internal policy*** includes a code of ethics or editorial guidelines.

***material financial benefit*** means a financial benefit exceeding $10 000 in value.

***material financial loss*** means a financial loss exceeding $10 000 in value.

7.6.01C Obligation to cite licence number in documents

(1) For subsection 912F(1) of the Act, the following documents are specified:

(a) a Financial Services Guide;

(b) a Supplementary Financial Services Guide;

(c) a Product Disclosure Statement;

(d) a Supplementary Product Disclosure Statement;

(e) a Statement of Advice;

(f) an application form for an application under section 1016A of the Act;

(g) a document containing information required by regulations made under section 1017DA of the Act;

(h) a document prepared for section 1017B of the Act, notifying a person of changes and events;

(i) a Replacement Product Disclosure Statement.

(2) On and after 1 July 2004, for subsection 912F(1) of the Act, a periodic statement under section 1017D of the Act is specified.

7.6.02 Alternative dispute resolution systems

(1) For subparagraph 912A(2)(a)(i) of the Act, ASIC must take the following matters into account when considering whether to make or approve standards or requirements relating to internal dispute resolution:

(a) Australian/New Zealand Standard AS/NZS 10002:2014 *Guidelines for complaint management in organizations* published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force or existing on 29 October 2014;

(b) any other matter ASIC considers relevant.

(2) ASIC may:

(a) vary or revoke a standard or requirement that it has made in relation to an internal dispute resolution procedure; and

(b) vary or revoke the operation of a standard or requirement that it has approved in its application to an internal dispute resolution procedure.

(5) For paragraph 926B(1)(a) of the Act, a financial services licensee who provides a financial service in the capacity of any of the following:

(a) a trustee appointed under the will or on the intestacy of a person;

(b) a trustee appointed under an express trust if:

(i) the settlor is a natural person; and

(ii) the interest in the trust is not a financial product;

(c) an attorney appointed under an enduring power of attorney;

does not have to comply with paragraph 912A(2)(c) of the Act in relation to the provision of the service if complaints about the service provided by the licensee may be made to the Ombudsman of a State or Territory.

(6) For paragraph 926B(1)(a) of the Act, a financial services licensee who provides a financial service in the capacity as administrator of the estate of an individual does not have to comply with paragraph 912A(1)(g) of the Act in relation to the provision of the service if complaints about the service provided by the licensee may be made under a State or Territory law listed in Schedule 8AC.

7.6.02AAA Arrangements for compensation if financial services provided to persons as retail clients (Act s 912B)

(1) For paragraph 912B(2)(a) of the Act, arrangements mentioned in subsection 912B(1) of the Act are, unless the financial services licensee is an exempt licensee, subject to the requirement that the licensee hold professional indemnity insurance cover that is adequate, having regard to:

(a) the licensee’s membership of the scheme mentioned in paragraph 912A(2)(c) of the Act, taking account of the maximum liability that has, realistically, some potential to arise in connection with:

(i) any particular claim against the licensee; and

(ii) all claims in respect of which the licensee could be found to have liability; and

(b) relevant considerations in relation to the financial services business carried on by the licensee, including:

(i) the volume of business; and

(ii) the number and kind of clients; and

(iii) the kind, or kinds, of business; and

(iv) the number of representatives of the licensee.

(2) For paragraph 912B(3)(c) of the Act, a matter that ASIC must have regard to, before approving particular arrangements under paragraph 912B(2)(b) of the Act, is whether those arrangements provide coverage that is adequate, having regard to matters of the kind mentioned in subregulation (1).

(3) In this regulation, ***exempt licensee*** means:

(a) a company or institution of any of the following kinds:

(i) a general insurance company regulated by APRA under the *Insurance Act 1973*;

(ii) a life insurance company regulated by APRA under the *Life Insurance Act 1995*;

(iii) an authorised deposit‑taking institution regulated by APRA under the *Banking Act 1959*; or

(b) a licensee (***related licensee***):

(i) that is related, within the meaning of section 50 of the Act, to a company or institution mentioned in paragraph (a); and

(ii) in respect of which the company or institution has provided a guarantee that:

(A) ensures payment of the obligations of the related licensee to its retail clients to an extent that is adequate within the meaning of subregulation (1); and

(B) is approved in writing by ASIC.

Note: A decision to refuse to approve a guarantee is a reviewable decision under section 1317B of the Act.

Security bonds held by ASIC

(4) A security bond lodged with ASIC by a licensee in consequence of the operation of regulation 7.6.02AA (as affected by any instrument made by ASIC under paragraph 926A(2)(c) of the Act) may be discharged or returned by ASIC (in whole or in part), without application from the licensee or surety who provided the security, in any of the following circumstances:

(a) the licensee certifies, in the form approved by ASIC, that it holds professional indemnity insurance, or has an alternative compensation arrangement in place that provides compensation protection for clients of the licensee, that is adequate to cover claims to which the security bond could apply;

(b) the licensee certifies, in the form approved by ASIC, that it holds professional indemnity insurance, or has an alternative compensation arrangement in place that, together with other financial resources available to it, provides compensation protection for clients of the licensee, that is adequate to cover claims to which the security bond could apply;

(c) the licensee is a company or institution of any of the following kinds:

(i) a general insurance company regulated by APRA under the *Insurance Act 1973*;

(ii) a life insurance company regulated by APRA under the *Life Insurance Act 1995*;

(iii) an authorised deposit‑taking institution regulated by APRA under the *Banking Act 1959*;

(d) the licensee certifies, in the form approved by ASIC, that it holds a guarantee given by a company or institution mentioned in paragraph (c) that, together with other financial resources available to it, provides compensation protection for clients of the licensee that is adequate to cover claims to which the security bond could apply.

Note: A decision to refuse to approve a guarantee is a reviewable decision under section 1317B of the Act.

Transitional

(5) Subregulations (1), (2) and (3) take effect as follows:

(a) for a financial services licensee whose licence commences before 1 January 2008—on 1 July 2008;

(b) for a financial services licensee whose licence commences on or after 1 January 2008—on the date of commencement of the licence.

7.6.02AA Modification of section 912B of the Act: professional indemnity insurance and security instead of arrangements for compensation

(1) For paragraph 926B(1)(c) of the Act, Part 7.6 of the Act applies as if section 912B of the Act were modified by substituting that section with the following:

‘912B Financial services provided to persons as retail clients—requirements in certain circumstances

(1) Subsection (2) applies in relation to a financial services licensee if the licensee’s financial services licence authorises the licensee to carry on an activity:

(a) to which paragraph 19(1)(b) or subparagraph 31B(1)(a)(ii) or (b)(ii) of the *Insurance (Agents and Brokers) Act 1984* (the ***repealed Act***) would have applied if that Act were not repealed; and

(b) for which the licensee would have been required under those provisions to have in force an acceptable contract of professional indemnity insurance.

(2) The repealed Act, and any associated provisions, continue to apply in relation to the licensee to the extent necessary to require the licensee to have in force an acceptable contract of professional indemnity insurance in relation to the activity.

(3) Subsections (4) and (5) apply in relation to a financial services licensee if the licensee’s financial services licence authorises the licensee to carry on an activity:

(a) to which Part 7.3 of the old Corporations Act would have applied if that Part were not repealed; and

(b) for which the licensee would have been required under that Part to have a dealers licence or investment advisers licence that could have been subject to the condition specified in paragraph 786(2)(d) of the old Corporations Act.

(4) Section 914A of the Act is taken to authorise ASIC to impose the condition specified in paragraph 786(2)(d) of the old Corporations Act as a condition of the licensee’s financial services licence.

(5) If ASIC acts under subsection (4), Part 7.3 of the old Corporations Act, and any associated provisions, continue to apply to the extent necessary to specify the content of the condition specified in paragraph 786(2)(d) of the old Corporations Act.’

(6) In this section:

***associated provisions***, in relation to provisions (the ***core provisions***) of a particular Act as in force at a particular time, include (but are not limited to):

(a) any regulations or other instruments that are or were in force for the purposes of any of the core provisions at that time; and

(b) any interpretation provisions that apply or applied in relation to any of the core provisions at that time (whether or not they also apply or applied for other purposes); and

(c) any provisions relating to liability (civil or criminal) that apply or applied in relation to any of the core provisions at that time (whether or not they also apply or applied for other purposes); and

(d) any provisions that limit or limited, or that otherwise affect or affected, the operation of any of the core provisions at that time (whether or not they also limit or limited, or affect or affected, the operation of other provisions).

***old Corporations Act*** means this Act as in force immediately before the FSR commencement.’.

(2) Subregulation (1) operates only in relation to a financial services licensee (other than an exempt licensee under regulation 7.6.02AAA):

(a) who has not complied with subsection 912B(1) of the Act, in its unmodified form; and

(b) until the licensee does so comply.

(3) Subregulations (1) and (2) are not taken to displace, or diminish, the requirement for a financial services licensee to comply with subsection 912B(1) of the Act in its unmodified form.

(4) A security bond lodged with ASIC by a financial services licensee in compliance with section 912B of the Act as modified by subregulation (1), or with any provision of the old Corporations Act, may be released by ASIC, at its discretion, if:

(a) ASIC considers that, in relation to the licensee, a security bond is no longer required because the licensee:

(i) has complied with subsection 912B(1) of the Act, in its unmodified form; or

(ii) is an exempt licensee within the meaning of regulation 7.6.02AAA; and

(b) ASIC has published on its internet website, and in a daily newspaper having national circulation:

(i) a proposal that it release the security bond; and

(ii) a direction to the web address at which further information may be obtained; and

(c) ASIC has advertised, at that web address, the existence of the security bond, and an invitation to submit valid claims against the bond; and

(d) 3 months after publication of the advertisement, no valid claim has been submitted.

7.6.02AB Modification of section 761G of the Act: meaning of *retail client* and *wholesale client*

For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 761G of the Act were modified by inserting after paragraph 761G(7)(c), the following paragraph:

“(ca) the financial product, or the financial service, is acquired by a company or trust controlled by a person who meets the requirements of subparagraph (c)(i) or (ii);”

| Column 1 | Column 2 | Column 3 |
| --- | --- | --- |
| Item | Provisions of Act |  |
| 1 | paragraph 926B(1)(c) | Part 7.6 |
| 2 | paragraph 951C(1)(c) | Part 7.7 |
| 2A | section 1368 | Part 7.7A |
| 3 | paragraph 992C(1)(c) | Part 7.8 |
| 4 | paragraph 1020G(1)(c) | Part 7.9 |

7.6.02AC Modification of section 761G of the Act: meaning of *retail client* and *wholesale client*

For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 761G of the Act were modified by inserting after subsection 761G(7), the following subsections:

“(7A) In determining the net assets of a person under subparagraph (7)(c)(i), the net assets of a company or trust controlled by the person may be included.

Note: *Control* is defined in section 50AA.

(7B) In determining the gross income of a person under subparagraph (7)(c)(ii), the gross income of a company or trust controlled by the person may be included.

Note: *Control* is defined in section 50AA.”

| Column 1 | Column 2 | Column 3 |
| --- | --- | --- |
| Item | Provisions of Act |  |
| 1 | paragraph 926B(1)(c) | Part 7.6 |
| 2 | paragraph 951C(1)(c) | Part 7.7 |
| 2A | section 1368 | Part 7.7A |
| 3 | paragraph 992C(1)(c) | Part 7.8 |
| 4 | paragraph 1020G(1)(c) | Part 7.9 |

7.6.02AD Modification of section 761G of the Act: meaning of *retail client* and *wholesale client*

For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 761G of the Act were modified by inserting after subsection 761G(4), the following subsection:

“(4A) If a financial product, or a financial service, is or would be provided to, or acquired by, a body corporate as a wholesale client, related bodies corporate of the client are taken to be wholesale clients in respect of the provision or acquisition of that financial product or financial service.”

| Column 1 | Column 2 | Column 3 |
| --- | --- | --- |
| Item | Provisions of Act |  |
| 1 | paragraph 926B(1)(c) | Part 7.6 |
| 2 | paragraph 951C(1)(c) | Part 7.7 |
| 2A | section 1368 | Part 7.7A |
| 3 | paragraph 992C(1)(c) | Part 7.8 |
| 4 | paragraph 1020G(1)(c) | Part 7.9 |

7.6.02AE Modification of section 9 of the Act: Definition of *professional investor*

For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 9 of the Act were modified by omitting paragraph (e) of the definition of ***professional investor*** and substituting the following paragraph:

“(e) the person has or controls gross assets of at least $10 million (including any assets held by an associate or under a trust that the person manages);”

| Column 1 | Column 2 | Column 3 |
| --- | --- | --- |
| Item | Provisions of Act |  |
| 1 | paragraph 926B(1)(c) | Part 7.6 |
| 2 | paragraph 951C(1)(c) | Part 7.7 |
| 2A | section 1368 | Part 7.7A |
| 3 | paragraph 992C(1)(c) | Part 7.8 |
| 4 | paragraph 1020G(1)(c) | Part 7.9 |

7.6.02AF Modification of section 761G of the Act: renewal period for accountants’ certificates

For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 761G of the Act were modified by omitting from paragraph 761G(7)(c) “6 months” and substituting “2 years”.

|  |  |  |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Item | Provisions of Act |  |
| 1 | paragraph 926B(1)(c) | Part 7.6 |
| 2 | paragraph 951C(1)(c) | Part 7.7 |
| 2A | section 1368 | Part 7.7A |
| 3 | paragraph 992C(1)(c) | Part 7.8 |
| 4 | paragraph 1020G(1)(c) | Part 7.9 |

7.6.02AG Modification of section 911A of the Act

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:

“(2A) Also, a person (***person 1***) is exempt from the requirement to hold an Australian financial services licence for a financial service they provide to a person (***person 2***) in the following circumstances:

(a) person 1 is not in this jurisdiction;

(b) person 2 is an Australian citizen or is resident in Australia;

(c) the service is provided from outside this jurisdiction;

(d) person 1 does not engage in conduct that is:

(i) intended to induce people in this jurisdiction to use the service; or

(ii) likely to have that effect.

(2B) Also, a person (***person 1***) is exempt from the requirement to hold an Australian financial services licence for a financial service they provide to a person (***person 2***) in the following circumstances:

(a) person 1 is not in this jurisdiction;

(b) person 1 believes on reasonable grounds that person 2 is not in this jurisdiction;

(c) person 1 is a participant in a financial market in this jurisdiction that is licensed under subsection 795B(2) of the Act;

(d) the service relates to a financial product traded on the licensed market.

(2C) Also, a person (***person 1***) is exempt from the requirement to hold an Australian financial services licence for a financial service they provide to a person (***person 2***) in the following circumstances:

(a) person 1 is not in this jurisdiction;

(b) person 2 is:

(i) the holder of an Australian financial services licence; or

(ii) exempt from the requirement to hold an Australian financial services licence under paragraph 911A(2)(h);

(c) person 2 is not, in relation to the service:

(i) acting as a trustee; or

(ii) acting as a responsible entity of a registered scheme; or

(iia) acting as a corporate director of a CCIV; or

(iii) otherwise acting on someone else’s behalf.

(2D) Also, a person (***person 1***) is exempt from the requirement to hold an Australian financial services licence for a financial service they provide to a person (***person 2***) in the following circumstances:

(a) person 1 is not in this jurisdiction;

(aa) person 1 is not a notified foreign passport fund or the operator of a notified foreign passport fund;

(b) person 2 is in this jurisdiction;

(c) the service relates to a financial product:

(i) issued by person 1 following an application by, or inquiry from, person 2; or

(ii) issued by person 1 and acquired by person 2 when person 2 was not in this jurisdiction; or

(iii) that supplements a financial product mentioned in subparagraphs (i) or (ii); or

(iv) that is of the same kind as, and is issued in substitution for, a financial product mentioned in subparagraphs (i) or (ii);

(d) person 1 does not actively solicit persons in this jurisdiction in relation to the financial products mentioned in subparagraphs (c)(i) to (iv);

(e) paragraph (d) does not preclude person 1 from contacting person 2 in relation to the financial products mentioned in subparagraphs (c)(i) to (iv) after they have been acquired by person 2.

Note 1: For subparagraph (c)(iii), an example of this kind of financial product includes a non‑cash payment facility (such as a cheque facility) that is added to an existing transaction or investment account.

Note 2: For subparagraph (c)(iv), examples of this kind of financial product include:

(a) a transaction or investment account that is replaced by another transaction or investment account; or

(b) the renewal of an insurance policy.

(2E) Also, a person (***person 1***) is exempt from the requirement to hold an Australian financial services licence for a financial service they provide to a person (***person 2***) in the following circumstances:

(a) person 1 is not in this jurisdiction;

(b) person 2 is a professional investor;

(c) the service consists of any or all of the following:

(i) dealing in derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units;

(ii) providing advice on derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units;

(iii) making a market in derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units.

(2F) Also, a person is exempt from the requirement to hold an Australian financial services licence for a financial service that the person provides by bidding at an auction conducted in accordance with a legislative instrument made for subsection 113(1) of the *Clean Energy Act 2011*, if the bidding is:

(a) on the person’s own behalf; or

(b) for a related body corporate of the person; or

(c) for an associated entity of the person.”

7.6.02AH Modification of paragraph 911B(1)(e) of the Act

For paragraph 926B(1)(c) of the Act, Part 7.6 of the Act applies as if paragraph 911B(1)(e) of the Act were modified by omitting “911A(2)” and substituting “911A(2), (2A), (2B), (2C), (2D), (2E) or (2F)”.

7.6.02A Obligation to notify ASIC of certain matters

(1) For paragraph 912D(3)(c) of the Act, the following Commonwealth legislation is specified:

(a) *Australian National Registry of Emissions Units Act 2011*;

(aa) *Banking Act 1959*;

(ab) *Carbon Credits (Carbon Farming Initiative) Act 2011*;

(b) *Financial Sector (Collection of Data) Act 2001*;

(c) *Financial Sector (Shareholdings) Act 1998*;

(d) *Financial Sector (Transfer and Restructure) Act 1999*;

(e) *Insurance Acquisitions and Takeovers Act 1991*;

(f) *Insurance Act 1973*;

(g) *Insurance Contracts Act 1984*;

(h) *Life Insurance Act 1995*;

(i) *Retirement Savings Accounts Act 1997*;

(j) *Superannuation Industry (Supervision) Act 1993*.

Certain breaches not required to be notified

(2) For the purposes of paragraph 912D(4)(b) of the Act:

(a) the following civil penalty provisions of the Act are prescribed:

(i) subsection 798H(1);

(ii) subsection 901E(1);

(iia) subsection 921BA(5) in so far as it relates to subsection 921BA(4);

(iib) subsection 921BB(4);

(iic) subsection 921E(3);

(iii) subsection 922M(5);

(iv) subsection 941A(3);

(v) subsection 941B(4);

(vi) subsection 962G(4);

(vii) subsection 962S(5);

(viii) subsection 962S(8);

(ix) subsection 962U(3);

(x) subsection 962V(3);

(xi) subsection 981B(3);

(xii) subsection 981C(2);

(xiii) subsection 1012A(5);

(xiv) subsection 1012B(6);

(xv) subsection 1012C(11);

(xvi) subsection 1017BA(4B);

(xvii) subsection 1017BB(5AA);

(xviii) subsection 1021E(8);

(xix) subsection 1021G(3);

(xx) section 1101AC; and

(b) all civil penalty provisions of Commonwealth legislation that is specified in subregulation (1) are prescribed.

7.6.03 Applying for Australian financial services licence

For paragraph 913A(a) of the Act, the following information is required as part of an application by person for an Australian financial services licence:

(a) if the person is a body corporate:

(i) the person’s name (including the person’s principal business name, if any); and

(ii) the name and address of each director; and

(iii) the name and address of each secretary;

(b) if the person is applying on behalf of a partnership—the partnership’s name and address, and the name of each partner;

(c) if paragraphs (a) and (b) do not apply—the person’s name (including the person’s principal business name, if any);

(d) the person’s principal business address;

(e) if the person has an ABN—the ABN;

(f) a description of the financial services that the person proposes to provide;

(g) the arrangements (including a description of systems) by which the person will comply with its general obligations set out in section 912A of the Act;

(h) any other information that ASIC requires for the purpose of considering the application.

7.6.03A Australian financial services licence—requirements for a foreign entity to appoint local agent

(1) For paragraph 913B(1)(d) of the Act, a foreign entity that:

(a) is not a foreign company; and

(b) applies for an Australian financial services licence;

must meet the requirements in subregulations (2) and (3).

(2) The foreign entity must:

(a) have appointed, as an agent, a person who is:

(i) a natural person or a company; and

(ii) resident in this jurisdiction; and

(iii) authorised to accept, on the foreign entity’s behalf, service of process and notices; and

(b) lodge, with the application, a memorandum of appointment or a power of attorney that is duly executed by or on behalf of the foreign entity and states the name and address of the agent.

(3) If the memorandum of appointment, or power of attorney, lodged under paragraph (2)(b) was executed on behalf of the foreign entity, the foreign entity must also lodge a copy declared in writing to be a true copy of the document authorising the execution.

7.6.03B Foreign entity must continue to have local agent

(1) For paragraph 912A(1)(j) of the Act, a foreign entity that:

(a) is not a foreign company; and

(b) is a financial services licensee;

must meet the requirements in subregulation (2).

(2) The foreign entity must:

(a) at all times, have an agent who is:

(i) a natural person or a company; and

(ii) resident in this jurisdiction; and

(iii) authorised to accept, on the foreign entity’s behalf, service of process and notices; and

(b) notify ASIC of any change to:

(i) the agent; or

(ii) the name or address of the agent;

not later than 1 month after the change; and

(c) make arrangements that ensure that ASIC may treat a document as being served on the foreign entity by leaving it at, or by sending it by post to:

(i) an address of the agent that has been notified to ASIC; or

(ii) if a notice or notices of a change or alteration to that address has or have been given to ASIC—the address shown in the most recent notice.

7.6.03C Financial services licensee must cooperate with AFCA

(1) For the purposes of paragraph 912A(1)(j) of the Act, a financial services licensee that is required by paragraph 912A(1)(g) of the Act to be a member of the AFCA scheme must comply with the obligation in subregulation (2).

(2) The licensee must take reasonable steps to cooperate with AFCA in resolving any complaint under the AFCA scheme to which the licensee is a party, including by:

(a) giving reasonable assistance to AFCA in resolving the complaint; and

(b) identifying, locating and providing to AFCA any documents and information that AFCA reasonably requires for the purposes of resolving the complaint; and

(c) giving effect to any determination made by AFCA in relation to the complaint.

(3) Subregulation (2) does not apply to superannuation complaints.

Note: For provisions relating to superannuation complaints, see Division 3 of Part 7.10A of the Act.

7.6.04 Conditions on Australian financial services licence

(1) For subsection 914A(8) of the Act, an Australian financial services licence is subject to the following conditions:

(a) subject to subregulation (1A)—a condition that, if any event occurs that may make a material adverse change to the financial position of the financial services licensee by comparison with its financial position:

(i) at the time of the application for the Australian financial services licence; or

(ii) as described in documents lodged with ASIC after the application for the Australian financial services licence;

the financial services licensee must lodge with ASIC in the prescribed form a notice setting out particulars of the event as soon as practicable, and in any case not later than 3 business days, after the financial services licensee becomes aware of the event;

(b) a condition that, if:

(i) there is a change in a matter particulars of which are entered in a register of financial services licensees; and

(ii) the change is not a direct consequence of an act by ASIC;

the financial services licensee must lodge with ASIC in the prescribed form particulars of the change within 10 business days after the change;

(c) a condition that, if:

(i) there is a change in a matter particulars of which are entered in a register of authorised representatives of financial services licensees; and

(ii) the change is not required to be reported in accordance with section 916F of the Act; and

(iii) the change is not a direct consequence of an act by ASIC;

the financial services licensee must ensure that particulars of the change are lodged with ASIC in the prescribed form within 30 business days after the change;

(ca) a condition that the financial services licensee must ensure that each representative of the financial services licensee that may give an authorisation to another representative is aware of the requirements in subsections 916F(1) and (3) of the Act;

(d) a condition that the financial services licensee must maintain a record of the training (relevant to the provision of financial services) that each of its representatives has undertaken, including:

(i) training undertaken after the representative became a representative of the licensee; and

(ii) any training undertaken before the representative became a representative of the licensee to the extent that the financial services licensee is able to obtain the information by reasonable inquiry;

(e) a condition that the financial services licensee must ensure that, before:

(i) the financial services licensee authorises a person to provide a financial service on its behalf as mentioned in section 916A of the Act; or

(ii) a body corporate that is an authorised representative of the financial services licensee authorises an individual to provide a financial service on behalf of the financial services licensee as mentioned in section 916B of the Act;

reasonable inquiries are made to establish:

(iii) the person’s identity; and

(iv) whether the person has already been allocated a number by ASIC as an authorised representative;

(f) a condition that the financial services licensee must ensure that, if:

(i) ASIC has allocated a number to an authorised representative; and

(ii) the financial services licensee, or a body corporate that has authorised an individual to provide a financial service on behalf of the financial services licensee as mentioned in section 916B of the Act, lodges a document with ASIC that refers to the authorised representative;

the document refers to the number.

(g) a condition that the financial services licensees must provide a copy of an authorisation of any of its authorised representatives:

(i) on request by any person; and

(ii) free of charge; and

(iii) as soon as practicable after receiving the request and, in any event, within 10 business days after the day on which it received the request;

(h) a condition that the financial services licensees must take reasonable steps to ensure that each of its authorised representatives supplies a copy of its authorisation by the financial services licensee:

(i) on request by any person; and

(ii) free of charge; and

(iii) as soon as practicable after receiving the request and, in any event, within 10 business days after the day on which it received the request;

(i) a condition that, if a financial services licensee becomes aware of any change in control of the financial services licensee, the financial services licensee must lodge with ASIC, in the prescribed form, particulars of the change not later than 10 business days after the change;

(j) a condition that, on the request of any person, the financial services licensee must make available a copy of its financial services licence within a reasonable time for inspection by that person;

(k) if the financial services licensee is a limited licensee—a condition that the licensee must, within 3 years from the date on which the licence is granted and if requested in writing by ASIC, demonstrate to the satisfaction of ASIC that:

(i) if the licensee is an individual—the licensee has:

(A) knowledge of the licensee’s obligations under the Act and these Regulations; and

(B) the competence to provide the financial services covered by the licence; or

(ii) if the licensee is a partnership or corporation—each recognised accountant that supervises and has responsibility for the provision of financial services covered by the licence has:

(A) knowledge of the licensee’s obligations under the Act and these Regulations; and

(B) the competence to provide the financial services covered by the licence.

(1A) Paragraph (1)(a) does not apply to a body regulated by APRA, unless the body is an RSE licensee that is also:

(a) the responsible entity of a registered scheme; or

(b) the corporate director of a CCIV.

(2) For paragraph (1)(i):

(a) a ***change in control***, in relation to a financial services licensee, includes a transaction, or a series of transactions in a 12 month period, that results in a person having control of the financial services licensee (either alone or together with associates of the person); and

(b) ***control***, in relation to a financial services licensee, means:

(i) if the financial services licensee is a body corporate:

(A) having the capacity to cast, or control the casting of, more than one‑half of the maximum number of votes that might be cast at a general meeting of the financial services licensee; or

(B) directly or indirectly holding more than one half of the issued share capital of the financial services licensee (not including any part of the issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(ii) the capacity to control the composition of the financial services licensee’s board or governing body; or

(iii) the capacity to determine the outcome of decisions about the licensee’s financial and operating policies; and

(c) for subparagraph (b)(iii), the following matters must be taken into account in determining whether a person has the capacity to determine the outcome of decisions about a financial services licensee’s financial and operating policies:

(i) the practical influence the person can exert (rather than the rights it can enforce);

(ii) any practice or pattern of behaviour affecting the financial services licensee’s financial or operating policies is to be taken into account (whether or not it involves a breach of an agreement or a breach of trust).

(3) In this regulation:

***limited financial services*** means the following financial services:

(a) financial product advice on self managed superannuation funds;

(b) financial product advice on superannuation products in relation to a person’s existing holding in a superannuation product but only to the extent required for:

(i) making a recommendation that the person establish a self managed superannuation fund; or

(ii) providing advice to the person on contributions or pensions under a superannuation product;

(c) class of product advice on the following:

(i) superannuation products;

(ii) securities;

(iii) simple managed investment schemes;

(iv) general insurance products;

(v) life risk insurance products;

(vi) basic deposit products;

(d) arrange to deal in an interest in a self managed superannuation fund.

Note 2: See subregulation 1.0.02(1) for the meaning of ***simple managed investment scheme****.*

Note 3: Financial product advice on self managed superannuation funds includes advice about acquiring or disposing of an interest in a self managed superannuation fund.

***limited licensee*** means a financial services licensee that:

(a) is:

(i) a recognised accountant; or

(ii) a corporation that has one or more recognised accountants that supervise and have responsibility for the provision of financial services covered by its licence; or

(iii) a partnership that has one or more recognised accountants that supervise and have responsibility for the provision of financial services covered by its licence; and

(b) applied for the financial services licence between 1 July 2013 and 30 June 2016; and

(c) is only licensed to provide one or more limited financial services.

***recognised accountant*** means:

(a) a member of CPA Australia who:

(i) holds a Public Practice Certificate issued by CPA Australia Ltd; and

(ii) is entitled to use the letters “CPA” or “FCPA”; and

(iii) is subject to, and complies with, CPA Australia’s continuing professional education requirements; or

(b) a member of The Institute of Chartered Accountants in Australia (***ICAA***) who:

(i) holds a Certificate of Public Practice issued by ICAA; and

(ii) is entitled to use the letters “ACA”, “CA” or “FCA”; and

(iii) is subject to, and complies with, ICAA’s continuing professional education requirements; or

(c) a member of the Institute of Public Accountants (***IPA***) who:

(i) holds a Public Practice Certificate issued by IPA; and

(ii) is entitled to use the letters “FIPA” or “MIPA”; and

(iii) is subject to, and complies with, IPA’s continuing professional education requirements.

7.6.04AA Time limits for notification of authorised representatives—modification of section 916F of the Act

For paragraph 926B(1)(c) of the Act, Part 7.6 of the Act applies as if:

(a) subsection 916F(1) were modified by omitting “15 business days” and substituting “30 business days”; and

(b) subsection 916F(3) were modified by omitting “10 business days” and substituting “30 business days”.

7.6.04A Exemptions to notification of authorised representatives

For paragraph 916F(1AA)(d) of the Act, each of the following financial products is prescribed:

(a) a general insurance product;

(b) a basic deposit product;

(c) a facility for making non‑cash payments that is related to a basic deposit product;

(d) a consumer credit insurance product;

(e) a cash management trust interest.

7.6.05 Register of financial services licensees and register of authorised representatives of financial services licensees

(1) For subsection 922A(2) of the Act, ASIC must include the following details for each financial services licensee in the register of financial service licensees:

(a) the financial services licensee’s name (including the financial services licensee’s principal business name, if any);

(b) the principal business address of the financial services licensee;

(c) the date on which the financial services licensee’s licence was granted;

(d) the number of the financial services licence of the financial services licensee;

(e) if the financial services licensee has an ABN—the ABN;

(f) details of any conditions on the financial services licensee’s licence, including details of the financial service, or class of financial services, that the financial services licensee is authorised to provide;

(g) any other information that ASIC believes should be included in the register.

(2) For subsection 922A(2) of the Act, ASIC must include the following details for each authorised representative of a financial services licensee in the register of authorised representatives of financial services licensees:

(a) the authorised representative’s name (including the authorised representative’s principal business name, if any);

(b) the authorised representative’s principal business address;

(c) if the authorised representative is a body corporate—the name of each director and secretary;

(d) the number allocated to the authorised representative by ASIC;

(e) the name of each financial services licensee for which the authorised representative is an authorised representative;

(f) the number of the financial services licence of each financial services licensee for which the authorised representative is an authorised representative;

(g) if the authorised representative has an ABN—the ABN;

(h) the date of the authorised person’s authorisation, and any other information about the authorisation that ASIC believes should be included in the register;

(i) any other information that ASIC believes should be included in the register.

7.6.06 ASIC register relating to persons against whom banning order or disqualification order is made

(1) For subsection 922A(2) of the Act, ASIC must include the following details for each person against whom a banning order is made in the register of persons against whom a banning order under Division 8 of Part 7.6 of the Act is made:

(a) the person’s name;

(b) the day on which the banning order took effect;

(c) whether the banning order is permanent or for a fixed period;

(d) if the banning order is for a fixed period—the period;

(e) the terms of the banning order;

(f) whether the banning order has been varied or cancelled;

(g) if the banning order has been varied:

(i) the date of the variation; and

(ii) the terms of the variation;

(h) if the banning order has been cancelled—the date of the cancellation;

(i) any other information that ASIC believes should be included in the register.

(2) For subsection 922A(2) of the Act, ASIC must include the following details for each person against whom a disqualification order is made in the register of persons against whom a disqualification order under Division 8 of Part 7.6 of the Act is made:

(a) the person’s name;

(b) the day on which the disqualification order took effect;

(c) whether the disqualification order is permanent or for a fixed period;

(d) if the disqualification order is for a fixed period—the period;

(e) the terms of the disqualification order;

(f) whether the disqualification order has been varied or revoked;

(g) if the disqualification order has been varied:

(i) the date of the variation; and

(ii) the terms of the variation;

(h) if the disqualification order has been revoked—the date of the revocation;

(i) any other information that ASIC believes should be included in the register.

7.6.06C Correcting registers

ASIC may correct any error in or omission from a register maintained under regulation 7.6.05 or 7.6.06.

Note: Australian Privacy Principle 13 applies to ASIC and requires it to take reasonable steps to correct personal information that is wrong or misleading so that the information is accurate, up to date, complete, relevant and not misleading (see Schedule 1 to the *Privacy Act 1988*).

7.6.06D Register of Relevant Providers—prescribed instruments

(1) For the purposes of subsection 922Q(3) of the Act, the following kinds of instrument made under subsection 921K(1) of the Act are prescribed:

(a) a direction (other than a direction covered by subregulation (2)) that a relevant provider:

(i) undertake specified training; or

(ii) receive specified counselling; or

(iii) receive specified supervision; or

(iv) report specified matters to ASIC;

(b) a registration suspension order;

(c) a registration prohibition order.

(2) A direction is covered by this subregulation if:

(a) on a particular occasion, one or more instruments are made under subsection 921K(1) of the Act in relation to a relevant provider; and

(b) the direction is that instrument or one of those instruments; and

(c) that occasion is the first occasion on which an instrument is made under that subsection in relation to the relevant provider.

7.6.07 Restriction on use of certain words or expressions

For subparagraph 923A(2)(b)(iii) of the Act, any other person in respect of whom section 942B or 942C of the Act makes provision for information to be provided in a financial services guide in relation to the receipt of remuneration or other benefits is prescribed.

7.6.07A Modification of section 923C

For paragraph 926B(1)(c) of the Act, Part 7.6 of the Act applies as if subsections 923C(1) to (10) of the Act were modified to read as follows:

“(1) An individual contravenes this subsection if:

(a) the individual carries on a financial services business or provides a financial service (whether or not on behalf of another person); and

(b) the individual assumes or uses, in this jurisdiction, a restricted word or expression in relation to the service; and

(c) any of the following apply:

(i) the individual is not a relevant provider;

(ii) the individual is a provisional relevant provider;

(iii) the individual is a limited‑service time‑sharing adviser.

Note 1: For the meanings of r***estricted word or expression*** and ***assume or use***, see subsections (8) and (9) of this section.

Note 2: A contravention of this subsection is an offence (see subsection 1311(1)).

(2) A person contravenes this subsection if:

(a) the person carries on a financial services business or provides a financial service; and

(b) an individual provides a financial service on behalf of the person; and

(c) the person assumes or uses, in this jurisdiction, a restricted word or expression in relation to the service; and

(d) any of the following apply:

(i) the individual is not a relevant provider;

(ii) the individual is a provisional relevant provider;

(iii) the individual is a limited‑service time‑sharing adviser.

Note 1: For the meanings of ***restricted word or expression*** and ***assume or use***, see subsections (8) and (9) of this section.

Note 2: A contravention of this subsection is an offence (see subsection 1311(1)).

Advice to wholesale clients

(3) It is not a contravention of subsection (1) for an individual to assume or use a restricted word or expression if:

(a) the individual provides advice to wholesale clients; and

(b) the individual assumes or uses the restricted word or expression only in relation to that advice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

(4) It is not a contravention of subsection (2) for a person to assume or use a restricted word or expression if:

(a) another person (the ***adviser***) provides a financial service on behalf of the person; and

(b) the adviser provides advice to wholesale clients; and

(c) the person assumes or uses the restricted word or expression only in relation to that advice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

Advice as employee or director

(5) It is not a contravention of subsection (1) for an individual to assume or use a restricted word or expression if:

(a) the individual is an employee or director of a body; and

(b) the individual provides advice to the body; and

(c) the individual assumes or uses the restricted word or expression only in relation to that advice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

(6) It is not a contravention of subsection (2) for a person to assume or use a restricted word or expression if:

(a) another person (the ***adviser***) is an employee or director of a body; and

(b) the adviser provides advice to the body; and

(c) the person assumes or uses the restricted word or expression only in relation to that advice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

Continuing contravention

(7) If a person assumes or uses a word or expression in circumstances that give rise to the person committing an offence under subsection (1) or (2), the person commits the offence in respect of:

(a) the first day on which the offence is committed; and

(b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

References to restricted word or expression

(8) In this section:

(a) a reference to a restricted word or expression is a reference to:

(i) the expression ***financial adviser*** or ***financial planner***; or

(ii) any other word or expression specified in the regulations as a restricted word or expression for the purposes of this section; or

(iii) any other word or expression (whether or not in English) that is of like import to a word or expression covered by any of the previous subparagraphs; and

(b) a reference to a restricted word or expression being assumed or used includes a reference to the restricted word or expression being assumed or used:

(i) as part of another word or expression; or

(ii) in combination with other words, letters or other symbols.

(9) However, a reference in this section to a restricted word or expression does not include a reference to a word or expression mentioned in paragraph (8)(a) if:

(a) the word or expression mentioned in that paragraph is assumed or used in relation to a provisional relevant provider; and

(b) the word or expression is assumed or used as part of a word or expression specified by the standards body for the purposes of subparagraph 921U(2)(a)(v).

Contravention does not affect arrangements for compensation

(10) To avoid doubt, this section does not affect the obligation of a financial services licensee to have arrangements in place under section 912B.

Note: Section 912B requires financial services licensees to have in place arrangements for compensation if the licensee provides financial services to retail clients.”.

7.6.07B Exam for existing providers

(1) For the purposes of paragraph 1684B(a) of the Act, 1 October 2022 is prescribed in relation to an existing provider who is a relevant provider if, at least twice before 1 January 2022, the existing provider sat an exam approved for the purposes of subsection 921B(3) of the Act as in force immediately before 1 January 2022.

(2) In this regulation:

***existing provider*** has the meaning given by section 1546A of the Act.

Part 7.6B—Provision of information to APRA about contracts of insurance

7.6.08A Definitions

In this Part:

***general insurer*** has the same meaning as in subsection 3(1) of the *Insurance Act 1973*.

***Lloyd’s underwriter*** has the same meaning as in subsection 3(1) of the *Insurance Act 1973*.

***unauthorised foreign insurer*** has the same meaning as in regulation 4 of the *Insurance Regulations 2002.*

7.6.08B Application

This Part applies to a person who is a financial services licensee authorised to deal in general insurance products.

7.6.08C Modification of section 912CA of the Act

For paragraph 926B(1)(c) of the Act, Part 7.6 of the Act applies as if section 912CA of the Act were modified to read as follows:

‘912CA Regulations may require information to be provided

(1) The regulations may require a financial services licensee, or each financial services licensee in a class of financial services licensees, to provide APRA (acting as ASIC’s agent) with specified information about:

(a) the financial services provided by the licensee or its representatives; or

(b) the financial services business carried on by the licensee.

(2) The specified information:

(a) must be lodged in the prescribed form; and

(b) must include:

(i) the information, statements, explanations or other matters required by the form; and

(ii) any further information requested by APRA in relation to any of the matters in subparagraph (i); and

(c) must be accompanied by any other material required by the form.’

7.6.08D Information about general insurance products

(1) This regulation applies in relation to a general insurance product that:

(a) is entered into as a result of a dealing in the product, either wholly or partially, by the person, with a general insurer, Lloyd’s underwriter or an unauthorised foreign insurer; and

(b) is not a reinsurance contract or a retrocession contract.

(2) However, if the person is a general insurer, this regulation does not apply in relation to a general insurance product issued by the person.

(3) For section 912CA of the Act, the person must provide information to APRA about the general insurance product entered into in a reporting period specified in subregulation (5):

(a) in accordance with Table 1 in Form 701; and

(b) either:

(i) within the time specified by ASIC or APRA if that is a reasonable time; or

(ii) if ASIC or APRA do not specify a time—within 20 business days after the last day of the applicable reporting period.

Penalty:

(a) for an individual—20 penalty units; and

(b) for a body corporate—200 penalty units.

(4) For section 912CA of the Act, the person must provide further information to APRA relating to the information provided in accordance with Table 1 in Form 701:

(a) if APRA makes a request in writing for the further information; and

(b) either:

(i) within 5 business days of receiving the request; or

(ii) if ASIC or APRA specifies a later date—by that date.

Penalty:

(a) for an individual—20 penalty units; and

(b) for a body corporate—200 penalty units.

(5) The reporting periods are:

(a) 1 May to 30 June 2010; and

(b) 1 July to 31 December 2010; and

(c) 1 January to 30 June in any year after 2010; and

(d) 1 July to 31 December in any year after 2010.

(6) Strict liability applies to subregulations (3) and (4).

7.6.08E Information about general insurance products—unauthorised foreign insurers

(1) This regulation applies in relation to a general insurance product:

(a) that is entered into as a result of a dealing in the product, either wholly or partially, by the person; and

(b) that is not a reinsurance contract or a retrocession contract; and

(c) in relation to which an unauthorised foreign insurer is a party to the contract that is the general insurance product.

Note: An unauthorised foreign insurer may be a party to a contract of insurance to which Part 2 of the *Insurance Regulations 2002* applies. These are insurance contracts for:

(a) high‑value insured; and

(b) atypical risks; and

(c) risks that cannot reasonably be placed in Australia; and

(d) contracts required by foreign law.

(2) However, if the general insurance product has been dealt with by more than 1 person, this regulation only applies, in relation to the general insurance product, to the person who has:

(a) dealt directly with the unauthorised foreign insurer; or

(b) dealt indirectly with the unauthorised foreign insurer through a foreign intermediary.

(3) For section 912CA of the Act, the person must provide information to APRA about the general insurance product entered into within a reporting period specified in subregulation (5):

(a) in accordance with Table 2 in Form 701; and

(b) either:

(i) within the time specified by ASIC or APRA if that is a reasonable time; or

(ii) if ASIC or APRA do not specify a time—within 20 business days after the last day of the applicable reporting period.

Penalty:

(a) for an individual—20 penalty units; and

(b) for a body corporate—200 penalty units.

(4) For section 912CA of the Act, the person must provide further information to APRA relating to the information provided in accordance with Table 2 in Form 701:

(a) if APRA makes a request in writing for the further information; and

(b) either:

(i) within 5 business days of receiving the request; or

(ii) if ASIC or APRA specify a later date—by that date.

Penalty:

(a) for an individual—20 penalty units; and

(b) for a body corporate—200 penalty units.

(5) The reporting periods are:

(a) 1 May to 30 June 2010; and

(b) 1 July to 31 December 2010; and

(c) 1 January to 30 June in any year after 2010; and

(d) 1 July to 31 December in any year after 2010.

(6) Strict liability applies to subregulations (3) and (4).

Chapter 7—Financial services and markets

Part 7.7—Financial service disclosure

Division 1—Preliminary

7.7.01 How documents, information and statements are to be given

(1) For subsection 940C(3) of the Act:

(a) if general advice is given orally in a public forum, information that subsection 941C(5) of the Act requires to be given must be given orally; and

(b) if general advice is given in electronic form in a public forum, information that subsection 941C(5) of the Act requires to be given must be given in electronic form; and

(c) if general advice is given in writing (otherwise than in electronic form) in a public forum, information that subsection 941C(5) of the Act requires to be given must be given in writing; and

(d) if general advice is given in any other manner in a public forum, information that subsection 941C(5) of the Act requires to be given must be given in the same manner.

(2) For paragraph 940C(7)(a) of the Act, a Financial Services Guide and a Statement of Advice may be given to a person in either of the following ways:

(a) making the Guide or Statement available to the person in any way that:

(i) is agreed to by the person; and

(ii) allows the regulated person to be satisfied, on reasonable grounds, that the person has received the Guide or Statement;

(b) making the Guide or Statement available to the person’s agent in any way that:

(i) is agreed to by the agent; and

(ii) allows the regulated person to be satisfied, on reasonable grounds, that the agent has received the Guide or Statement.

(3) For paragraph 940C(7)(b) of the Act, a document, information or statement that is to be given in electronic form must, as far as practicable, be presented in a way that will allow the person to whom it is given to keep a copy of it so that the person can have ready access to it in the future.

(4) A document or statement that is to be given in electronic form must be presented in a way that clearly identifies the information that is part of the document or statement.

Division 2—Financial Services Guide

7.7.02 Situations in which Financial Services Guide is not required

(1) For paragraph 941C(6)(c) of the Act, the following are prescribed:

(a) a deposit product that is a facility in relation to which:

(i) there is no minimum period before which funds cannot be withdrawn or transferred from the facility without a reduction in the return generated for the depositor; or

(ii) if there is such a period, it expires on or before the end of the period of 2 years starting on the day on which funds were first deposited in the facility;

(b) travellers’ cheques;

(c) a cash management trust interest.

(2) For subsection 941C(4) of the Act:

(a) providing general advice to the public, or a section of the public, at an event organised by or for financial services licensees to which retail clients are invited is prescribed; and

(b) a broadcast of general advice to the public, or a section of the public, that may be viewed or heard by any person is prescribed; and

(c) distributing or displaying promotional material that:

(i) provides general advice to the public, or a section of the public; and

(ii) is available in a place that is accessible to the public is prescribed.

Examples:

1 Television or radio broadcasts.

2 Distributing promotional material contained in newspapers and magazines.

3 Sending a broadcast via an Internet website or webcast.

4 Giving a public lecture or seminar for retail clients, including employees of a workplace.

Note: If general advice is given to the public, or a section of the public, the requirements of subsection 941C(5) of the Act must be complied with. Additionally, if general advice is provided to 1 or more retail clients, the providing entity must comply with section 949A of the Act.

(3) For subsection 941C(8) of the Act, a Financial Services Guide does not have to be given to a client in the following circumstances:

(a) a person (***person 1***) makes an inquiry by telephone in relation to the rental of a vehicle from another person (***person 2***);

(b) as a result of that inquiry, it becomes apparent to person 2 that a financial service will be, or is likely to be, provided to person 1;

(c) the financial service is the issue of an insurance product that relates to either or both of:

(i) the accidental death of, or bodily injury to, a person caused by an accident in connection with the use of the rented vehicle during the rental period; and

(ii) the loss or destruction of, or damage to, either or both of baggage and personal effects belonging to a person in the rented vehicle caused by an insured event during the rental period;

(d) person 2 makes arrangements for a document that is the equivalent of a Financial Services Guide to be given to person 1 no later than the start of the use to which the insurance product relates.

Example: The commencement of a journey of the rental vehicle is a use to which the insurance product relates.

(3A) For subsection 941C(8) of the Act, a Financial Services Guide does not have to be given to a client for a financial service provided in the circumstances specified in paragraph 7.6.01(1)(la).

(4) For subsection 941C(8) of the Act, a Financial Services Guide does not have to be given to a client in respect of advice that:

(a) is provided by a providing entity that is:

(i) a product issuer; or

(ii) a related body corporate of a product issuer; or

(iii) a product distributor; or

(iv) an authorised representative of an entity mentioned in subparagraph (i), (ii) or (iii); and

(b) is only general advice in relation to a financial product that is, or a class of financial products that includes, a financial product that is:

(i) issued by the providing entity or a related body corporate of the providing entity; or

(ii) offered by the providing entity; and

(c) is not provided during a meeting; and

(d) is not provided during a telephone call, unless:

(i) the advice:

(A) concerns a class of financial products that includes a financial product already held by the client; and

(B) is provided by the providing entity for that financial product; or

(ii) there is no issue or sale of any financial product during the telephone call.

Note: The providing entity must meet obligations under the Act in relation to the telephone call such as the prohibition of hawking in sections 992A and 992AA of the Act and the requirements for Product Disclosure Statements in Part 7.9 of the Act.

(4A) If general advice is provided during a telephone call in accordance with paragraph (4)(d), the providing entity must tell the client that:

(a) a Financial Services Guide exists; and

(b) the provider will send out a Financial Services Guide on request.

(5) If subregulation (4) applies and the providing entity does not give a Financial Services Guide to the client when the advice is provided, the providing entity must give to the client:

(a) the information that would be required to be in the Financial Services Guide by paragraphs 942B(2)(a), (e) and (f) of the Act; or

(b) the information that would be required to be in the Financial Services Guide by paragraphs 942C(2)(a), (c), (f) and (g) of the Act;

as the case requires.

Note: If general advice is provided to 1 or more retail clients, the providing entity must comply with section 949A of the Act.

(5A) For subsection 941C(8) of the Act, a Financial Services Guide does not have to be given to a client in the following circumstances:

(a) the advice is provided in circumstances in which section 1018A of the Act applies or will apply at the end of the transition period;

(b) the advice is only general advice in relation to a financial product that is, or a class of financial products that includes, a financial product issued by the product issuer;

(c) the advice is in the form of advertising the financial product:

(i) on a billboard or a poster; or

(ii) in the media within the meaning of subregulation 7.6.01(7);

(d) the advertisement indicates that a person should consider whether or not the product is appropriate for the person.

(5B) For subsection 941C(8) of the Act, a Financial Services Guide does not have to be given to a client in the following circumstances:

(a) the providing entity is an issuer of derivatives that are able to be traded on a financial market;

(b) the financial service is a dealing in a derivative by the providing entity;

(c) at the time of the dealing, the providing entity is not a participant in the financial market on which the particular derivative may be traded;

(d) the only financial service that the providing entity provides to the client is the issuing of the derivative.

(6) In this regulation:

***product distributor*** means a licensee that offers a financial product for sale.

(7) If:

(a) a financial service is provided by a person (the ***secondary service provider***) to a client by causing or authorising another person (the ***intermediary***) to provide or pass on the service; and

(b) but for the operation of section 52 of the Act, the secondary service provider would not be taken to be providing the financial service to the client; and

(c) the intermediary does not act on behalf of the secondary service provider in providing or passing on the service for the secondary service provider (see section 911B of the Act); and

(d) the intermediary is a financial services licensee or an authorised representative of a financial services licensee; and

(e) the secondary service provider has a written agreement with the intermediary under which the intermediary agrees to either:

(i) give the secondary service provider’s Financial Services Guide relating to the financial service provided by the secondary service provider to the client; or

(ii) inform the client how to obtain the secondary service provider’s Financial Services Guide relating to the financial service provided by the secondary service provider;

then, for subsection 941C(8) of the Act, the secondary service provider does not have to give the client a Financial Services Guide for the financial service.

7.7.02A Situations when Financial Services Guide is not required

(1) For paragraph 951C(1)(c) of the Act, section 941C of the Act is modified by inserting after subsection 941C(1) the following subsection:

“(1A) The providing entity does not have to give the client a Financial Services Guide if the client has already received the documents referred to in paragraphs (7A)(b) and (c), in the circumstances set out in that subsection, that together contain all of the information that the new Financial Services Guide is required to contain.”

(2) For paragraph 951C(1)(c) of the Act, section 941C of the Act is modified by inserting after subsection 941C(7) the following subsections:

“(7A) The providing entity does not have to give the client a Financial Services Guide in the following circumstances:

(a) if the providing entity will, or is likely to, provide a financial service to the client in a recommendation situation (see section 1012A), an issue situation (see section 1012B) or a sale situation (see section 1012C);

(b) the providing entity gives to the client a Product Disclosure Statement;

(c) the providing entity gives to the client a statement that:

(i) contains so much of the information required by section 942B or 942C (as the case may be), and any regulations made for the purposes of the appropriate section, as is not already set out in the Product Disclosure Statement; and

(ii) complies with the requirements set out in subsection (7B);

(d) the statements mentioned in paragraphs (b) and (c) are given at the same time.

(7B) The statement referred to in paragraph (7A)(c) must:

(a) be up to date as at the time it is given to the client; and

(b) may contain information apart from that referred to in subparagraph (7A)(c)(i); and

(c) meet the requirements of subsections 942B(3) and (6A) or subsections 942C(3) and (6A) (as the case may be).”

7.7.03 Financial Services Guide given by financial services licensee: description of documents

(1) For paragraph 942B(2)(k) of the Act, the Financial Services Guide given by a financial services licensee must include a statement that:

(a) describes the purpose and content of the Financial Services Guide; and

(b) if appropriate:

(i) informs the client that the client may also receive either or both of a Statement of Advice and a Product Disclosure Statement; and

(ii) describes the purpose and content of those documents.

(2) In describing the purpose and content of the Financial Services Guide as mentioned in subregulation (1), the client’s attention must be drawn to the following matters:

(a) the Guide is designed to assist the client in deciding whether to use any of the services offered in the Guide;

(b) the Guide contains information about remuneration that may be paid to the financial services licensee and other relevant persons in relation to the services offered;

(c) the Guide contains information on how complaints against the financial services licensee are dealt with.

(3) In describing the purpose and content of a Statement of Advice or Product Disclosure Statement, the client’s attention must be drawn to a description of the circumstances in which the Statement of Advice or Product Disclosure Statement will be given.

(4) Subregulations (2) and (3) do not prevent the statement required under subregulation (1) from drawing attention to other matters relating to the purpose and content of the Financial Services Guide, the Statement of Advice or the Product Disclosure Statement.

(5) The statement required under subregulation (1) must be:

(a) presented in a manner that is easy for the client to understand; and

(b) displayed prominently in the Financial Services Guide.

(6) A statement is displayed prominently if it:

(a) appears at, or close to, the front of the Financial Services Guide; and

(b) stands out from the other information contained in the Guide.

Note: Ideally, the statement should be placed:

(a) on the inside cover or inside facing page of a paper‑based Financial Services Guide form; or

(b) in an equivalent position of a Financial Services Guide that is not provided in a paper‑based form.

7.7.03A Financial Services Guide given by financial services licensee: arrangements for compensation

(1) For paragraph 942B(2)(k) of the Act, the Financial Services Guide given by a financial services licensee must include a statement about:

(a) the kind of arrangements for compensation that the licensee has in place; and

(b) whether those arrangements satisfy the requirements under section 912B of the Act for arrangements for compensation.

(2) This regulation commences, for a particular financial services licensee, on the date that subregulations 7.6.02AAA(1), (2) and (3) take effect for that licensee.

7.7.04 Financial Services Guide given by financial services licensee: remuneration, commission and benefits

(1) For paragraph 942B(2)(k) of the Act, the Financial Services Guide given by a financial services licensee must include information, to the extent that the information is able to be ascertained at the time the Financial Services Guide is given to the client, about all remuneration (including commission) and other benefits that a person (***person 1***) has received, or is to receive, for referring another person to the financial services licensee.

Overview of regulation

(2) For paragraph 942B(4)(c) of the Act, the information required in particular situations by paragraph 942B(2)(e) in relation to persons mentioned in paragraph 942B(2)(e) or person 1 (see subregulation (1)) is as set out in subregulations (3), (4) and (5).

If remuneration is ascertainable at the time FSG is given

(3) The following information is required if the remuneration, commission or other benefits are able to be worked out at the time the Financial Services Guide is given to the client:

(a) in a case where the remuneration, commission or other benefits are to be received by a person who is a licensed trustee company, either:

(i) the remuneration, commission or other benefits; or

(ii) the remuneration, commission or other benefits stated as a percentage of the income from the estate or as a percentage of the capital value of the estate;

(b) in any other case—the remuneration, commission or other benefits.

If remuneration is not ascertainable at the time FSG is given and personal advice will be given

(4) If:

(a) the remuneration (including commission) or other benefits are not able to be ascertained at the time the Financial Services Guide is given to the client; and

(b) the providing entity reasonably believes that personal advice will be given to the client;

the following information is required:

(c) either:

(i) particulars of the remuneration (including commission) or other benefits, including, to the extent relevant, a statement of the range of amounts or rates of remuneration (including commission) or other benefits; or

(ii) general information about the remuneration (including commission) or other benefits and the manner in which the remuneration (including commission) or other benefits are to be calculated;

(d) a statement that:

(i) if the remuneration (including commission) or other benefits are calculable at the time the personal advice is given, the remuneration (including commission) or other benefits the person receives on specific financial products to which the personal advice relates will be disclosed at the time the personal advice is given or as soon as practicable after that time; or

(ii) if the remuneration (including commission) or other benefits are not calculable at the time the personal advice is given, the manner in which the remuneration (including commission) or other benefits are to be calculated will be disclosed at the time the personal advice is given or as soon as practicable after that time.

If remuneration is not ascertainable at the time FSG is given and personal advice will not be given

(5) If:

(a) the remuneration (including commission) or other benefits are not able to be ascertained at the time the Financial Services Guide is given to the client; and

(b) the providing entity reasonably believes that personal advice will not be given to the client;

the following information is required:

(c) particulars of the remuneration (including commission) or other benefits, including, to the extent relevant, a statement of the range of amounts or rates of remuneration (including commission) or other benefits; or

(d) both of the following:

(i) general information about the remuneration (including commission) or other benefits and the manner in which the remuneration (including commission) or other benefits are to be calculated;

(ii) a statement that the client may request particulars of the remuneration (including commission) or other benefits but that the request must be made within a reasonable time after the client is given the Financial Services Guide and before any financial service identified in the Guide is provided to the client.

7.7.04A Financial services guide given by financial services licensee: more detailed information about remuneration etc

(1) For subsection 942B(7) of the Act, if:

(a) the remuneration (including commission) or other benefits that a person mentioned in paragraph 942B(2)(e) or person 1 in subregulation 7.7.04(1) has received, or is to receive, are not able to be ascertained at the time the Financial Services Guide is given to the client; and

(b) the providing entity reasonably believes that personal advice will not be given to the client; and

(c) the Financial Services Guide does not contain particulars of the remuneration (including commission) or other benefits;

the client may request, from the financial services licensee, particulars of the remuneration (including commission) or other benefits.

(2) A request under subregulation (1) must be made within a reasonable time after the client is given the Financial Services Guide and before any financial service identified in the Guide is provided to the client.

(3) For subregulation (1), the particulars must, to the extent relevant, include a statement of the range of amounts or rates of remuneration (including commission) or other benefits.

Examples:

1 Remuneration is paid within the range of $X to $Y.

2 Commission is paid at rates between X% and Y%.

(4) The particulars mentioned in subregulation (3) must be presented in a manner that is easy for the client to understand.

7.7.04AA Financial Services Guide given by financial services licensee: non‑monetary benefit that is not conflicted remuneration

(1) This regulation is made for paragraph 942B(4)(b) of the Act.

(2) Information about a non‑monetary benefit that, in accordance with paragraph 963C(b) of the Act, is not conflicted remuneration is not required by paragraph 942B(2)(e) of the Act.

Note: Under paragraph 963C(b) of the Act, if a non‑monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

7.7.04AB Financial Services Guide given by authorised representative: non‑monetary benefit that is not conflicted remuneration

(1) This regulation is made for paragraph 942C(4)(b) of the Act.

(2) Information about a non‑monetary benefit that, in accordance with paragraph 963C(b) of the Act, is not conflicted remuneration is not required by paragraph 942C(2)(f) of the Act.

Note: Under paragraph 963C(b) of the Act, if a non‑monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

7.7.05 Record of advice given by financial services licensee

For subparagraph 942B(2)(g)(iii) of the Act, the period within which a client may request a record of the advice to which that subparagraph relates is 7 years after the day on which the advice is provided.

7.7.05A Financial Services Guide given by authorised representative of financial services licensee: authorised representative number

(1) For paragraph 942C(2)(m) of the Act, the Financial Services Guide given by an authorised representative must include the authorised representative number allocated by ASIC to the authorised representative.

(2) Subregulation (1) does not apply to a Financial Services Guide to which regulation 7.7.05B applies.

7.7.05B Personalised Financial Services Guide

(1) This regulation applies if:

(a) a financial services licensee; or

(b) an authorised representative (the ***authoriser***) of a financial services licensee;

authorises an individual to provide financial services on behalf of the licensee.

(2) For paragraph 942C(4)(b) of the Act, the Financial Services Guide in relation to a financial service does not have to include the information in paragraph 942C(2)(a) of the Act, in respect of the individual, if:

(a) the financial service is dealing in a financial product or the provision of general advice or both; and

(b) the individual provides the financial service in accordance with the authorisation; and

(c) the licensee has reasonable grounds to believe that the identity or remuneration of the individual would not be material to a decision by a retail client whether or not to obtain the financial service; and

(d) the Financial Services Guide includes:

(i) the contact details and licence number of the licensee; and

(ii) a statement setting out, in general terms, the individual’s role and capacity in providing the financial service.

(2A) For paragraph 942C(4)(b) of the Act, the Financial Services Guide in relation to a financial service does not have to include a statement setting out the name and contact details of a person if:

(a) the person is:

(i) a franchisee of the holder of an Australian financial services licence (the ***franchisor***) and a corporate authorised representative of the franchisor; or

(ii) an employee of a franchisee of the holder of an Australian financial services licence; and

(b) the franchisor is an authorised deposit‑taking institution (within the meaning of the *Banking Act 1959*) and regulated by APRA; and

(c) the franchise agreement:

(i) subjects the person to the policies of the franchisor; and

(ii) requires compliance by the person with the policies of the franchisor that were made to give effect to the franchisor’s obligations under the Australian financial services licence; and

(d) the Financial Services Guide produced by the franchisor explains that the franchisor takes responsibility for the services provided by the person.

(3) For paragraph 942C(4)(b) of the Act, the Financial Service Guide in relation to a financial service does not have to include the information in paragraph 942C(2)(a) of the Act, in respect of an authoriser, if:

(a) the financial service is dealing in a financial product or the provision of general advice or both; and

(b) the authoriser provides the financial service in accordance with the authorisation; and

(c) the licensee has reasonable grounds to believe that the identity or remuneration of the authoriser would not be material to a decision by a retail client whether or not to obtain the financial service; and

(d) the Financial Services Guide includes:

(i) the contact details and licence number of the licensee; and

(ii) a statement setting out, in general terms, the authoriser’s role and capacity in providing the financial service.

Note: The Financial Services Guide will contain all information otherwise required by section 942C of the Act.

7.7.05C Exemption from providing certain information in a Financial Services Guide

(1) For paragraph 942B(4)(b) of the Act, for a Financial Services Guide:

(a) information is not required by paragraph 942B(2)(c) of the Act about a financial service to which subsection 941C(6) of the Act applies; and

(b) information is not required by paragraph 942B(2)(e) of the Act in relation to remuneration (including commission) or other benefits that are received only in respect of, or that are only attributable to, a financial service to which subsection 941C(6) of the Act applies.

(2) For paragraph 942C(4)(b) of the Act, for a Financial Services Guide:

(a) information is not required by paragraph 942C(2)(d) of the Act, about a financial service to which subsection 941C(6) of the Act applies; and

(b) information is not required by paragraph 942C(2)(f) of the Act, in relation to remuneration (including commission) or other benefits that are received only in respect of, or that are only attributable to, a financial service to which subsection 941C(6) of the Act applies.

7.7.06 Financial Services Guide given by authorised representative of financial services licensee: description of documents

(1) For paragraph 942C(2)(m) of the Act, the Financial Services Guide given by an authorised representative must include a statement that:

(a) describes the purpose and content of the Financial Services Guide; and

(b) if appropriate:

(i) informs the client that the client may also receive either or both of a Statement of Advice and a Product Disclosure Statement; and

(ii) describes the purpose and content of those documents.

(2) In describing the purpose and content of the Financial Services Guide as mentioned in subregulation (1), the client’s attention must be drawn to the following matters:

(a) the Guide is designed to assist the client in deciding whether to use any of the services offered in the Guide;

(b) the Guide contains information about remuneration that may be paid to the authorised representative and other relevant persons in relation to the services offered;

(c) the Guide contains information on how complaints against the authorised representative are dealt with.

(3) In describing the purpose and content of a Statement of Advice or Product Disclosure Statement, the client’s attention must be drawn to a description of the circumstances in which the Statement of Advice or Product Disclosure Statement will be given.

(4) Subregulations (2) and (3) do not prevent the statement required under subregulation (1) from drawing attention to other matters relating to the purpose and content of the Financial Services Guide, the Statement of Advice or the Product Disclosure Statement.

(5) The statement required under subregulation (1) must be:

(a) presented in a manner that is easy for the client to understand; and

(b) displayed prominently in the Financial Services Guide.

(6) A statement is displayed prominently if it:

(a) appears at, or close to, the front of the Financial Services Guide; and

(b) stands out from the other information contained in the Guide.

Note: Ideally, the statement should be placed:

(a) on the inside cover or inside facing page of a paper‑based Financial Services Guide form; or

(b) in an equivalent position of a Financial Services Guide that is not provided in a paper‑based form.

7.7.06A Financial Services Guide given by authorised representative of financial services licensee—licence number

For paragraph 942C(2)(m) of the Act, a providing entity that is an authorised representative of a financial services licensee must include the licensee’s licence number in a Financial Services Guide given to a client.

7.7.06B Financial Services Guide given by authorised representative of financial services licensee: arrangements for compensation

(1) For paragraph 942C(2)(m) of the Act, the Financial Services Guide given by the authorised representative of a financial services licensee must include a statement about:

(a) the kind of arrangements for compensation that the licensee has in place; and

(b) whether those arrangements satisfy the requirements under section 912B of the Act for arrangements for compensation.

(2) This regulation commences, for a particular authorised representative, on the date that subregulations 7.6.02AAA(1), (2) and (3) take effect for the financial services licensee for whom he or she is a representative.

7.7.07 Financial Services Guide given by authorised representative of financial services licensee: remuneration, commission and benefits

(1) For paragraph 942C(2)(m) of the Act, the Financial Services Guide given by an authorised representative of a financial services licensee must include information, to the extent that the information is able to be ascertained at the time the Financial Services Guide is given to the client, about all remuneration (including commission) and other benefits that a person (***person 1***) has received, or is to receive, for referring another person to:

(a) the authorised representative; or

(b) the financial services licensee.

Overview of regulation

(2) For paragraph 942C(4)(c) of the Act, the information required in particular situations by paragraph 942C(2)(f) in relation to persons mentioned in paragraph 942C(2)(f) or person 1 (see subregulation (1)) is as set out in subregulations (3), (4) and (5).

If remuneration is ascertainable at the time FSG is given

(3) The following information is required if the remuneration, commission or other benefits are able to be worked out at the time the Financial Services Guide is given to the client:

(a) in a case where the remuneration, commission or other benefits are to be received by a person who is a licensed trustee company, either:

(i) the remuneration, commission or other benefits; or

(ii) the remuneration, commission or other benefits stated as a percentage of the income from the estate or as a percentage of the capital value of the estate;

(b) in any other case—the remuneration, commission or other benefits.

If remuneration is not ascertainable at the time FSG is given and personal advice will be given

(4) If:

(a) the remuneration (including commission) or other benefits are not able to be ascertained at the time the Financial Services Guide is given to the client; and

(b) the providing entity reasonably believes that personal advice will be given to the client;

the following information is required:

(c) either:

(i) particulars of the remuneration (including commission) or other benefits, including, to the extent relevant, a statement of the range of amounts or rates of remuneration (including commission) or other benefits; or

(ii) general information about the remuneration (including commission) or other benefits and the manner in which the remuneration (including commission) or other benefits are to be calculated;

(d) a statement that:

(i) if the remuneration (including commission) or other benefits are calculable at the time the personal advice is given, the remuneration (including commission) or other benefits the person receives on specified financial products to which the personal advice relates will be disclosed at the time the personal advice is given or as soon as practicable after that time; or

(ii) if the remuneration (including commission) or other benefits are not calculable at the time the personal advice is given, the manner in which the remuneration (including commission) or other benefits are to be calculated will be disclosed at the time the personal advice is given or as soon as practicable after that time.

If remuneration is not ascertainable at the time FSG is given and personal advice will not be given

(5) If:

(a) the remuneration (including commission) or other benefits are not able to be ascertained at the time the Financial Services Guide is given to the client; and

(b) the providing entity reasonably believes that personal advice will not be given to the client;

the following information is required:

(c) particulars of the remuneration (including commission) or other benefits, including, to the extent relevant, a statement of the range of amounts or ratesof remuneration (including commission) or other benefits; or

(d) both of the following:

(i) general information about the remuneration (including commission) or other benefits and the manner in which the remuneration (including commission) or other benefits are to be calculated;

(ii) a statement that the client may request particulars of the remuneration (including commission) or other benefits but that the request must be made within a reasonable time after the client is given the Financial Services Guide and before any financial service identified in the Guide is provided to the client.

7.7.07A Financial services guide given by authorised representative: more detailed information about remuneration etc

(1) For subsection 942C(7) of the Act, if:

(a) the remuneration (including commission) or other benefits that a person mentioned in paragraph 942C(2)(f) or person 1 in subregulation 7.7.07(1) has received, or is to receive, are not able to be ascertained at the time the Financial Services Guide is given to the client; and

(b) the providing entity reasonably believes that personal advice will not be given to the client; and

(c) the Financial Services Guide does not contain particulars of the remuneration (including commission) or other benefits;

the client may request, from the authorised representative, particulars of the remuneration (including commission) or other benefits.

(2) A request under subregulation (1) must be made within a reasonable time after the client is given the Financial Services Guide and before any financial service identified in the Guide is provided to the client.

(3) For subregulation (1), the particulars must, to the extent relevant, include a statement of the range of amounts or rates of remuneration (including commission) or other benefits.

Examples:

1 Remuneration is paid within the range of $X to $Y.

2 Commission is paid at rates between X% and Y%.

(4) The particulars mentioned in subregulation (3) must be presented in a manner that is easy for the client to understand.

7.7.08 Record of advice given by authorised representative of financial services licensee

For subparagraph 942C(2)(h)(iii) of the Act, the period within which a client may request a record of the advice to which that subparagraph relates is 7 years after the day on which the advice is provided.

Division 2A—Combined Financial Services Guide and Product Disclosure Statement

7.7.08A Combined Financial Services Guide and Product Disclosure Statement

(1) For subsection 942DA(1) of the Act, this regulation specifies the circumstances in which a Financial Services Guide and a Product Disclosure Statement may be combined in a single document.

(1B) This regulation does not apply if the Product Disclosure Statement is for a standard margin lending facility.

(1C) This regulation does not apply if the Product Disclosure Statement is for a superannuation product to which Subdivision 4.2B of Division 4 of Part 7.9 applies.

(1D) This regulation does not apply if the Product Disclosure Statement is for:

(a) a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 applies; or

(b) a simple sub‑fund product to which Subdivision 4.2D of Division 4 of Part 7.9 applies.

(2) A combined Financial Services Guide and Product Disclosure Statement may be issued as a single document if:

(a) the providing entity for the financial service and the product issuer for a product issued in relation to that financial service are the same person; and

(b) the document is divided into 2 separate parts:

(i) a part identifiable as a Financial Services Guide that satisfies the requirements under the Act for a Financial Services Guide; and

(ii) a part identifiable as a Product Disclosure Statement that satisfies the requirements for a Product Disclosure Statement; and

(c) the title ‘Combined Financial Services Guide and Product Disclosure Statement’ is marked on or near the front of the document; and

(d) the document is provided to a client at the earlier of the time at which a Financial Services Guide must be provided and the time at which a Product Disclosure Statement must be provided.

(3) A combined Financial Services Guide and Product Disclosure Statement may be issued as a single document if:

(a) the providing entity for the financial service is a representative or a related body corporate of the product issuer; and

(b) the product is only a basic deposit product, a non‑cash payment facility that is related to a basic deposit product, a general insurance product or a life risk insurance product; and

(c) the document is divided into 2 separate parts:

(i) a part identifiable as a Financial Services Guide that satisfies the requirements under the Act for a Financial Services Guide; and

(ii) a part identifiable as a Product Disclosure Statement that satisfies the requirements for a product Disclosure Statement; and

(d) the title ‘Combined Financial Services Guide and Product Disclosure Statement’ is marked on or near the front of the document; and

(e) the document clearly and prominently discloses:

(i) the identity of the providing entity and the product issuer; and

(ii) the nature of the relationship between the providing entity and the product issuer; and

(iii) the liability of the providing entity and the product issuer in relation to the document; and

(f) the document is provided to a client at the earlier of the time at which a Financial Services Guide must be provided and the time at which a Product Disclosure Statement must be provided.

(4) For the single document:

(a) the Financial Services Guide and the Product Disclosure Statement may provide for matters by the use of cross‑references to each other rather than by fully setting out material; and

(b) if the document includes cross‑references:

(i) the document as a whole must include all of the information required by subsections 942B(6A) and 1013C(3) of the Act; and

(ii) the use of the cross‑references must not have the effect that the document is misleading or deceptive.

Division 2AA—Combined Financial Services Guide and credit guide

7.7.08B Modification of section 942DA of the Act

(1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if section 942DA of the Act were modified by substituting the heading of the section with the following section heading and subsection heading:

‘942DA Combining a Financial Services Guide and another instrument

Financial Services Guide and a Product Disclosure Statement’.

(2) Part 7.7 of the Act applies as if section 942DA of the Act were also modified by inserting after subsection (3) the following subsection heading and subsections:

‘Financial Services Guide and a credit guide

(4) If:

(a) a person:

(i) is:

(A) a financial services licensee; or

(B) an authorised representative of a financial services licensee; and

(ii) is required to give a Financial Services Guide to a client under this Act; and

(b) the person:

(i) either:

(A) holds an Australian credit licence under the *National Consumer Credit Protection Act 2009*; or

(B) is a credit representative (within the same meaning as in the *National Consumer Credit Protection Act 2009*); and

(ii) is required to give a credit guide to a consumer under that Act;

the person may combine the Financial Services Guide and credit guide in a single document.

(5) If the person combines the Financial Services Guide and credit guide in a single document, any statements or information to be included in the credit guide that are identical to statements or information to be included in the Financial Services Guide need only be included once.’

Division 2B—Record of small investment advice

7.7.08C Record of small investment advice—content requirements

(1) For subsection 946AA(4) of the Act, a record of advice to a client must set out:

(a) the matters set out in subregulation (2); and

(b) the information that, if a Statement of Advice were to be given, would be required in that statement by paragraphs 947B(2)(d) and (e) of the Act or paragraphs 947C(2)(e) and (f) of the Act.

(2) For paragraph (1)(a), the matters that the record of advice must set out are:

(a) brief particulars of the recommendations made to the client and the basis on which the recommendations are made; and

(b) brief particulars of the information that would be required by subsection 947D(2) of the Act if a Statement of Advice were given to the client; and

(c) the statement that would be required by subsection 947D(3) of the Act if a Statement of Advice were given to the client.

Note: A client is entitled to ask the providing entity for a record of advice and the providing entity must give a copy of the record of advice to the client—see paragraph 946AA(5)(a) of the Act.

Division 3—Statement of Advice

7.7.09 Situations in which statement of advice is not required: further advice

(1) For subsection 946B(3A) of the Act, a record of advice must set out:

(a) the following:

(i) the advice given to the client by the providing entity;

(ii) if information or a statement required by subsections 947D(2) and (3) is given—the information and statement; or

(b) the following:

(i) brief particulars of the recommendations made and the basis on which the recommendations are made;

(ii) if information under subsection 947D(2) is given—brief particulars of the information;

(iii) if a statement under subsection 947D(3) is given—an acknowledgement that the statement has been given.

(2) The providing entity may keep the record in any form, for example, a tape recording.

(3) The providing entity must keep the record for 7 years after the day on which the further advice is provided.

7.7.09A Situations in which Statement of Advice is not required: small investments threshold

(1) For subparagraph 946AA(1)(a)(i) of the Act, the threshold amount is $15 000.

(2) Subregulations (3) and (4) apply to each of the following financial products:

(a) shares;

(b) rights issues;

(c) options over unissued shares;

(d) partly paid shares;

(e) debentures;

(f) stapled securities;

(g) securities in a CCIV.

(3) For small investment advice to a client that is related to the acquisition of one or more of the financial products listed in paragraphs (2)(a) to (g), the threshold amount in subregulation (1) must be calculated to include the total value of all financial investments that would be committed to by the client if the advice were accepted by the client.

Examples:

1 If the small investment advice related to the purchase of options over unissued shares the total cost of the options would be both the cost to buy the options and the cost of the exercise price on the face of the options.

2 If the small investment advice relates to the purchase of partly paid shares the total cost of the shares must be calculated as if all calls had been made on the shares.

Note: The total value of all financial investments in relation to which small investment advice is provided is calculated in accordance with subsection 946AA(2) of the Act.

(4) For small investment advice to a client that is related to the disposal of one or more of the financial products listed in paragraphs (2)(a) to (g), the threshold amount in subregulation (1) must be calculated to include the total value of all financial investments that would be disposed of by the client if the advice were accepted by the client.

Note: The total value of all financial investments in relation to which small investment advice is provided is calculated in accordance with subsection 946AA(2) of the Act.

(5) Subregulations (6) and (7) apply to each of the following financial products:

(a) superannuation;

(b) managed investment schemes;

(c) non‑derivative instalment warrants.

(6) For small investment advice to a client that is related to the acquisition of one or more of the financial products listed in paragraphs (5)(a) to (c), the threshold amount in subregulation (1) must be calculated to include:

(a) both:

(i) the cost to the client of the initial investment; and

(ii) other amounts that would be committed to by the client if the advice is taken; and

(b) if the investment is not finite—the value of the investment is calculated for the 12‑month period beginning from the date that the record of advice is required by subregulation (10), (11) or (12) to be given to the client.

Examples:

1 **Advice given in relation to switching superannuation funds**

A person earning $50 000 per annum is given advice to switch an existing superannuation fund balance of $12 000 to another superannuation fund and direct all future superannuation guarantee contributions to that same fund. In this event the total of the superannuation guarantee contributions in the first 12‑month period (ie $50 000 × 0.09 = $4 500) when added to the initial $12 000 transfer, would exceed the $15 000 threshold. In this example the exemption, in section 946AA of the Act, from the requirement to provide a Statement of Advice would not apply.

2 **Advice given to acquire non‑derivative instalment warrants**

The terms of the non‑derivative instalment warrants are that $10 000 must be paid initially, a second payment of $12 000 in 18 months time and a third and final payment of $12 000 in 3 years time. The investment advice, assuming the client has committed to implementing the advice, concerns a $34 000 investment and therefore the exemption, in section 946AA of the Act, from the requirement to provide a Statement of Advice would not apply.

Note: The total value of all financial investments in relation to which small investment advice is provided is calculated in accordance with subsection 946AA(2) of the Act.

(7) For small investment advice to a client that is related to the disposal of one or more of the financial products listed in paragraphs (5)(a) to (c), the threshold amount in subregulation (1) must be calculated to include:

(a) the value to the client of the total divestment; and

(b) other amounts reasonably related to the divestment that would be expended if the advice is taken.

Note: The total value of all financial investments in relation to which small investment advice is provided is calculated in accordance with subsection 946AA(2) of the Act.

(8) If the total value of an investment, to which investment advice to a client relates, is not able to be ascertained under subsection 946AA(2) of the Act, the investment advice is taken to exceed the threshold amount in subregulation (1).

(9) If an investment, to which investment advice relates, is jointly held by more than 1 client, the sum of the values of each client’s investment must be calculated to determine whether the threshold amount in subregulation (1) is exceeded.

When record of advice is given

(10) For subsection 946AA(4) of the Act, a record of advice is required to be given to a client when, or as soon as practicable after, investment advice is provided to the client and, in any event, subject to subregulation (12), before the providing entity provides the client with any further financial service that arises out of or in connection with the investment advice.

Statement of certain information if record of advice not given when advice provided

(11) If the record of advice is not given to the client when the investment advice is provided, the providing entity must, at the time the investment advice is provided, give the client a statement that contains the information that would be required to be in a Statement of Advice by:

(a) paragraphs 947B(2)(d) and (e) of the Act; or

(b) paragraphs 947C(2)(e) and (f) of the Act;

as the case requires, and by section 947D of the Act, if applicable.

Time‑critical cases

(12) If:

(a) a client expressly instructs that they require a further financial service to be provided immediately, or by a specified time; and

(b) the further financial service arises out of, or in connection with, the investment advice given to the client; and

(c) it is not reasonably practicable to give a record of advice to the client before the further service is provided as so instructed;

the providing entity must give the client the record of advice:

(d) unless paragraph (e) applies—within 5 days after providing the further service, or as soon as practicable; or

(e) if the further financial service is the provision to the client of a financial product and section 1019B of the Act applies to the acquisition of the product by the client—before the start of the period applicable under subsection 1019B(3) of the Act, or sooner if practicable.

7.7.09AA Statement of Advice from financial services licensee

(1) For paragraph 947B(2)(g) of the Act, a Statement of Advice given by a financial services licensee in relation to a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA(1) of the Act must include the following information:

(a) whether the client has taken out a loan to fund the secured property or transferred securities contributed by the client for establishing the margin lending facility;

Note: This is sometimes referred to as ‘double gearing’.

(b) if a loan to fund the secured property or transferred securities contributed by the client for establishing the margin lending facility has been taken out—whether the security for the loan includes the primary residential property of the client;

(c) whether there is a guarantor for the margin lending facility, and, if so:

(i) if the financial services licensee has the necessary information—a statement as to whether the guarantor has been appropriately informed of, and warned about, the risks and possible consequences of providing the guarantee; or

(ii) if the financial services licensee does not have the necessary information—a statement that the financial services licensee does not have the information;

(d) the amount of any other debt incurred by the client;

(e) any other matter that ASIC has specified in a legislative instrument for subregulation (2).

(2) ASIC may specify in a legislative instrument any matter ASIC considers to be relevant for the purpose of establishing whether the margin lending facility, or the margin lending facility with the increased limit, is unsuitable for the client.

7.7.09AB Modification of subsection 947B(4) of the Act

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 947B(4) of the Act were modified by:

(a) substituting the full stop at the end of paragraph (c) with a semi‑colon; and

(b) inserting after paragraph (c) the following paragraph:

‘(d) that ASIC may specify in a legislative instrument matters ASIC considers to be relevant for the purposes of paragraph 947B(2)(g) of the Act.’

7.7.09B Statement of Advice from providing entity—information not included in the Statement

(1) For paragraphs 947B(4)(b) and 947C(4)(b) of the Act, a providing entity is not required to include a statement or information mentioned in Part 7.7 of the Act in a Statement of Advice to the client if the Statement of Advice:

(a) refers to the statement or information; and

(b) provides sufficient details about the statement or information to enable the client:

(i) to identify by a unique identifier the document, or part of the document, that contains the statement or information; and

(ii) to decide whether or not to read the statement or information or obtain a copy of the statement or information; and

(c) states that a copy of the statement or information may be obtained from the providing entity on request, at no charge.

(2) Subject to subregulation (3), the providing entity must give the client the document, or part of the document (whichever is applicable), unless the providing entity has already given the document or part of the document to the client.

(3) If the providing entity is an authorised representative of an Australian financial services licensee, the document, or part of the document (whichever is applicable), may be provided to the client:

(a) by another authorised representative appointed by and acting on behalf of the licensee; or

(b) by the licensee.

(4) If the client requests a copy of a statement or information that the providing entity is not required to include in accordance with subregulation (1), the providing entity must provide the copy as soon as practicable, at no charge.

(5) If a statement or information is not required to be included in a Statement of Advice because of subregulation (1), the statement or information is taken to be included in the Statement of Advice.

(6) The exemption in subregulation (1) does not apply to a statement or information that is required by section 947D or 961H of the Act.

7.7.09BA Statement of Advice from authorised representative

(1) For paragraph 947C(2)(h) of the Act, a Statement of Advice given by an authorised representative in relation to a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA(1) of the Act must include the following information:

(a) whether the client has taken out a loan to fund the secured property or transferred securities contributed by the client for establishing the margin lending facility;

Note: This is sometimes referred to as ‘double gearing’.

(b) if a loan to fund the secured property or transferred securities contributed by the client for establishing the margin lending facility has been taken out—whether the security for the loan includes the primary residential property of the client;

(c) whether there is a guarantor for the margin lending facility, and, if so:

(i) if the authorised representative has the necessary information—a statement as to whether the guarantor has been appropriately informed of, and warned about, the risks and possible consequences of providing the guarantee; or

(ii) if the authorised representative does not have the necessary information—a statement that the authorised representative does not have the information;

(d) the amount of any other debt incurred by the client;

(e) any other matter that ASIC has specified in a legislative instrument for subregulation (2).

(2) ASIC may specify in a legislative instrument any matter ASIC considers to be relevant for the purpose of establishing whether the margin lending facility, or the margin lending facility with the increased limit, is unsuitable for the client.

7.7.09BB Modification of subsection 947C(4) of the Act

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 947C(4) of the Act were modified by:

(a) substituting the full stop at the end of paragraph (c) with a semi‑colon; and

(b) inserting after paragraph (c) the following paragraph:

‘(d) that ASIC may specify in a legislative instrument matters ASIC considers to be relevant for the purposes of paragraph 947C(2)(h) of the Act.’

7.7.09BC Statement of Advice given by financial services licensee: non‑monetary benefit that is not conflicted remuneration

(1) This regulation is made for paragraph 947B(4)(b) of the Act.

(2) Information about a non‑monetary benefit that, in accordance with paragraph 963C(b) of the Act, is not conflicted remuneration is not required by paragraph 947B(2)(d) of the Act.

Note: Under paragraph 963C(b) of the Act, if a non‑monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

7.7.09BD Statement of Advice given by authorised representative: non‑monetary benefit that is not conflicted remuneration

(1) This regulation is made for paragraph 947C(4)(b) of the Act.

(2) Information about a non‑monetary benefit that, in accordance with paragraph 963C(b) of the Act, is not conflicted remuneration is not required by paragraph 947C(2)(e) of the Act.

Note: Under paragraph 963C(b) of the Act, if a non‑monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

7.7.09C Requirement to keep Statement of Advice and other documents

A Statement of Advice and a document, or part of a document, mentioned in the Statement, must be retained, by the providing entity that gave the Statement, for 7 years after the day on which the Statement is provided to the client.

7.7.10 Products for which a Statement of Advice is not required

For paragraph 946B(5)(c) of the Act, the following are prescribed:

(a) a deposit product that is a facility in relation to which:

(i) there is no minimum period before which funds cannot be withdrawn or transferred from the facility without a reduction in the return generated for the depositor; or

(ii) if there is such a period, it expires on or before the end of the period of 2 years starting on the day on which funds were first deposited in the facility;

(b) travellers’ cheques;

(c) a cash management trust interest;

(d) a motor vehicle insurance product (see regulation 7.1.11);

(e) a home building insurance product (see regulation 7.1.12);

(f) a home contents insurance product (see regulation 7.1.13);

(g) a travel insurance product (see regulation 7.1.16);

(h) a personal and domestic property insurance product (see regulation 7.1.17);

(i) a general insurance product prescribed by regulations made for the purposes of subparagraph 761G(5)(b)(viii) (see regulation 7.1.17A).

7.7.10AA Obligation on authorised representative to give a financial services guide

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 941B(2) were omitted and the following subsection were substituted:

“(2) A Financial Services Guide must not be given to the person by the providing entity unless the authorising licensee, or each of the authorising licensees, on whose behalf the providing entity provides the financial services, has authorised its distribution by the providing entity.”

7.7.10AAA Record of advice without a recommendation to purchase or sell—content requirements

For subsection 946B(9) of the Act, a record of advice must set out the following:

(a) the investment advice given to a client by the providing entity;

(b) brief particulars of the recommendations made to the client and the basis on which the recommendations are made;

(c) if the providing entity is a financial services licensee—the information that, if a Statement of Advice were to be given, would be required in that Statement by paragraphs 947B(2)(d) and (e) of the Act;

(d) if the providing entity is an authorised representative—the information that, if a Statement of Advice were to be given, would be required in that Statement by paragraphs 947C(2)(e) and (f) of the Act.

Note: A client is entitled to ask the providing entity for a record of advice under subsections 942B(8) and 942C(8) of the Act.

7.7.10AB Financial services guide—contents of guide

Financial services guide given by financial services licensee

(1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 942B(2)(c) of the Act were omitted and the following paragraph were substituted:

“(c) either:

(i) information about the financial services (the ***authorised services***) that the providing entity will be, or is likely to be, providing to the client, and the kinds of financial products to which those services relate; or

(ii) information about the kinds of financial services (the ***authorised services***) that the providing entity is authorised by its licence to provide, and the kinds of financial products to which those services relate; and”.

Financial services guide given by authorised representative

(2) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraphs 942C(2)(c), (d) and (e) of the Act were omitted and the following paragraphs were substituted:

“(c) either:

(i) information about the financial services (the ***authorised services***) that the providing entity will be, or is likely to be, providing to the client, and the kinds of financial products to which those services relate; or

(ii) information, in relation to the authorising licensee or each of the authorising licensees, about the kinds of financial services (the ***authorised services***) that the providing entity provides as representative of the authorising licensee, and the kinds of financial products to which those services relate; and

(d) information about who the authorising licensee, or each of the authorising licensees, acts for when the authorised services are provided on their behalf by the providing entity; and

(e) a statement:

(i) setting out the name and contact details of the authorising licensee, or of each of the authorising licensees, mentioned in paragraph (d); and

(ii) stating that the providing entity is the authorised representative of that licensee or those licensees; and”.

7.7.10AC Financial services guide

Financial services guide given by financial services licensee—contents of guide

(1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 942B(2)(g) were omitted and the following paragraph were substituted:

“(g) if the providing entity provides further advice—a statement in relation to which the following requirements are satisfied:

(i) the statement must indicate that the client may request a record of further advice that is provided to them, if they have not already been provided with a record of that advice;

(ii) the statement must set out particulars of how the client may request such a record;

(iii) any limitation in those particulars relating to the time within which the client may request such a record must be consistent with any applicable requirements in regulations made for the purposes of this subparagraph or, if there are no such applicable requirements, must be such as to allow the client a reasonable opportunity to request a record of the advice; and”.

Financial services guide given by financial services licensee—compliance with statement

(2) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 942B(8) were omitted and the following subsection were substituted:

“(8) If:

(a) the Financial Services Guide includes a statement to the effect that a client may request a record of further advice; and

(b) the client is provided with further advice to which that statement applies; and

(c) the client has not already been provided with a record of that advice;

the providing entity must comply with a request made in accordance with that statement for a record of that advice.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).”

7.7.10AD Financial services guide

Financial services guide given by authorised representative—contents of guide

(1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 942C(2)(h) were omitted and the following paragraph were substituted:

“(h) if the providing entity, when acting as representative of the authorising licensee or any of the authorising licensees, provides further advice—a statement in relation to which the following requirements are satisfied:

(i) the statement must indicate that the client may request a record of further advice that is provided to them, if they have not already been provided with a record of that advice;

(ii) the statement must set out particulars of how the client may request such a record;

(iii) any limitation in those particulars relating to the time within which the client may request such a record must be consistent with any applicable requirements in regulations made for the purposes of this subparagraph or, if there are no such applicable requirements, must be such as to allow the client a reasonable opportunity to request a record of the advice; and”.

Financial services guide given by authorised representative—compliance with statement

(2) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 942C(8) were omitted and the following subsection were substituted:

“(8) If:

(a) the Financial Services Guide includes a statement to the effect that a client may request a record of further advice; and

(b) the client is provided with further advice to which that statement applies; and

(c) the client has not already been provided with a record of that advice;

the providing entity must comply with a request made in accordance with that statement for a record of that advice.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).”

7.7.10AE Situations in which Statement of Advice not required

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if section 946B of the Act were omitted and the following section were substituted:

“946B Situations in which a Statement of Advice is not required

First situation: further advice

(1) The providing entity does not have to give the client a Statement of Advice for particular advice (the ***further advice***) if subsection (2) or (2A) applies.

(2) This subsection applies if:

(a) the providing entity has previously given the client a Statement of Advice that set out the client’s relevant personal circumstances in relation to the advice (the ***previous advice***) set out in that Statement; and

(b) the client’s relevant personal circumstances in relation to the further advice (determined having regard to the client’s objectives, financial situation and needs as currently known to the providing entity) are not significantly different from the client’s relevant personal circumstances in relation to the previous advice; and

(c) so far as the basis on which advice is given relates to other matters—the basis on which the further advice is given is not significantly different from the basis on which the previous advice was given.

Note: Paragraphs 947B(2)(b) and 947C(2)(b) require a Statement of Advice to include information about the basis on which the advice is or was given, which may include the client's relevant personal circumstances, in which case paragraph (a) of this subsection would be satisfied.

(2A) This subsection applies if:

(a) the client had a relationship with the providing entity before:

(i) if the providing entity is a licensee—the day on which the providing entity obtained its Australian financial services Licence; or

(ii) if the providing entity is an authorised representative—the day on which the licensee on whose behalf the advice is provided obtained its Australian financial services Licence; and

(b) the providing entity gave the client advice (the ***earlier advice***) of a kind that if it were given after the day the Australian financial services Licence was obtained would be considered to be personal advice; and

(c) the client’s relevant personal circumstances in relation to the further advice are not significantly different from the client’s investment objectives, financial situation and particular needs that were determined for the earlier advice; and

(d) so far as the basis on which advice is given relates to other matters—the basis on which the further advice is given is not significantly different from the basis on which the earlier advice was given.

(3) At the same time or as soon as practicable after the further advice is given to the client, the client must be given a statement that contains the information that would, if a Statement of Advice were to be given, be required to be in the Statement by paragraphs 947B(2)(d) and (e), or 947C(2)(e) and (f), as the case requires, and by section 947D, if applicable.

(3A) The providing entity must keep a record of the further advice and, in doing so, must comply with any applicable requirements of regulations made for the purposes of this subsection.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 2: For the client’s right to a record of the advice, see subsections 942B(8) and 942C(8).

Note 3: Subsections 947D(2) and (3) require additional information to be included in the record in certain circumstances.

Second situation: certain basic deposit and other products

(5) The providing entity does not have to give the client a Statement of Advice if the advice relates to any or all of the following:

(a) a basic deposit product;

(b) a facility for making non‑cash payments (see section 763D) that is related to a basic deposit product;

(c) a financial product of a kind prescribed by regulations made for the purposes of this paragraph.

(6) However, if subsection (4) applies and the client is not given a Statement of Advice, the client must instead, when, or as soon as practicable after, the advice is provided, be given the information that would be required to be in the Statement of Advice by paragraphs 947B(2)(d) and (e), or 947C(2)(e) and (f), as the case requires.”

7.7.10AF Various consequential amendments to Division 7 of Part 7.7 concerning situations where Financial Services Guides do not have to be given

(1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if the provision set out in column 2 of the following table were modified as set out in columns 3 and 4:

| Column 1 | Column 2 | Column 3 | Column 4 |
| --- | --- | --- | --- |
| Item | provision of Act | is modified by… | and… |
| 1 | paragraph (a) of the definition of ***defective*** in subsection 952B(1) | omitting “941D(2)” | substituting “941D(2) or paragraph 941C(7A)(c) or” |
| 2 | subparagraph (a)(iv) of the definition of ***defective*** in subsection 952B(1) | omitting “941D(2)” | substituting “941D(2) or paragraph 941C(7A)(c) or” |
| 3 | paragraph (d) of the definition of ***disclosure document or statement*** in subsection 952B(1) | omitting “946C(2)” | substituting “946C(2) or paragraph 941C(7A)(c),” |
| 4 | paragraph 952E(2)(a) | omitting “946C(2)” | substituting “946C(2) or paragraph 941C(7A)(c),” |
| 5 | paragraph 952F(1)(b) | omitting “946C(2)” | substituting “946C(2) or paragraph 941C(7A)(c),” |
| 6 | subparagraph 952F(1)(c)(i) | omitting “946C(2)” | substituting “946C(2) or paragraph 941C(7A)(c),” |
| 7 | paragraph 952G(1)(b) | omitting “946C(2)” | substituting “946C(2) or paragraph 941C(7A)(c),” |
| 8 | subparagraph 952G(1)(c)(i) | omitting “946C(2)” | substituting “946C(2) or paragraph 941C(7A)(c),” |
| 9 | paragraph (a) of the definition of ***defective*** in subsection 953A(1) | omitting “941D(2)” | substituting “941D(2) or paragraph 941C(7A)(c) or” |
| 10 | subparagraph (a)(iv) of the definition of ***defective*** in subsection 953A(1) | omitting “941D(2)” | substituting “941D(2) or paragraph 941C(7A)(c) or” |
| 11 | paragraph (d) of the definition of ***disclosure document or statement*** in subsection 953A(1) | omitting “946C(2)” | substituting “946C(2) or paragraph 941C(7A)(c),” |

(2) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 940C(1) were modified by omitting “or a Statement of Advice” and substituting “, a Statement of Advice or a statement referred to in paragraph 941C(7A)(c)”.

(3) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 941D(4) were omitted and the following subsection were substituted:

“(4) The client must then be given:

(a) the statement referred to in paragraph 941C(7A)(c) together with a Product Disclosure Statement as required by paragraph 941C(7A)(b)) in accordance with the requirements of subsections 941C(7A) and (7B); or

(b) a Financial Services Guide;

within 5 business days after having given the statement referred to in subsection (3), or sooner if practicable.”

(4) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if the following subsection were inserted at the end of section 941F:

“(2) If:

(a) a statement referred to in paragraph 941C(7A)(c) is given to the client before the financial service is provided; and

(b) the following conditions are satisfied:

(i) there is a change in circumstances before the service is provided and the statement does not contain the information it would be required to contain if it were given to a person immediately after that change;

(ii) the fact that the statement does not contain the up to date information is materially adverse from the point of view of a reasonable person deciding, as a retail client, whether to proceed to be provided with the financial service;

the providing entity must, before the service is provided, give the client another statement of the kind referred to in paragraph 941C(7A)(c) that contains the up to date information before the service is provided.”

7.7.10AG Various consequential amendments to Division 7 of Part 7.7

(1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if the provisions set out in column 2 of the following table were modified as set out in columns 3 and 4:

| Column 1 | Column 2 | Column 3 | Column 4 |
| --- | --- | --- | --- |
| Item | provision of Act | is modified by… | and… |
| 1 | paragraph (b) of the definition of ***defective*** in subsection 952B(1) | omitting “Statement of Advice” | substituting “Statement of Advice, a record of advice required by subsection 946B(3A),” |
| 2 | paragraph 952E(2)(a) | omitting “Statement of Advice” | substituting “Statement of Advice, a record of advice required by subsection 946B(3A),” |
| 3 | paragraph 952F(1)(b) | omitting “Statement of Advice” | substituting “Statement of Advice, a record of advice required by subsection 946B(3A),” |
| 4 | subparagraph 952F(1)(c)(i) | omitting “Statement of Advice” | substituting “Statement of Advice, a record of advice required by subsection 946B(3A),” |
| 5 | paragraph 952G(1)(b) | omitting “Statement of Advice” | substituting “Statement of Advice, a record of advice required by subsection 946B(3A),” |
| 6 | subparagraph 952G(1)(c)(i) | omitting “Statement of Advice” | substituting “Statement of Advice, a record of advice required by subsection 946B(3A),” |
| 7 | paragraph (b) of the definition of ***defective*** in subsection 953A(1) | omitting “Statement of Advice” | substituting “Statement of Advice, a record of advice required by subsection 946B(3A),” |

(2) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if the provisions set out in column 2 of the following table were modified as set out in column 3:

| Column 1 | Column 2 | Column 3 |
| --- | --- | --- |
| Item | provision of Act | is modified by… |
| 1 | the definition of ***defective*** in subsection 952B(1) | inserting after subparagraph 952B(1)(b)(ii):  (iiA) if it is a record of advice required by subsection 946B(3A)—there is an omission from the record of advice of material required by subsection 946B(3A) or section 947D; or |
| 2 | the definition of ***disclosure document or statement*** in subsection 952B(1) | inserting after paragraph (c) of the definition the following paragraph:  (ca) a record of advice required by subsection 946B(3A); or |
| 3 | the definition of ***defective*** in subsection 953A(1) | inserting after subparagraph 952B(1)(b)(ii) the following paragraph:  (iiA) if it is a record of advice required by subsection 946B(3A)—there is an omission from the record of advice of material required by subsection 946B(3A) or section 947D; or |
| 4 | the definition of ***disclosure document or statement*** in subsection 953A(1) | inserting after paragraph (c) of the definition the following paragraph:  (ca) a record of advice required by subsection 946B(3A); or |

7.7.10AI Obligation to warn client that advice does not take account of client’s objectives, financial situation or needs—carbon units, Australian carbon credit units and eligible international emissions units

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit as if paragraph 949A(2)(c) read as follows:

“(c) if the advice relates to the acquisition, or possible acquisition, of a carbon unit, the providing entity must:

(i) provide the client with the address of the website of the Clean Energy Regulator mentioned in section 202 of the *Clean Energy Act 2011*; and

(ii) inform the client that the client should consider each statement mentioned in section 202 of the *Clean Energy Act 2011* before making any decision about whether to acquire the financial product; and

(d) if the advice relates to the acquisition, or possible acquisition, of an Australian carbon credit unit, the providing entity must:

(i) provide the client with the address of the website of the Clean Energy Regulator mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; and

(ii) inform the client that the client should consider each statement mentioned in section 162 of that Act before making any decision about whether to acquire the financial product; and

(e) if the advice relates to the acquisition, or possible acquisition, of an eligible international emissions unit, the providing entity must:

(i) provide the client with the address of the website of the Clean Energy Regulator mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*; and

(ii) inform the client that the client should consider each statement mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011* before making any decision about whether to acquire the financial product.”.

7.7.10A Statements of Advice—requirement to state information as amounts in dollars

(1) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 947B(2)(h) of the Act were modified to read as follows:

‘(h) unless in accordance with the regulations and a determination by ASIC, information to be disclosed in accordance with paragraph (d) and subparagraph (e)(i) must be stated as amounts in dollars.’.

(2) For paragraph 951C(1)(a) of the Act, a providing entity does not have to provide the information mentioned in paragraph 947B(2)(h) of the Act, in the form required by that paragraph, in a Statement of Advice prepared before 1 January 2005.

(3) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 947C(2)(i) of the Act were modified to read as follows:

‘(i) unless in accordance with the regulations and a determination by ASIC, information to be disclosed in accordance with paragraph (e) and subparagraph (f)(i) must be stated as amounts in dollars.’.

(4) For paragraph 951C(1)(a) of the Act, a providing entity does not have to provide the information mentioned in paragraph 947C(2)(i) of the Act, in the form required by that paragraph, in a Statement of Advice prepared before 1 January 2005.

(5) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if paragraph 947D(2)(d) of the Act were modified to read as follows:

‘(d) unless in accordance with the regulations and a determination by ASIC, information to be disclosed in accordance with paragraph (a) must be stated as amounts in dollars.’.

(6) For paragraph 951C(1)(a) of the Act, a providing entity does not have to provide the information mentioned in paragraph 947D(2)(d) of the Act, in the form required by that paragraph, in a Statement of Advice prepared before 1 January 2005.

7.7.10B Insertion of definition—further advice

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if the following definition were inserted in section 9:

“***further advice*** means advice to which subsection 946B(2) or (2A) applies.”

7.7.10C Omission of definition—further market‑related advice

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if the definition of “further market‑related advice” were omitted from section 9.

7.7.10D Additional information in Statement of Advice

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 947D(2) of the Act were modified by omitting “Statement of Advice” and substituting “Statement of Advice or the record of advice under subsection 946B(3A), as the case requires,”.

7.7.10E Additional information in Statement of Advice

For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if subsection 947D(3) of the Act were modified by omitting “Statement of Advice” and substituting “Statement of Advice or the record of advice under subsection 946B(3A), as the case requires”.

7.7.11 Statement of Advice given by financial services licensee

(1) For paragraph 947B(2)(g) of the Act, a Statement of Advice given by a financial services licensee must include information about all remuneration (including commission) and other benefits that a person (***person 1***) has received, or is to receive, for referring another person to the financial services licensee.

(2) For paragraph 947B(2)(h) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 947B(2)(d) or subparagraph 947B(2)(e)(i) as an amount in dollars, the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(3) For paragraph 947B(2)(h) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 947B(2)(d) or subparagraph 947B(2)(e)(i) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the remuneration, benefits or interests (including worked dollar examples, unless that is inappropriate).

(4) A determination under subregulation (2) or (3) must be:

(a) in writing; and

(b) published in the *Gazette*.

(5) The statements and descriptions must be presented in a manner that is easy for the client to understand.

7.7.11A Statement of Advice given by authorised representative of financial services licensee—licence number

For paragraph 947C(2)(h) of the Act, a providing entity that is an authorised representative of a financial services licensee must include the licensee’s licence number in a Statement of Advice given to a client.

7.7.11B Statement of Advice—disclosure of dollar amounts

(1) For paragraph 947B(2)(h) of the Act, if ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars:

(a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or

(b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or

(c) would not be in the interests of a client, or a class of clients;

the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(2) For paragraph 947B(2)(h) of the Act, if ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars, or to describe the amount as a percentage:

(a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or

(b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or

(c) would not be in the interests of a client, or a class of clients;

the information may be set out as a description of the method of calculating the remuneration, benefits or interests (including worked dollar examples, unless that is inappropriate).

(3) A determination under subregulation (1) or (2) must be:

(a) in writing; and

(b) published in the *Gazette*.

7.7.12 Statement of Advice given by authorised representative of financial services licensee

(1) For paragraph 947C(2)(h) of the Act, a Statement of Advice given by an authorised representative of a financial services licensee must include information about all remuneration (including commission) and other benefits that a person (***person 1***) has received, or is to receive, for referring another person to the authorised representative or the financial services licensee.

(2) For paragraph 947C(2)(i) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 947C(2)(e) or subparagraph 947C(2)(f)(i) as an amount in dollars, the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(3) For paragraph 947C(2)(i) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 947C(2)(e) or subparagraph 947C(2)(f)(i) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the remuneration, benefits or interests (including worked dollar examples, unless that is inappropriate).

(4) A determination under subregulation (1) or (2) must be:

(a) in writing; and

(b) published in the *Gazette*.

(5) The statements and descriptions must be presented in a manner that is easy for the client to understand.

7.7.13 Statement of Advice provided by authorised representative—disclosure of dollar amounts

(1) For paragraph 947C(2)(i) of the Act, if ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars:

(a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or

(b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or

(c) would not be in the interests of a client, or a class of clients;

the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(2) For paragraph 947C(2)(i) of the Act, if ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars, or to describe the amount as a percentage:

(a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or

(b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or

(c) would not be in the interests of a client, or a class of clients;

the information may be set out as a description of the method of calculating the remuneration, benefits or interests (including worked dollar examples, unless that is inappropriate).

(3) A determination under subregulation (1) or (2) must be:

(a) in writing; and

(b) published in the *Gazette*.

7.7.13A Additional information about charges or benefits—disclosure of dollar amounts

(1) For paragraph 947D(2)(d) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 947D(2)(a) as an amount in dollars, the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(2) For paragraph 947D(2)(d) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 947D(2)(a) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the charge or benefit (including worked dollar examples, unless that is inappropriate).

(3) A determination under subregulation (1) or (2) must be:

(a) in writing; and

(b) published in the *Gazette*.

7.7.13B Additional information about charges or benefits—disclosure of dollar amounts

(1) For paragraph 947D(2)(d) of the Act, if ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars:

(a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or

(b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or

(c) would not be in the interests of a client, or a class of clients;

the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(2) For paragraph 947D(2)(d) of the Act, if ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars, or to describe the amount as a percentage:

(a) would impose an unreasonable burden on a providing entity, or a class of providing entities; or

(b) would impose an unreasonable burden on a providing entity, or a class of providing entities, within a period specified in the determination; or

(c) would not be in the interests of a client, or a class of clients;

the information may be set out as a description of the method of calculating the charge or benefit (including worked dollar examples, unless that is inappropriate).

(3) A determination under subregulation (1) or (2) must be:

(a) in writing; and

(b) published in the *Gazette*.

Division 4—General advice provided to a retail client

7.7.14 Product Disclosure Statement not required

For paragraph 926B(1)(a) of the Act, a providing entity that is giving general advice in relation to a financial product for which, under Part 7.9 of the Act, a Product Disclosure Statement is not required, does not have to give the warning in paragraph 949A(2)(c) of the Act.

Division 5—Other disclosure requirements

7.7.20 General advice to retail client—no obligation to warn client

For paragraph 949A(1)(c) of the Act, the provision of general advice in the circumstances set out in subregulation 7.7.02(5A) is specified.

7.7.20A Extension of disclosure requirements to wholesale clients dealing with certain unauthorised insurers

(1) For paragraph 949B(1)(e) of the Act, a person must give a wholesale client the information set out in subregulation (3) for a financial service provided by that person to the wholesale client if:

(a) the service relates to an insurance contract specified in regulation 4C or 4D of the *Insurance Regulations 2002* that may be offered or issued by an unauthorised foreign insurer (within the meaning of those Regulations) (the ***insurer***); and

(b) either:

(i) the person would be required to give a Statement of Advice if the service were provided to a retail client; or

(ii) the contract is offered or issued to the wholesale client.

(2) For paragraph 949B(1)(e) of the Act, a person must give a wholesale client the information set out in subregulation (3) for a financial service provided by that person to the wholesale client if:

(a) the service relates to the wholesale client dealing with an entity (the ***insurer***) specified in regulation 12 of the *Insurance Regulations 2002*; and

(b) either:

(i) the person would be required to give a Statement of Advice if the service were provided to a retail client; or

(ii) the insurer offers or issues a financial product to the wholesale client.

(3) The information is:

(a) a statement that the insurer is not authorised under the *Insurance Act 1973* to conduct insurance business in Australia; and

(b) a statement that the insurer is not subject to the provisions of the *Insurance Act 1973*, which establishes a system of financial supervision of general insurers in Australia; and

(c) a statement that the wholesale client should consider whether to obtain further information, including:

(i) the country in which the insurer is incorporated, and whether the country has a system of financial supervision of insurers; and

(ii) the paid up capital of the insurer; and

(iii) which country’s laws will determine disputes in relation to the financial product; and

(d) a statement that the insurer cannot be a declared general insurer for the purpose of Part VC of the *Insurance Act 1973*, and, if the insurer becomes insolvent, the wholesale client will not be covered by the financial claims scheme provided under Part VC of that Act.

Division 6—Exemptions from application of Part 7.7 of the Act

7.7.21 Exemption from application of Part 7.7 of the Act

For paragraph 951C(1)(a) of the Act, Part 7.7 of the Act does not apply to a financial services licensee or an authorised representative in respect of financial services provided to retail clients who are not in this jurisdiction.

Note: Regulation 7.9.98 also contains exemptions from the operation of Part 7.7 of the Act.

Part 7.7A—Best interests obligations and remuneration

Note: Regulations 7.7A.01 to 7.7A.04 are reserved for future use.

Division 2—Best interests obligations

7.7A.05 Best interests duty—basic banking products etc.

(1) This regulation:

(a) is made for paragraph 961B(5)(b) of the Act; and

(b) prescribes a circumstance in which the provider is not required to prove that he or she has taken the steps mentioned in paragraphs 961B(2)(d), (e), (f) and (g) of the Act in relation to advice that relates to a basic banking product or general insurance product.

(2) The provider is not required to prove that he or she has taken the steps if:

(a) the provider is:

(i) an agent or employee of an Australian ADI; or

(ii) otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI; and

(b) the subject matter of the advice sought by the client relates only to the following:

(i) a basic banking product;

(ii) a general insurance product;

(iii) consumer credit insurance;

(iv) a combination of any of those products.

7.7A.06 Best interests duty—general insurance products

(1) This regulation:

(a) is made for paragraph 961B(5)(b) of the Act; and

(b) prescribes a circumstance in which the provider is not required to prove that he or she has taken the steps mentioned in paragraphs 961B(2)(d), (e), (f) and (g) of the Act.

(2) The provider is not required to prove that he or she has taken the steps to the extent that the subject matter of the advice sought by the client is a general insurance product.

Division 3—Charging ongoing fees to clients

7.7A.10 Arrangements that are not ongoing fee arrangements

(1) This regulation is made for subsection 962A(5) of the Act.

(2) An arrangement of a kind mentioned in subsection 962A(1) or (2) of the Act is not an ongoing fee arrangement to the extent that the arrangement relates to a product fee mentioned in subregulation (3).

(3) Each of the following is a product fee:

(a) a fee for the administration, management or operation of a financial product that is charged to a retail client to which the product is issued by the issuer of the product;

Example 1: A monthly account keeping fee charged by the provider of a basic deposit product.

Example 2: A monthly administration or investment fee charged by a trustee of a superannuation fund or a responsible entity of a registered scheme.

(b) a fee that:

(i) is a cost of providing financial product advice; and

(ii) under section 99F of the *Superannuation Industry (Supervision) Act 1993*, is not prohibited or prevented from being passed on to a member of a regulated superannuation fund.

7.7A.11 Fee disclosure statements

Product fees

(1) For the purposes of paragraph 962H(3)(a) of the Act, information about a product fee mentioned in subregulation 7.7A.10(3) is not required by subsection 962H(2) or (2A) of the Act.

Ongoing fee arrangements during transition period

(2) For the purposes of paragraphs 962H(2)(f) and 962H(3)(a) of the Act, a fee disclosure statement for:

(a) an ongoing fee arrangement that is in force immediately before 1 July 2021; and

(b) a transition day (within the meaning of Part 10.46 of the Act);

is not required to include, but is required to include a reasonable estimate of, the following:

(c) an amount mentioned in paragraph 962H(2)(a) of the Act if the amount relates to the period of 60 days ending immediately before that transition day;

(d) information about a service mentioned in paragraph 962H(2)(d) of the Act if the service was received during the period of 60 days ending immediately before that transition day.

Note: This provision relates to sections 962G and 962H of the Act as modified for the 12‑month transition period from 1 July 2021 to 30 June 2022: see section 1673C of the Act.

7.7A.11AA Compliance records required to be kept by fee recipients

(1) This regulation is made for the purposes of section 962X of the Act.

(2) A fee recipient must keep the following records in relation to an ongoing fee arrangement the fee recipient has with the client:

(a) each fee disclosure statement the fee recipient has given to the client;

(b) the date on which each such fee disclosure statement was given to the client, and the manner in which it was given;

(c) if the client gives any of the following notifications to the fee recipient—the notification and the date on which the notification was given:

(i) a notification of an election to renew the ongoing fee arrangement;

(ii) a notification of an election not to renew the ongoing fee arrangement;

(iii) a notification terminating the ongoing fee arrangement;

(d) if the ongoing fee arrangement has terminated—the date on which the arrangement terminated and the basis on which the arrangement terminated.

(3) A fee recipient must also keep the following records in relation to an ongoing fee arrangement:

(a) each consent for deductions relating to the ongoing fee arrangement given to the fee recipient for the purposes of section 962R or 962S of the Act;

(b) the date on which each such consent was given;

(c) each notice given to the fee recipient under subsection 962U(1) of the Act withdrawing or varying such consent;

(d) the date on which each such notice was given;

(e) each confirmation of receipt of such notice given by the fee recipient under subsection 962U(2) of the Act;

(f) each of the following communications in relation to the consent referred to in paragraph (a), and the date on which the communication occurred:

(i) giving a copy of the consent as required under paragraph 962S(3)(c) of the Act;

(ii) giving a copy of a notice withdrawing or varying the consent as required under paragraph 962U(2)(b) of the Act;

(iii) giving written notice of the cessation of the consent under subsection 962V(2) of the Act;

(g) if the fee recipient arranges with another person (the ***account provider***) for deductions relating to the ongoing fee arrangement to be made, as referred to in paragraph 962S(1)(d) of the Act—the details of the arrangement with the account provider.

Division 4—Conflicted remuneration

Subdivision 1—Benefits in relation to life risk insurance products that are conflicted remuneration

7.7A.11A What this Subdivision is about

This Subdivision:

(a) is made for the purposes of section 963AA of the Act; and

(b) prescribes circumstances, in addition to those set out in section 963A, in which a benefit given to a financial services licensee, or a representative of a financial services licensee, in relation to a life risk insurance product, or life risk insurance products, is conflicted remuneration.

7.7A.11B Circumstances in which benefits in relation to life risk insurance products are conflicted remuneration

Giving information in relation to life risk insurance products

(1) A benefit given to a financial services licensee, or a representative of a financial services licensee, is ***conflicted remuneration*** if:

(a) the benefit is given to the licensee or representative in relation to information given to a person, or persons, in relation to a life risk insurance product, or life risk insurance products; and

(b) access to the benefit, or the value of the benefit, is dependent on:

(i) the value of a life risk insurance product, or life risk insurance products, subsequently acquired by a person or persons to whom, or in relation to whom, the information is given; or

(ii) the value of a life risk insurance product, or life risk insurance products, subsequently varied that are held by a person or persons to whom, or in relation to whom, the information is given; or

(iii) the number of life risk insurance products subsequently acquired by a person or persons to whom, or in relation to whom, the information is given; or

(iv) the number of life risk insurance products subsequently varied that are held by a person or persons to whom, or in relation to whom, the information is given; and

(c) the information is not given in the course of, or as a result of, the licensee or representative, or an associate of the licensee or representative, providing financial product advice; and

(d) if the information is given in the course of providing a financial product—the information is not given in the course of providing that product to a person as a wholesale client, or to persons as wholesale clients.

Dealing in life risk insurance products

(2) A benefit given to a financial services licensee, or a representative of a financial services licensee, is ***conflicted remuneration*** if:

(a) the benefit is given to the licensee or representative in relation to a dealing in a life risk insurance product with a person as a retail client, or dealings in life risk insurance products with persons as retail clients; and

(b) access to the benefit, or the value of the benefit, is dependent on:

(i) the value of the life risk insurance product to which the dealing relates, or the life risk insurance products to which the dealings relate; or

(ii) the number of life risk insurance products to which the dealings relate; and

(c) the dealing, or dealings, do not occur in the course of, or as a result of, the licensee or representative, or an associate of the licensee or representative:

(i) providing financial product advice; or

(ii) giving information in circumstances in which the benefit would be conflicted remuneration under subregulation (1).

7.7A.11C Circumstances in which benefits in relation to information about life risk insurance products are not conflicted remuneration

Monetary benefits

(1) Despite subregulation 7.7A.11B(1), a monetary benefit given to a financial services licensee, or a representative of a financial services licensee, in relation to information given to a person, or persons, in relation to a life risk insurance product, or life risk insurance products, is not ***conflicted remuneration*** if:

(a) because of the nature of the benefit or the circumstances in which it is given, the benefit could not reasonably be expected to influence:

(i) whether the licensee or representative gives the information to the person or persons; or

(ii) the way in which the licensee or representative presents the information in giving it to the person or persons; or

(b) none of the products is a life risk insurance product covered by subsection 963B(2) of the Act and either:

(i) the benefit ratio for the benefit is the same for the year in which the product or products are issued as it is for each year in which the product or products are continued; or

(ii) the benefit ratio requirements and clawback requirements are satisfied in relation to the benefit; or

(c) the benefit is given to the licensee or representative in relation to consumer credit insurance; or

(d) if the information is given in the course of providing a financial product to a person as a retail client or to persons as retail clients—the benefit is given by that person, or those persons; or

(e) the benefit is given to the licensee as part of the purchase or sale of all or part of the licensee’s business, or to the representative as part of the purchase or sale of all or part of the representative’s business.

Non‑monetary benefits

(2) Despite subregulation 7.7A.11B(1), a non‑monetary benefit given to a financial services licensee, or a representative of a financial services licensee, in relation to information given to a person, or persons, in relation to a life risk insurance product, or life risk insurance products, is not ***conflicted remuneration*** if:

(a) because of the nature of the benefit or the circumstances in which it is given, the benefit could not reasonably be expected to influence:

(i) whether the licensee or representative gives the information to the person or persons; or

(ii) the way in which the licensee or representative presents the information in giving it to the person or persons; or

(b) each of the following is satisfied:

(i) the licensee or representative is the final recipient of the benefit, or all or part of the benefit passes through the licensee or representative to another financial services licensee, or representative of a financial services licensee, who is the final recipient of the benefit;

(ii) the value of the benefit in the hands of each final recipient is less than $300;

(iii) identical or similar benefits are not given on a frequent or regular basis; or

(c) each of the following is satisfied:

(i) the benefit has a genuine education or training purpose;

(ii) the benefit is relevant to giving information in relation to life risk insurance products;

(iii) if education or training is provided through an education or training course (within the meaning of regulation 7.7A.14)—subregulations 7.7A.14(3) and (4) are satisfied in relation to the education or training;

(iv) if education or training is provided other than through an education or training course—the dominant purpose of the benefit is education and training; or

(d) each of the following is satisfied:

(i) the benefit is the provision of information technology software or support;

(ii) the benefit is relevant to giving information in relation to a life risk insurance product, or life risk insurance products; or

(e) if the information is given in the course of providing a financial product to a person as a retail client or to persons as retail clients—the benefit is given by that person, or those persons.

7.7A.11D Circumstances in which benefits in relation to dealings in life risk insurance products are not conflicted remuneration

Monetary benefits

(1) Despite subregulation 7.7A.11B(2), a monetary benefit given to a financial services licensee, or a representative of a financial services licensee, in relation to a dealing in a life risk insurance product with a person as a retail client, or dealings in life risk insurance products with persons as retail clients, is not ***conflicted remuneration*** if:

(a) because of the nature of the benefit or the circumstances in which it is given, the benefit could not reasonably be expected to influence:

(i) whether the licensee or representative deals in the life risk insurance product, or life risk insurance products; or

(ii) the way in which the licensee or representative deals in the life risk insurance product, or life risk insurance products; or

(b) none of the products is a life risk insurance product covered by subsection 963B(2) of the Act and either:

(i) the benefit ratio for the benefit is the same for the year in which the product or products are issued as it is for each year in which the product or products are continued; or

(ii) the benefit ratio requirements and clawback requirements are satisfied in relation to the benefit; or

(c) the benefit is given to the licensee or representative in relation to consumer credit insurance; or

(d) the benefit is given to the licensee or representative by the retail client, or retail clients; or

(e) the benefit is paid to the licensee as part of the purchase or sale of all or part of the licensee’s business, or to the representative as part of the purchase or sale of all or part of the representative’s business.

Non‑monetary benefits

(2) Despite subregulation 7.7A.11B(2), a non‑monetary benefit given to a financial services licensee, or a representative of a financial services licensee, in relation to a dealing in a life risk insurance product with a person as a retail client, or dealings in life risk insurance products with persons as retail clients, is not ***conflicted remuneration*** if:

(a) because of the nature of the benefit or the circumstances in which it is given, the benefit could not reasonably be expected to influence:

(i) whether the licensee or representative deals in the life risk insurance product, or life risk insurance products; or

(ii) the way in which the licensee or representative deals in the life risk insurance product, or life risk insurance products; or

(b) each of the following is satisfied:

(i) the licensee or representative is the final recipient of the benefit, or all or part of the benefit passes through the licensee or representative to another financial services licensee, or representative of a financial services licensee, who is the final recipient of the benefit;

(ii) the value of the benefit in the hands of each final recipient is less than $300;

(iii) identical or similar benefits are not given on a frequent or regular basis; or

(c) each of the following is satisfied:

(i) the benefit has a genuine education or training purpose;

(ii) the benefit is relevant to dealing in life risk insurance products;

(iii) if the education or training is provided through an education or training course (within the meaning of regulation 7.7A.14)—subregulations 7.7A.14(3) and (4) are satisfied in relation to the education or training;

(iv) if the education or training is provided other than through an education or training course—the dominant purpose of the benefit is education and training; or

(d) each of the following is satisfied:

(i) the benefit is the provision of information technology software or support;

(ii) the benefit is relevant to dealing in life risk insurance products; or

(e) the benefit is given to the licensee or representative by the retail client, or retail clients.

Subdivision 2—Monetary benefits that are not conflicted remuneration

7.7A.12 What subdivision is about

This subdivision:

(a) is made for paragraph 963B(1)(e) of the Act; and

(b) prescribes the circumstances in which a monetary benefit given to a financial services licensee, or representative of a financial services licensee, (the ***provider***) who provides financial product advice to persons as retail clients is not conflicted remuneration.

Note 2: A reference in this Division to giving a benefit includes a reference to causing or authorising it to be given (see section 52 of the Act).

Note 3: Under the governing rules of some regulated superannuation funds, a member may seek advice on the basis that the trustee of the fund will pay the licensee or representative for the advice and then recover the amount paid from the assets of the fund attributed to that member. In that case, the member has caused or authorised the amount to be paid to the licensee or representative. If the operation of section 52 of the Act and these regulations means that the payment is not conflicted remuneration, the trustee’s obligations under section 62 of the *Superannuation Industry (Supervision) Act 1993* (which deals with the purposes for which a trustee may act in maintaining a regulated superannuation fund) will not be affected.

7.7A.12B Stamping fees

(1) A monetary benefit is not conflicted remuneration if:

(a) it is a stamping fee given to facilitate an approved capital raising; and

(b) in a case where the benefit is given on or after 1 July 2020—the approved capital raising does not relate to an approved financial product that consists of:

(i) interests, or proposed interests, in a company (other than an infrastructure entity) that is listed, or proposed to be listed, and whose main purpose is investing in passive investments; or

(ii) interests, or proposed interests, in a managed investment scheme (other than a real estate investment trust or an infrastructure entity) that is listed or proposed to be listed.

(2) In this regulation:

***approved capital raising*** means:

(a) an offer to issue an approved financial product; or

(b) an offer to sell an approved financial product;

where the purpose of the offer is to raise funds for the person issuing or selling the approved financial product.

***approved financial product*** means:

(a) debentures, stocks or bonds that are, or are proposed to be, issued by a government; or

(b) shares in, or debentures of, a body that are, or are proposed to be, quoted on a prescribed financial market; or

(c) interests in a managed investment scheme that are, or are proposed to be, quoted on a prescribed financial market; or

(d) a right to acquire, by way of issue, shares, debentures or interests mentioned in paragraph (b) or (c).

***infrastructure assets*** means any of the following:

(a) airports;

(b) electricity generation, transmission or distribution facilities;

(c) gas transmission or distribution facilities;

(d) hospitals;

(e) ports;

(f) prisons;

(g) railways;

(h) roads;

(i) sewerage facilities;

(j) telecommunication facilities;

(k) water supply facilities.

***infrastructure entity*** means a company or managed investment scheme whose main purpose is to operate or invest in infrastructure assets.

***interest***, in a company or managed investment scheme, does not include a stapled real estate or infrastructure interest in the company or managed investment scheme.

***passive investments***, in relation to a company, means any of the following:

(a) shares, units, options, rights or similar interests;

(b) financial instruments (such as loans, debts, debentures, bonds, promissory notes, futures contracts, forward contracts, currency swap contracts and a right or option in respect of a share, security, loan or contract);

(c) an asset whose main use by the company in the course of carrying on its business is to derive interest, an annuity, rent, royalties or foreign exchange gains unless:

(i) the asset is an intangible asset and has been substantially developed, altered or improved by the company so that its market value has been substantially enhanced; or

(ii) its main use for deriving rent was only temporary;

(d) goodwill.

***real estate investment trust*** means a managed investment scheme whose main purpose is to invest in real property.

***stamping fee*** means a fee, or a part of a fee:

(a) that a person, including an issuer of a financial product, or a person acting on behalf of the issuer, pays either directly or indirectly to a provider in connection with:

(i) an offer by the issuer to issue the financial product; or

(ii) an invitation by the issuer for an application to issue the financial product; or

(b) that a person, including a holder of a financial product, or person acting on behalf of the holder, pays either directly or indirectly to a provider in connection with:

(i) an offer by the holder to sell the financial product; or

(ii) an invitation by the holder for an application to sell the financial product.

***stapled real estate or infrastructure interest***: an interest is a ***stapled real estate or infrastructure interest*** if:

(a) the interest is an interest in a company or managed investment scheme; and

(b) the interest can only be transferred together with one or more other interests in one or more companies, managed investment schemes or other entities; and

(c) the companies, managed investment schemes or other entities mentioned in paragraphs (a) and (b) are engaging in activities together for the main purpose of:

(i) investing in real property; or

(ii) operating or investing in infrastructure assets.

7.7A.12C Time‑sharing schemes

A monetary benefit is not conflicted remuneration if the benefit is given for advice that relates to an interest in a time‑sharing scheme.

7.7A.12D Brokerage fees

(1) A monetary benefit is not conflicted remuneration if:

(a) the benefit consists of a percentage, of no more than 100%, of a brokerage fee that is given to a provider who is a trading participant of a prescribed financial market or the market known as the ASX24; and

(b) the provider, directly or indirectly, gives the benefit to a representative of the provider.

Note 1: For ***prescribed financial market***, see regulation 1.0.02A.

Note 2: The ASX24 is the financial market operated by Australian Securities Exchange Limited that was formerly known as the Sydney Futures Exchange.

(1A) A monetary benefit is not conflicted remuneration if:

(a) the benefit is a fee paid between a financial services licensee that is a trading participant of a prescribed financial market and a financial services licensee that is not a trading participant in respect of dealings undertaken by a retail client through a specified service; and

(b) each of those trades is executed by the trading participant on behalf of the retail client; and

(c) the fee is a percentage, not exceeding 100%, of a brokerage fee paid directly or indirectly by the retail client; and

(d) no portion of the benefit is paid to a person other than the trading participant or the licensee that is not a trading participant.

(2) In this regulation:

***brokerage fee*** means a fee that a retail client pays to a provider in relation to a transaction in which the provider, on behalf of the retail client, deals in a financial product that is traded on:

(a) a prescribed financial market; or

(aa) the market known as the ASX24; or

(b) a prescribed foreign financial market.

Note 1: Regulations 7.7A.17 and 7.7A.18 relate to exemptions in relation to the charging of asset‑based fees on borrowed amounts.

Note 2: The ASX24 is the financial market operated by Australian Securities Exchange Limited that was formerly known as the Sydney Futures Exchange.

***prescribed foreign financial market*** means a financial market that:

(a) has its principal place of business in a foreign country; and

(b) has been authorised by an authority in that country that is a signatory to the International Organization of Securities Commissions’ Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information of May 2002.

***specified service*** means a service which:

(a) is provided for retail clients under the name or brand name of:

(i) the financial services licensee that is not a trading participant; or

(ii) the trading participant and the financial services licensee that is not a trading participant; and

(b) relates to the dealing, on behalf of the retail client, in a financial product traded on:

(i) a prescribed financial market; or

(ii) a prescribed foreign financial market; and

(c) is provided in either or both of the following ways:

(i) by direct electronic access;

(ii) by telephone, but only if:

(A) direct electronic access is not available for a temporary period, or the retail client expresses a preference that the service be provided by telephone; and

(B) neither the trading participant nor the financial services licensee that is not a trading participant is to provide financial product advice to the retail client by telephone in relation to the dealing undertaken on the retail client’s behalf; and

(d) is provided in circumstances in which neither the trading participant nor the financial services licensee that is not a trading participant provides personal advice to the retail client in relation to the dealing undertaken on the retail client’s behalf.

***trading participant*** of a prescribed financial market or the market known as the ASX24 means a person who:

(a) is a participant of the market admitted under the market’s operating rules; and

(b) is allowed, under the market’s operating rules, to deal in one or more of the financial products that are able to be traded on the market.

Note: The ASX24 is the financial market operated by Australian Securities Exchange Limited that was formerly known as the Sydney Futures Exchange.

7.7A.12E Fees paid by clients for dealing services

A monetary benefit is not conflicted remuneration if the benefit is given to the provider by a retail client in relation to the provider dealing in a financial product on behalf of the client.

7.7A.12EA Application of ban on conflicted remuneration—purchase or sale of financial advice business

A monetary benefit is not conflicted remuneration to the extent that:

(a) the benefit is given to a financial services licensee or a representative of the licensee; and

(b) the benefit is paid as part of:

(i) the purchase or sale of all or part of the licensee’s financial advice business; or

(ii) the purchase or sale of all or part of the representative’s financial advice business; and

(c) the price is calculated using a formula:

(i) which is based, in whole or in part, on the number or value of all or part of the financial products held by the licensee’s clients or the representative’s clients; and

(ii) in which the weighting attributed to the financial products issued by the licensee or a related body corporate or other person is the same as the weighting attributed to other similar financial products.

Subdivision 3—Monetary benefits that relate to life risk insurance products

7.7A.12EB Life risk insurance products—clawback requirements related to cancellation etc.

For the purposes of subparagraph 963BA(3)(a)(i) of the Act, the prescribed circumstances are that the life risk insurance product, or the relevant one of the life risk insurance products, is cancelled or is not continued because:

(a) the person insured dies; or

(b) the person insured commits an act of self‑harm; or

(c) the person insured reaches an age that, under the terms of the life risk insurance product under which the person is insured, has the result that the product is cancelled or is not continued; or

(d) an administrative error has been made.

7.7A.12EC Life risk insurance products—clawback requirements related to reduction of policy cost

For the purposes of subparagraph 963BA(3)(a)(ii) of the Act, the prescribed circumstances are that the policy cost for the life risk insurance product, or the relevant one of the life risk insurance products, is reduced because:

(a) the person who issued the product and the person to whom the product is issued agree that there is a reduction in a risk in relation to a person insured under the product; or

(b) the person who issued the product reduces the premium for the product without changing the risks covered, or the benefits available, in relation to any person insured under the product; or

(c) each of the following is satisfied:

(i) a rebate is paid or a discount applied;

(ii) it is reasonable in all the circumstances to conclude that the rebate is paid or discount applied to induce the person to whom the product is issued to acquire, or to continue to hold, the product; or

(d) a benefit payable in relation to a person insured under the product has been, or is being, paid; or

(e) an administrative error has been made.

Subdivision 4—Other monetary and non‑monetary benefits that are not conflicted remuneration

7.7A.12F What subdivision is about

This subdivision:

(a) is made for paragraphs 963B(1)(e) and 963C(f) of the Act; and

(b) prescribes the circumstances in which a monetary or non‑monetary benefit given to a financial services licensee, or representative of a financial services licensee, (the ***provider***) who provides financial product advice to persons as retail clients is not conflicted remuneration.

7.7A.12G General insurance

A benefit is not conflicted remuneration if the benefit is given in relation to a general insurance product.

Note: If a benefit is given in relation to a financial product that consists of both general insurance and life risk insurance, the benefit is to be treated as relating to a general insurance product and a life risk insurance product.

7.7A.12H Basic banking and general insurance products

A benefit is not conflicted remuneration if:

(a) to the extent that the benefit is given in relation to financial product advice, the benefit only relates to the following financial products:

(i) a basic banking product;

(ii) a general insurance product;

(iii) consumer credit insurance;

(iv) a combination of any of those products; and

(b) the provider does not, at the same time, provide advice about any other financial products; and

(c) the provider is:

(i) an agent or an employee of an Australian ADI; or

(ii) otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI.

7.7A.12I Mixed benefits

(1) A benefit that is given in one or more of the circumstances set out in the prescribed provisions is not conflicted remuneration even if:

(a) the benefit also relates to other activities, but only to the extent that the part of the benefit that relates to the other activities is not conflicted remuneration; or

(b) the provider, at the same time, provides other services (whether or not financial services).

(2) However, subregulation (1) does not apply to the extent that the prescribed provisions under which the benefit is given provide that:

(a) the benefit may only relate to particular financial products or services; or

(b) the provider must not receive the benefit if the provider is, at the same time, providing other specified financial services.

(3) In this regulation:

***prescribed provision*** means:

(a) paragraph 963B(1)(a), (b), (c) or (d) of the Act, or a regulation made under paragraph 963B(1)(e) of the Act; or

(b) paragraph 963C(a), (b), (c), (d) or (e) of the Act, or a regulation made under paragraph 963C(f) of the Act.

7.7A.13 Non‑monetary benefit given in certain circumstances not conflicted remuneration: prescribed amount

For subparagraph 963C(b)(i) of the Act, the amount is $300 for each financial services licensee, or each representative of a financial services licensee, who is the final recipient of a non‑monetary benefit.

Note: Under paragraph 963C(b) of the Act, if a non‑monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

7.7A.14 Non‑monetary benefit given in certain circumstances not conflicted remuneration: education or training course

(1) This regulation is made for subparagraph 963C(c)(iii) of the Act.

(2) This regulation sets out requirements if a non‑monetary benefit to which subparagraphs 963C(c)(i) and (ii) of the Act apply is the provision of an education or training course to a financial services licensee, or a representative of a financial services licensee.

Note: Under paragraph 963C(c) of the Act, if certain non‑monetary benefits have a genuine education or training purpose, are relevant to the provision of financial product advice to retail clients and comply with the regulations, the benefits are not conflicted remuneration.

(3) Education or training activities for the professional development of the participants in the course must take up at least:

(a) 75% of the time spent on the course; or

(b) 6 hours a day;

whichever is the lesser.

(4) The participant, or the participant’s employer or licensee, must pay for the costs of:

(a) travel and accommodation relating to the course; and

(b) events and functions held in conjunction with the course.

Example: The cost of day trips or dinners.

(5) In this regulation:

***education or training course*** includes a conference or seminar.

7.7A.15 Non‑monetary benefit given in certain circumstances not conflicted remuneration: other education and training benefit

(1) This regulation is made for subparagraph 963C(c)(iii) of the Act.

(2) This regulation sets out a requirement if a non‑monetary benefit to which subparagraphs 963C(c)(i) and (ii) of the Act apply is not the provision of an education or training course to which regulation 7.7A.13 applies.

Note: Under paragraph 963C(c) of the Act, if certain non‑monetary benefits have a genuine education or training purpose, are relevant to the provision of financial product advice to retail clients and comply with the regulations, the benefits are not conflicted remuneration.

(3) The dominant purpose of the non‑monetary benefit must be education and training.

7.7A.15A Non‑monetary benefit given in certain circumstances not conflicted remuneration—education and training in conducting a financial services business

(1) This regulation:

(a) is made for paragraph 963C(f) of the Act; and

(b) prescribes the circumstances in which a non‑monetary benefit given to a financial services licensee, or representative of a financial services licensee, who provides financial product advice to persons as retail clients is not conflicted remuneration.

(2) The benefit is not conflicted remuneration if the benefit:

(a) has a genuine education or training purpose; and

(b) is relevant to the carrying on of a financial services business; and

(c) complies with regulations made for the purposes of subparagraph 963C(c)(iii) of the Act.

Subdivision 4A—Ban on conflicted remuneration (rebates)

7.7A.15AJ What Subdivision is about

(1) This Subdivision is made for the purposes of subsection 963N(1) of the Act.

(2) This Subdivision provides for a scheme under which a person (the ***covered person***) covered by section 963M of the Act in relation to conflicted remuneration must pay amounts, or provide monetary benefits, based on that conflicted remuneration, to product holders mentioned in section 963N of the Act.

7.7A.15AK Obligations of covered person

(1) The covered person must pay amounts, or provide monetary benefits, to the product holders no later than 1 year after the day by which the covered person is legally obliged (disregarding Subdivision C of Division 4 of Part 7.7A of the Act) to give the conflicted remuneration to another person (see paragraph 963M(1)(a) of the Act).

(2) The amounts paid, or the amounts of the monetary benefit provided, to the product holders under subregulation (1) must be amounts that are just and equitable in the circumstances.

(3) For the purposes of subregulation (2), in determining whether an amount is just and equitable in the circumstances, take account of the following matters:

(a) the amount of the conflicted remuneration;

(b) the amount invested by each product holder in the financial products mentioned in subsection 963N(2) of the Act;

(c) the structure of the fees (if any) that the product holders have paid in respect of those financial products;

(d) the extent to which the sum of the amounts to be paid, and the amount of the monetary benefits to be provided, to the product holders under subregulation (2) equals the amount of, or the present value of, the conflicted remuneration;

(e) any other relevant matter.

(4) However, for the purposes of subregulation (2), in determining whether an amount is just and equitable in the circumstances, do not take account of the costs of the covered person in paying the amounts or providing the monetary benefits.

Subdivision 6—Application provisions relating to the Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017

7.7A.16G Definitions

In this Subdivision:

***amending Act*** means the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017*.

***commencement day*** means the day on which Schedule 1 to the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017* commences.

7.7A.16H Life risk insurance products substantially related to existing products

(1) This regulation is made for the purposes of subsection 1549B(3) of the Act.

(2) The amendments made by Schedule 1 to the amending Act do not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee, in relation to a life risk insurance product issued to a person on or after the commencement day (the ***post‑commencement product***) if:

(a) the person held another life risk insurance product immediately before the commencement day (the ***pre‑commencement product***); and

(b) either:

(i) the person acquires the post‑commencement product by exercising an option given to the person under the pre‑commencement product; or

(ii) the person acquires the post‑commencement product because the pre‑commencement product was cancelled due to an administrative error.

Subdivision 7—Asset‑based fees on borrowed amounts

7.7A.17 Financial services licensees

For subsection 964D(4) of the Act, a circumstance in which subsections 964D(1) and (2) of the Act do not apply is that the asset‑based fee being charged is a brokerage fee within the meaning of regulation 7.7A.12D.

7.7A.18 Authorised representatives

For subsection 964E(3) of the Act, a circumstance in which subsection 964E(1) of the Act does not apply is that the asset‑based fee being charged is a brokerage fee within the meaning of regulation 7.7A.12D.

Division 6—Exemptions from application of Part 7.7A of the Act

7.7A.40 Exemption from application of Part 7.7A of the Act

For paragraph 1368(d) of the Act, Part 7.7A of the Act does not have effect in relation to a financial services licensee or an authorised representative in respect of financial services provided to retail clients who are not in this jurisdiction.

Part 7.8—Other provisions relating to conduct etc connected with financial products and financial services, other than financial product disclosure

Division 2—Dealing with clients’ money

Subdivision A—Money other than loans

7.8.01A Wholesale client money

For the purposes of paragraph 981A(4)(a) of the Act, money paid as mentioned in subsection 981A(1) of the Act is exempt from Subdivision A of Division 2 of Part 7.8 of the Act at a time if:

(a) at that time the licensee has the client’s written agreement to the money being dealt with other than in accordance with that Subdivision; and

Note 1: It is not necessary for the agreement to mention that Subdivision explicitly.

Note 2: If the licensee obtains the agreement after the money is paid, that Subdivision ceases to apply to the money when the licensee obtains the agreement.

(b) either:

(i) the financial service referred to in subparagraph 981A(1)(a)(i) of the Act is or relates to a dealing in a derivative; or

(ii) the financial product referred to in subparagraph 981A(1)(a)(ii) of the Act is a derivative; and

(c) the entry into of the derivative was not or will not be cleared through a clearing and settlement facility; and

(d) the financial service or product would have been provided to the client as a wholesale client if:

(i) the service or product were provided to the client when the money was paid; and

(ii) section 761GA of the Act (about sophisticated investors) did not apply.

7.8.01 Obligation to pay money into an account

(1) For subparagraph 981B(1)(a)(i) of the Act, the reference in that subparagraph to an account with an Australian ADI does not prevent a financial services licensee that is an ADI from paying money into an account held by itself.

(2) For subparagraph 981B(1)(a)(ii) of the Act, the following accounts are prescribed:

(a) an account with an approved foreign bank;

(b) a cash management trust.

(3) For subparagraph 981B(1)(b)(iv) of the Act, if, in accordance with an agreement mentioned in paragraph 7.8.02(3)(a), a financial services licensee is required to pay an amount mentioned in subparagraph 7.8.02(3)(a)(iv), that amount is money which must be paid into an account to which that subparagraph applies.

(4) For subparagraph 981B(1)(b)(iv) of the Act:

(a) money paid to a financial services licensee:

(i) from or on behalf or an insured or intending insured for or on account of an insurer; and

(ii) in connection with a contract of insurance or proposed contract of insurance;

is money which may be paid into an account to which that subparagraph applies; and

(b) money paid to a financial services licensee from or on behalf of an insurer for or on account of an insured or intending insured is money which may be paid into an account to which that subparagraph applies.

(4A) For subparagraph 981B(1)(b)(iv) of the Act, if a financial services licensee is required, by the market integrity rules or the operating rules of a licensed market, to pay an amount into an account to which section 981B relates, the amount is money which may be paid into that account.

(5) For paragraph 981B(1)(c) of the Act, a financial services licensee must:

(a) operate an account to which that paragraph applies as a trust account; and

(b) designate the account to be a trust account; and

(c) hold all moneys paid into the account (other than moneys paid to the financial services licensee under the financial services licensee’s obligation to call margins from clients under the market integrity rules, the operating rules of a licensed market or the operating rules of a licensed CS facility) on trust for the benefit of the person who is entitled to the moneys.

(6) For subparagraph 981B(1)(b)(iv) of the Act, money received under section 1017E of the Act is money which may be paid into:

(a) an account to which section 981B relates; or

(b) an insurance broking account maintained under section 26 of the *Insurance (Agents and Brokers) Act 1984*.

(7) For paragraph 981B(1)(c) of the Act, if money received under section 1017E of the Act is paid into an account under subregulation (6), Part 7.8 of the Act applies to the money.

Note: See also subregulation 7.9.08(3).

(8) For paragraph 981B(1)(c) of the Act, if a financial services licensee is required to call margins from a client under the market integrity rules, the operating rules of a licensed market or the operating rules of a licensed CS facility:

(a) the financial services licensee may operate an account to which that paragraph applies as:

(i) a clients’ segregated account; or

(ii) a trust account;

in accordance with the operating rules or market integrity rules; and

(b) if:

(i) the account is operated outside Australia; and

(ii) the law in force in the jurisdiction where it is maintained requires the account to be designated in a particular way;

the financial services licensee must designate the account in that way.

Note: The operating rules or market integrity rules may require client moneys, including moneys used for margining, to be held in either a clients’ segregated account or a trust account.

(9) For subparagraph 981B(1)(b)(iv) of the Act, if an account is operated in accordance with subregulation (8), all money received by the financial services licensee under Subdivision A of Division 2 of Part 7.8 of the Act is money that may be paid into that account.

(10) Subregulation (8) does not affect the operation of section 981E of the Act.

(11) For subparagraph 981B(1)(b)(iv) of the Act, each of the following is money that may be paid into an account:

(a) mixed money;

(b) unidentified money.

(12) For paragraph 981B(1)(c) of the Act, if mixed money is paid into an account under subregulation (11), the licensee must, as soon as practicable, but within 1 month after the mixed money is paid into the account, remove from the account the part of the money that is not section 981B money.

(13) For paragraph 981B(1)(c) of the Act, if unidentified money is paid into an account under subregulation (11), the licensee must, as soon as practicable after the unidentified money is paid into the account:

(a) identify any part of the money that is section 981B money; and

(b) remove from the account any part of the money that is not section 981B money.

(14) For subregulations (11) to (13):

***mixed money*** means money that:

(a) is received by the licensee as a single payment; and

(b) is not wholly section 981B money, but includes section 981B money.

***section 981B money*** means:

(a) money to which Subdivision A of Division 2 of Part 7.8 of the Act applies; or

(b) money that is allowed to remain in the account because of the operation of subparagraphs 981B(1)(b)(ii) and (iii) of the Act; or

(c) money mentioned in subregulation (4).

***unidentified money*** means money that:

(a) is received by the licensee as a single payment; and

(b) at the time of receipt, is unable to be identified as section 981B money or mixed money; and

(c) might include section 981B money.

7.8.02 Accounts maintained for section 981B of the Act

Withdrawals from account

(1) For paragraph 981C(1)(a) of the Act, payments may be made out of an account maintained for section 981B of the Act in any of the following circumstances:

(a) making a payment to, or in accordance with the written direction of, a person entitled to the money (subject to regulation 7.8.02A);

(b) defraying brokerage and other proper charges;

(c) paying to the financial services licensee money to which the financial services licensee is entitled (subject to regulation 7.8.02A);

(d) making a payment of moneys due to an insurer in connection with a contract of insurance;

(e) making a payment that is otherwise authorised by law;

(f) paying to the financial services licensee money to which the financial services licensee is entitled pursuant to the market integrity rules or the operating rules of a licensed market.

(1A) For paragraph 981C(1)(a) and subparagraph 981B(1)(b)(iv) of the Act, if, under paragraph (1)(a), a financial services licensee (the ***paying licensee***) withdraws money from an account maintained for section 981B of the Act and pays it to another financial services licensee (the ***receiving licensee***):

(a) the paying licensee must ensure that the receiving licensee is notified, at the same time as the payment is made or as soon as practicable, that the money:

(i) has been withdrawn from an account of the paying licensee maintained for section 981B of the Act; and

(ii) should be paid into an account of the receiving licensee maintained for section 981B of the Act; and

(b) not later than the day after the receiving licensee receives the payment, the receiving licensee must pay the money into an account of the receiving licensee maintained for section 981B of the Act.

Permissible investments

(2) For paragraph 981C(1)(a) of the Act, and subject to subregulations (3), (4) and (5), the following kinds of investment may be made in relation to an account maintained for section 981B of the Act:

(a) investment in any manner in which trustees are for the time being authorised by law to invest trust funds;

(b) investment on deposit with an eligible money market dealer;

(c) investment on deposit at interest with an Australian ADI;

(d) the acquisition of cash management trust interests;

(e) investment in a security issued or guaranteed by the Commonwealth or a State or Territory;

(f) investment on deposit with a licensed CS facility.

(3) A financial services licensee must not invest an amount in a way permitted by subregulation (2) unless:

(a) the financial services licensee has obtained the client’s written agreement to the following matters:

(i) the making of the investment;

(ii) how earnings on the investment are to be dealt with (including whether or not the earnings are to be shared, and whether or not the earnings are to be paid into the account);

(iii) how the realisation of the investment is to be dealt with (including whether or not the capital invested, and the proceeds of the investment, are to be deposited into the account);

(iv) how any losses made on the investment are to be dealt with (including the circumstances in which the financial services licensee is required to pay an amount equal to the difference between the amount invested and the amount received, into the account or otherwise);

(v) the fee (if any) that the financial services licensee proposes to charge for the investment; and

(b) the money is money to which the client is entitled.

Note: The investment arrangement may be a managed investment scheme.

(4) For paragraph 981A(4)(a) of the Act, subregulation (3) does not apply to money to which subregulation 7.8.01(4) applies.

(5) In subregulation (2):

***investment*** does not include the making of an investment in accordance with the specific direction of a client.

Note: Paragraph (1)(a) deals with the withdrawal of money from an account in accordance with the written direction of a person entitled to the money.

(6) For paragraph 981C(1)(b) of the Act, in relation to moneys received in relation to insurance products, the financial services licensee must ensure that:

(a) the balance of moneys in an account maintained by the financial services licensee under section 981B of the Act; and

(b) the total amount previously withdrawn from the account and currently invested under subregulation (2);

is at least the sum of:

(c) any amounts that an insurer is entitled to receive from the account; and

(d) any amounts that an insured or intending insured is entitled to receive from the account.

(6A) For paragraph (6)(c), if, at a particular time, money received by a financial services licensee for or on account of an insurer as mentioned in paragraph 7.8.01(4)(a) is paid into the account, the insurer is taken to be entitled to receive payment of:

(a) the amount; or

(b) if any deductions from the amount are authorised by a written agreement between the insurer and the broker—the amount less the deductions;

throughout the period:

(c) beginning at that time; and

(d) ending when the payment is actually made to the insurer;

whether or not the amount has been invested under subregulation (2).

(6B) For paragraph (6)(d), if, at a particular time, money received by a financial services licensee for or on account of an insured or intending insured as mentioned in paragraph 7.8.01(4)(b) is paid into an account, the insured or intending insured is taken to be entitled to receive payment of the amount throughout the period:

(a) beginning at that time; and

(b) ending when the payment is actually made to the insured or intending insured;

whether or not the amount has been invested under subregulation (2).

(6C) On application by a financial services licensee in the prescribed form, ASIC may consent in writing to the minimum balance of monies received in relation to insurance products being less than the level specified in subregulation (6).

(7) For paragraph 981C(1)(c) of the Act, if money is held in an account maintained for section 981B of the Act:

(a) the financial services licensee is entitled to the interest on the account; and

(b) the interest on the account is not required to be paid into the account;

only if the financial services licensee discloses to the client that the financial services licensee is keeping the interest (if any) earned on the account.

Interest and other earnings on investments

(8) For paragraph 981C(1)(d) of the Act, interest or other earnings on:

(a) an investment of money withdrawn from an account maintained for section 981B of the Act; or

(b) the proceeds of the realisation of such an investment;

must be dealt with in accordance with the written agreement between the financial services licensee and the client under subregulation (3).

7.8.02A Accounts maintained for the purposes of section 981B of the Act—special rules for retail clients

(1) Paragraph 7.8.02(1)(a) does not apply to a written direction to the extent the direction allows the financial services licensee to use derivative retail client money as mentioned in subregulation (3) of this regulation.

(2) Paragraph 7.8.02(1)(c) does not apply to an entitlement of the financial services licensee to use derivative retail client money as mentioned in subregulation (3) of this regulation.

(3) Subregulations (1) and (2) apply to using the money:

(a) as the licensee’s capital, including working capital; or

(b) for the purpose of meeting obligations incurred by the licensee other than on behalf of the client; or

(c) for the purpose of entering into, or meeting obligations under, transactions that the licensee enters into to hedge, counteract or offset the risk to the licensee associated with a transaction between the licensee and the client.

7.8.03 How money to be dealt with if licensee ceases to be licensed etc

(1) For paragraph 981F(a) of the Act, this regulation applies if a financial services licensee ceases to be licensed (including a cessation because the financial services licensee’s licence has been suspended or cancelled).

(2) For paragraph 981F(b) of the Act, this regulation applies if a financial services licensee:

(a) becomes insolvent under an administration; or

(b) is the subject of any of the following arrangements:

(i) the appointment of an administrator under section 436A, 436B or 436C of the Act;

(ii) the commencement of winding up;

(iii) the appointment of a receiver of property of the financial services licensee, whether by a court or otherwise;

(iv) the appointment of a receiver and manager of property of the financial services licensee, whether by a court or otherwise;

(v) entry into a compromise or arrangement with creditors of the financial services licensee, or a class of creditors;

(vi) if the financial services licensee is deceased—administration of the estate of the financial services licensee under Part XI of the *Bankruptcy Act 1966*;

(vii) if the financial services licensee is deceased—administration of the estate of the financial services licensee under the law of an external Territory that provides for the administration of the insolvent estate of a deceased person;

(viii) an arrangement under the law of a foreign country that provides for a matter mentioned in subparagraphs (i) to (vii).

(3) For paragraph 981F(d) of the Act, this regulation applies if:

(a) a financial services licensee ceases to carry on a particular activity authorised by the financial services licence; and

(b) money is paid in connection with that activity.

(4) For each person who is entitled to be paid money from an account of the financial services licensee maintained for section 981B of the Act, the account is taken to be subject to a trust in favour of the person.

(5) If money in an account of the financial services licensee maintained for section 981B of the Act has been invested, for each person who is entitled to be paid money from the account, the investment is taken to be subject to a trust in favour of the person.

(6) Money in the account of the financial services licensee maintained for section 981B of the Act is to be paid as follows:

(a) the first payment is of money that has been paid into the account in error;

(b) if money has been received on behalf of insureds in accordance with a contract of insurance, the second payment is payment to each insured person who is entitled to be paid money from the account, in the following order:

(i) the amounts that the insured persons are entitled to receive from the moneys in the account in respect of claims that have been made;

(ii) the amounts that the insured persons are entitled to receive from the moneys in the account in respect of other matters;

(c) if:

(i) paragraph (b) has been complied with; or

(ii) paragraph (b) does not apply;

the next payment is payment to each person who is entitled to be paid money from the account;

(d) if the money in the account is not sufficient to be paid in accordance with paragraph (a), (b) or (c), the money in the account must be paid in proportion to the amount of each person’s entitlement;

(e) if there is money remaining in the account after payments made in accordance with paragraphs (a), (b) and (c), the remaining money is taken to be money payable to the financial services licensee.

(7) This regulation applies despite anything to the contrary in the *Bankruptcy Act 1966* or a law relating to companies.

7.8.04 Money to which Subdivision A of Division 2 of Part 7.8 of the Act applies taken to be held in trust: breach of financial services law

For paragraph 981H(3)(b) of the Act, if client money is held by an investment mentioned in subregulation 7.8.02(5) following a breach of a financial services law:

(a) the money is subject to a trust in favour of the client to the extent that the client is entitled to the money; and

(b) any investment of the money is subject to a trust in favour of the client to the extent that the client is entitled to the investment; and

(c) the proceeds of a realisation of an investment of the money are subject to a trust in favour of the client to the extent that the client is entitled to the proceeds.

7.8.05 Money to which Subdivision A of Division 2 of Part 7.8 of the Act applies taken to be held in trust: risk accepted by insurer

(1) For paragraph 981H(3)(b) of the Act, this regulation applies if, in relation to an insurance product:

(a) a financial services licensee is holding money to which Subdivision A of Division 2 of Part 7.8 of the Act applies; and

(b) the risk in relation to the insurance product has been accepted by an insurer.

(2) The financial services licensee holds the money on trust for the insurer in accordance with Division 2 of Part 7.8 of the Act, subject to the agreement of the insurer.

(3) This regulation does not affect the operation of regulations 7.8.03 and 7.8.08.

(4) For paragraph 981C(1)(c) of the Act, if money to which this regulation applies is held in an account maintained for section 981B of the Act:

(a) the financial services licensee is entitled to the interest on the account; and

(b) the interest on the account is not required to be paid into the account.

Subdivision AA—Client money reporting rules

7.8.05A Definitions for Subdivision AA of Division 2

In this Subdivision:

***client money reporting infringement notice*** means an infringement notice given under regulation 7.8.05C.

***client money reporting infringement notice period*** has the meaning given by subregulation 7.8.05H(2).

***recipient***, in relation to a client money reporting infringement notice, means the person to whom ASIC gives the infringement notice, or intends to give the infringement notice, under regulation 7.8.05C.

7.8.05B Enforceable undertakings

(1) For the purposes of paragraph 981N(1)(d) of the Act, ASIC may accept a written undertaking, given by a person who is alleged to have contravened subsection 981M(1) of the Act, as an alternative to civil proceedings.

(2) Without limiting subregulation (1), ASIC may accept an undertaking that includes any of the following:

(a) an undertaking to take specified action within a specified period;

(b) an undertaking to refrain from taking specified action;

(c) an undertaking to pay a specified amount within a specified period to the Commonwealth or to some other specified person.

Note: An undertaking may relate to a client money reporting infringement notice given in relation to the alleged contravention. For example, an infringement notice may require a person to give an undertaking, a person may give an undertaking to comply with an infringement notice or a person may give an undertaking if the person does not comply with an infringement notice or if the infringement notice is withdrawn.

(3) If ASIC agrees, in writing, to the withdrawal or variation of the undertaking, the person who gave the undertaking may withdraw or vary the undertaking.

(4) If ASIC is satisfied that the person who gave the undertaking has breached a term of the undertaking, ASIC may apply to a Court for an order under subregulation (5).

(5) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make one or more of the following orders:

(a) an order directing the person to comply with the term of the undertaking;

(b) an order directing the person to pay to the Commonwealth an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) an order directing the person to compensate another person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

(6) This regulation does not affect the liability of a person to civil proceedings if ASIC does not accept an undertaking in relation to the alleged contravention referred to in subregulation (1).

7.8.05C Client money reporting infringement notices

(1) This regulation is made for the purposes of subsection 981N(1) of the Act.

(2) If ASIC has reasonable grounds to believe that a person has contravened subsection 981M(1) of the Act, ASIC may give the person an infringement notice (a ***client money reporting infringement notice***) in relation to the alleged contravention.

(3) A client money reporting infringement notice may relate to one or more alleged contraventions of a client money reporting rule.

(4) If ASIC withdraws a client money reporting infringement notice given to a person in relation to an alleged contravention of a client money reporting rule, ASIC may give the person a new infringement notice in relation to the alleged contravention.

Example: A client money reporting infringement notice given to a person in relation to an alleged contravention of a client money reporting rule may be withdrawn, and a new infringement notice given to the person in relation to that alleged contravention, if the original infringement notice contained an error.

7.8.05D Effect of client money reporting infringement notice provisions

(1) Regulations 7.8.05C to 7.8.05Q do not require ASIC to give a client money reporting infringement notice to a person in relation to an alleged contravention of a client money reporting rule.

(2) Regulations 7.8.05C to 7.8.05Q do not affect the liability of a person to civil proceedings if ASIC does not give a client money reporting infringement notice to the person in relation to an alleged contravention of a client money reporting rule.

(3) Regulations 7.8.05C to 7.8.05Q do not affect the liability of a person to civil proceedings if:

(a) ASIC gives a client money reporting infringement notice to the person in relation to an alleged contravention of a client money reporting rule; and

(b) either:

(i) the infringement notice is withdrawn; or

(ii) the person does not comply with the infringement notice in accordance with regulation 7.8.05H.

(4) Regulations 7.8.05C to 7.8.05Q do not limit or otherwise affect the penalty that a Court could impose on the person for a contravention of a client money reporting rule.

7.8.05E Statement of reasons must be given

(1) Before giving a recipient a client money reporting infringement notice, ASIC must:

(a) give the recipient a written statement that sets out ASIC’s reasons for believing that the recipient has contravened a client money reporting rule; and

(b) give the recipient, or a representative of the recipient, an opportunity to:

(i) appear at a private hearing before ASIC; and

(ii) give evidence to ASIC; and

(iii) make submissions to ASIC;

in relation to the alleged contravention of the client money reporting rule.

(2) If a recipient, or a representative of a recipient, gives ASIC evidence or information under paragraph (1)(b) in relation to the alleged contravention of a client money reporting rule, the evidence or information is not admissible in evidence in any proceedings against the recipient, other than proceedings relating to the evidence or information being false or misleading.

7.8.05F Contents of client money reporting infringement notice

A client money reporting infringement notice:

(a) must state the date on which it is given; and

(b) must be identified by a unique code; and

(c) must state the name and address of the recipient; and

(d) must state that it is being given by ASIC under regulation 7.8.05C; and

(e) must specify details of each alleged contravention of a client money reporting rule to which the infringement notice relates, including:

(i) the conduct that made up each alleged contravention (including, to the extent known, the date on which it occurred and the place at which it occurred); and

(ii) each client money reporting rule that ASIC alleges the recipient has contravened; and

(f) must, in relation to each client money reporting rule to which the infringement notice relates, state the maximum pecuniary penalty that a Court could order the recipient to pay for contravening the rule; and

(g) must, in relation to each alleged contravention of a client money reporting rule to which the infringement notice relates:

(i) specify the penalty (if any) payable for the alleged contravention; and

(ii) specify the remedial measures (if any) that the recipient must undertake or institute; and

(iii) specify the sanctions (if any) that the recipient must accept; and

(iv) specify the terms of an undertaking (if any) that the recipient must give under regulation 7.8.05B; and

(h) if one or more penalties are specified in the infringement notice—must:

(i) specify the total penalty that the recipient must pay to the Commonwealth; and

(ii) state that the penalty is payable to ASIC on behalf of the Commonwealth; and

(iii) explain how the penalty can be paid; and

(i) must state that the recipient may choose not to comply with the infringement notice, but that if the recipient does not comply, civil proceedings may be brought against the recipient in relation to the alleged contravention; and

(j) must explain what the recipient must do to comply with the infringement notice and the effect of compliance with the infringement notice; and

(k) must state that the recipient may apply to ASIC:

(i) for withdrawal of the notice under regulation 7.8.05L; or

(ii) for an extension of time under regulation 7.8.05J; and

(l) must state that ASIC may publish details of the infringement notice under regulation 7.8.05Q; and

(m) may include any other information that ASIC considers necessary.

Note: For the purposes of subparagraph (h)(i), the total penalty is the sum of the penalties payable under subparagraph (g)(i).

7.8.05G Amount of penalty payable to the Commonwealth

(1) The penalty payable for an alleged contravention of a client money reporting rule is the amount determined by ASIC (which may be nil), subject to subsection 981N(2) of the Act.

Note: See subsection 981N(2) of the Act for the maximum penalty payable.

(2) If a client money reporting infringement notice relates to more than one alleged contravention, the total penalty payable under the infringement notice is the sum of the penalties (if any) payable for the alleged contraventions.

7.8.05H Compliance with client money reporting infringement notice

(1) A recipient complies with a client money reporting infringement notice if, during the client money reporting infringement notice period, the recipient does all of the following:

(a) pays the total penalty specified in the infringement notice under subparagraph 7.8.05F(h)(i) (if any);

(b) undertakes or institutes the remedial measures specified in the infringement notice under subparagraph 7.8.05F(g)(ii) (if any);

(c) accepts the sanctions specified in the infringement notice under subparagraph 7.8.05F(g)(iii) (if any);

(d) gives an undertaking (including an undertaking to comply with the infringement notice) with the terms specified in the infringement notice under subparagraph 7.8.05F(g)(iv) (if any).

(2) The ***client money reporting infringement notice period*** for a client money reporting infringement notice:

(a) starts on the day on which the infringement notice is given to the recipient; and

(b) ends:

(i) 27 days after the day on which the infringement notice is given to the recipient; or

(ii) on another day permitted by this regulation.

(3) If the recipient applies for a further period of time in which to comply with the client money reporting infringement notice, and the application is granted, the client money reporting infringement notice period ends at the end of the further period allowed.

(4) If the recipient applies for a further period of time in which to comply with the client money reporting infringement notice, and the application is refused, the client money reporting infringement notice period ends on the later of:

(a) 28 days after the day on which the infringement notice was given to the recipient; and

(b) 7 days after the notice of refusal is given to the recipient.

(5) If the recipient applies for the client money reporting infringement notice to be withdrawn, and the application is refused, the client money reporting infringement notice period ends 28 days after the notice of refusal is given to the recipient.

7.8.05J Extension of client money reporting infringement notice period

(1) During the client money reporting infringement notice period, a recipient may apply, in writing, to ASIC for a further period of no more than 28 days in which to comply with the client money reporting infringement notice.

(2) The application must:

(a) specify the client money reporting infringement notice’s unique identification code; and

(b) set out the reasons for the application.

(3) Within 14 days after receiving the application, ASIC must:

(a) grant or refuse a further period no longer than the period sought (and no longer than 28 days); and

(b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.

(4) If ASIC refuses a further period under paragraph (3)(a), the recipient may not make a further application under subregulation (1) in relation to that client money reporting infringement notice.

(5) If ASIC does not grant or refuse a further period under paragraph (3)(a) within 14 days after receiving the application, ASIC is taken to have refused a further period.

7.8.05K Effect of compliance with client money reporting infringement notice

(1) Subject to subregulation (3), if:

(a) a client money reporting infringement notice is given to a recipient in relation to an alleged contravention of a client money reporting rule; and

(b) the infringement notice is not withdrawn; and

(c) the recipient complies with the infringement notice;

the effects in subregulation (2) apply.

(2) The effects are:

(a) any liability of the recipient to the Commonwealth for the alleged contravention of the client money reporting rule is discharged; and

(b) no civil or criminal proceedings may be brought or continued by the Commonwealth against the recipient for the conduct specified in the client money reporting infringement notice as being the conduct that made up the alleged contravention of the client money reporting rule or rules; and

(c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against the recipient for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of the client money reporting rule; and

(d) the recipient is not taken to have admitted guilt or liability in relation to the alleged contravention; and

(e) the recipient is not taken to have contravened the client money reporting rule.

Note: Third parties are not prevented from commencing civil proceedings against the recipient, including under section 1101B of the Act. ASIC is not prevented from applying for an order on behalf of a plaintiff in accordance with the Act.

(3) Subregulation (2) does not apply if the recipient has knowingly:

(a) provided false or misleading information to ASIC; or

(b) withheld evidence or information from ASIC;

in relation to the alleged contravention of the client money reporting rule.

7.8.05L Application to withdraw client money reporting infringement notice

(1) During the client money reporting infringement notice period, a recipient of a client money reporting infringement notice may apply, in writing, to ASIC for the infringement notice to be withdrawn.

(2) The application must:

(a) specify the client money reporting infringement notice’s unique identification code; and

(b) set out the reasons for the application.

(3) Within 14 days after receiving the application, ASIC must:

(a) withdraw or refuse to withdraw the client money reporting infringement notice; and

(b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.

(4) In deciding whether to withdraw the client money reporting infringement notice, ASIC may take the following matters into account:

(a) whether the recipient has previously been found to have contravened subsection 981M(1) of the Act;

(b) the circumstances in which the contravention set out in the infringement notice is alleged to have occurred;

(c) whether an infringement notice has previously been given to the recipient in relation to an alleged contravention of subsection 981M(1) of the Act, and whether the recipient complied with the infringement notice;

(d) any other relevant matters.

(5) If ASIC refuses to withdraw the client money reporting infringement notice, the recipient may not make a further application under subregulation (1) in relation to that infringement notice.

(6) If ASIC has not withdrawn, or refused to withdraw, the client money reporting infringement notice within 14 days after receiving the application, ASIC is taken to have refused to withdraw the infringement notice.

7.8.05M Withdrawal of client money reporting infringement notice by ASIC

(1) ASIC may withdraw a client money reporting infringement notice given by ASIC without an application under regulation 7.8.05L having been made.

(2) In deciding whether to withdraw a client money reporting infringement notice under this regulation, ASIC may take the matters referred to in subregulation 7.8.05L(4) into account.

7.8.05N Notice of withdrawal of client money reporting infringement notice

(1) A notice withdrawing a client money reporting infringement notice must include the following information:

(a) the name and address of the recipient;

(b) the date the infringement notice was given;

(c) the infringement notice’s unique identification code.

(2) The notice must also state that the client money reporting infringement notice is withdrawn.

7.8.05P Withdrawal of notice after compliance

(1) ASIC may withdraw a client money reporting infringement notice after the recipient has complied with the infringement notice only if the recipient agrees, in writing, to the withdrawal.

(2) If a client money reporting infringement notice is withdrawn after the penalty specified in it (if any) has been paid, the Commonwealth must refund the amount of the penalty to the person who paid it.

(3) If a client money reporting infringement notice is withdrawn after the recipient has complied with a requirement specified in the infringement notice:

(a) to undertake or institute remedial measures; or

(b) to accept sanctions other than a payment of a penalty to the Commonwealth; or

(c) to give an undertaking;

the remedial measures, sanctions or undertaking are taken to no longer be enforceable by ASIC.

7.8.05Q Publication of details of client money reporting infringement notice

(1) If ASIC gives a client money reporting infringement notice to a recipient, ASIC may, at the end of the client money reporting infringement notice period, publish details of the infringement notice.

(2) If ASIC decides to publish details of the client money reporting infringement notice, ASIC must publish the details in accordance with either or both of subregulations (3) and (4).

(3) ASIC may publish details of a client money reporting infringement notice by publishing in the Gazette:

(a) a copy of the infringement notice; and

(b) a statement as to whether the recipient has complied with the infringement notice; and

(c) if the recipient has complied with the infringement notice—a statement that:

(i) compliance is not an admission of guilt or liability; and

(ii) the recipient is not regarded as having contravened a client money reporting rule; and

(d) if the recipient has not complied with the infringement notice—a statement that:

(i) the giving of an infringement notice to a recipient is only an allegation that the recipient has contravened a client money reporting rule; and

(ii) the recipient is not regarded as having contravened the client money reporting rule or rules specified in the infringement notice.

(4) ASIC may publish details of a client money reporting infringement notice by issuing a written or oral statement that includes:

(a) an accurate summary of the details of the infringement notice, including:

(i) the name of the recipient; and

(ii) the amount of the penalty specified in the infringement notice (if any); and

(iii) the remedial measures specified in the infringement notice (if any); and

(iv) the sanctions specified in the infringement notice (if any); and

(v) the terms of an undertaking specified in the infringement notice (if any); and

(vi) the conduct specified in the infringement notice as being the conduct that made up the alleged contravention; and

(b) a statement as to whether the recipient has complied with the infringement notice; and

(c) if the recipient has complied with the infringement notice—a statement that:

(i) compliance is not an admission of guilt or liability; and

(ii) the recipient is not regarded as having contravened a client money reporting rule; and

(d) if the recipient has not complied with the infringement notice—a statement that:

(i) the giving of an infringement notice to a recipient is only an allegation that the recipient has contravened a client money reporting rule; and

(ii) the recipient is not regarded as having contravened the client money reporting rule or rules specified in the infringement notice.

Subdivision B—Loan money

7.8.06 Statement setting out terms of loan etc

For subsection 982C(1) of the Act, the financial services licensee must give a client a disclosure document that contains, as far as practicable, the matters required for Division 2 of Part 7.9 of the Act.

Division 3—Dealing with other property of clients

7.8.06A Property exempt from Division 3 of Part 7.8 of the Act

For paragraph 984A(2)(a) of the Act, property given as security for a standard margin lending facility is exempt from Division 3 of Part 7.8 of the Act.

Note: Paragraph 984A(2)(a) of the Act provides that the regulations may exempt property given in specified circumstances from some or all of the provisions of Division 3 of Part 7.8 of the Act.

7.8.06B Wholesale client property

For the purposes of paragraph 984A(2)(a) of the Act, property given as mentioned in subsection 984A(1) of the Act is exempt from Division 3 of Part 7.8 of the Act at a time if:

(a) at that time the licensee has the client’s written agreement to the property being dealt with other than in accordance with that Division; and

Note 1: It is not necessary for the agreement to mention that Division explicitly.

Note 2: If the licensee obtains the agreement after the property is given, that Division ceases to apply to the property when the licensee obtains the agreement.

(b) either:

(i) the financial service referred to in subparagraph 984A(1)(a)(i) of the Act is or relates to a dealing in a derivative; or

(ii) the financial product referred to in subparagraph 984A(1)(a)(ii) of the Act is a derivative; and

(c) the entry into of the derivative was not or will not be cleared through a clearing and settlement facility; and

(d) the financial service or product would have been provided to the client as a wholesale client if:

(i) the service or product were provided to the client when the property was given; and

(ii) section 761GA of the Act (about sophisticated investors) did not apply.

7.8.07 How property to which Division 3 of Part 7.8 of the Act to be dealt with

(1) For paragraph 984B(1)(a) of the Act, this regulation sets out requirements in relation to property to which Division 3 of Part 7.8 of the Act applies.

(2) The financial services licensee must hold the property on trust for the benefit of the person who is entitled to it.

(3) If the client requests the financial services licensee, in writing, to deposit the property in safe custody with an ADI:

(a) the licensee must deposit the property; or

(b) if the licensee does not comply with the request for any reason, the licensee must notify the client, as soon as practicable, of the failure to comply with the request.

(4) If the client requests the financial services licensee, in writing, to deposit the property in safe custody with a financial services licensee that provides a custodial or depositary service:

(a) the licensee must deposit the property; or

(b) if the licensee does not comply with the request for any reason, the licensee must notify the client, as soon as practicable, of the failure to comply with the request.

(5) If the client requests the financial services licensee, in writing, to deposit the property in safe custody in the place where the property was deposited with, or received by, the licensee:

(a) the licensee must deposit the property in accordance with the request; and

(b) if the licensee does not comply with the request for any reason, the licensee must notify the client, as soon as practicable, of the failure to comply with the request.

(6) If the client requests that the body corporate that issued or made available the securities, managed investment products or foreign passport fund products underlying the property register the property in the name of a nominee controlled by the financial services licensee, the financial services licensee must arrange for the body corporate to register the securities, managed investment products or foreign passport fund products in that way.

(7) If:

(a) none of subsections (3) to (6) applies; and

(b) the property is not registered in the client’s name by the body corporate that issued or made available the securities, managed investment products or foreign passport fund products underlying the property;

the financial services licensee must arrange to have the property registered in the client’s name.

(8) A financial services licensee must not deposit property as security for a loan or advance to the financial services licensee unless:

(a) the client owes the financial services licensee an amount in connection with a transaction entered into by the financial services licensee on the client’s behalf; and

(b) the financial services licensee gives the client a written notice that identifies the property and states that the dealer proposes to deposit it as security for a loan or advance to the financial services licensee; and

(c) the amount, or total of the amounts, that the client owes on the day of the deposit is at least the amount of the loan or advance.

(9) If a financial services licensee deposits property as security for a loan or advance to the financial services licensee, in accordance with subregulation (8):

(a) the financial services licensee must, not later than 1 business day after the amount, or total of the amounts, that the client owes on the day of the deposit are repaid, withdraw the property from that deposit; and

(b) if, at the end of 3 months after the day of that deposit, or at the end of any subsequent interval of 3 months, the property has not been withdrawn from that deposit—the financial services licensee must give the client written notice of that fact.

(10) In this regulation:

***property*** includes scrip, but does not include money.

Division 4—Special provisions relating to insurance

7.8.08 Debts of financial services licensee in relation to premiums etc

(1) Subregulations (2) to (4) apply if:

(a) money is received by a financial services licensee:

(i) from, or on behalf of, an insured or intending insured, or from another financial services licensee on behalf of an insured or intending insured; and

(ii) as a premium or an instalment of a premium in connection with a contract of insurance or a proposed contract of insurance; and

(b) the risk, or a part of the risk, to which the contract or proposed contract relates is accepted by or on behalf of an insurer; and

(c) the financial services licensee who so received the money is informed of, or otherwise ascertains, the amount of the premium or instalment to be paid.

(2) The financial services licensee who received the money must pay to the insurer an amount equal to the amount of the premium or instalment to be paid:

(a) in the period of 90 days (the ***relevant period***) after:

(i) the day on which the cover provided by the insurer under the contract starts to have effect; or

(ii) the first day of the period to which the instalment relates; or

(b) if it is not practicable for the financial services licensee to pay the amount in the relevant period—as soon as practicable after the end of that period.

(3) If the financial services licensee has not received the amount of the premium, or of an instalment of the premium, payable in respect of a contract of insurance at the end of the relevant period, the financial services licensee must notify the insurer in writing, not later than 7 days after the end of the relevant period, that the financial services licensee has not received the amount.

(4) Subregulation (3) does not apply if the financial services licensee receives the amount:

(a) in the period of 7 days mentioned in subregulation (3); and

(b) before notifying the insurer in accordance with subregulation (3).

(5) Subregulations (6) and (7) apply if:

(a) a financial services licensee receives money from, or on behalf of:

(i) an insured or intending insured; or

(ii) another financial services licensee on behalf of an insured or intending insured;

as a premium or an instalment of a premium in connection with a contract of insurance or a proposed contract of insurance; and

(b) the risk, or a part of the risk, to which the contract or proposed contract relates is accepted by or on behalf of an insurer; and

(c) the financial services licensee who received the money has not been informed of, and has not otherwise ascertained, the amount of the premium or instalment to be paid.

(6) The financial services licensee who received the money must pay the amount mentioned in subregulation (7) to the insurer:

(a) in the period of 90 days (the ***relevant period***) after:

(i) the day on which the cover provided by the insurer under the contract starts to have effect; or

(ii) the first day of the period to which the instalment relates; or

(b) if it is not practicable for the financial services licensee to pay the amount in the relevant period—as soon as practicable after the end of that period.

(7) For subregulation (6), the amount is:

(a) for a new contract of insurance, an amount not less than the lesser of:

(i) the amount of the money received; or

(ii) 75% of the amount fairly estimated by the financial services licensee to be the premium or instalment that is to be paid; and

(b) for a renewal of a contract of insurance, an amount not less than the lesser of:

(i) the amount of the money so received; or

(ii) 75% of the previous year’s premium for the risk, or of the last instalment of that years premium.

(8) Subregulation (9) applies if:

(a) the risk, or a part of the risk, to which a contract of insurance or a proposed contract of insurance relates is accepted by or on behalf of an insurer; and

(b) the contract of insurance or proposed contract of insurance has been, or is being, arranged or effected by a financial services licensee (***licensee 1***), either directly or through another financial services licensee; and

(c) licensee 1 has not been informed of, and has not otherwise ascertained, the amount of a premium or of an instalment of a premium to be paid in connection with the contract or proposed contract.

(9) Licensee 1 must, notify the insurer in writing, within 10 days after the day on which the risk, or that part of the risk, was accepted, that:

(a) the risk, or that part of the risk, has been accepted; and

(b) licensee 1 does not know the amount of the premium or instalment to be paid;

unless licensee 1 is informed of, or otherwise ascertains, the amount of the premium or instalment to be paid before notifying the insurer.

(10) Nothing in this regulation prevents:

(a) an insurer from making a contract or arrangement with a financial services licensee providing for the financial services licensee to pay an amount to the insurer before the time by which the financial services licensee is required by the provision concerned to pay that amount to the insurer; or

(b) an insurer from authorising a financial services licensee in writing to pay on behalf of the insurer, out of the money received by the financial services licensee as a premium or instalment of a premium in respect of a contract of insurance arranged with the insurer, any charges required by law to be paid by the insurer in respect of the contract; or

(c) a financial services licensee from exercising any legal right available to the financial services licensee to deduct from any moneys payable by the financial services licensee to the insurer any remuneration payable by the insurer to the financial services licensee in relation to a contract of insurance.

(11) For subregulation (1) or (5), if the risk, or a part of the risk, to which a contract or proposed contract mentioned in that subregulation is accepted on behalf of an insurer by an insurance intermediary other than the insurance financial services licensee who received the moneys from or on behalf of the insured or intending insured, the payment of the premium, or part of the premium, by the financial services licensee to the intermediary is taken to be a payment of the premium or part of the premium by the financial services licensee to the insurer.

(12) For subregulation (3) or (8), if:

(a) a financial services licensee is required to notify an insurer in accordance with that subregulation; and

(b) an insurance intermediary other than the financial services licensee has accepted the risk, or a part of the risk, to which the contract or proposed contract relates on behalf of the insurer;

a notification by the financial services licensee to the intermediary is taken to be a notification by the financial services licensee to the insurer.

(13) Subregulations (14) and (15) apply if:

(a) a financial services licensee receives money from, or on behalf of, an insured or intending insured in connection with a contract of insurance or proposed contract of insurance; and

(b) at the end of 30 days after the day on which the money was received, the risk, or a part of the risk, to which the contract or proposed contract relates has not been accepted.

(14) If the risk has not been accepted, the financial services licensee must, within 7 days after the end of the 30 day period:

(a) give notice to the insured or intending insured, in a form (if any) approved by ASIC for this paragraph, that the risk has not been accepted; and

(b) return the money to the insured or intending insured.

(15) If a part of the risk to which the contract or proposed contract relates has not been accepted, the financial services licensee must, within 7 days after the end of the 30 day period:

(a) give notice to the insured or intending insured, in a form (if any) approved by ASIC for this paragraph, of the extent to which the risk has not been accepted; and

(b) return that part of the money that relates to the part of the risk that has not been accepted to the insured or intending insured.

(16) If a financial services licensee receives money from, or on behalf of, an insurer for payment to, or on behalf of, an insured, the financial services licensee must pay an amount equal to the money to, or on behalf of, the insured:

(a) within 7 days after the day on which the financial services licensee received the money; or

(b) if it is not practicable for the financial services licensee to pay the amount in that period—as soon as practicable after the end of the period.

(17) Nothing in subregulation (16) prevents:

(a) an insured from making a contract or arrangement with an insurance financial services licensee providing for the financial services licensee to pay an amount mentioned in that subregulation to or on behalf of the insured before the time by which the financial services licensee is required by that subregulation to pay that amount to or on behalf of the insured; or

(b) a financial services licensee from exercising any legal right available to the financial services licensee to deduct from an amount payable by the financial services licensee to the insured any money payable by the insured to the financial services licensee in connection with a contract of insurance.

(18) A person is guilty of an offence if the person contravenes subregulation (2), (3), (6), (9), (14) or (16), whether or not it was done with the consent of the insurer or of the insured or intending insured.

Penalty:

(a) for an individual—20 penalty units; and

(b) for a body corporate—200 penalty units.

(19) Subregulation (18) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subregulation (18) (see subsection 13.3(3) of the *Criminal Code*).

(20) Strict liability applies to subregulation (18).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(21) If:

(a) under subregulation (2), (3), (6) or (9), a financial services licensee is required to pay an amount to, or to notify, an insurer; and

(b) under the contract or proposed contract of insurance concerned the insurer is an underwriting member of Lloyd’s;

it is sufficient compliance with the subregulation if the financial services licensee pays the amount to, or notifies, as the case may be, the Lloyd’s broker concerned.

Division 4A—Special provisions relating to margin lending facilities

Subdivision A—Responsible lending conduct for margin lending facilities

7.8.08A Limit of margin lending facility taken to be increased

(1) For paragraph 985E(3)(a) of the Act, the limit of a margin lending facility is taken to be increased, despite subsection 985E(2) of the Act, if:

(a) the increase is a result of a contribution of further secured property or transferred securities that occurs without the prior knowledge or agreement of the provider; and

(b) the provider permits the increase to continue; and

(c) the increase is no more than 5% of the current limit of the margin lending facility.

(2) If the limit of a margin lending facility is taken to be increased in the circumstances mentioned in subregulation (1), subsection 985E(1) of the Act is modified by omitting ‘before the critical day:’ and inserting ‘after the critical day:’.

Note: Paragraph 992C(1)(c) of the Act provides that the regulations may provide that Part 7.8 of the Act applies as if specified provisions were omitted, modified or varied as specified in the regulations.

(3) For subregulation (1), if:

(a) more than one contribution of further secured property or transferred securities under the margin lending facility occurs on a day; and

(b) each of the contributions is taken to increase the limit of the facility; and

(c) either:

(i) the cumulative increase is no more than 5% of the current limit of the margin lending facility; or

(ii) if the cumulative increase is more than 5% of the current limit of the margin lending facility, the provider ensures that the increases are reduced so that the cumulative increase becomes no more than 5% of the current limit of the margin lending facility;

the increases are taken to be one increase for this regulation.

Increase prior to assessment only to occur once

(4) Subregulation (5) applies if:

(a) the limit of a margin lending facility is taken to be increased in the circumstances mentioned in subregulation (1); and

(b) an assessment has not yet been made in accordance with section 985F of the Act.

(5) If the limit of the margin lending facility would be taken to increase further in accordance with subregulation (1):

(a) the limit is taken not to be further increased until:

(i) an assessment has been made in accordance with section 985F of the Act; and

(ii) it is assessed that the facility will not be unsuitable for the client if the limit is increased; and

(b) the provider must ensure that the increase does not continue unless paragraph (a) permits it.

If facility assessed as unsuitable

(6) If:

(a) the limit of a margin lending facility is taken to be increased in the circumstances mentioned in subregulation (1); and

(b) the assessment made in accordance with section 985F of the Act assesses that the facility is unsuitable for the client because of the increased limit;

the limit is taken to be reduced to the limit of the margin lending facility before the increase, and the provider must ensure that the limit is reduced within 90 days of the day the assessment is made.

Facility not unsuitable for subsection 985K(4) of the Act

(7) For subsection 985K(4) of the Act, a margin lending facility is taken not to be unsuitable if:

(a) the limit of the margin lending facility is taken to be increased in the circumstances mentioned in subregulation (1); and

(b) the assessment made in accordance with section 985F of the Act assesses that the facility:

(i) is not unsuitable for the client; or

(ii) is unsuitable for the client because of the increased limit; and

(c) in the case of subparagraph (b)(ii), the provider ensures that the limit is reduced, within 90 days of the day the assessment is made, to the limit of the margin lending facility before the increase.

7.8.08B Exemption from requirement to make unsuitability assessment

(1) For paragraph 992C(1)(a) of the Act, a person is exempt from the requirement in paragraph 985E(1)(c) of the Act to make an assessment if the margin lending facility mentioned in paragraph 985E(1)(a) or (b) of the Act is a facility mentioned in subregulation (2):

(a) in respect of the full amount of the loan, including any interest, fees and charges; and

(b) in relation to which the client has not taken out a loan to fund the secured property contributed by the client for establishing the margin lending facility.

(2) For subregulation (1), the facility is a standard margin lending facility under the terms of which:

(a) the credit provided must be applied wholly:

(i) to acquire one or more marketable securities, or a beneficial interest in one or more marketable securities; or

(ii) to repay another credit facility, under the terms of which the credit provided was applied wholly to acquire one or more marketable securities, or a beneficial interest in one or more marketable securities; and

(b) the secured property mentioned in paragraphs (c) and (d) of that subsection:

(i) consists wholly of one or more marketable securities, or a beneficial interest in one or more marketable securities; or

(ii) consists:

(A) partly of one or more marketable securities, or a beneficial interest in one or more marketable securities; and

(B) partly of cash given to the provider and held in trust for the client for the sole purpose of servicing obligations under the facility; and

(c) the liability of the client to the provider is limited to the rights relating to the secured property.

7.8.09 Reasonable inquiries etc about retail client: inquiries

(1) For paragraph 985G(1)(c) of the Act, the following inquiries about a client are prescribed in relation to a margin lending facility, or a margin lending facility whose limit is proposed to be increased, within the meaning of subsection 761EA(1) of the Act:

(a) reasonable inquiries as to whether the client has taken out a loan to fund the secured property or transferred securities contributed by the client for establishing the margin lending facility;

Note: This is sometimes referred to as ‘double gearing’.

(b) if a loan to fund the secured property or transferred securities contributed by the client for establishing the margin lending facility has been taken out—reasonable inquiries as to whether the security for the loan includes the primary residential property of the client;

(c) if there is a guarantor for the margin lending facility—reasonable inquiries as to whether the guarantor has been appropriately informed of, and warned about, the risks and possible consequences of providing the guarantee;

(d) reasonable inquiries as to the amount of any other debt incurred by the client;

(e) any other matter that ASIC has specified in a legislative instrument for subregulation (2).

(2) ASIC may specify in a legislative instrument any matter ASIC considers to be relevant for the purpose of establishing whether the margin lending facility, or the margin lending facility with the increased limit, is unsuitable for the client.

7.8.09A Modification of section 985G of the Act

For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if section 985G of the Act were modified by inserting after subsection (2) the following subsection:

‘(2A) The regulations may provide that ASIC may specify in a legislative instrument matters ASIC considers to be relevant for the purposes of paragraph 985G(1)(c) of the Act.’

7.8.10 Circumstances in which margin lending facility is unsuitable

For paragraph 985H(2)(b) of the Act, a margin lending facility, or a margin lending facility whose limit is proposed to be increased, is unsuitable for a retail client if the client:

(a) is, on an ongoing basis, unable to be contacted by any of the usual means of communication; and

(b) has not appointed an agent to act on the client’s behalf.

7.8.10A Margin lending facility taken not to be unsuitable

For subsection 985K(4) of the Act, a margin lending facility is taken not to be unsuitable:

(a) if:

(i) an assessment of unsuitability was undertaken in accordance with the Act; and

(ii) the assessment reasonably concluded that the margin lending facility is not unsuitable; or

(b) if a person is exempt under regulation 7.8.08B from the requirement to make an assessment of unsuitability in relation to the margin lending facility.

Division 6—Financial records, statements and audit

Subdivision B—Financial records of financial services licensees

7.8.11 Particular categories of information to be shown in records

For paragraph 988E(g) of the Act, the following matters are specified:

(a) all underwriting transactions entered into by the financial services licensee;

(b) all financial products dealt with by the licensee under instructions from another person;

(c) each person who gave instructions to deal with financial products;

(d) all property:

(i) that is not the property of the financial services licensee; and

(ii) for which the financial services licensee, or a nominee controlled by the financial services licensee, is accountable;

(e) each person by whom, or for whom, property mentioned in paragraph (d) is held;

(f) the extent to which property mentioned in paragraph (d) is:

(i) held in safe custody; or

(ii) deposited with a third party as security for a loan or advance made to the financial services licensee;

(g) all transactions in relation to insurance products entered into with, or on behalf of, foreign insurers.

7.8.11A Particular categories of information to be shown in records: records of non‑monetary benefit that is not conflicted remuneration

(1) This regulation is made for paragraph 988E(g) and section 988F of the Act.

(2) The following table sets out matters in relation to a non‑monetary benefit that:

(a) is given to a financial services licensee or a representative of a financial services licensee; and

(b) either:

(i) is not conflicted remuneration in accordance with paragraph 963C(b) of the Act, and is over $100; or

(ii) is not conflicted remuneration in accordance with paragraph 963C(c) or (d) of the Act; or

Note: Particulars of the matters must be shown in the records kept by the financial services licensee.

| Item | Matter |
| --- | --- |
| 1 | A description of the benefit |
| 2 | Either: |
|  | (a) the value of the benefit; or |
|  | (b) if the value is not known, the estimated value of the benefit; |
|  | expressed as a dollar amount or as a range of dollars |
| 3 | The date on which the benefit was given |
| 4 | The name of the person who gave the benefit and, if relevant, the number of the person’s financial services licence |
| 5 | Whether the benefit was given to the licensee or to a representative of the licensee |
| 6 | If the benefit was given to an authorised representative of the licensee, the name and contact details of the authorised representative |
| 7 | If the benefit was given to another representative of the licensee, the name and contact details of the other representative |

(3) At the request of a person, a financial services licensee must give the person the particulars in its records relating to the matters in items 1 to 4 of the table for the last financial year.

(4) The licensee may require the person making the request to pay a charge for obtaining the particulars.

(5) The amount of the charge must not exceed the reasonable costs that the licensee incurs that are reasonably related to giving the particulars (including any costs incurred in photocopying the document containing the particulars).

Note: This would include the costs of collating the information.

(6) The licensee must give the particulars to the person as soon as practicable, and no later than one month after the person makes the request to the licensee.

7.8.11B Information to be shown in records: records of rebates in relation to conflicted remuneration

(1) For the purposes of paragraph 988E(g) of the Act, the following matters are specified in relation to records that must be kept by a financial services licensee who is a person covered by section 963M of the Act:

(a) all conflicted remuneration that the financial services licensee is legally obliged (disregarding Subdivision C of Division 4 of Part 7.7A of the Act) to give another person for a financial year;

(b) all amounts that the financial services licensee is required by regulation 7.7A.15AK to pay, and all monetary benefits that the financial services licensee is required by that regulation to provide, for a financial year, and the following:

(i) all such amounts paid, and all such monetary benefits provided, by the financial services licensee for the financial year;

(ii) all cases where the financial services licensee determined that an amount that was just and equitable in the circumstances for the purposes of subregulation 7.7A.15AK(2) was nil.

(2) For the purposes of section 988F of the Act, subregulation (3) sets out additional requirements for things to be contained in records, and relating to the level of detail to be shown in records, that are imposed in relation to records that must be kept by a financial services licensee who is a person covered by section 963M of the Act, for:

(a) all amounts that the financial services licensee is required by regulation 7.7A.15AK to pay, and all monetary benefits that the financial services licensee is required by that regulation to provide; and

(b) all cases where the financial services licensee determined that an amount that was just and equitable in the circumstances for the purposes of subregulation 7.7A.15AK(2) was nil.

(3) The requirements are as follows:

(a) an explanation of how the financial services licensee ascertained the identity of the product holders;

(b) an explanation of:

(i) if paragraph (2)(a) applies—how the financial services licensee determined that the amounts to pay, or the amounts of the monetary benefit to provide, were just and equitable in the circumstances for the purposes of subregulation 7.7A.15AK(2); and

(ii) if paragraph (2)(b) applies—how the financial services licensee determined that nil amounts were just and equitable in the circumstances for the purposes of subregulation 7.7A.15AK(2);

(c) a description of the financial product or products to which the conflicted remuneration relates, including the following information:

(i) the name of that product (or the names of those products);

(ii) the product identification number of that product (or the product identification numbers of those products) (if any);

(d) if paragraph (2)(a) applies:

(i) the date by which the financial services licensee was required under regulation 7.7A.15AK to pay the amounts or provide the monetary benefits; and

(ii) the date or dates on which the amounts were paid, or the monetary benefits were provided; and

(iii) a description of the manner in which the amounts were paid, or the monetary benefits were provided.

7.8.12 Requirements in relation to financial records of financial services licensees

(1) For section 988F of the Act, the financial records of a financial services licensee must be kept in sufficient detail as to show or include, for basic deposit products:

(a) separate particulars of every transaction by the financial services licensee; and

(b) the day on which, or the period during which, each transaction by the financial services licensee took place.

(2) For section 988F of the Act, the financial records of a financial services licensee must be kept in sufficient detail as to show or include, for all financial products other than basic deposit products:

(a) the information mentioned in subregulation (1); and

(b) if the financial services licensee is not a partner in a firm—separate particulars of each transaction by the financial services licensee with, or for the account of:

(i) clients of the financial services licensee; or

(ii) the financial services licensee’s own account; or

(iii) other financial services licensees; or

(iv) representatives of the financial services licensee; or

(v) employees of the financial services licensee; and

(c) if the financial services licensee is a partner in a firm—separate particulars of each transaction by the financial services licensee with, or for the account of:

(i) clients of the financial services licensee other than the partners in the firm; or

(ii) the partners in the firm; or

(iii) the financial services licensee’s own account; or

(iv) other financial services licensees; or

(v) representatives of the financial services licensee; or

(vi) employees of the financial services licensee; and

(d) copies of acknowledgments of the receipt of financial products or documents of title to financial products.

Subdivision C—Financial statements of financial services licensees

7.8.12A Modification of section 989B of the Act

(1) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if subsection 989B(3) were modified to read as follows:

“(3) The licensee must, with the statement and balance sheet, lodge with ASIC:

(a) for a licensee who is a limited licensee for the whole of a financial year—a compliance certificate containing the information and matters required by the regulations; or

(b) for a licensee who is a limited licensee for part of a financial year:

(i) a compliance certificate containing the information and matters required by the regulations for the part of the financial year that the licensee was a limited licensee; and

(ii) an auditor’s reporting containing the information and matters required by the regulations for the part of the financial year that the licensee was not a limited licensee; or

(c) for all other licensees—an auditor’s report containing the information and matters required by the regulations.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).”.

(2) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if section 989B of the Act were modified by inserting after subsection 989B(3) the following subsection:

“(4) In this section:

***limited financial service*** means the following financial services:

(a) financial product advice on self managed superannuation funds;

(b) financial product advice on superannuation products in relation to a person’s existing holding in a superannuation product but only to the extent required for:

(i) making a recommendation that the person establish a self managed superannuation fund; or

(ii) providing advice to the person on contributions or pensions under a superannuation product;

(c) class of product advice on the following:

(i) superannuation products;

(ii) securities;

(iii) simple managed investment schemes;

(iv) general insurance products;

(v) life risk insurance products;

(vi) basic deposit products;

(d) arrange to deal in an interest in a self managed superannuation fund.

Note: Financial product advice on self managed superannuation funds includes advice about acquiring or disposing of an interest in a self managed superannuation fund.

***limited licensee*** means a financial services licensee that:

(a) does not deal with money to which Division 2 of Part 7.8 of the Act applies; and

(b) is only licensed to provide one or more limited financial services.

***simple managed investment scheme*** has the same meaning as in the regulations.”.

7.8.13 Auditor’s report with annual profit and loss statement and balance sheet

(1) For subparagraph 989B(3)(b)(ii) or paragraph 989B(3)(c) of the Act, an auditor’s report lodged with a true and fair profit and loss statement and balance sheet in respect of a financial year must be lodged with ASIC in the prescribed form.

(2) For subparagraph 989B(3)(b)(ii) or paragraph 989B(3)(c) of the Act, an auditor’s report lodged with a true and fair profit and loss statement and balance sheet in respect of a financial year must contain a statement of the auditor’s opinion on the following matters:

(a) the effectiveness of internal controls used by a financial services licensee to comply with:

(i) Divisions 2, 3, 4, 4A, 5 and 6 of Part 7.8 of the Act; and

(ii) Division 7 of Part 7.8 of the Act other than section 991A;

(b) whether each account required by sections 981B and 982B of the Act to be maintained by the financial services licensee has been operated and controlled in accordance with those sections;

(c) whether all necessary records, information and explanations were received from the financial services licensee.

7.8.13A Compliance certificate with profit and loss statement and balance sheet

For paragraph 989B(3)(a) and subparagraph 989B(3)(b)(i) of the Act, a compliance certificate lodged by a licensee with a true and fair profit and loss statement and balance sheet in respect of a financial year must:

(a) be lodged with ASIC in the prescribed form; and

(b) be signed by:

(i) if the licensee is an individual—the licensee; or

(ii) if the licensee is a corporation—an officer of the corporation; or

(iii) if the licensee is a partnership or the trustees of a trust—a partner or trustee who performs duties in relation to financial services.

7.8.14 Contents of annual profit and loss statement and balance sheet and applicable accounting procedures

For paragraph 989C(a) of the Act, a true and fair profit and loss statement and balance sheet in respect of a financial year must contain a declaration by the financial services licensee that:

(a) the profit and loss statement and balance sheet give a true and fair view of the matters stated in it; and

(b) if the licensee is required to lodge an auditor’s report under subparagraph 989B(3)(b)(ii) or paragraph 989B(3)(c) of the Act—the auditor’s report lodged with the profit and loss statement and balance sheet is a true copy of the report on the profit and loss statement and balance sheet of the financial services licensee; and

(c) if the licensee is required to lodge a compliance certificate under paragraph 989B(3)(a) or subparagraph 989B(3)(b)(i) of the Act—the information in the compliance certificate lodged with the profit and loss statement and balance sheet is complete and accurate.

7.8.14A Lodgement of annual profit and loss statement and balance sheet

For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if paragraph 989D(1)(b) were modified to read as follows:

‘(b) if the licensee is:

(i) a body corporate that is a disclosing entity or a registered scheme—the day that is 3 months after the end of that financial year; or

(ii) a body corporate that is not a disclosing entity or a registered scheme—the day that is 4 months after the end of that financial year.’.

Subdivision D—Appointment etc. of auditors

7.8.14B Modification of section 990B of the Act

(1) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if subsection 990B(1) of the Act were modified by:

(a) omitting “must, within 1 month after beginning to hold the licence,” and substituting “who is not a limited licensee must”; and

(b) omitting “(4) and (5)” and substituting “(4), (5) and (5A)”.

(2) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if section 990B of the Act were modified by inserting after subsection 990B(5) the following subsection:

“(5A) The licensee must appoint an auditor or auditors within:

(a) if the licensee was a limited licensee—one month after the licensee ceased to be a limited licensee; or

(b) for all other licensees—one month after beginning to hold the licence.”.

(3) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act applies as if subsection 990B(9) of the Act were modified to read as follows:

“(9) In this section:

***limited financial services*** means the following financial services:

(a) financial product advice on self managed superannuation funds;

(b) financial product advice on superannuation products in relation to a person’s existing holding in a superannuation product but only to the extent required for:

(i) making a recommendation that the person establish a self managed superannuation fund; or

(ii) providing advice to the person on contributions or pensions under a superannuation product;

(c) class of product advice on the following:

(i) superannuation products;

(ii) securities;

(iii) simple managed investment schemes;

(iv) general insurance products;

(v) life risk insurance products;

(vi) basic deposit products;

(d) arrange to deal in an interest in a self managed superannuation fund.

Note: Financial product advice on self managed superannuation funds includes advice about acquiring or disposing of an interest in a self managed superannuation fund.

***limited licensee*** means a financial services licensee that:

(a) does not deal with money to which Division 2 of Part 7.8 of the Act applies; and

(b) is only licensed to provide one or more limited financial services.

***person*** means:

(a) an individual auditor; or

(b) an authorised audit company.

***simple managed investment scheme*** has the same meaning as in the regulations.”.

7.8.15 Appointment of auditor by financial services licensee

(1) For subsections 990B(7) and (8) of the Act, this regulation:

(a) sets out matters related to the appointment of a firm as auditor of the financial statements of a financial service licensee; and

(b) modifies the effect of section 990E of the Act.

(1A) If an applicant for a financial services licence:

(a) specifies, in the application for the licence, the name of a person or firm that is to be, or has been, appointed to audit the applicant’s financial statements; and

(b) the auditor or auditors specified are appointed before the end of 1 month after the licence takes effect;

the applicant is taken to have lodged a notice under subsection 990B(6) of the Act.

(2) The appointment is taken to be an appointment of each person who is:

(a) a member of the firm; and

(b) a registered company auditor;

whether the person is resident in Australia or not at the date of the appointment.

(3) Unless subregulation (4) applies, the appointment of the members of a firm as auditors that is taken by subregulation (2) to have been made because of the appointment of the firm as auditor of the holder is not affected by the dissolution of the firm.

(4) If a firm that has been appointed as auditor is reconstituted because of the death, retirement or withdrawal of a member or members, or because of the admission of a new member or new members, or both:

(a) a person who:

(i) was taken under subregulation (2) to be an auditor of the financial services licensee; and

(ii) has retired or withdrawn from the firm as previously constituted;

is taken to have resigned as auditor as from the day of the retirement or withdrawal; and

(b) a person who:

(i) is a registered company auditor; and

(ii) is admitted to the firm;

is taken to have been appointed as an auditor of the holder as from the date of the admission; and

(c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors; and

(d) nothing in paragraphs (a) to (c) affects the operation of section 990C of the Act.

(5) Sections 990F to 990H of the Act do not apply to a resignation mentioned in paragraph (4)(a) unless:

(a) the person who is taken to have resigned was the only member of the firm who was a registered company auditor; and

(b) there is no member of the firm who is a registered company auditor after the retirement or withdrawal of that person.

(6) A report or notice that purports to be made or given by a firm appointed as auditor is taken not to have been duly made or given unless it is signed by a member of the firm who is a registered company auditor:

(a) in the firm’s name; and

(b) in his or her own name.

(7) If a vacancy in the office of an auditor continues, the surviving or continuing auditor or auditors (if any) may act as auditor while the vacancy continues.

(8) If a vacancy occurs in the office of an auditor, and there is no surviving or continuing auditor of the financial services licensee, the financial services licensee must, within 14 days after the vacancy occurs appoint as auditor:

(a) a person who is eligible to act as auditor; or

(b) 2 or more persons each of whom is eligible to act as auditor; or

(c) a firm that is eligible to act as auditor; or

(d) 2 or more firms each of which is eligible to act as auditor; or

(e) a combination of persons and firms each of which is eligible to act as auditor.

(9) If an auditor ceases to hold office in accordance with paragraph 990E(a) or (d) of the Act, the financial services licensee for which the auditor acted must lodge with ASIC a notice in the prescribed form stating that the auditor has ceased to hold the office.

7.8.16 When person is ineligible to act as auditor of financial services licensee

(1) For section 990C of the Act, a person is ineligible to act as auditor of a financial services licensee in any of the following circumstances:

(a) the person is not a registered company auditor;

(b) the person is indebted in an amount exceeding $5 000 to:

(i) the financial services licensee; or

(ii) if the financial services licensee is a body corporate—to a body corporate related to the financial services licensee;

(c) a body corporate in which the person has a substantial holding is indebted in an amount exceeding $5 000 to:

(i) the financial services licensee; or

(ii) if the financial services licensee is a body corporate—to a body corporate related to the financial services licensee;

(d) the person is a partner or employee of the financial services licensee;

(e) if the financial services licensee is a body corporate—the person is:

(i) an officer of the body; or

(ii) a partner, employer or employee of an officer of the body; or

(iii) a partner or employee of an employee of an officer of the body.

(2) For section 990C of the Act, a firm is ineligible to act as auditor of a financial services licensee at a particular time unless:

(a) at least 1 member of the firm is a registered company auditor who is ordinarily resident in Australia; and

(b) if the business name under which the firm is carrying on business is not registered under a law of a State or Territory—a return has been lodged in the prescribed form showing, in relation to each member of the firm:

(i) the member’s full name; and

(ii) the member’s address at that time; and

(c) no member of the firm is indebted in an amount exceeding $5 000 to:

(i) the financial services licensee; or

(ii) if the financial services licensee is a body corporate—to a body corporate related to the financial services licensee; and

(d) no body corporate in which any member of the firm has a substantial holding is indebted in an amount exceeding $5 000 to:

(i) the financial services licensee; or

(ii) if the financial services licensee is a body corporate—to a body corporate related to the financial services licensee; and

(e) no member of the firm is a partner or employee of the financial services licensee; and

(f) if the financial services licensee is a body corporate—no member of the firm is:

(i) an officer of the body; or

(ii) a partner, employer or employee of an officer of the body; or

(iii) a partner or employee of an employee of an officer of the body; and

(g) if the financial services licensee is a body corporate—no officer of the financial services licensee receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(3) For paragraphs (1)(b), (1)(c), (2)(c) and (2)(d), a debt owed by a natural person to a body corporate is to be disregarded if:

(a) the body corporate is:

(i) an Australian ADI; or

(ii) a body corporate registered under the *Life Insurance Act 1995*; and

(b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and

(c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.

(4) For subregulations (1) and (2), a person is taken to be an officer of a body corporate if:

(a) the person is an officer of a related body corporate; or

(b) unless ASIC directs that this paragraph not apply in relation to the person—the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the body corporate or of a related body corporate.

(5) For this regulation, a person is not taken to be an officer of a body corporate by reason only of being or having been the liquidator of the body corporate or of a related body corporate.

(6) For this regulation, a person is not taken to be an officer of a body corporate:

(a) by reason only of having been appointed as an auditor of that body corporate or of a related body corporate; or

(b) for any purpose relating to taxation, a public officer of a body corporate; or

(c) by reason only of being or having been authorised to accept on behalf of the body corporate or a related body corporate:

(i) service of process; or

(ii) any notices required to be served on the body corporate or related body corporate.

Division 7—Other rules about conduct

7.8.17 Priority to clients’ orders

(1) For paragraph 991B(3)(b) of the Act, if a participant in a licensed market:

(a) enters into a transaction; and

(b) complies with all of the participant’s obligations in relation to the transaction under the market integrity rules and the operating rules of the licensed market;

subsection 991B(2) of the Act does not apply in relation to the transaction.

(2) Subject to subregulation (3), for paragraph 991B(3)(b) of the Act, subsection 991B(2) of the Act does not apply to a transaction if, at the time that the instruction is issued, the financial services licensee is not a participant in the licensed market on which the particular financial product is being traded.

(3) Subregulation (2) does not apply if:

(a) the financial services licensee deals, or has dealt, in a financial product traded on that market:

(i) on the licencee’s own behalf (whether directly or through an agent or other representative); or

(ii) on behalf of a client; or

(b) an associate of the financial services licensee is a participant in the market mentioned in that subregulation.

7.8.18 Instructions to deal through licensed markets

(1) For section 991C of the Act, this regulation applies in relation to all instructions received by a financial services licensee to deal in financial products through licensed markets, except to the extent that the market integrity rules, or the operating rules of a licensed market in relation to which the financial services licensee is a participant, otherwise provide.

(2) Subject to subregulation (3), the financial services licensee must transmit, in the sequence in which they are received, all instructions to deal in a class of financial products at or near the market price for financial products of that class prevailing immediately before execution of the instructions.

(3) If:

(a) a financial services licensee proposes to deal in a class of financial products on the financial services licensee’s own account; and

(b) the person by whom or on whose instructions the instructions for the dealing are to be transmitted is aware of instructions of a client of the financial services licensee to deal in that class of financial products at or near the market price for a financial product of that class prevailing at that time (being instructions that have not been transmitted);

that person must not transmit, and must not give instructions to any other person to transmit, the instructions to give effect to the proposal of the financial services licensee to deal in that class of financial products before the instructions of the client are transmitted.

(4) If:

(a) during a particular period, a financial services licensee transmits instructions (whether or not those instructions consist of, or include, instructions giving effect to a proposal of the financial services licensee to deal in the class of financial products concerned on the financial services licensee’s own account) to deal in a class of financial products at or near the market price for a financial product of that class prevailing immediately before execution of the instructions; and

(b) dealings in that class of financial products are effected pursuant to those instructions;

the financial services licensee must allocate the dealings to those instructions:

(c) in the sequence in which the dealings were effected; and

(d) in the sequence in which the financial services licensee transmitted the instructions.

(5) A financial services licensee (***licensee 1***), or a director, partner, officer or employee of a financial services licensee, must not disclose to any other financial services licensee, or to a person engaged or employed in the business of licensee 1 or any other financial services licensee, instructions of a client to deal in a class of financial products, except:

(a) to the extent necessary to execute the instructions; or

(b) as required by this Act or any other law.

(6) In this regulation, a reference to the transmission by a financial services licensee of instructions to deal in a class of financial products is a reference:

(a) if the financial services licensee has direct access to the licensed market on which the instructions are to be executed—to the transmission of the instructions to that licensed market; or

(b) if the financial services licensee has access to the licensed market on which the instructions are to be executed only through another financial services licensee—to the transmission of the instructions to that other financial services licensee.

7.8.19 Records of instructions to deal on licensed markets and foreign markets

(1) For section 991D of the Act, this regulation applies in relation to:

(a) instructions received by a financial services licensee to deal in financial products, on behalf of a client, through licensed markets or through other financial markets (whether inside or outside Australia); and

(b) instructions received by a financial services licensee to deal in financial products, on the financial service licensee’s own account, through licensed markets or through other financial markets (whether inside or outside Australia).

(2) The financial services licensee must keep records setting out brief particulars of the following matters:

(a) the instructions;

(b) if the instructions were received on behalf of a client—the client;

(c) the person who gave the instructions to the financial services licensee;

(d) the date and time of receipt of the instructions, and the person who received the instructions;

(e) the date and time of transmission of the instructions, and the person who transmitted the instructions;

(f) the date and time of execution of the instructions.

(3) For subregulation (2), if:

(a) a financial services licensee transmits for execution on a financial market outside Australia and the external Territories instructions to deal in financial products; and

(b) it is not reasonably practicable for the financial services licensee to set out the date and time of execution of those instructions in its records;

the financial services licensee must set out the date and time as precisely as is reasonably practicable.

(4) The financial services licensee must keep records relating to instructions given by a client to deal in financial products in a manner that makes the records identifiable separately from records relating to instructions to deal in financial products on the financial services licensee’s own account.

(5) The financial services licensee must keep the records mentioned in subregulation (2) for at least 5 years after the particulars are created.

7.8.20 Dealings with non‑licensees

(1) For the purposes of subsection 991E(1) of the Act, section 991E of the Act does not apply in relation to the sale or purchase of the following financial products by the body corporate by which the financial products were made available:

(a) a security made available in accordance with Chapters 5C and 6D of the Act;

(b) a managed investment product made available in accordance with Chapters 5C, 7 and 8A of the Act;

(c) a foreign passport fund product made available in accordance with Chapters 7 and 8A of the Act.

(1A) Subject to subregulation (1B), for subsection 991E(1) of the Act, the subsection does not apply to a transaction if, at the time of the transaction, the financial services licensee is not a participant in the licensed market on which the particular financial product is being traded.

(1B) Subregulation (1A) does not apply if:

(a) the financial services licensee deals, or has dealt, in a financial product traded on that market:

(i) on the licensee’s own behalf (whether directly or through an agent or other representative); or

(ii) on behalf of a client; or

(b) an associate of the financial services licensee is a participant in the market mentioned in that subregulation.

(2) For subsection 991E(2) of the Act:

(a) a disclosure referred to in paragraph 991E(1)(c) of the Act must be given by the financial services licensee to the non‑licensee:

(i) in writing; and

(ii) if the transaction is an on‑market transaction—in relation to the particular transaction, a class of on‑market transactions which includes the transaction, or all on‑market transactions; and

(b) a consent referred to in paragraph 991E(1)(d) of the Act:

(i) may be given orally, or in writing, by the non‑licensee; and

(ii) is effective until it is revoked, either orally or in writing, by the non‑licensee; and

(c) if the non‑licensee gives an oral consent to the financial services licensee, or revokes a consent orally, the financial services licensee must:

(i) make a written record of the consent or revocation; and

(ii) provide a copy of the written record to the non‑licensee within 10 business days after the day on which the consent is given or revoked.

(3) For subsection 991E(3) of the Act, a brokerage, commission or other fee is permitted in respect of a transaction between a financial services licensee and a non‑licensee only if:

(a) the financial services licensee is a participant in a licensed market; and

(b) the financial services licensee has complied with all of the financial services licensee’s obligations in relation to the transaction under the market integrity rules and the operating rules of the relevant licensed market; and

(c) the market integrity rules or the operating rules permit a brokerage, commission or fee to be charged to non‑licensees of the same kind as the non‑licensee; and

(d) the non‑licensee has authorised the financial services licensee to charge the non‑licensee in respect of the transaction; and

(e) the financial services licensee discloses to the non‑licensee the amount of the brokerage, commission or fee, or the basis on which it will be calculated, before the non‑licensee gives the authorisation mentioned in paragraph (d); and

(f) the amount of the brokerage, commission or fee is reasonable having regard to the amount that would have been charged by the financial services licensee to the non‑licensee if the financial services licensee had entered the transaction with the non‑licensee as agent and not on its own behalf.

(4) For subregulation (3):

(a) an authorisation given to the financial services licensee by the non‑licensee:

(i) may be given orally, or in writing, by the non‑licensee; and

(ii) is effective until it is revoked, either orally or in writing, by the non‑licensee; and

(b) if the non‑licensee gives an oral authorisation to the financial services licensee, or revokes an authorisation orally, the financial services licensee must:

(i) make a written record of the authorisation or revocation; and

(ii) provide a copy of the written record to the non‑licensee within 10 business days after the day on which the authorisation is given or revoked; and

(c) a disclosure of the amount of the brokerage, commission or fee, or the basis on which it will be calculated must be given by the financial services licensee to the non‑licensee:

(i) in writing: and

(ii) if the transaction is an on‑market transaction—in relation to the particular transaction, a class of on‑market transactions that includes the transaction, or all on‑market transactions.

(5) For subsection 991E(7) of the Act, a financial services licensee must:

(a) keep records of the following matters relating to each financial products transaction entered into by the financial services licensee on the financial service licensee’s own behalf:

(i) a description of the financial products transaction;

(ii) the date and time of receipt of the instructions for the financial products transaction;

(iii) the date and time of transmission of the instructions to the licensed market concerned;

(iv) the date and time of execution of the instructions;

(v) the source of the funds, or financial products, used to effect the financial products transaction; and

(b) keep the records in a manner that makes the records identifiable separately from records of the financial services licensee.

Note: Other requirements for record‑keeping are in Division 6 of Part 7.8 of the Act.

7.8.20A Dealings involving employees of financial service licensees—risk insurance products

For subsection 991F(1) of the Act, a financial services licensee and one or more employees of the financial services licensee may, on their own behalves, jointly acquire a financial product if it is a risk insurance product.

7.8.21 Dealings involving employees of financial services licensees

(1) For subsection 991F(2) of the Act, that subsection does not have effect in relation to:

(a) a bank; or

(b) a body corporate that gives credit in good faith to a person (not being a director of the body corporate) employed by the body corporate, or by another body corporate that is related to the first body corporate, to enable the person to acquire financial products that are:

(i) fully paid shares in the body corporate; and

(ii) to be held in beneficial ownership by the person.

(1A) For subsection 991F(2) of the Act, that subsection does not have effect in relation to a financial services licensee that gives credit in good faith to a person employed by:

(a) the financial services licensee; or

(b) a person related to the financial services licensee;

to enable the person to acquire an insurance product in relation to a credit facility provided by the financial services licensee to the person.

Example: Mortgage insurance is an insurance product in relation to a credit facility.

(2) For subsection 991F(3) of the Act, a body corporate that is related to a financial services licensee may act as the agent of an employee of the financial services licensee, in respect of the acquisition mentioned in that subsection, only if:

(a) before the acquisition, the employee has informed the related body corporate that the employee is acquiring, or agreeing to acquire, the financial product on the employee’s own behalf; and

(b) the financial services licensee has in place arrangements with the related body corporate to allow the licensee to be informed of, and to gain access to records relating to, the acquisition.

(3) For subsection 991F(3) of the Act, a body corporate may act as the agent of a person who is an employee of a financial services licensee that is a participant in a licensed market and is so employed in connection with a business of dealing in financial products, in respect of an acquisition mentioned in that subsection, if:

(a) the body corporate holds an Australian financial services licence; and

(b) the body corporate is a participant in the same licensed market as the licensee; and

(c) the employer has given consent in writing to the particular acquisition before the acquisition takes place; and

(d) the employee gives the employer a copy of the confirmation of the transaction.

(4) For subsection 991F(3) of the Act, a person who is:

(a) an employee of a financial services licensee that is a participant in a licensed market; and

(b) employed in connection with a business of dealing in financial products;

may, on the person’s own behalf, acquire, or agree to acquire, a financial product that is able to be traded on that licensed market, without the licensee’s acting as an agent in respect of the transaction, if the person’s employment is not directly connected with the licensee’s business of dealing in financial products on that licensed market.

(5) Subject to subregulation (6), for subsection 991F(3) of the Act, the subsection does not apply unless:

(a) the particular financial product that is acquired or proposed to be acquired is a financial product traded on a market in which the financial services licensee is not a participant at the time of the acquisition or the proposed acquisition; or

(b) the particular financial product is a derivative the value of which is derived from a financial product mentioned in paragraph (a).

(6) Subregulation (5) does not apply if:

(a) the financial services licensee deals, or has dealt, in a financial product traded on that market:

(i) on the licensee’s own behalf (whether directly or through an agent or other representative); or

(ii) on behalf of a client; or

(b) an associate of the financial services licensee is a participant in the market mentioned in that subregulation.

Division 8—Miscellaneous

7.8.21A Exceptions to prohibition on hawking of financial products

For the purposes of paragraph 992A(2)(c) of the Act, the following kinds of offer, request or invitation are prescribed:

(a) an offer for the issue or sale of:

(i) listed securities; or

(ii) an interest in a listed managed investment scheme;

that is made by telephone by a financial services licensee;

(b) an offer for the issue or sale of securities that is made to a client by a financial services licensee through whom the client has bought or sold securities in the last 12 months;

(c) an offer for the issue or sale of an interest in a managed investment scheme that is made to a client by a financial services licensee through whom the client has acquired or disposed of an interest in a managed investment scheme in the last 12 months;

(d) a CSF offer;

(f) an offer of, or a request or invitation relating to, a financial product that is an arrangement under which medical indemnity cover to which the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* applies is provided to:

(i) a medical practitioner (within the meaning of that Act); or

(ii) a registered health professional (within the meaning of that Act) in relation to whom regulations made for the purposes of Part 3 of that Act apply;

(g) an offer of, or a request or invitation relating to, a financial product that is an interest in a scheme that is in the nature of a litigation funding scheme, or a litigation funding arrangement, mentioned in regulation 5C.11.01;

(h) an offer of, or a request or invitation relating to, a financial product that is a basic banking product, if the offer, request or invitation was made in the course of contact with the consumer that the consumer initiated for any purpose;

(i) an offer of, or a request or invitation relating to, a financial product that is a facility if:

(i) the definition of ***basic deposit product*** in section 9 of the Act does not apply to the facility, but would apply to the facility if paragraph (d) of that definition were disregarded; and

(ii) funds are able to be withdrawn or transferred from the facility on the instruction of, or by authority of, the depositor with prior notice of 31 days or less to the ADI that makes the facility available (whether or not the withdrawal or transfer will attract a reduction in the return generated for the depositor); and

(iii) the offer, request or invitation was made in the course of contact with the consumer that the consumer initiated for any purpose;

(j) an offer for the issue or sale of a financial product that is substantially similar to a financial product (the ***current financial product***) that the recipient of the offer:

(i) already holds with the offeror; or

(ii) held with the offeror at any time during the period of 30 day before the day on which the offer is made;

and that is in the nature of an offer to renew the current financial product.

7.8.23 Return of financial product: transfer between superannuation entities or RSAs

(1) For the purposes of paragraph 992AA(2)(c) of the Act, this regulation applies in relation to a superannuation product or an RSA that has been issued to the holder of the product as a result of a transfer between superannuation entities or RSAs.

(2) It is a requirement of the exercise of the right to return the superannuation product or RSA that, if the money to be repaid includes:

(a) restricted non‑preserved benefits; or

(b) preserved benefits;

the holder of the superannuation product, or the RSA holder, must nominate a superannuation fund, approved deposit fund or RSA into which the money representing restricted non‑preserved benefits or preserved benefits is to be repaid.

(3) For the purposes of paragraph 992AA(2)(c) of the Act, if the right of return is exercised, the responsible person must return the money as directed.

7.8.24 Right of return not to apply

For the purposes of paragraph 992AA(3)(a) of the Act, the following classes of financial products are excluded from section 992AA of the Act:

(a) a financial product offered or issued under a distribution reinvestment plan or switching facility;

(b) a financial product the acquisition of which is an additional contribution required by an existing agreement or contract;

(c) a financial product issued as consideration for an offer made under a takeover bid under Chapter 6 of the Act;

(d) an interim contract of insurance within the meaning of subsection 11(2) of the *Insurance Contracts Act 1984*;

(e) a superannuation product that is issued in relation to:

(i) a non‑public offer superannuation entity; or

(ii) a public offer superannuation entity mentioned in paragraph 7.6.01(1)(b), (c) or (d);

(f) a risk insurance product that is:

(i) of less than 12 months duration; and

(ii) a renewal of an existing product on the terms and conditions to which the product is currently subject.

7.8.25 Variation of amount to be repaid

For the purposes of paragraph 992AA(2)(c) of the Act, if a financial product is subject to a distribution, the amount that would otherwise be repaid on the exercise of the right to return the financial product may be reduced by the amount of that distribution.

Part 7.8A—Design and distribution requirements relating to financial products for retail clients

Division 1—Preliminary

7.8A.01 Definitions

In this Part:

***credit*** has the same meaning as in subregulation 2B(3) of the *Australian Securities and Investments Commission Regulations 2001*.

***credit facility*** has the same meaning as in the *Australian Securities and Investments Commission Regulations 2001*.

***extended operation financial product*** means a financial product that:

(a) is a financial product within the meaning of Division 2 of Part 2 of the ASIC Act; and

(b) is not a financial product within the meaning of the Act.

7.8A.02 Meaning of *regulated person*—prescribed persons

(1) This regulation is made for the purposes of paragraph (c) of the definition of ***regulated person*** in subsection 994A(2) of the Act.

Persons who are exempt from having an Australian financial services licence

(2) A person is prescribed in relation to a financial product if the person is exempt from the requirement in section 911A of the Act to hold an Australian financial services licence under either of the following provisions of the Act:

(a) paragraph 926A(2)(a);

(b) paragraph 926B(1)(a).

Product distributors

(3) A product distributor within the meaning of section 910A of the Act (as modified by the *ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682*) is prescribed in relation to the following financial products:

(a) a basic deposit product;

(b) a general insurance product;

(c) a bundled consumer credit insurance product (within the meaning of that instrument).

Credit licensees

(4) Each of the following persons is prescribed in relation to a financial product that is a credit facility:

(a) a person who is a licensee within the meaning of the *National Consumer Credit Protection Act 2009* (the ***Credit Act***);

(b) a person who is a credit representative (within the meaning of the Credit Act) of such a licensee;

(c) a person who is exempt from the operation of section 29 of the Credit Act (which is about the requirement to hold a credit licence) under any of the following provisions of that Act:

(i) paragraph 109(1)(a);

(ii) paragraph 109(3)(a);

(iii) paragraph 110(1)(a);

(d) a person who engages in a credit activity (within the meaning of section 6 of the Credit Act) on the person’s own behalf;

(e) a person who contravenes section 29 of the Credit Act.

Issuers and sellers of extended operation financial products

(5) Each of the following persons is prescribed in relation to an extended operation financial product:

(a) a person who issues the product;

(b) a person who sells the product under a regulated sale.

Division 2—Financial products for which target market determinations are required

7.8A.03 Financial products for which target market determinations are required

This Division is made for the purposes of paragraphs 994B(1)(c) and 994B(2)(b) of the Act.

7.8A.04 Jurisdictional scope of Division

A person is not required by this Division to make a target market determination for a financial product if the product is:

(a) a financial product that is not available for acquisition by issue, or by regulated sale, in this jurisdiction; or

(b) securities (as defined in subsection 92(7) of the Act) offered under a recognised offer in relation to a recognised jurisdiction.

7.8A.05 Simple corporate bonds

A person must make a target market determination for a financial product if:

(a) the product is a simple corporate bonds depository interest where the bonds are to be issued under a 2‑part simple corporate bonds prospectus; and

(b) the person is the person required to prepare a disclosure document for the bonds.

Note: The person must make the determination before any person engages in retail product distribution conduct in relation to the product: see subparagraph 994B(2)(b)(ii) of the Act.

7.8A.06 Debentures of certain bodies

A person must make a target market determination for a financial product if:

(a) the product is a debenture of a body that is:

(i) an ADI (short for authorised deposit‑taking institution) within the meaning of the *Banking Act 1959*; or

(ii) registered under section 21 of the *Life Insurance Act 1995*; and

(b) but for subsection 708(19) of the Act, disclosure to investors under Part 6D.2 of the Act would be needed for an offer of the debenture for issue or sale; and

(c) the person is the person who, but for subsection 708(19) of the Act, would be required to prepare a disclosure document for an offer of the debenture for issue or sale.

Note: The person must make the determination before any person engages in retail product distribution conduct in relation to the product: see subparagraph 994B(2)(b)(ii) of the Act.

7.8A.07 Basic banking products

A person must make a target market determination for a financial product if:

(a) the product is a basic banking product; and

(b) the person issues, or offers to issue, the product.

Note: The person must make the determination before any person engages in retail product distribution conduct in relation to the product: see subparagraph 994B(2)(b)(ii) of the Act.

7.8A.08 Investor‑directed portfolio services

(1) A person must make a target market determination for a financial product if:

(a) the product is an interest in a managed investment scheme; and

(b) the interest arises out of participation or proposed participation in an IDPS, but is not IDPS property; and

(c) but for ASIC Class Order [CO 13/763], Part 7.9 of the Act would give rise to an obligation on a person to give another person a Product Disclosure Statement for the interest; and

(d) the person is the operator of the IDPS.

Note: The person must make the determination before any person engages in retail product distribution conduct in relation to the product: see subparagraph 994B(2)(b)(ii) of the Act.

(2) The following terms used in this regulation have the same meaning as in the section 912AD set out in paragraph 6 of ASIC Class Order [CO 13/763]:

(a) IDPS;

(b) IDPS property;

(c) operator, in relation to an IDPS.

7.8A.09 Exchange traded products

(1) A person must make a target market determination for a financial product if:

(a) the product is covered by subregulation (4); and

(b) the product is, or will be, able to be traded on a licensed market; and

(c) the issuer issued the product with the purpose mentioned in subparagraph 1012C(6)(c)(i) of the Act; and

(d) it is reasonably likely that a regulated person will offer to sell the product to a person as a retail client within 12 months of the issue of the product; and

(e) the person is the issuer of the product.

Note: Subsection 1012C(7) of the Act affects whether the issuer is taken to have a particular purpose.

(2) The time before which the issuer is required to make the determination is the close of business on the day on which the issuer first issues the product with the purpose mentioned in paragraph (1)(c).

(3) This regulation does not apply to a financial product if the issuer issued, or offered to issue, the product to a person as a retail client at or before the time specified in subregulation (2).

(4) This subregulation covers the following financial products:

(a) an interest in a managed investment scheme;

(b) a share in a foreign company that has the economic features of a managed investment scheme and is an open‑end investment company registered with the U.S. Securities and Exchange Commission under the *Investment Company Act 1940* of the United States of America;

(c) a legal or equitable right or interest in a financial product covered by paragraph (a) or (b);

(d) an option to acquire, by way of issue, a financial product covered by paragraph (a), (b) or (c).

7.8A.10 Custodial or depository services

A person must make a target market determination for a financial product if:

(a) the product includes a custodial or depository service; and

(b) but for this regulation, Part 7.8A of the Act would not apply in relation to the financial product; and

(c) the custodial or depository service is to be provided to a retail client; and

(d) the person is the issuer of the product.

Note: The person must make the determination before any person engages in retail product distribution conduct in relation to the product: see subparagraph 994B(2)(b)(ii) of the Act.

Division 3—Exemptions

7.8A.20 Financial products for which target market determinations are not required

(1) For the purposes of paragraph 994B(3)(f) of the Act, each kind of financial product covered by a subregulation of this regulation is prescribed.

Superannuation

(2) This subregulation covers an interest in an eligible rollover fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

(3) This subregulation covers a defined benefit interest (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*).

Insurance products

(4) This subregulation covers a medical indemnity insurance product.

Depository interests

(5) This subregulation covers a depository interest in fully paid ordinary shares in a foreign company, being shares in relation to which, if they were offered directly to retail clients, Part 7.8A of the Act would not apply.

Money products

(6) This subregulation covers a bank draft, including (but not limited to):

(a) a cheque drawn by a financial institution on itself; or

(b) a cheque drawn by a financial institution on a financial institution other than itself.

(7) This subregulation covers a money order issued as a money order by, or for, Australia Post.

Extended operation financial products not received in this jurisdiction

(8) This subregulation covers an extended operation financial product, if the offer to issue or sell the product is not received in this jurisdiction.

Credit facilities

(9) This subregulation covers each of the following:

(a) a credit facility that is not or was not issued, or that will not be issued, in the course of a business that is wholly or partly a business of providing credit;

(b) a credit facility under the terms of which the credit is, or must be, applied wholly or predominantly for business purposes;

(c) a credit facility that:

(i) involves a matter referred to in paragraph (b) of the definition of ***credit*** in subregulation 2B(3) of the *Australian Securities and Investments Commission Regulations 2001*; but

(ii) does not involve credit of a kind referred to in paragraph (a) of that definition;

(d) a credit facility that is the provision of a mortgage that secures obligations under a credit contract (but not the credit contract);

(e) the provision of credit by a pawnbroker in the ordinary course of a pawnbroker’s business (being a business which is being lawfully conducted by the pawnbroker).

Income management regimes

(10) This subregulation covers a financial product that is:

(a) a BasicsCard bank account (within the meaning of Part 3AA of the *Social Security (Administration) Act 1999*); or

(b) a debit card that is attached to an account referred to in paragraph (a); or

(c) an income management account (within the meaning of Part 3B of that Act); or

(d) either:

(i) a stored value card (within the meaning of Part 3B of that Act); or

(ii) a voucher given under subsection 123YC(2) or 123YD(2) of that Act;

that relates to an account referred to in paragraph (c).

7.8A.25 Exemption from Part 7.8A—Employers complying with certain superannuation guarantee obligations

(1) For the purposes of paragraph 1368(d) of the Act, Part 7.8A does not have effect in relation to a person in relation to a transaction that involves retail product distribution conduct if:

(a) the person is an employer; and

(b) the relevant retail client is an employee of the employer; and

(c) the conduct is covered by subregulation (2).

(2) The following retail product distribution conduct is covered by this subregulation:

(a) under Part 7.9, giving the employee a Product Disclosure Statement for a product that is a default fund product for the employer and employee;

(b) dealing in a financial product that consists only of the employer paying contributions on behalf of the employee into a product that is:

(i) a default fund product for the employer and employee; or

(ii) a chosen fund product for the employee;

(c) dealing in a financial product that consists only of the employer arranging for the issue to the employee of a product that is:

(i) a default fund product for the employer and employee; or

(ii) a chosen fund product for the employee.

(3) In this regulation:

***chosen fund product***, for an employee, means a financial product that is an interest in a chosen fund (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*) for the employee*.*

***default fund product***: a financial product that is an interest in a fund is a ***default fund product*** for an employer and an employee at a time if, assuming that the employee were a member of the fund and the employer were to make a contribution to the fund at the time for the benefit of the employee, the employer could rely on a provision of section 32C of the *Superannuation Guarantee (Administration) Act 1992* (other than subsection 32C(1)) to satisfy the choice of fund requirements in relation to the contribution.

***fund*** has the same meaning as in Part 3A of the *Superannuation Guarantee (Administration) Act 1992*.

Part 7.9—Financial product disclosure and other provisions relating to issue and sale of financial products

Division 1—Preliminary

7.9.01 Interpretation

(1) In this Part:

***amount*** includes a nil amount.

***annuity*** has the same meaning as in regulation 1.05 of the SIS Regulations.

***contact details***, in relation to a superannuation entity, means:

(a) the name of the superannuation entity and, if relevant, of the sub‑plan; and

(b) a contact address for the superannuation entity; and

(c) a contact person and telephone number for the contact person.

***contact person***, in relation to a superannuation entity, means a named individual, or a person holding a designated office or position, who is available to receive and deal with inquiries or complaints by product holders (as the case may be).

***contribution*** includes a benefit that is rolled over or transferred to a fund.

***exit charge*** means a charge that:

(a) is made against:

(i) a product holder’s benefits in a fund or financial product; or

(ii) a product holder or another person on the product holder’s behalf; and

(b) is only made when a payment is:

(i) made in respect of a product holder; or

(ii) transferred.

***fund information***, in relation to a superannuation product or an RSA, means information required to be given under Subdivision 5.5.

***fund reporting period*** means a reporting period for fund information.

***Government co‑contribution*** means a Government co‑contribution payable under the *Superannuation (Government Co‑contribution for Low Income Earners) Act 2003*.

***legal personal representative*** has the meaning given by section 10 of the SIS Act.

***lost member*** has the meaning given by the SIS regulations.

***lost RSA holder*** has the meaning given by the RSA regulations.

***net amount of Government co‑contribution received*** means all amounts of Government co‑contributions credited to the member of a superannuation fund (other than a self managed superannuation fund) or an RSA holder, less any amounts deducted by the superannuation provider or providers to reimburse it or them for repaying a co‑contribution amount to the Commissioner of Taxation, during the reporting period.

***net earnings*** means the investment return on the assets of a fund after payment of transaction costs, government charges, taxes and duties and charges relating to the management of investment of fund assets.

***prescribed net earnings rate***, in relation to a fixed‑rate option offered by a capital guaranteed fund for a period, means the net earnings rate declared, in advance, by the fund.

***remuneration***, for an Australian financial services licensee or an authorised representative, means a payment that:

(a) is made to the Australian financial services licensee or authorised representative because a superannuation interest is issued to a member; and

(b) is not made under an agreement by which the member, or another person on the member’s behalf, has retained the Australian financial services licensee or authorised representative on a fee‑for‑service basis.

Note: Also see subregulation (5).

***sub‑fund***, in relation to a capital guaranteed fund, means a segment of a public offer superannuation fund that has the following characteristics:

(a) the sub‑fund has separately identifiable assets and separately identifiable beneficiaries;

(b) the interest of each beneficiary of the sub‑fund is determined by reference only to the conditions governing that sub‑fund;

(c) there is no transfer of assets, benefits or money between the sub‑fund and another sub‑fund without a transfer of a corresponding beneficial interest;

(d) the insurance and administration costs of the sub‑fund are attributable only to that sub‑fund.

***transaction cost*** means:

(a) brokerage paid because of an investment transaction; or

(b) a cost arising from maintenance of a property investment; or

(c) stamp duty on an investment transaction.

***unfunded defined benefits fund*** means a defined benefits fund under which all or some of the amounts that will be required for the payment of a benefit are not paid into the fund until the member concerned becomes entitled to receive the benefit.

***withdrawal benefit*** has the same meaning as in the SIS Regulations.

(2) In this Part, unless the contrary intention appears, a reference to a ***member*** is taken to mean:

(a) in relation to a superannuation entity—a person who:

(i) is a member of the entity; or

(ii) receives a pension from the entity; or

(iii) has deferred his or her entitlement to receive a benefit from the entity; and

(b) in relation to an approved deposit fund—a depositor in the fund; and

(c) in relation to a pooled superannuation trust—a unit‑holder.

(3) In a Division of this Part, a reference to a fund is a reference to a fund of the kind to which the Division applies.

(5) For the definition of ***remuneration***, payment is taken to have been given to an Australian financial services licensee or an authorised representative for issuing an interest to a member if:

(a) issuing the interest is taken into account to increase the payment given to the Australian financial services licensee or authorised representative for other matters (for example, bonus commission); or

(b) the payment is given after the interest is issued and only if the member remains a member of the fund (for example, trailing commission).

7.9.02 Sub‑plans

(1) This regulation applies if the trustee of a regulated superannuation fund proposes to make a determination as to whether a sub‑plan should be made.

(2) In making a determination, the trustee must have regard to all relevant matters, including each of the following:

(a) whether there is a common factor in a segment of the fund (for example, whether a group of members of the fund have the same employer);

(b) whether the governing rules of the fund provide for a particular segment to be a sub‑plan.

(3) For subsection 1017C(9) of the Act, the sub‑plan is a relevant sub‑plan.

(4) For paragraph 761E(7)(a) of the Act, if:

(a) a person is a member of a superannuation fund in relation to a sub‑plan; and

(b) either:

(i) the person’s membership changes to membership in relation to another sub‑plan; or

(ii) the person holds interests in 2 or more sub‑plans at the same time;

the change to membership in relation to the other sub‑plan is taken to be the issue of a new interest in the superannuation fund.

(5) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to the fund (including a sub‑plan) as set out in Part 1 of Schedule 10A.

7.9.02A Alternative ways of giving Statement

(1) For subsection 1015C(4) of the Act, the following are alternative ways of giving a Statement to a person:

(a) making the Statement available to the person in any way that:

(i) is agreed to by the person; and

(ii) allows the regulated person to be satisfied, on reasonable grounds, that the person has received the Statement;

(b) making the Statement available to the person’s agent in any way that:

(i) is agreed to by the agent; and

(ii) allows the regulated person to be satisfied, on reasonable grounds, that the agent has received the Statement.

(2) If a provision of the Act or these Regulations imposes additional requirements in relation to a matter in subregulation (1), the alternative way of giving a Statement is subject to the requirements.

Note: Regulation 7.9.02B is an example of an additional requirement.

7.9.02B Product Disclosure Statement in electronic form

(1) For paragraph 1015C(5)(b) of the Act, a statement that is to be given in electronic form must, as far as practicable, be presented in a way that will allow the person to whom it is given to keep a copy of it so that the person can have ready access to it in the future.

(2) A statement that is to be given in electronic form must be presented in a way that clearly identifies the information that is part of the statement.

Division 2—Arrangements for Product Disclosure Statements in relation to superannuation products and RSAs

Subdivision 2.1—Preliminary

7.9.03 Application of Division 2

This Division applies in relation to superannuation products and RSAs.

Note: See paragraphs 764A(1)(g) and (h) of the Act.

Subdivision 2.2—Late provision of Product Disclosure Statement for certain members of regulated superannuation fund, public offer superannuation fund or successor fund

7.9.04 Product Disclosure Statement to be provided later

(1) For section 1012F of the Act, the following superannuation products are specified:

(a) a superannuation interest issued by the trustee of a regulated superannuation fund that is not a public offer superannuation fund, other than:

(ii) a financial product taken to be issued because of regulation 7.1.04E; or

(iii) an annuity or pension taken to be issued because of subregulation 7.9.02(4); or

(iv) an interest in a self managed superannuation fund that is not acquired at the time that the fund is established;

(b) a pension issued by a superannuation fund the rules of which do not allow a member to receive accumulated benefits in a form other than a pension from that fund;

(c) a superannuation interest issued by the trustee of a successor fund in relation to the transfer of benefits in the fund;

(d) a superannuation interest issued by the trustee of a regulated superannuation fund as a result of complying with a commutation authority issued to the trustee under Subdivision 136‑B in Schedule 1 to the *Taxation Administration Act 1953*.

(2) For paragraph 1020G(1)(c) of the Act:

(a) section 1012B of the Act is modified in its application in relation to the specified superannuation product as set out in Part 17 of Schedule 10A; and

(b) section 1012I of the Act is modified in its application in relation to the specified superannuation product as set out in Part 17 of Schedule 10A.

Subdivision 2.3—Product Disclosure Statement for RSA

7.9.05 Situation in which Product Disclosure Statement is not required

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to an RSA as set out in Part 2 of Schedule 10A.

Subdivision 2.4—Additional obligations for eligible rollover funds

7.9.06A Meaning of *relevant superannuation entity*

For the definition of ***relevant superannuation entity*** in subsection 1016A(1) of the Act, a public offer superannuation entity is specified.

7.9.06B Application forms

(1) For paragraph 1016A(2)(f) of the Act, the following situation in which a restricted issue occurs is prescribed:

(a) the financial product is a superannuation product;

(b) the interest is issued by the trustee of a public offer superannuation entity in relation to the payment of benefits to the entity:

(i) from an exempt public sector superannuation scheme; and

(ii) in accordance with an application made under the provisions of section 243 of the SIS Act, as applied by subregulation (2) (the ***applied provisions***);

(c) if the application is the first application under the applied provisions made to the trustee of the public offer superannuation entity by the trustee of the exempt public sector superannuation scheme on behalf of any person—the application is an eligible application.

(2) For paragraph (1)(b), section 243 of the SIS Act applies in relation to the payment of benefits from the exempt public sector superannuation scheme to a public offer superannuation entity as if:

(a) a reference in that section to a transferor fund were a reference to the exempt public sector superannuation scheme; and

(b) a reference in that section to an eligible rollover fund were a reference to the public offer superannuation entity.

Subdivision 2.5—Product Disclosure Statement for insurance options

7.9.07 Modification of Act: Product Disclosure Statement in relation to insurance options

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to a superannuation entity or an RSA as set out in Part 3 of Schedule 10A.

Division 2A—Product Disclosure Statement for warrants

7.9.07A Warrants

(1) This regulation applies in relation to warrants.

(2) For paragraph 1020G(2)(a) of the Act, section 1010A of the Act is modified by adding after subsection 1010A(1):

‘(1A) Despite subsection (1), this Part applies in relation to a financial product to which regulation 7.9.07A of the *Corporations Regulations 2001* applies.’.

(3) For paragraph 761E(7)(a) of the Act, if the financial product is entered into, or acquired, on a financial market through an arrangement made by a financial services licensee acting on behalf of another person:

(a) the financial services licensee is not taken to be the issuer of the financial product; and

(b) the warrant issuer is taken to be the issuer of the financial product.

(4) For paragraph 761E(7)(a) of the Act, if the financial product is entered into, or acquired, on a financial market through an arrangement made by an authorised representative of a financial services licensee acting on behalf of another person (not being the licensee):

(a) the financial services licensee is not taken to be the issuer of the financial product; and

(b) the warrant issuer is taken to be the issuer of the financial product.

(5) For paragraph 1013F(2)(f) of the Act:

(a) information that is, or is required to be, disclosed to the market in relation to the underlying thing from which a warrant derives its value, including information published by a market operator in relation to financial products (including warrants and types of warrants) in the form of market data or educational material which is generally made available to the public by the market operator is a matter that may be taken into account for section 1013F of the Act; and

(b) other information that a market operator is required to disclose to the market, in accordance with the Act, including:

(i) information that was required to be disclosed to the market operator; and

(ii) information that the operator was required to disclose in order to meet its obligations under the Act;

is a matter that may be taken into account for section 1013F of the Act; and

(c) information that is generally made available to the public by a market operator in relation to financial products, including information published about a warrant that is entered into or acquired on a financial market in the form of market data or educational material, is a matter that may be taken into account for section 1013F of the Act.

(6) For paragraph 1017B(3)(c) of the Act, a way in which the warrant issuer may notify a holder of a matter to which that paragraph applies is by giving the relevant information to the operator of the financial market on which the warrant was entered into or acquired.

(7) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies in relation to a warrant as if the words ‘but not more than 3 months after, the change or event occurs’ in item 1 of the table in subsection 1017B(5) of the Act were omitted.

(8) In this regulation:

***warrant issuer***, in relation to a warrant, means the person who:

(a) determines the terms of the warrant, including the rights and conditions of the warrant; and

(b) is responsible for obligations owed under the terms of the warrant.

Division 2B—Product Disclosure Statement for market‑traded derivatives

7.9.07B Product Disclosure Statements for certain market‑traded derivatives

(1) For paragraph 1020G(1)(c) of the Act, subregulations (2) and (3) apply if:

(a) the standard terms and conditions relating to a type of derivative are:

(i) specified by the market operator; and

(ii) made generally available to the public; and

(b) the financial services licensee in relation to the derivative is taken to be the issuer of the derivative under subsection 761E(6) of the Act; and

(c) a retail client for the derivative has agreed to the terms and conditions as applicable to the financial product or products that are the subject of the transaction.

(2) Subsection 1013D(1) of the Act is modified in its application to the derivative as if the information required by paragraphs 1013D(1)(b), (c), (d) and (f) were required to be included as general information about the type of derivative, including, for example:

(a) general information about exercise prices for the type of derivative; and

(b) general information about expiry dates for the type of derivative; and

(c) general information about exercise styles for the type of derivative.

(3) For paragraph 1013F(2)(f) of the Act:

(a) information that is, or is required to be, disclosed to the market in relation to the underlying thing from which a derivative derives its value, including information published by a market operator in relation to financial products (including derivatives and types of derivatives) in the form of market data or educational material which is generally made available to the public by the market operator is a matter that may be taken into account for section 1013F of the Act; and

(b) other information that a market operator is required to disclose to the market, in accordance with the Act, including:

(i) information that was required to be disclosed to the market operator; and

(ii) information that the operator was required to disclose in order to meet its obligations under the Act;

is a matter that may be taken into account for section 1013F of the Act; and

(c) information that is generally made available to the public by a market operator in relation to financial products, including information published about derivatives and types of derivatives in the form of market data or educational material, is a matter that may be taken into account for section 1013F of the Act.

7.9.07C Remedies for Product Disclosure Statements for certain market‑traded derivatives

For paragraph 1016F(7)(a) of the Act, financial products that are derivatives are excluded from section 1016F if the operating rules of a licensed market or a licensed CS facility permit the closing out of the derivatives by the matching up of the arrangement with another arrangement of the same kind under which a person has assumed an offsetting position.

Division 2BA—Product Disclosure Statement for discretionary mutual funds

7.9.07CA Extension of Product Disclosure Statement requirements to wholesale clients

(1) For paragraph 949B(1)(e) of the Act, a regulated person must give a wholesale client a Product Disclosure Statement or a Supplementary Product Disclosure Statement for a financial product if:

(a) the financial product is offered or issued by a discretionary mutual fund (within the meaning given by subsections 5(5) and (6) of the *Financial Sector (Collection of Data) Act 2001*); and

(b) the regulated person would be required to give the Statement if the product were offered or issued to a retail client.

(2) The Product Disclosure Statement or Supplementary Product Disclosure Statement required to be given under this regulation must be the same as that which would be given to a retail client.

Division 2C—Situations where a Product Disclosure Statement is not required

7.9.07D Product Disclosure Statement not required for offers of bundled contracts of insurance

For paragraph 1020G(1)(c) of the Act, section 1012D of the Act is modified by adding before subsection 1012D(10):

‘(9G) In an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement for a financial product if:

(a) the financial product is a general insurance product; and

(b) the product would be provided to the person as a retail client; and

(c) the financial product would be provided as part of a contract of insurance that offers more than one kind of insurance cover; and

(d) the regulated person reasonably believes that the client does not intend to acquire the product.

7.9.07E Product Disclosure Statement not required if offer of financial product is declined

For paragraph 1020G(1)(c) of the Act, section 1012D of the Act is modified by adding before subsection 1012D(10):

‘(9J) In an issue situation or sale situation, the regulated person does not have to give the client a Product Disclosure Statement for a financial product if:

(a) the situation is an offer to issue or sell the financial product; and

(b) the client informs the regulated person, in the course of the contact during which the offer is made, that the client does not intend to acquire the financial product; and

(c) no issue or sale results from the offer.

(9K) For paragraph (9J)(c), the client must inform the regulated person explicitly but may inform the regulated person orally or in any other way.’.

7.9.07F Product Disclosure Statement not required if the client is not contactable

For paragraph 1020G(1)(c) of the Act, section 1012D of the Act is modified by adding before subsection 1012D(10):

‘(9L) In an issue situation, the regulated person does not have to give the client a Product Disclosure Statement, if:

(a) the regulated person has not given the client a Product Disclosure Statement because the regulated person did not need to give a Product Disclosure Statement at or before the time when it would otherwise be required to be given because of the operation of section 1012F or 1012G of the Act, regulation 7.9.04 or Part 17 of Schedule 10A; and

(b) either:

(i) the regulated person:

(A) has an address for the client; and

(B) is satisfied, on reasonable grounds that the address is incorrect; and

(C) has taken reasonable steps to locate the client but is unable to do so; or

(ii) the regulated person:

(A) does not have an address for the client; and

(B) is unable to obtain an address for the client; and

(C) has taken reasonable steps to locate the client but has been unable to do so.

(9M) If a regulated person does not give a client a Product Disclosure Statement in reliance on subsection (9L), and the regulated person becomes aware of the address or location of the client, the regulated person must give the client a Product Disclosure Statement as soon as practicable.’.

7.9.07FA Product Disclosure Statement not required for certain specified products

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1012D of the Act were modified by inserting the following subsection after subsection 1012D(7):

‘Recommendation, issue or sale situation—when Product Disclosure Statement not required

(7A) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement for the financial product if:

(a) the product is:

(i) a basic deposit product; or

(ii) a facility for making non‑cash payments (see section 763D) that is related to a basic deposit product; or

(iii) a traveller’s cheque; and

(b) the regulated person has provided information about the cost of the product (if any) to the client; and

(c) the regulated person has informed the client as to whether or not any amounts will or may be payable by the holder of the product, in respect of the product, after its acquisition; and

(ca) if the product is a protected account under the *Banking Act 1959*—the regulated person has informed the client that:

(i) the account‑holder may be entitled to payment under the financial claims scheme; and

(ii) payments under the scheme are subject to a limit for each depositor; and

(iii) information about the financial claims scheme can be obtained from the APRA website at http://www.fcs.gov.au; and

(d) the regulated person has asked the client whether or not the client would like further information about the amounts mentioned in paragraph (c); and

(e) if the client indicates that the client would like the further information about the amounts mentioned in paragraph (c)—the regulated person has provided that information.’.

7.9.07FB Product Disclosure Statement not required if client not in this jurisdiction

For paragraph 1020G(1)(c) of the Act, section 1012D of the Act is modified by inserting after subsection 1012D(8):

“(8A) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement for the financial product if the client is not in this jurisdiction.”

7.9.07FC Product Disclosure Statement not required general insurance situation

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified by adding after section 1014E of the Act the following section:

“1014EA General insurance product situation in which only a Supplementary Product Disclosure Statement need be given

(1) This section applies if:

(a) a person (the ***client****)* acquires a general insurance product (the ***original product***) from another person (the ***regulated person***); and

(b) the client received a Product Disclosure Statement (the ***original PDS***) relating to the product as required by the Act; and

(c) the contract of insurance provides a renewable insurance cover (within the meaning of subsection 58(1) of the *Insurance Contracts Act 1984*); and

(d) the regulated person offers to renew the client’s contract of insurance (the ***new product***); and

(e) the regulated person is required to give the client a Product Disclosure Statement (the ***new PDS***) relating to the new product; and

(f) the original PDS contains some but not all of the information that the new PDS is required to contain.

(2) The regulated person may give the client a new PDS.

(3) If the regulated person does not give the client a new PDS, the regulated person must give the client a Supplementary Product Disclosure Statement that contains the additional information.

(4) If the regulated person gives the client a Supplementary Product Disclosure Statement under subsection (3), for the purposes of this Act:

(a) the original PDS is taken to be the new PDS; and

(b) the new PDS is taken to have been given to the client as required by this Act.”

Division 2D—Preparation and content of Product Disclosure Statements

7.9.07J Only 1 responsible person for a Product Disclosure Statement

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1013A of the Act were modified by adding after subsection 1013A(3):

‘(3A) A Product Disclosure Statement for a product that is not a jointly issued product may be prepared by, or on behalf of, only 1 responsible person.’.

7.9.07K Definition of *defective*: Product Disclosure Statement, Short‑Form PDS or Replacement Product Disclosure Statement

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1022A of the Act were varied by omitting paragraph (b) of the definition of ***defective*** in subsection (1) and the following paragraph were inserted:

‘(b) if it is a Product Disclosure Statement, a Short‑Form PDS or a Replacement Product Disclosure Statement—either:

(i) it is not prepared in accordance with section 1013A; or

(ii) there is an omission from the Product Disclosure Statement, Short‑Form PDS or Replacement Product Disclosure Statement of material required by section 1013C, other than material required by section 1013B or 1013G; or’.

Division 2E—Obligation to make information publicly available: registrable superannuation entities

Subdivision 2E.1—Obligation to make product dashboard publicly available

7.9.07L Modification of Act

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1017BA of the Act were modified as set out in Part 6A of Schedule 10A.

7.9.07M Source of power for this Subdivision

This Subdivision is made for paragraphs 1017BA(1)(c) and (e) and subsection 1017BA(2) of the Act.

7.9.07N Definitions

In this Subdivision:

***lifecycle exception*** has the meaning given by subsection 29TC(2) of the SIS Act.

***lifecycle MySuper product*** means a MySuper product to which a lifecycle exception applies.

***lifecycle stage***, of a MySuper product offered by a regulated superannuation fund, means a subclass of members of the fund who hold the MySuper product, determined on the basis of:

(a) age; or

(b) age and the factors mentioned in regulation 9.47 of the SIS Regulations.

***offering period*** means:

(a) for a MySuper product other than a lifecycle MySuper product:

(i) if the MySuper product has been offered for less than 10 financial years and there is no predecessor product—the number of whole financial years for which the product has been offered; or

(ii) if the MySuper product and a predecessor product have been offered for a total of less than 10 financial years—the number of whole financial years for which the products have been offered; or

(b) for a lifecycle stage of a lifecycle MySuper product:

(i) if the lifecycle stage of the MySuper product has been offered for less than 10 financial years and there is no equivalent lifecycle stage of a predecessor product—the number of whole financial years for which the lifecycle stage has been offered; or

(ii) if the lifecycle stage of the MySuper product and an equivalent lifecycle stage of a predecessor product have been offered for a total of less than 10 financial years—the number of whole financial years for which the lifecycle stage of the MySuper product and the predecessor product have been offered.

***predecessor product***, in relation to a MySuper product, means a default investment option in existence on 30 June 2013 in relation to which, if a member’s accrued default amount were attributed to the MySuper product, the RSE licensee would be exempted from disclosure requirements under subregulation 9.46(2) of the SIS Regulations.

***reporting standard*** means a reporting standard determined by APRA under subsection 13(1) of the *Financial Sector (Collection of Data) Act 2001*, as in force from time to time.

7.9.07P Meaning of *MySuper product dashboard reporting standards*

For this Subdivision, a reporting standard is a ***MySuper product dashboard reporting standard*** if the reporting standard contains a clause stating that it relates to information that will be included in a product dashboard for a MySuper product.

7.9.07Q Product dashboard—how information must be set out

(1) Information for a MySuper product must be set out in a product dashboard as follows (including the headings):

| **PRODUCT DASHBOARD** | |
| --- | --- |
| **Return target** |  |
| **Return** |  |
| **Comparison between return target and return** |  |
| **Level of investment risk** |  |
| **Statement of fees and other costs** |  |

(2) For a lifecycle MySuper product, the information mentioned in each item of the table must be set out in relation to each lifecycle stage of the product.

7.9.07R Product dashboard—return target

(1) The return target for a MySuper product other than a lifecycle MySuper product must be worked out in accordance with the MySuper product dashboard reporting standards.

(2) The return target for a lifecycle MySuper product must be worked out in relation to each lifecycle stage of the product in accordance with the MySuper product dashboard reporting standards.

(3) The period in relation to which the return target must be worked out is the period of 10 years starting at the beginning of the current financial year.

7.9.07S Product dashboard—return

MySuper product other than lifecycle MySuper product

(1) The return for a MySuper product other than a lifecycle MySuper product must be worked out in accordance with the MySuper product dashboard reporting standards.

(2) The period in relation to which the return must be worked out is:

(a) the last 10 whole financial years, if:

(i) the MySuper product has been offered for at least 10 financial years; or

(ii) the MySuper product and a predecessor product have been offered for a total of at least 10 financial years; or

(b) the offering period.

Lifecycle MySuper product

(3) The return for a lifecycle MySuper product must be worked out in relation to each lifecycle stage of the product in accordance with the MySuper product dashboard reporting standards.

(4) The period in relation to which the return in relation to a lifecycle stage of a lifecycle MySuper product must be worked out is:

(a) the last 10 whole financial years, if:

(i) the lifecycle stage of the MySuper product has been offered for at least 10 financial years; or

(ii) the lifecycle stage of the MySuper product and an equivalent stage of a predecessor product have been offered for a total of at least 10 financial years; or

(b) the offering period.

7.9.07T Product dashboard—comparison between return target and return

MySuper product other than lifecycle MySuper product

(1) The comparison between the return target and the return for a MySuper product other than a lifecycle MySuper product must be worked out in accordance with the MySuper product dashboard reporting standards.

(2) The period in relation to which the comparison must be worked out is:

(a) the last 10 whole financial years, if:

(i) the MySuper product has been offered for at least 10 financial years; or

(ii) the MySuper product and a predecessor product, or a lifecycle stage have been offered for a total of at least 10 financial years; or

(b) the offering period.

Lifecycle MySuper product

(3) The comparison between the return target and the return for a lifecycle MySuper product must be worked out in relation to each lifecycle stage of the product in accordance with the MySuper product dashboard reporting standards.

(4) The period in relation to which the comparison in relation to a lifecycle stage of a MySuper product must be worked out is:

(a) the last 10 whole financial years, if:

(i) the lifecycle stage of the MySuper product has been offered for at least 10 financial years; or

(ii) the lifecycle stage of the MySuper product and an equivalent stage of a predecessor product have been offered for a total of at least 10 financial years; or

(b) the offering period.

7.9.07U Comparison to be set out as a graph

(1) A product dashboard must set out a comparison mentioned in regulation 7.9.07T as a graph.

(2) The graph must contain:

(a) a column representing the return for each year in the comparison period; and

(b) a line representing the moving average return target for the comparison period; and

(c) a line representing the moving average return for the comparison period.

(3) The column and the lines mentioned in subregulation (2) must be identified in accordance with the MySuper product dashboard reporting standards.

(4) In this regulation:

***comparison period*** means the period mentioned in subregulation 7.9.07S(3) that is applicable in the circumstances.

***moving average return*** has the meaning given by the MySuper product dashboard reporting standards.

***moving average return target*** has the meaning given by the MySuper product dashboard reporting standards.

7.9.07V Product dashboard—level of investment risk

(1) The level of investment risk for a MySuper product other than a lifecycle MySuper product must be worked out in accordance with the MySuper product dashboard reporting standards.

(2) The level of investment risk for a lifecycle MySuper product must be worked out in relation to each lifecycle stage of the product in accordance with the MySuper product dashboard reporting standards.

(3) The level of investment risk must be expressed using the relevant risk label set out in the MySuper product dashboard reporting standards.

(4) The period in relation to which the level of investment risk must be worked out is the current financial year.

7.9.07W Product dashboard—statement of fees and other costs

(1) The statement of fees and other costs for a MySuper product other than a lifecycle MySuper product must be worked out in accordance with the MySuper product dashboard reporting standards.

(2) The statement of fees and other costs for a lifecycle MySuper product must be worked out in relation to each lifecycle stage of the product in accordance with the MySuper product dashboard reporting standards.

(3) The period in relation to which the statement of fees and other costs must be worked out is the current financial year.

(4) For paragraph 1017BA(1)(c) of the Act, the period is 14 days after a change to the fees or other costs.

Subdivision 2E.2—Making portfolio holding information publicly available

7.9.07Z Kinds of disclosable item for aggregated reporting

(1) For the purposes of subsection 1017BB(1A) of the Act, investment items of a kind described in an item of Table 1 in Schedule 8D to these Regulations are a prescribed kind of disclosable item if the table provides that individual asset names are not required to be disclosed for investments items that meet that description.

Example: Cash assets are required to be organised by the name of the institution and are a prescribed kind of disclosable item as the words “*Individual asset names not required to be disclosed*” appear immediately below “Name of institution” for cash.

(2) For the purposes of subsection 1017BB(1A) of the Act, investment items of a kind described in an item of Table 2, 3 or 4 in Schedule 8D are a prescribed kind of disclosable item.

7.9.07ZA Way the information must be organised

General rule

(1) For the purposes of subsection 1017BB(3) of the Act, the trustee, or the trustees, of the registrable superannuation entity must organise the information about an investment option in a way that:

(a) is consistent with the tables in Schedule 8D to these Regulations; and

(b) is easily downloadable and readable; and

(c) is in one or more formats, with at least one of those formats being a delimited file format.

Different rows or columns in tables

(2) For the purposes of paragraph (1)(a), when organising the information about an investment option in a way that is consistent with the tables in Schedule 8D, the tables used for the investment option may have a different number of rows or columns from those in the tables in that Schedule.

Using subsidiary tables

(3) Subregulation (1) does not prevent the information about the investment option from being expressed in a table that:

(a) deals only with the investment option; and

(b) makes use of one or more subsidiary tables;

if all of the information referred to in Schedule 8D is readily accessible from that combination of tables.

Subdivision 2E.3—Additional obligations to provide information

7.9.07ZB Obligation to provide information to the holder of a superannuation product via website

(1) This regulation is made for the purposes of paragraph 1017DA(1)(a) of the Act.

(2) The trustee of a superannuation entity (other than an entity referred to in subparagraph (b)(i), (ii) or (iii) of the definition of ***registrable superannuation entity*** in section 9 of the Act or a self managed superannuation fund) must provide the holder of a superannuation product (being an interest in that entity) with the information, relating to the entity and any relevant sub‑plan (within the meaning of section 1017C of the Act), specified in an item in the table in subregulation (3).

(3) Subject to subregulations (5) to (7), the information specified in an item in the following table must be provided by making it publicly availableon the entity’s website from:

(a) if, immediately before the day Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* commences, the information was required under paragraph 29QB(1)(b) of the SIS Act to be made publicly available—the time the *Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023* commences; or

(b) otherwise—the time specified in that item.

If that item specifies an end time, the trustee is not required to provide the information after that time.

| Information to be provided | | |
| --- | --- | --- |
| Item | Information | Time from which information must be made publicly available |
| 1 | The current trust deed and any material not incorporated in the current version of the trust deed | Either:  (a) no later than 20 business days after the deed or material begins to apply; or  (b) if the deed or material is amended or replaced—the later of:  (i) the date of the amendment or replacement; and  (ii) the effective date of the amendment or replacement |
| 2 | The governing rules | Either:  (a) no later than 20 business days after the governing rules begin to apply; or  (b) if the governing rules are amended or replaced—the later of:  (i) the date of the amendment or replacement; and  (ii) the effective date of the amendment or replacement |
| 3 | The rules relating to the nomination, appointment and removal of the trustee or a director of the trustee | Either:  (a) no later than 20 business days after the rules begin to apply; or  (b) if the rules are amended or replaced—the later of:  (i) the date of the amendment or replacement; and  (ii) the effective date of the amendment or replacement |
| 4 | The most recent actuarial report, provided in relation to the entity under a provision of the RSE licensee law, for each defined benefit fund or each defined benefit sub‑fund in each defined benefit fund | For each report, no later than 20 business days after the trustee receives the report |
| 5 | The most recent Product Disclosure Statement, Supplementary Product Disclosure Statement or Replacement Product Disclosure Statement, for the product | No later than 20 business days after the statement is first given to a person in respect of a recommendation, issue or sale of the product |
| 6 | If on 31 August in the current financial year both of the following circumstances exist:  (a) APRA has given the trustee a notification of a determination under subsection 60C(2) of the SIS Act that the requirement in subsection 60D(1) of that Act has not been met for a Part 6A product (within the meaning of that Act) offered by the entity, in relation to the most recently completed financial year;  (b) APRA had not given the trustee a notification of another determination under subsection 60C(2) of the SIS Act that the requirement in subsection 60D(1) of that Act had not been met for the Part 6A product, in relation to the financial year 2 years before the current financial year;  a description of those circumstances | From 1 business day after 31 August in the current financial year until 1 business day after 31 August in the following financial year |
| 7 | The most recent Financial Services Guide | No later than 20 business days after the Financial Services Guide is first given to a person under section 941A or 941B of the Act |
| 8 | A summary of each change or event that the holder has been notified of under section 1017B of the Act in the previous 2 years | No later than 20 business days after the most recent notice is given |
| 9 | The register of relevant interests, and the register of relevant duties, provided in relation to the entity under a provision of the RSE licensee law | No later than 20 business days after the end of each period of 3 months ending on 31 March, 30 June, 30 September or 31 December |
| 10 | A summary of the conflicts management policy | Either:  (a) no later than 20 business days after the policy begins to apply; or  (b) if the policy is amended or replaced—the later of:  (i) the date of the amendment or replacement; and  (ii) the effective date of the amendment or replacement |
| 11 | The proxy voting policies | For each policy—either:  (a) no later than 20 business days after the policy begins to apply; or  (b) if the policy is amended or replaced—the later of:  (i) the date of the amendment or replacement; and  (ii) the effective date of the amendment or replacement |
| 12 | A summary of when, during the previous financial year of the entity, and how the entity has exercised its voting rights in relation to shares in listed companies | No later than20 business days after the end of the previous financial year |
| 13 | If the trustee is a body corporate—the constitution of the body corporate | Either:  (a) no later than 20 business days after the constitution begins to apply; or  (b) if the constitution is amended or replaced—the later of:  (i) the date of the amendment or replacement; and  (ii) the effective date of the amendment or replacement |
| 14 | The annual financial statement for the previous financial year that the trustee, as a financial services licensee, is required to lodge with ASIC under Part 7.6 of the Act | The day that the annual financial statement is first lodged with ASIC |

(4) The information must be:

(a) readily accessible from the entity’s website; and

(b) kept up to date.

Exception—personal information

(5) If:

(a) the trustee is required under subregulations (2) and (3) to make available a document referred to in item 1, 2, 4, 5 or 8 of the table in subregulation (3); and

(b) the document contains personal information in relation to a beneficiary or former beneficiary of the registrable superannuation entity;

the trustee may instead comply with the requirement by making available a version of the document that has been redacted to exclude personal information (within the meaning of the *Privacy Act 1988*) in relation to a beneficiary or former beneficiary of the registrable superannuation entity.

Transitional exceptions—standard employer‑sponsored sub‑plan

(6) If:

(a) before 1 July 2024, the trustee is required under subregulations (2) and (3) to make available a document referred to in item 1, 2, 4, 5 or 8 of the table in subregulation (3); and

(b) the document only relates to the entity because it relates to a standard employer‑sponsored sub‑plan;

the trustee may instead comply with the requirement by making the document available from 1 July 2024.

(7) If:

(a) before 1 July 2024, the trustee is required under subregulations (2) and (3) to make available a document referred to in item 1, 2, 4, 5 or 8 of the table in subregulation (3); and

(b) the document contains information that only relates to the registrable entity because it relates to a standard employer‑sponsored sub‑plan;

then, until 1 July 2024, the trustee may instead comply with the requirement by making available a version of the document that has been redacted to exclude information that only relates to the registrable entity because it relates to a standard employer‑sponsored sub‑plan.

(8) A ***standard employer‑sponsored sub‑plan***means a segment of a public offer superannuation fund for which each member of the segment is:

(a) a standard employer‑sponsored member; or

(b) a member of a class that is a prescribed class for the purposes of sub‑subparagraph 18(1)(a)(ii)(B) of the SIS Act.

7.9.07ZC Transitional obligation to provide information to the holder of a superannuation product via website

(1) This regulation is made for the purposes of paragraph 1017DA(1)(a) of the Act.

(2) The trustee of a superannuation entity (other than an entity referred to in subparagraph (b)(i), (ii) or (iii) of the definition of ***registrable superannuation entity*** in section 9 of the Act or a self managed superannuation fund) must provide the holder of a superannuation product (being an interest in that entity) with the information, relating to the entity and any relevant sub‑plan (within the meaning of section 1017C of the Act), specified in subregulations (3), (5) and (7).

Remuneration details—on commencement

(3) If, immediately before the day Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* commences, the trustee was required under paragraph 29QB(1)(a) of the SIS Act to make details of remuneration publicly available, the information is those details.

(4) The information referred to in subregulation (3) must be provided by making it publicly available on the entity’s website throughout the period:

(a) starting on the day the *Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023* commences; and

(b) ending on the day before the start of the period referred to in subregulation (6).

The information must be readily accessible from the entity’s website.

Remuneration details—2022‑23 financial year

(5) The information is the details set out in regulation 2M.3.04 in relation to the remuneration of each member of the key management personnel of the superannuation entity for the entity’s 2022‑23 financial year.

(6) The information referred to in subregulation (5) must be provided by making it publicly available on the entity’s website throughout the period:

(a) starting on the day that is 3 months after the later of the following:

(i) the day the *Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023* commences;

(ii) the last day of the entity’s 2022‑23 financial year; and

(b) ending on the day before the entity first reports to members under section 314AA of the Act.

The information must be readily accessible from the entity’s website.

Annual report—on commencement

(7) If, immediately before the day Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* commences, the trustee was required under paragraph 29QB(1)(b) of the SIS Act to make an annual report publicly available, the information is the annual report.

(8) Subject to subregulation (9), the information referred to in subregulation (7) must be provided by making it publicly available throughout the period:

(a) starting on the day the *Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023* commences; and

(b) ending on the day that the entity next provides fund information under regulation 7.9.32.

The information must be readily accessible from the entity’s website.

(9) Subregulations 7.9.07ZB(5) to (7) apply to the requirement under this regulation to provide the information referred to in subregulation (7) of this regulation in the same way subregulations 7.9.07ZB(5) to (7) would apply if the information were a document referred to in item 1 of the table in subregulation 7.9.07ZB(3).

Note: Subregulations 7.9.07ZB(5) to (7) permit later provision of information or provision of redacted information in certain circumstances, for example, in relation to standard employer‑sponsored sub‑plans.

Division 3—Dealing with money received for financial product before the product is issued

7.9.08 Accounts

(1) For subparagraph 1017E(2)(a)(ii) of the Act, the following accounts are prescribed:

(a) an account with a foreign deposit taking institution that is regulated by a foreign regulatory body that ASIC has approved in writing for this paragraph;

(b) an account with a cash management trust;

(c) a statutory fund under section 29 of the *Life Insurance Act 1995*.

(2) For paragraph 1017E(2)(c) of the Act, a product provider to which subsection 1017E(2) of the Act applies must:

(a) operate an account to which paragraph 1017E(2)(a) of the Act applies as a trust account; and

(b) designate the account to be a trust account; and

(c) hold all moneys paid into the account on trust for the benefit of the person who is entitled to the moneys.

(3) For paragraph 1020G(1)(c) of the Act, if money received under section 1017E of the Act is paid into an account under subregulation 7.8.01(6), Part 7.8 of the Act applies to the money.

Note: See also subregulation 7.8.01(7).

(4) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1017E of the Act were modified by omitting paragraph 1017E(2)(b) and inserting the following paragraph:

‘(b) any money may be paid into the account, provided that:

(i) money to which this section applies; and

(ii) interest on the amount from time to time standing to the credit of the account;

is identified and held in accordance with all other provisions of this section; and’.

7.9.08A Dealing with interest

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1017E of the Act were modified by adding after subsection 1017E(2C):

‘(2D) In relation to money to which this section applies:

(a) the product provider is entitled to the interest on the account; and

(b) the interest on the account is not required to be paid into the account;

only if the product provider discloses to the person who paid the money that the product provider is keeping the interest (if any) earned on the account.’.

7.9.08B Crediting of payments before money is received

(1) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1017E of the Act were modified by adding after subsection 1017E(1):

‘(1A) This section also applies to money paid by a product provider in the following circumstances:

(a) the product provider knows, or believes on reasonable grounds, that money (the ***client’s money***) will be paid to the product provider to acquire, or acquire an increased interest in, one or more of the financial products mentioned in paragraph (1)(a) or (b) from the product provider (whether or not the acquisition would be by a person as a retail client);

(b) either:

(i) the financial product or increased interest was offered in this jurisdiction; or

(ii) the application for the financial product or increased interest was made in this jurisdiction; or

(iii) the money will be received in this jurisdiction;

(c) before receiving the client’s money, the product provider pays an equivalent amount of money (the ***product provider’s money***) into an account described in subsection (2).’.

(2) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1017E of the Act were modified by adding after subsection 1017E(5):

‘(5A) If subsection (1A) applies:

(a) the product provider is not required to comply with this section in relation to the client’s money; and

(b) subsections (2A), (2B), (2C), (2D), (3), (4), (5) and (6) apply to the product provider’s money as if the money had been paid by the person who paid, or is expected to pay, the client’s money.’.

(3) For paragraph 1017E(3)(d) of the Act, money may be taken out of an account if:

(a) the circumstances described in the modified subsection 1017E(1A) of the Act exist; and

(b) after paying the product provider’s money, the product provider becomes aware, or has reasonable grounds to believe, that the client’s money will not be paid.

7.9.08C Money held in trust for a superannuation product or RSA

For subsection 1017E(2C) of the Act, if money is paid to a product provider for a financial product that is a superannuation product or an RSA:

(a) subsection 1017E(2A) of the Act does not apply in relation to the money; and

(b) the money is taken to be held in trust by the product provider for the benefit of the person who is entitled to the money.

7.9.08D Statutory funds under the *Life Insurance Act 1995*

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies in relation to an account mentioned in paragraph 7.9.08(1)(c) of these Regulations as if paragraph 1017E(2)(b) were omitted.

Division 4—Content of Product Disclosure Statements

Subdivision 4.1—Preliminary

7.9.09 Application of this Division

(1) This Division applies in relation to:

(a) superannuation products; and

(b) RSAs; and

(c) annuity products; and

(e) a standard margin lending facility; and

(f) a superannuation product to which Subdivision 4.2B of this Division applies; and

(g) a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 applies; and

(h) a simple sub‑fund product to which Subdivision 4.2D of this Division applies.

(2) Each of the Subdivisions of this Division has an application provision:

(a) stating the types of entity in relation to which the Subdivision applies; and

(b) referring to any provisions that limit or restrict the application of the Subdivision or a particular provision.

Note: Information content requirements are set out in the main provisions of section 1013D of the Act. These Regulations set out a more detailed statement of the information required under subsection 1013D(1) that the retail clients of superannuation products and RSAs would reasonably require for the purpose of making a decision whether to acquire the financial product.

Subdivision 4.1A—No Product Disclosure Statement for carbon units, Australian carbon credit units and eligible international emissions units

7.9.09A Application of this Subdivision

This Subdivision applies:

(a) to a person who, apart from this Subdivision, would be required to give a Product Disclosure Statement for a carbon unit, an Australian carbon credit unit or an eligible international emissions unit; and

(b) in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit.

7.9.09B Provisions of Part 7.9 of Act that do not apply in relation to carbon units, Australian carbon credit units and eligible international emissions units

For paragraph 1020G(1)(b) of the Act, the following provisions of Part 7.9 of the Act do not apply in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit:

(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.

7.9.09C Modification of Act

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit as set out in Part 19 of Schedule 10A.

Subdivision 4.2A—Form and content of Product Disclosure Statement for standard margin lending facility

7.9.11 Application of this Subdivision

This Subdivision applies to:

(a) a person who is required to prepare a Product Disclosure Statement for a standard margin lending facility; and

(b) a Product Disclosure Statement for a standard margin lending facility.

7.9.11A Provisions of Part 7.7 of Act that do not apply in relation to standard margin lending facility

For paragraph 951C(1)(b) of the Act, section 942DA of the Act does not apply in relation to a standard margin lending facility.

7.9.11B Definitions for Subdivision 4.2A

(1) In this Subdivision and in Schedule 10C:

***Approved Securities List*** means the list of secured properties that are acceptable for the provider or potential provider of a standard margin lending facility as security for the facility and includes the amount of credit the provider will give for each of the properties.

(2) In this Subdivision and in Schedule 10C, a provision of the Act that is modified in accordance with regulation 7.9.11C is referred to as ***modified***.

Example: Paragraphs 1013C(1)(a) and (b) of the Act as modified by subitem 5A.2(1) of Part 5A of Schedule 10A are referred to in this Subdivision as ‘modified paragraphs 1013C(1)(a) and (b)’.

7.9.11C Modification of Act—standard margin lending facility

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application to a standard margin lending facility as set out in Part 5A of Schedule 10A.

7.9.11D Form and content of Product Disclosure Statement for standard margin lending facility

(1) For modified paragraph 1013C(1)(a) of the Act, a Product Disclosure Statement for a standard margin lending facility must include the information and statements mentioned in Schedule 10C.

(2) For modified paragraph 1013C(1)(b) of the Act, a Product Disclosure Statement for a standard margin lending facility must be in the form mentioned in Schedule 10C.

7.9.11E Requirements for references to incorporated information for standard margin lending facility

(1) For subsection 1013C(1D) of the Act, as modified by Part 5A of Schedule 10A, this regulation prescribes requirements for applying, adopting or incorporating, in a Product Disclosure Statement for a standard margin lending facility, a matter contained in writing.

(2) A Product Disclosure Statement may apply, adopt or incorporate a matter only if a provision of these Regulations requires or permits the matter to be applied, adopted or incorporated by the Statement.

(3) If a Product Disclosure Statement applies, adopts or incorporates a matter:

(a) the matter must be:

(i) in writing; and

(ii) clearly distinguishable from any other matters that are not applied, adopted or incorporated; and

(iii) publicly available in a document other than the Statement; and

(b) the responsible person for the Statement must identify the matter by:

(i) including in the Statement a concise description of the matter; and

(ii) ensuring that the reference to the matter is clearly distinguishable from the other contents of the Statement; and

(c) the responsible person for the Statement must:

(i) identify each version of the matter (by including the date on which the version was prepared) so that a person who, at a particular time, is considering a standard margin lending facility can identify the version that is relevant to the standard margin lending facility at that time; and

(ii) state the date on which the version was prepared in a prominent position at or near the front of the version; and

(d) the responsible person for the Statement must ensure that a person who is relying on the Statement is able to have access to:

(i) the matter; or

(ii) if there is more than 1 version of the matter—each version;

reasonably easily and reasonably quickly.

(4) The responsible person for the Product Disclosure Statement must also ensure that the Statement includes the statements in the following table relating to the matter, and sets them out in each place at which the matter has been applied, adopted or incorporated.

| Item | | Statement |
| --- | --- | --- |
| 1 | You should read the important information about *[the subject]* before making a decision. Go to *[location of the matter that has been applied, adopted or incorporated]* | |
| 2 | The material relating to *[matter]* may change between the time when you read this Statement and the day when you sign the application form | |

(5) The responsible person for the Product Disclosure Statement must also ensure that each document mentioned in subregulation (3) includes the statement in the following table relating to the matter.

|  |  |
| --- | --- |
| Item | Statement |
| 1 | The information in this document forms part of the Product Disclosure Statement *[identification by name, date and version (if applicable) of each Statement]* |

(6) For the avoidance of doubt:

(a) the giving of a Product Disclosure Statement to which this Subdivision applies is taken to be the giving of every matter that is applied, adopted or incorporated in accordance with subregulations (1) to (5); and

(b) if a document mentioned in subparagraph (3)(a)(iii) refers to more than one PDS, the document:

(i) must include a statement to the effect that the information in the document forms part of the Product Disclosure Statement offered by the responsible entity; but

(ii) is not required to name each Product Disclosure Statement of which it forms part.

(7) If the Product Disclosure Statement applies, adopts or incorporates a matter, the information dealing with the matter is taken to have been given to a person on the day on which the person signs the application form accompanying the Statement.

7.9.11F Retention of copies of Product Disclosure Statement for standard margin lending facility

(1) The responsible person for a Product Disclosure Statement for a standard margin lending facility must retain a copy of each version of the Statement that the responsible person issues for a period of 7 years starting on the day on which the version is prepared.

(2) The responsible person for the Product Disclosure Statement must retain a copy of the document from which a matter is applied, adopted or incorporated by the Statement as mentioned in paragraph 7.9.11E(3)(c) for a period of 7 years commencing on the day on which the Statement is prepared.

(3) If a document from which a matter is adopted, applied or incorporated by the Product Disclosure Statement as mentioned in paragraph 7.9.11E(3)(c) is changed in a way that changes the description of, or reference to, the matter, the responsible person for the Statement must retain a copy of the document for a period of 7 years commencing on the day on which the document is changed.

7.9.11G Requirement to provide copy of Product Disclosure Statement for standard margin lending facility free of charge

(1) For paragraph 1015C(5)(a) of the Act, this regulation specifies requirements as to the manner in which a Product Disclosure Statement for a standard margin lending facility must be given to a person if the person requests a copy of the Statement.

(2) The responsible person for the Product Disclosure Statement must give the person, free of charge:

(a) a copy of the Statement within 8 business days; and

(b) a copy of a matter in writing that is applied, adopted or incorporated by the Statement within 8 business days.

7.9.11H Notification about change to Approved Securities List or current interest rate for standard margin lending facility

(1) For paragraph 1017B(1A)(b) of the Act, a change to the Approved Securities List or current interest rate for a standard margin lending facility is specified.

(2) For paragraph 1017B(3)(c) of the Act, the issuer of the standard margin lending facility must notify the holder of the change by:

(a) sending notice of the change to the holder:

(i) by pre‑paid post to a postal address nominated by the holder; or

(ii) to an email address nominated by the holder; or

(b) placing a notice on a webpage that is likely to come to the holder’s attention if the holder is monitoring the holder’s standard margin lending facility.

Subdivision 4.2B—Content of Product Disclosure Statement for superannuation product

7.9.11K Application of this Subdivision

(1) This Subdivision applies to:

(a) a superannuation trustee that is required to prepare a Product Disclosure Statement for a superannuation product; and

(b) a Product Disclosure Statement for a superannuation product.

(2) However, this Subdivision does not apply to the following financial products:

(a) an interest in a superannuation product that is solely a defined benefit interest;

(b) a superannuation product that is solely a pension product;

(c) a superannuation product that has no investment component (also known as a risk‑only superannuation product).

7.9.11L Provisions of Part 7.7 of Act that do not apply in relation to superannuation product

For paragraph 951C(1)(b) of the Act, section 942DA of the Act does not apply in relation to a superannuation product.

7.9.11LA Attribution of accrued default amount to MySuper product—exemption from significant event notice requirements

For paragraph 1020G(1)(a) of the Act, a person is exempt from section 1017B of the Act in relation to the attribution or transfer of an accrued default amount if the person:

(a) is an RSE licensee; and

(b) must comply with a requirement under regulation 9.46 of the *Superannuation Industry (Supervision) Regulations 1994* in relation to the attribution or transfer.

7.9.11LB Attribution of accrued default amount to MySuper product—modification of significant event notice requirements

If a person:

(a) is an RSE licensee; and

(b) is exempted under subregulation 9.46(2) of the *Superannuation Industry (Supervision) Regulations 1994* from notice requirements in relation to the attribution or transfer of an accrued default amount;

then, for paragraph 1020G(1)(c) of the Act, section 1017B of the Act applies to the person as if subsection 1017B(4) were omitted and the following subsection were substituted:

(4) The notice must mention the following:

(a) the accrued default amount that was attributed or transferred;

(b) the name of the MySuper product to which the amount was attributed or transferred;

(c) how the member may obtain a product disclosure statement for the MySuper product;

(d) any other information that the member needs to understand the attribution or transfer.

7.9.11M Provisions of Part 7.9 of Act that do not apply in relation to superannuation product

(1) For paragraph 1020G(1)(b) of the Act, Subdivision D of Division 2 of Part 7.9 of the Act does not apply in relation to a superannuation product.

(2) If a person:

(a) proposes to prepare a Product Disclosure Statement or a Supplementary Product Disclosure Statement for a superannuation product during the period commencing on the day on which this subregulation commences and ending on 22 June 2012; and

(b) is permitted to decide, in accordance with regulation 4 of the *Corporations Amendment Regulations 2010 (No. 5)*, to prepare the Product Disclosure Statement or Supplementary Product Disclosure Statement in accordance with Subdivision D of Division 2 of Part 7.9 of the Act; and

(c) prepares the Product Disclosure Statement or Supplementary Product Disclosure Statement in accordance with that Subdivision;

the preparation of the Product Disclosure Statement or Supplementary Product Disclosure Statement is taken to be full compliance with all requirements of Part 7.9 of the Act and these Regulations relating to how the Product Disclosure Statement or Supplementary Product Disclosure Statement is to be prepared.

Note: The *Corporations Amendment Regulations 2010 (No. 5)* amended these Regulations to make new arrangements for the preparation of Product Disclosure Statements for superannuation products, including identifying that Subdivision D of Division 2 of Part 7.9 of the Act would no longer apply. However, the transitional arrangements in subregulations 4(1) to (7) of the Amendment Regulations allowed certain persons to decide to rely on Subdivision D of Division 2 of Part 7.9 of the Act for the purpose of preparing the Product Disclosure Statement.

7.9.11N Modification of Act—superannuation product

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application to a superannuation product to which this Subdivision applies as set out in Part 5B of Schedule 10A.

7.9.11O Form and content of Product Disclosure Statement for superannuation product

(1) For modified paragraph 1013C(1)(a) of the Act, a Product Disclosure Statement for a superannuation product to which this Subdivision applies must include the information and statements mentioned in Schedule 10D.

(2) For modified paragraph 1013C(1)(b) of the Act, a Product Disclosure Statement for a superannuation product to which this Subdivision applies must be in the form mentioned in Schedule 10D.

7.9.11P Requirements for references to incorporated information for superannuation product

(1) For subsection 1013C(1D) of the Act, as modified by Part 5B of Schedule 10A, this regulation prescribes requirements for applying, adopting or incorporating, in a Product Disclosure Statement for a superannuation product to which this Subdivision applies, a matter contained in writing.

(2) A Product Disclosure Statement may apply, adopt or incorporate a matter only if a provision of these Regulations requires or permits the matter to be applied, adopted or incorporated by the Statement.

(3) If a Product Disclosure Statement applies, adopts or incorporates a matter:

(a) the matter must be:

(i) in writing; and

(ii) clearly distinguishable from any other matters that are not to be applied, adopted or incorporated; and

(iii) if the superannuation product is not issued to a standard employer‑sponsored member—publicly available in a document other than the Statement; and

(b) the responsible person for the Statement must identify the matter by:

(i) including in the Statement a concise description of the matter; and

(ii) ensuring that the reference to the matter is clearly distinguishable from the other contents of the Statement; and

(c) the responsible person for the Statement must:

(i) identify each version of the matter (by including the date on which the version was prepared) so that a person who, at a particular time, is considering a superannuation product can identify the version that is relevant to the superannuation product at that time; and

(ii) state the date on which a version was prepared in a prominent position at or near the front of the version; and

(d) the responsible person for the Statement must ensure that a person who is relying on the Statement is able to have access to:

(i) the document containing the matter; or

(ii) if there is more than 1 version of the document containing the matter—each version;

reasonably easily and reasonably quickly.

(4) The responsible person for the Product Disclosure Statement must also ensure that the Statement includes the statements in the following table relating to the matter, and sets them out in each place at which the matter has been applied, adopted or incorporated.

| Item | Statement |
| --- | --- |
| 1 | You should read the important information about *[the subject]* before making a decision. Go to *[location of the matter that has been applied, adopted or incorporated]* |
| 2 | The material relating to *[matter]* may change between the time when you read this Statement and the day when you acquire the product |

(5) The responsible person for the Product Disclosure Statement must also ensure that each document mentioned in subregulation (3) includes the statement in the following table relating to the matter.

|  |  |
| --- | --- |
| Item | Statement |
| 1 | The information in this document forms part of the Product Disclosure Statement *[identification by name, date and version (if applicable) of each Statement]* |

(6) For the avoidance of doubt, the giving of a Product Disclosure Statement to which this Subdivision applies is taken to be the giving of every matter that is applied, adopted or incorporated in accordance with subregulations (1) to (5).

(7) If the Product Disclosure Statement applies, adopts or incorporates a matter, the information dealing with the matter is taken to have been given to a person on the day on which the product is acquired.

7.9.11Q Retention of copies of Product Disclosure Statement for superannuation product

(1) This regulation applies if:

(a) section 1015B of the Act does not apply to require a Product Disclosure Statement to be lodged with ASIC; and

(b) the Statement is for a superannuation product to which this Subdivision applies.

(2) The responsible person for the Product Disclosure Statement must retain a copy of each version of the Statement that the responsible person issues for a period of 7 years starting on the day on which the version is prepared.

(3) The responsible person for the Product Disclosure Statement must retain a copy of the document from which a matter is applied, adopted or incorporated by the Statement as mentioned in paragraph 7.9.11P(3)(c) for a period of 7 years commencing on the day on which the Statement is prepared.

(4) If a document from which a matter is adopted, applied or incorporated by the Product Disclosure Statement as mentioned in paragraph 7.9.11P(3)(c) is changed in a way that changes the description of, or reference to, the matter, the responsible person for the Statement must retain a copy of the document for a period of 7 years commencing on the day on which the document is changed.

7.9.11R Requirement to provide copy of Product Disclosure Statement for superannuation product free of charge

(1) For paragraph 1015C(5)(a) of the Act, this regulation specifies requirements as to the manner in which a Product Disclosure Statement for a superannuation product to which this Subdivision applies must be given to a person if the person requests a copy of the Statement.

(2) The responsible person for the Product Disclosure Statement must give the person, free of charge:

(a) a copy of the Statement within 8 business days; and

(b) a copy of a matter in writing that is applied, adopted or incorporated by the Statement within 8 business days.

Subdivision 4.2C—Content of Product Disclosure Statement for simple managed investment scheme

7.9.11S Application of this Subdivision

(1) This Subdivision applies to:

(a) a person that is required to prepare a Product Disclosure Statement for a simple managed investment scheme; and

(b) a Product Disclosure Statement for a simple managed investment scheme.

(2) This Subdivision does not apply to the extent that the simple managed investment scheme relates to a financial product (known as a “quoted product”) which is, or is intended to be, traded on a prescribed financial market.

(3) This Subdivision does not apply to the extent that the simple managed investment scheme relates to a financial product (known as a “stapled security”) to which the following requirements apply:

(a) the product consists of interests in 2 or more financial products;

(b) the interests include at least 1 interest in a registered scheme;

(c) under the terms on which each of the interests is to be traded, the interests must be transferred together;

(d) there are no financial products in the same class as the interests which may be transferred separately.

(4) This Subdivision does not apply to the extent that the simple managed investment scheme is a managed investment scheme that has a constitution that provides that:

(a) a member may direct that an amount of money corresponding to part or all of the amount invested by the member in the scheme be invested in accessible investments; and

(b) the distributions of capital and income from the scheme to the member in relation to the member’s interests in the scheme will be determined by reference to amounts received by the responsible entity or a custodian in relation to the accessible investments acquired in accordance with the direction.

7.9.11T Provisions of Part 7.7 of Act that do not apply in relation to simple managed investment scheme

For paragraph 951C(1)(b) of the Act, section 942DA of the Act does not apply in relation to a simple managed investment scheme to which this Subdivision applies.

7.9.11U Provisions of Part 7.9 of Act that do not apply in relation to simple managed investment scheme

(1) For paragraph 1020G(1)(b) of the Act, Subdivision D of Division 2 of Part 7.9 of the Act does not apply in relation to a simple managed investment scheme to which this Subdivision applies.

(2) If a person:

(a) proposes to prepare a Product Disclosure Statement or a Supplementary Product Disclosure Statement for a simple managed investment scheme to which this Subdivision applies during the period commencing on the day on which this subregulation commences and ending on 22 June 2012; and

(b) is permitted to decide, in accordance with regulation 4 of the *Corporations Amendment Regulations 2010 (No. 5)*, to prepare the Product Disclosure Statement or Supplementary Product Disclosure Statement in accordance with Subdivision D of Division 2 of Part 7.9 of the Act; and

(c) prepares the Product Disclosure Statement or Supplementary Product Disclosure Statement in accordance with that Subdivision;

the preparation of the Product Disclosure Statement or Supplementary Product Disclosure Statement is taken to be full compliance with all requirements of Part 7.9 of the Act and these Regulations relating to how the Product Disclosure Statement or Supplementary Product Disclosure Statement is to be prepared.

Note: The *Corporations Amendment Regulations 2010 (No. 5)* amended these Regulations to make new arrangements for the preparation of Product Disclosure Statements for simple managed investment schemes, including identifying that Subdivision D of Division 2 of Part 7.9 of the Act would no longer apply. However, the transitional arrangements in subregulations 4(1) to (7) of the Amendment Regulations allowed certain persons to decide to rely on Subdivision D of Division 2 of Part 7.9 of the Act for the purpose of preparing the Product Disclosure Statement.

7.9.11V Modification of Act—simple managed investment scheme

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application to a simple managed investment scheme to which this Subdivision applies as set out in Part 5C of Schedule 10A.

7.9.11W Form and content of Product Disclosure Statement for simple managed investment scheme

(1) For modified paragraph 1013C(1)(a) of the Act, a Product Disclosure Statement for a simple managed investment scheme to which this Subdivision applies must include the information and statements mentioned in Schedule 10E.

(2) For modified paragraph 1013C(1)(b) of the Act, a Product Disclosure Statement for a simple managed investment scheme to which this Subdivision applies must be in the form mentioned in Schedule 10E.

7.9.11X Requirements for references to incorporated information for simple managed investment scheme

(1) For subsection 1013C(1D) of the Act, as modified by Part 5C of Schedule 10A, this regulation prescribes requirements for applying, adopting or incorporating, in a Product Disclosure Statement for a simple managed investment scheme to which this Subdivision applies, a matter contained in writing.

(2) A Statement may apply, adopt or incorporate a matter only if a provision of these Regulations requires or permits the matter to be applied, adopted or incorporated by the Statement.

(3) If a Product Disclosure Statement applies, adopts or incorporates a matter:

(a) the matter must be:

(i) in writing; and

(ii) clearly distinguishable from any other matters that are not applied, adopted or incorporated; and

(iii) publicly available in a document other than the Statement; and

(b) the responsible person for the Statement must identify the matter by:

(i) including in the Statement a concise description of the matter; and

(ii) ensuring that the reference to the matter is clearly distinguishable from the other contents of the Statement; and

(c) the responsible person for the Statement must:

(i) identify each version of the matter (by including the date on which the version was prepared) so that a person who, at a particular time, is considering a simple managed investment scheme to which this Subdivision applies can identify the version that is relevant to the simple managed investment scheme at that time; and

(ii) state the date on which the version was prepared in a prominent position at or near the front of the version; and

(d) the responsible person for the Statement must ensure that a person who is relying on the Statement is able to have access to:

(i) the matter; or

(ii) if there is more than 1 version of the matter—each version;

reasonably easily and reasonably quickly.

(4) The responsible person for the Product Disclosure Statement must also ensure that the Statement includes the statements in the following table relating to the matter, and sets them out in each place at which the matter has been applied, adopted or incorporated.

| Item | Statement |
| --- | --- |
| 1 | You should read the important information about *[the subject]* before making a decision. Go to *[location of the matter that has been applied, adopted or incorporated]* |
| 2 | The material relating to *[matter]* may change between the time when you read this Statement and the day when you acquire the product |

(5) The responsible person for the Product Disclosure Statement must also ensure that each document mentioned in subregulation (3) includes the statement in the following table relating to the matter.

| Item | Statement |
| --- | --- |
| 1 | The information in this document forms part of the Product Disclosure Statement *[identification by name, date and version (if applicable) of each Statement]* |

(6) For the avoidance of doubt:

(a) the giving of a Product Disclosure Statement to which this Subdivision applies is taken to be the giving of every matter that is applied, adopted or incorporated in accordance with subregulations (1) to (5); and

(b) if a document mentioned in subparagraph (3)(a)(iii) refers to more than one PDS, the document:

(i) must include a statement to the effect that the information in the document forms part of the Product Disclosure Statement offered by the responsible entity; but

(ii) is not required to name each Product Disclosure Statement of which it forms part.

(7) If the Product Disclosure Statement applies, adopts or incorporates a matter, the information dealing with the matter is taken to have been given to a person on the day on which the product is acquired.

7.9.11Y Retention of copies of Product Disclosure Statement for simple managed investment scheme

(1) The responsible person for a Product Disclosure Statement for a simple managed investment scheme to which this Subdivision applies must retain a copy of each version of the Statement that the responsible person issues for a period of 7 years starting on the day on which the version is prepared.

(2) The responsible person for the Product Disclosure Statement must retain a copy of the document from which a matter is applied, adopted or incorporated by the Statement as mentioned in paragraph 7.9.11X(3)(c) for a period of 7 years commencing on the day on which the Statement is prepared.

(3) If a document from which a matter is adopted, applied or incorporated by the Product Disclosure Statement as mentioned in paragraph 7.9.11X(3)(c) is changed in a way that changes the description of, or reference to, the matter, the responsible person for the Statement must retain a copy of the document for a period of 7 years commencing on the day on which the document is changed.

7.9.11Z Requirement to provide copy of Product Disclosure Statement for simple managed investment scheme free of charge

(1) For paragraph 1015C(5)(a) of the Act, this regulation specifies requirements as to the manner in which a Product Disclosure Statement for a simple managed investment scheme to which this Subdivision applies must be given to a person if the person requests a copy of the Statement.

(2) The responsible person for the Product Disclosure Statement must give the person, free of charge:

(a) a copy of the Statement within 8 business days; and

(b) a copy of a matter in writing that is applied, adopted or incorporated by the Statement within 8 business days.

Subdivision 4.2D—Content of Product Disclosure Statement for simple sub‑fund products

7.9.11ZA Application of this Subdivision

(1) This Subdivision applies to:

(a) a person that is required to prepare a Product Disclosure Statement for a simple sub‑fund product; and

(b) a Product Disclosure Statement for a simple sub‑fund product.

(2) This Subdivision does not apply to the extent that the simple sub‑fund product is a financial product (known as a “quoted product”) that is, or is intended to be, traded on a prescribed financial market.

(3) This Subdivision does not apply to the extent that the simple sub‑fund product relates to a financial product (known as a “stapled security”) to which the following requirements apply:

(a) the product consists of interests in 2 or more financial products;

(b) the interests include at least one security in a CCIV;

(c) under the terms on which each of the interests is to be traded, the interests must be transferred together;

(d) there are no financial products in the same class as the interests that may be transferred separately*.*

(4) This Subdivision does not apply to the extent that the simple sub‑fund product is a security in a CCIV (referable to a sub‑fund of the CCIV) and the CCIV has a constitution that provides:

(a) that a member of the sub‑fund may direct that an amount of money corresponding to part or all of the amount invested by the member in the sub‑fund be invested in accessible investments; and

(b) that any distributions to members of the sub‑fund will be determined by reference to amounts received by the CCIV in relation to the accessible investments acquired in accordance with the direction.

7.9.11ZB Provisions of Part 7.7 of Act that do not apply in relation to simple sub‑fund products

For the purposes of paragraph 951C(1)(b) of the Act, section 942DA of the Act does not apply in relation to a simple sub‑fund product to which this Subdivision applies.

7.9.11ZC Provisions of Part 7.9 of Act that do not apply in relation to simple sub‑fund products

For the purposes of paragraph 1020G(1)(b) of the Act, Subdivision D of Division 2 of Part 7.9 of the Act does not apply in relation to a simple sub‑fund product to which this Subdivision applies.

7.9.11ZD Modification of Act—simple sub‑fund products

For the purposes of paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application to a simple sub‑fund product to which this Subdivision applies as set out in Part 5D of Schedule 10A*.*

7.9.11ZE Form and content of Product Disclosure Statement for simple sub‑fund products

(1) For the purposes of paragraph 1013C(1)(a) of the Act, as modified by Part 5D of Schedule 10A, a Product Disclosure Statement for a simple sub‑fund product to which this Subdivision applies must include the statements and information mentioned in Schedule 10F.

(2) For the purposes of paragraph 1013C(1)(b) of the Act, as modified by Part 5D of Schedule 10A, a Product Disclosure Statement for a simple sub‑fund product to which this Subdivision applies must be in the form mentioned in Schedule 10F.

7.9.11ZF Requirements for references to incorporated information for simple sub‑fund products

(1) For the purposes of subsection 1013C(1D) of the Act, as modified by Part 5D of Schedule 10A, this regulation prescribes requirements for applying, adopting or incorporating, in a Product Disclosure Statement for a simple sub‑fund product to which this Subdivision applies, a matter contained in writing.

(2) A Statement may apply, adopt or incorporate a matter only if a provision of these Regulations requires or permits the matter to be applied, adopted or incorporated by the Statement.

(3) If a Product Disclosure Statement applies, adopts or incorporates a matter:

(a) the matter must be:

(i) in writing; and

(ii) clearly distinguishable from any other matters that are not applied, adopted or incorporated; and

(iii) publicly available in a document other than the Statement; and

(b) the responsible person for the Statement must identify the matter by:

(i) including in the Statement a concise description of the matter; and

(ii) ensuring that the reference to the matter is clearly distinguishable from the other contents of the Statement; and

(c) the responsible person for the Statement must:

(i) identify each version of the matter (by including the date on which the version was prepared) so that a person who, at a particular time, is considering a simple sub‑fund product to which this Subdivision applies can identify the version that is relevant to the simple sub‑fund product at that time; and

(ii) state the date on which the version was prepared in a prominent position at or near the front of the version; and

(d) the responsible person for the Statement must ensure that a person who is relying on the Statement is able to have access to:

(i) the matter; or

(ii) if there is more than one version of the matter—each version;

reasonably easily and reasonably quickly.

(4) The responsible person for the Product Disclosure Statement must also ensure that the Statement includes the statements in the following table relating to the matter, and sets them out in each place at which the matter has been applied, adopted or incorporated.

| Item | Statement |
| --- | --- |
| 1 | You should read the important information about *[the subject]* before making a decision. Go to *[location of the matter that has been applied, adopted or incorporated]* |
| 2 | The material relating to *[matter]* may change between the time when you read this Statement and the day when you acquire the product |

(5) The responsible person for the Product Disclosure Statement must also ensure that each document mentioned in subregulation (3) includes the statement in the following table relating to the matter.

| Item | Statement |
| --- | --- |
| 1 | The information in this document forms part of the Product Disclosure Statement *[identification by name, date and version (if applicable) of each Statement]* |

(6) For the avoidance of doubt:

(a) the giving of a Product Disclosure Statement to which this Subdivision applies is taken to be the giving of every matter that is applied, adopted or incorporated in accordance with subregulations (1) to (5); and

(b) if a document mentioned in subparagraph (3)(a)(iii) refers to more than one Product Disclosure Statement, the document:

(i) must include a statement to the effect that the information in the document forms part of the Product Disclosure Statement offered by the responsible person; but

(ii) is not required to name each Product Disclosure Statement of which it forms part.

(7) If the Product Disclosure Statement applies, adopts or incorporates a matter, the information dealing with the matter is taken to have been given to a person on the day on which the product is acquired.

7.9.11ZG Retention of copies of Product Disclosure Statement for simple sub‑fund products

(1) The responsible person for a Product Disclosure Statement for a simple sub‑fund product to which this Subdivision applies must retain a copy of each version of the Statement that the responsible person issues for a period of 7 years starting on the day on which the version is prepared.

(2) The responsible person for the Product Disclosure Statement must retain a copy of the document from which a matter is applied, adopted or incorporated by the Statement as mentioned in paragraph 7.9.11ZF(3)(c) for a period of 7 years commencing on the day on which the Statement is prepared.

(3) If a document from which a matter is adopted, applied or incorporated by the Product Disclosure Statement as mentioned in paragraph 7.9.11ZF(3)(c) is changed in a way that changes the description of, or reference to, the matter, the responsible person for the Statement must retain a copy of the document for a period of 7 years commencing on the day on which the document is changed.

7.9.11ZH Requirement to provide copy of Product Disclosure Statement for simple sub‑fund products free of charge

(1) For the purposes of paragraph 1015C(5)(a) of the Act, this regulation specifies requirements as to the manner in which a Product Disclosure Statement for a simple sub‑fund product to which this Subdivision applies must be given to a person if the person requests a copy of the Statement.

(2) The responsible person for the Product Disclosure Statement must give the person, free of charge:

(a) a copy of the Statement within 8 business days; and

(b) a copy of a matter in writing that is applied, adopted or incorporated by the Statement within 8 business days.

Subdivision 4.3—Other arrangements for Product Disclosure Statements and application forms

7.9.12 Modification of Act: Product Disclosure Statements and application forms for standard employer‑sponsors and successor funds

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to superannuation products and RSAs as set out in Part 6 of Schedule 10A.

7.9.13 Offer of superannuation interest without application or eligible application

(1) For paragraph 1016A(4)(a) of the Act, if a trustee of a public offer entity issues a superannuation interest in the entity to a person without first receiving an application, or an eligible application, the trustee is taken not to have contravened section 1016A of the Act if:

(a) the entity is a standard employer‑sponsored fund; and

(b) the person holds the interest as a standard employer‑sponsored member of the entity; and

(c) after issuing the interest, the trustee makes reasonable efforts:

(i) to obtain an application or eligible application (as the case requires under paragraph 1016A(2)(b) or (c) of the Act) from the person’s standard employer‑sponsor; or

(ii) to obtain an eligible application mentioned in paragraph 1016A(2)(a) of the Act from the person; and

(d) if the trustee has not obtained the application or eligible application within 90 days after issuing the interest, the trustee does not accept any more contributions from the standard employer‑sponsor in respect of the person until the trustee receives the application or eligible application.

(2) For paragraph 1016A(4)(b) of the Act, if a trustee has not obtained the application or eligible application under subregulation (1) within 90 days after issuing the interest, the trustee must not intentionally or recklessly accept any more contributions from the standard employer‑sponsor in respect of the person until the trustee receives the application or eligible application.

Penalty:

(a) for an individual—50 penalty units; and

(b) for a body corporate—500 penalty units.

(3) Subregulation (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subregulation (2) (see subsection 13.3(3) of the *Criminal Code*).

(4) Strict liability applies to subregulation (2).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

7.9.14 Remedies for person acquiring financial product under defective Product Disclosure Statement: superannuation and RSAs

(1) This regulation applies to a financial product:

(a) that is:

(i) a superannuation product to which requirements of the SIS Act relating to preservation rules and cashing restrictions apply; or

(ii) an RSA to which requirements of the RSA Regulations relating to preservation rules and cashing restrictions apply; and

(b) that has been issued or sold in contravention of section 1016E of the Act.

(2) For subsection 1016F(3) of the Act, to exercise a right of return for the financial product in circumstances in which the moneys paid to acquire the financial product are subject to the preservation rules and cashing restrictions, the client must:

(a) nominate a superannuation entity or RSA into which the monies subject to the preservation rules and cashing restrictions, and to which preservation conditions apply, are to be repaid; and

(b) make the nomination not later than 1 month after notifying the responsible person of the right to exercise the right of return.

(2A) The right of return is taken to have been exercised only on receipt by the responsible person of the nomination.

(3) The client must notify the responsible person in writing or by electronic means.

(4) For subsection 1016F(6) of the Act, the responsible person must repay the monies as directed.

(5) For subsection 1019B(7) of the Act, if:

(a) a financial product mentioned in this regulation is subject to the nomination of a further superannuation entity or RSA; and

(b) the application in relation to the financial product is not accepted by the nominated superannuation entity or RSA;

the responsible person may rollover or transfer the client’s benefits to an eligible rollover fund.

7.9.14A Treatment of arrangements under which a person can instruct another person to acquire a financial product

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if the definition of ***instruction*** in subsection 1012IA(1) of the Act were modified by adding at the end ‘, including a direction to follow an investment strategy mentioned in paragraph 52(4)(a) of the *Superannuation Industry (Supervision) Act 1993*’.

Subdivision 4.4—Product information for certain insurance products

7.9.14B Product information

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to financial products as if:

(a) that Part applied to a financial product mentioned in paragraph 7.1.14(2)(d); and

(b) the following section were inserted after section 1019B of the Act:

‘1019C Information about certain vehicle insurance

(1) This section applies in relation to the issue of a financial product mentioned in paragraph 7.1.14(2)(d) of the *Corporations Regulations 2001*.

(2) The product issuer of the financial product must, as soon as practicable after issuing the financial product, give the holder of the financial product a statement that contains the information mentioned in paragraphs 1013D(1)(a) and (b) unless:

(a) the product holder already has a statement containing that information; or

(b) the product issuer believes on reasonable grounds that the product holder has already received a statement containing that information.

(3) The product issuer must give the statement in the same way as a Product Disclosure Statement is to be given under subsection 1015C.

(4) The product issuer is not required to comply with any other requirements in Divisions 2 to 6 (inclusive) in relation to the issue of the financial product.

(5) The product issuer must not refuse, or intentionally or recklessly fail, to comply with subsections (2) and (3).

Penalty:

(a) for an individual—50 penalty units; and

(b) for a body corporate—500 penalty units.

(6) Subsection (5) does not apply to the extent that the product issuer has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6A), see subsection 13.3(3) of the Criminal Code.

(7) Divisions 1 and 7 do not apply in relation to the product issuer in relation to the financial product mentioned in paragraph 7.1.14(2)(d) of the *Corporations Regulations 2001*.’.

Division 4A—General

7.9.14C Labour standards and environmental, social and ethical considerations

For paragraph 1013D(4)(c) of the Act, the more detailed information to be included in a Product Disclosure Statement about the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of an investment is:

(a) a statement that the product issuer does, or does not, take into account labour standards for the purpose of selecting, retaining or realising the investment; and

(b) a statement that the product issuer does, or does not, take into account environmental, social or ethical considerations for the purpose of selecting, retaining or realising the investment; and

(c) if the Product Disclosure Statement includes a statement that the product issuer does take into account labour standards for the purpose of selecting, retaining or realising the investment—a statement outlining:

(i) the standards that the product issuer considers to be labour standards for that purpose; and

(ii) the extent to which the product issuer takes those standards into account in the selection, retention or realisation of the investment; and

(d) if the Product Disclosure Statement includes a statement that the product issuer does take into account environmental, social or ethical considerations for the purpose of selecting, retaining or realising the investment—a statement outlining:

(i) the considerations that the product issuer regards as environmental, social or ethical considerations for that purpose; and

(ii) the extent to which the product issuer takes those considerations into account in the selection, retention or realisation of the investment.

7.9.14D Further statements required in Product Disclosure Statement—financial claims scheme

(1) For paragraph 1013D(1)(k) of the Act, the following further statements must be included in a Product Disclosure Statement that relates to a protected policy issued by a general insurer or a protected account issued by an authorised deposit‑taking institution:

(a) if the Product Disclosure Statement relates to a protected policy—a statement that:

(i) the person entitled to claim under insurance cover under a protected policy may be entitled to payment under the financial claims scheme; and

(ii) access to the scheme is subject to eligibility criteria;

(b) if the Product Disclosure Statement relates to a protected account—a statement that:

(i) the account‑holder may be entitled to payment under the financial claims scheme; and

(ii) payments under the scheme are subject to a limit for each depositor;

(c) a statement that information about the scheme can be obtained from the APRA website at http://www.fcs.gov.au.

(2) In this regulation:

***authorised deposit‑taking institution*** has the meaning given by subsection 5(1) of the *Banking Act 1959*.

***financial claims scheme*** means:

(a) the scheme provided for in Division 2AA of Part II of the *Banking Act 1959*; and

(b) the scheme provided for in Part VC of the *Insurance Act* *1973*.

***general insurer*** has the meaning given by section 11 of the *Insurance Act 1973*.

***protected account*** has the meaning given by subsections 5(4) to (7) of the *Banking Act 1959*.

***protected policy*** has the meaning given by subsection 3(1) of the *Insurance Act 1973*.

7.9.15 More detailed information in Product Disclosure Statement: unauthorised foreign insurer

(1) For paragraph 1013D(4)(c) of the Act, the more detailed information that must be included in a Product Disclosure Statement that relates to a financial product issued by an unauthorised foreign insurer is:

(a) a statement that the product issuer is:

(i) an unauthorised foreign insurer; and

(ii) not authorised under the *Insurance Act 1973* to conduct insurance business in Australia; and

(b) a statement that an insurer of that kind is not subject to the provisions of the *Insurance Act 1973*, which establishes a system of financial supervision of general insurers in Australia; and

(c) a statement that the person should consider whether to obtain further information, including:

(i) the country in which the product issuer is incorporated, and whether the country has a system of financial supervision of insurers; and

(ii) the paid up capital of the product issuer; and

(iii) which country’s laws will determine disputes in relation to the financial product; and

(d) a statement that an insurer of that kind cannot be a declared general insurer for the purpose of Part VC of the *Insurance Act 1973*, and, if the insurer becomes insolvent, the person will not be covered by the financial claims scheme provided under Part VC of that Act.

(2) In this regulation:

***unauthorised foreign insurer*** means:

(a) an insurer that:

(i) does not have an authority under the *Insurance Act 1973* to carry on insurance business; and

(ii) is not a person who, because of section 5 of that Act, is not required to have such an authority; and

(iii) carries on insurance business outside Australia and the external Territories to which the *Insurance Act 1973* extends; or

(b) if a direction is in force under section 74 of the *Insurance Act 1973*—a Lloyd’s underwriter.

7.9.15A Product Disclosure Statements—requirement to state information as amounts in dollars

(1) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if paragraph 1013D(1)(m) of the Act were modified to read as follows:

‘(m) unless, in accordance with the regulations and a determination by ASIC, information to be disclosed in accordance with paragraphs (b), (d) and (e) must be stated as amounts in dollars.’.

(2) For paragraph 1020G(1)(a) of the Act, an issuer of a financial product does not have to provide the information mentioned in paragraph 1013D(1)(m) of the Act in the form required by that paragraph, in a Product Disclosure Statement prepared before 1 January 2005.

7.9.15B Product Disclosure Statements—disclosure of dollar amounts

(1) For paragraph 1013D(1)(m) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 1013D(1)(b), (d) or (e) as an amount in dollars, the information may be set out as a description of the benefit, cost, amount or payment as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(2) For paragraph 1013D(1)(m) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state information to be disclosed in accordance with paragraph 1013D(1)(b), (d) or (e) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the benefit, cost, amount or payment (including worked dollar examples, unless that is inappropriate).

(3) A determination under subregulation (1) or (2) must be:

(a) in writing; and

(b) published in the *Gazette*.

7.9.15C Product Disclosure Statements—disclosure of dollar amounts

(1) For paragraph 1013D(1)(m) of the Act, if ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars:

(a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or

(b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or

(c) would not be in the interests of a client, or a class of clients;

the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(2) For paragraph 1013D(1)(m) of the Act, if ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars, or to describe the amount as a percentage:

(a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or

(b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or

(c) would not be in the interests of a client, or a class of clients;

the information may be set out as a description of the method of calculating the charge or benefit (including worked dollar examples, unless that is inappropriate).

(3) A determination under subregulation (1) or (2) must be:

(a) in writing; and

(b) published in the *Gazette*.

(4) For paragraph 1013D(1)(m) of the Act, for a Product Disclosure Statement that is required in relation to a general insurance product, if:

(a) information is required to be stated in dollars; and

(b) the amount can only be determined:

(i) after the responsible person assesses the risk of the insured; or

(ii) after the insured has nominated desired levels of insurance cover;

the responsible person may comply with the requirement to state the information by either of the ways mentioned in subregulation (5).

(5) For subregulation (4), the responsible person may state the information by:

(a) stating an amount in dollars in the Product Disclosure Statement; or

(b) giving to the insured:

(i) a document containing the information, as soon as practicable (but in any case, not later than 5 business days after the responsible person issues the general insurance product); and

(ii) a statement in the Product Disclosure Statement that sets out the information in at least 1 of the following formats:

(A) as a range of amounts in dollars;

(B) as a percentage of a matter that is mentioned in the statement;

(C) as a description.

7.9.15CA Less information in Product Disclosure Statement—financial claims scheme

(1) This regulation applies from 18 April 2010 to 11 October 2011.

(2) For paragraph 1013D(4)(b) of the Act, paragraphs 1013D(1)(b) and (f) of the Act do not require a Product Disclosure Statement to contain information relating to Division 2AA of Part II of the *Banking Act 1959* or Part VC of the *Insurance Act 1973*.

7.9.15D Less information in product disclosure statement: general insurance product

For paragraph 1013D(4)(a) of the Act, the following provisions do not apply to a Product Disclosure Statement that relates to a general insurance product:

(a) paragraph 1013D(1)(c);

(b) subparagraph 1013D(1)(d)(iii);

(c) paragraph 1013D(1)(e);

(d) paragraph 1013D(1)(h);

(e) paragraph 1013D(1)(j);

(f) paragraph 1013D(1)(l).

7.9.15DA Statement or information not included in a Product Disclosure Statement

(1) For paragraph 1020G(1)(c) of the Act, and subject to subregulation (1A) and (4), a responsible person is not required to include a statement or information mentioned in Part 7.9 of the Act in a Product Disclosure Statement if:

(a) the statement or information is in writing and is publicly available in a document other than the Product Disclosure Statement; and

(b) the Product Disclosure Statement:

(i) refers to the statement or information; and

(ii) provides sufficient details about the statement or information to enable a person:

(A) to identify by a unique identifier the document, or part of the document, that contains the statement or information; and

(B) to locate the statement or information; and

(C) to decide whether or not to read the statement or information or obtain a copy of the statement or information; and

(iii) states that a copy of the statement or information may be obtained from the responsible person on request, at no charge; and

(c) the statement or information is not a statement or information that is in a Short‑Form Product Disclosure Statement.

(1A) This regulation does not apply if the Product Disclosure Statement is for:

(a) a standard margin lending facility; or

(b) a superannuation product to which Subdivision 4.2B of Division 4 of this Part applies; or

(c) a simple managed investment scheme to which Subdivision 4.2C of Division 4 of this Part applies; or

(d) a simple sub‑fund product to which Subdivision 4.2D of Division 4 of this Part applies.

(2) If the client requests a copy of the statement or information that the responsible person is not required to include in accordance with subregulation (1), the responsible person must provide the copy as soon as practicable, at no charge.

(3) If a statement or information is not included in a Product Disclosure Statement because of subregulation (1), the statement or information is taken to be included in the Product Disclosure Statement.

(4) Despite subregulation (3), if a responsible person does not include a statement or information in a Product Disclosure Statement in accordance with subregulation (1), the responsible person must include the following information in the Product Disclosure Statement:

(a) for information required by paragraph 1013D(1)(b) or (f) of the Act—a description, in summary, of the purpose and key features of the product;

(b) for information required by paragraph 1013D(1)(c) of the Act—a description, in summary, of the key risks of the product;

(c) the information required by:

(i) paragraphs 1013D(1)(a), (g) and (i) of the Act; and

(ii) Divisions 1 and 2 of Part 2 of Schedule 10; and

(iii) paragraphs 209(e) and (h) of Division 4 of Part 2 of Schedule 10; and

(iv) Divisions 5 and 6 of Part 2 of Schedule 10;

(d) the Consumer Advisory Warning in Division 7 of Part 2 of Schedule 10.

7.9.15DB Requirement to keep record of Product Disclosure Statement and other documents

(1) If section 1015B of the Act does not require a copy of a Product Disclosure Statement to be lodged with ASIC, the Statement and a document, or part of a document, mentioned in the Statement must be retained by the responsible person for that Statement for 7 years after the date of the Statement.

(2) This regulation does not apply if the Product Disclosure Statement is for:

(a) a standard margin lending facility; or

(b) a superannuation product to which Subdivision 4.2B of Division 4 of this Part applies; or

(c) a simple managed investment scheme to which Subdivision 4.2C of Division 4 of this Part applies; or

(d) a simple sub‑fund product to which Subdivision 4.2D of Division 4 of this Part applies.

7.9.15DC Requirement to lodge documents mentioned in a Product Disclosure Statement with ASIC

(1) A document, or part of a document, mentioned in a Product Disclosure Statement that was required to be lodged with ASIC under section 1015B of the Act must be lodged with ASIC as if the document, or part of the document, were a Statement within the meaning of section 1015B of the Act.

(2) This regulation does not apply if the Product Disclosure Statement is for:

(a) a standard margin lending facility; or

(b) a superannuation product to which Subdivision 4.2B of Division 4 of this Part applies; or

(c) a simple managed investment scheme to which Subdivision 4.2C of Division 4 of this Part applies; or

(d) a simple sub‑fund product to which Subdivision 4.2D of Division 4 of this Part applies.

7.9.15E More detailed information in product disclosure statement: general insurance product

For paragraph 1013D(4)(c) of the Act, the more detailed statement of the information, for paragraph 1013D(1)(f), that must be included in a Product Disclosure Statement that relates to a general insurance product is:

(a) the terms and conditions of the policy document (within the meaning of the *Insurance Contracts Act 1984*) being terms and conditions that are not provided in a Schedule to the policy document; and

(b) information that, if the issuer were seeking to rely on subsection 35(2) and section 37 of the *Insurance Contracts Act 1984*, the issuer would have had to provide to the insured before the contract of insurance was entered into.

7.9.15F Product disclosure statement: general insurance product

For paragraph 1020G(1)(b) of the Act, Part 7.9 of the Act applies to general insurance products as if subparagraph 1013C(1)(a)(ii) and section 1013E were omitted.

7.9.15FA Transitional arrangements for regulations 7.9.15D, 7.9.15E and 7.9.15F

(1) If, at any time during the transition period, a Product Disclosure Statement for a general insurance product complies with the requirements of old sections 1013C and 1013D, the Product Disclosure Statement is taken to comply with the requirements of:

(a) sections 1013C and 1013D of the Act; and

(b) the provisions of any regulations made for the purposes of, or modifying, sections 1013C and 1013D of the Act;

as in force at that time.

(2) In this regulation:

***commencing day*** means the day on which this regulation commences.

***old sections 1013C and 1013D*** means:

(a) sections 1013C and 1013D of the Act; and

(b) the provisions of any regulations made for the purposes of, or modifying, those sections;

as in force immediately before the commencing day.

***transition period*** means the period starting on the commencing day and ending at the end of 30 June 2008.

Note: Before the commencement of this regulation, transitional arrangements in similar terms were provided for regulations 7.9.15D, 7.9.15E and 7.9.15F by item 2 of Schedule 5 to the *Corporations Amendment Regulations 2005 (No. 5)* (SLI 2005 No. 324).

7.9.15H New section 1012G: product disclosure statement may sometimes be provided later

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if section 1012G were omitted and the following section were substituted:

“1012G Product disclosure statement may sometimes be provided later: financial products subject to a cooling off period

Application of section

(1) The regulated person may deal with a financial product under this section only if the financial product is one for which an application form is not required under section 1016A and section 1019B (cooling off period) will apply if the client enters into a legal obligation to acquire the product pursuant to the recommendation or offer that constitutes the relevant conduct.

No need to give Product Disclosure Statement in certain circumstances

(2) In a recommendation situation or an issue situation, the regulated person need not give the client a Product Disclosure Statement for the financial product at or before the time when it would otherwise be required to be given if:

(a) the client expressly instructs the regulated person that they require:

(i) in a recommendation situation—the advice constituting the recommendation; or

(ii) in an issue situation—the financial product;

to be provided or issued immediately, or by a specified time; and

(b) it is not reasonably practicable, while complying with the client’s instructions, to give the client the Product Disclosure Statement at or before the time when it would otherwise be required to be given.

The regulated person must comply instead with subsection (3).

Requirements to be complied with to be able to give Product Disclosure statement later

(3) The regulated person must:

(a) at or before the time referred to in paragraph (2)(b), orally communicate the following information to the client:

(i) the name and contact details of the issuer of the financial product;

(ii) information about the cooling off regime that applies in respect of acquisitions of the product (whether this regime is provided for by law or otherwise);

(iii) that the client should consider the information in the Product Disclosure Statement that will be provided to the client;

(iv) the further information (if any) requested by the client in response to a question under paragraph (b); and

(b) at or before the time referred to in paragraph (2)(b), ask the client whether the client would like further information about the financial product; and

(c) give the client the Product Disclosure Statement as soon as practicable after that time, and in any event not later than:

(i) the time when the confirmation requirement (if applicable) is complied with; or

(ii) the end of the fifth business day after the day on which the financial product was issued or sold to the client.

How information to be communicated

(4) The information referred to in paragraph (3)(a) must be communicated in a clear, concise and effective manner.

How confirmation requirement to be complied with

(5) For the purposes of subparagraph (3)(c)(i), the confirmation requirement is complied with when:

(a) the client receives confirmation, as mentioned in paragraph 1017F(5)(a), of the transaction by which they acquired the financial product; or

(b) confirmation of that transaction is available to the client by a facility as mentioned in paragraph 1017F(5)(b).”

7.9.15I Modification of section 1012IA

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if subparagraph 1012IA(4)(b)(ii) were omitted and the following subparagraph was inserted:

“(ii) subsection 1012G(3) applies in relation to the provider, the client and the regulated acquisition as if the reference to the regulated person were instead a reference to the provider, as if subparagraph 1012G(3)(c)(i) were omitted and as if the reference in subparagraph 1012G(3)(c)(ii) to the day on which the financial product was issued or sold to the client were instead a reference to the day on which the regulated acquisition occurs.”

7.9.16 More detailed information in Product Disclosure Statement: consumer credit insurance product

(1) For paragraph 1013D(4)(c) of the Act, the more detailed information that must be included in a Product Disclosure Statement that relates to a consumer credit insurance product is:

(a) a brief explanation of the purposes of consumer credit insurance; and

(b) an outline statement of general areas covered by the consumer credit insurance product, or the kind of consumer credit insurance product; and

(c) a statement that it is important that the insured read the Product Disclosure Statement carefully to understand the extent of cover provided by the consumer credit insurance product, and its limitations; and

(d) if all of the following matters apply under the consumer credit insurance product:

(i) a person who applies for, or obtains, consumer credit insurance is not obliged to buy the consumer credit insurance;

(ii) cover is provided under the consumer credit insurance product in respect of losses caused by certain contingencies;

(iii) the extent of loss to the consumer credit insurance product applies is measured by reference to the liability of the insured under the credit agreement to which the consumer credit insurance applies;

a statement to that effect, accompanied by examples of the contingencies; and

(e) a table of the benefit limits applicable under the consumer credit insurance product; and

(f) a statement that the insured:

(i) is required to be truthful; and

(ii) is able to arrange consumer credit insurance through a different insurer; and

(g) a statement of the commission paid or payable in relation to the provision of the consumer credit insurance product.

(2) In this regulation:

***consumer credit insurance product*** means a general insurance product provided by a class of contracts of insurance that is:

(a) declared, in accordance with the *Insurance Contracts Act 1984* to be a class of contracts to which Division 1 of Part V of that Act applies; and

(b) identified as consumer credit insurance as part of that declaration.

7.9.16A Small scale offerings of managed investment and other prescribed financial products (20 issues or sales in 12 months)

For paragraph 1012E(1)(b) of the Act, interests in financial products covered by paragraph 764A(1)(ba) of the Act (which deals with financial products in relation to certain managed investment schemes that are not registered schemes) are prescribed.

Division 4B—Ongoing disclosure

7.9.16G Ongoing disclosure of material changes and significant events

(1) For paragraph 1017B(1)(d) of the Act, the circumstances in subregulation (2) are specified.

(2) The circumstances are that the product issuer issued a financial product that was acquired by a holder as a retail client:

(a) in a sale situation in which the issuer is not required to give a Product Disclosure Statement for the product under section 1012C of the Act; or

(b) in a situation in which a Product Disclosure Statement is not required because of the operation of section 1012D of the Act other than subsection (1), (2), (2A) or (2B) of that section; or

(c) in an offer situation in which a Product Disclosure Statement is not required under section 1012E of the Act.

(3) For paragraph 1017B(1A)(c) of the Act, the attribution, on the recommendation of the trustee, of an amount in relation to a member in a MySuper product to another class of beneficial interest in the fund is specified.

Division 4C—Fee Disclosure for certain financial products

Subdivision 4C.1—Application

7.9.16J Application of this Division to financial products

This Division applies to:

(a) superannuation products other than:

(i) self managed superannuation funds; and

(ii) superannuation products that have no investment component (also known as risk‑only superannuation products); and

(iii) annuities (except market‑linked annuities); and

(iv) non‑investment or accumulation life insurance policies offered through a superannuation fund; and

(b) managed investment products; and

(c) foreign passport fund products; and

(d) securities in a CCIV.

7.9.16JA Application of this Division to financial products—temporary arrangements

For paragraph 1020G(1)(a) of the Act:

(a) an issuer of a superannuation product to which this Division applies does not have to provide the information mentioned in subparagraph 1013D(1)(d)(iii) of the Act in a Product Disclosure Statement issued before 1 July 2005; and

(b) an issuer of a financial product, other than a superannuation product to which this Division applies, does not have to provide the information mentioned in subparagraph 1013D(1)(d)(iii) of the Act in a Product Disclosure Statement issued before 1 July 2006.

7.9.16K Application of this Division to periodic statements and Product Disclosure Statements

This Division applies:

(a) in relation to superannuation products:

(i) to periodic statements (other than exit statements) in relation to a reporting period commencing on or after 1 July 2005; and

(ii) to periodic statements that are exit statements issued on or after 1 July 2006; and

(iii) to Product Disclosure Statements issued on or after 1 July 2005; and

(b) in relation to managed investment products:

(i) to periodic statements (other than exit statements) in relation to a reporting period commencing on or after 1 July 2006; and

(ii) to periodic statements that are exit statements issued on or after 1 July 2007; and

(iii) to Product Disclosure Statements issued on or after 1 July 2006; and

(c) in relation to securities in a CCIV:

(i) to periodic statements (including exit statements) in relation to a reporting period commencing on or after 1 July 2022; and

(ii) to Product Disclosure Statements issued on or after 1 July 2022*.*

Subdivision 4C.2—Product Disclosure Statements

7.9.16L More detailed information about fees and costs

(1) For paragraph 1013D(4)(c) of the Act, a Product Disclosure Statement must include the details of fees and costs set out in Part 2 of Schedule 10.

(2) This regulation does not apply if the Product Disclosure Statement is for:

(a) a standard margin lending facility; or

(b) a superannuation product to which Subdivision 4.2B of Division 4 of this Part applies; or

(c) a simple managed investment scheme to which Subdivision 4.2C of Division 4 of this Part applies; or

(d) a simple sub‑fund product to which Subdivision 4.2D of Division 4 of this Part applies.

7.9.16M Modification of section 1015C of the Act

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies in relation to a product mentioned in regulation 7.9.16J as if paragraph 1015C(5)(b) of the Act were modified to omit the words ‘that is to be given in electronic form’.

7.9.16N Presentation, structure and format of fees and costs in Product Disclosure Statements

(1) For paragraph 1015C(5)(b) of the Act, the information required by paragraphs 1013D(1)(d) and (e) of the Act must be set out in a single section of the Product Disclosure Statement (***fees section***) with the heading ‘Fees and other costs’.

(2) The fees section of a Product Disclosure Statement must include:

(a) the Fees and Costs Template, comprising the template and the additional explanation of fees and costs set out in Part 2 of Schedule 10; and

(b) an example of annual fees and costs and associated notes as set out in Part 2 of Schedule 10; and

(c) the boxed Consumer Advisory Warning Statement set out in Part 2 of Schedule 10.

Subdivision 4C.3—Periodic statements

7.9.16O Presentation, structure and format of fees and charges in periodic statements

(1) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies in relation to a product mentioned in regulation 7.9.16J as if section 1017D of the Act were modified to add, after subsection (7):

‘(8) The regulations may specify requirements as to the presentation, structure and format of a periodic statement.’.

(2) For subsection 1017D(8) of the Act, the information required by paragraph 1017D(5)(c) of the Act must be set out in the periodic statement:

(a) in the manner specified in Part 3 of Schedule 10; and

(b) using the terminology used in Part 3 of Schedule 10.

Division 4D—Other requirements relating to Product Disclosure Statements and Supplementary Product Disclosure Statements

Subdivision 4D.1—Requirement to lodge a notice with ASIC

7.9.16T Variation of paragraph 1015D(2)(b) of the Act

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if paragraph 1015D(2)(b) of the Act were omitted and the following paragraph and note were inserted:

‘(b) a change is made to the fees and charges set out in the enhanced fee disclosure table in the Statement;

Note: The templates for the enhanced fee disclosure table are set out in items 201 and 202 of Schedule 10 to the *Corporations Regulations 2001*.’.

Division 5—Ongoing requirements for product disclosure after person becomes a member

Subdivision 5.1—Preliminary

7.9.17 Application of Division 5

This Division applies in relation to the following entities:

(a) a regulated superannuation fund;

(b) an approved deposit fund;

(c) a pooled superannuation trust;

(d) an RSA.

Subdivision 5.2—Periodic statements for retail clients for financial products that have an investment component: regulated superannuation funds, approved deposit funds and RSAs

7.9.18 Application of Subdivision 5.2

This Subdivision applies in relation to:

(a) a regulated superannuation fund; and

(b) an approved deposit fund; and

(c) an RSA.

7.9.19 Specific requirements for periodic statements: superannuation funds (other than self managed superannuation funds) and RSAs

For paragraph 1017D(5)(g) of the Act, a periodic statement for a superannuation product, given to a member of a superannuation fund (other than a self managed superannuation fund) or an RSA given to an RSA holder must include the following details:

(a) the contact details of the fund or the RSA provider;

(b) the amount of withdrawal benefit for the member or RSA holder at the start of the reporting period;

(c) the amount of the withdrawal benefit for the member or RSA holder at the end of the reporting period, and the method by which that amount was worked out;

(d) the amount (if any) of the withdrawal benefit for the member or RSA holder, at the end of the reporting period, that consists of preserved benefits;

(e) the amount (if any) of the withdrawal benefit for the member or RSA holder, at the end of the reporting period, that consists of restricted non‑preserved benefits;

(f) the amount (if any) of the withdrawal benefit for the member or RSA holder, at the end of the reporting period, that consists of unrestricted non‑preserved benefits;

(g) if, in providing details of the amount of the withdrawal benefit at the end of the reporting period, a deduction for fees, charges or expenses has been made or might be made—details of the deduction;

(h) if relevant, a statement informing the product holder that:

(i) the information about the withdrawal benefit for the product holder at the end of the reporting period is based on notional amounts that would have been attributable to the product holder if the product holder had disposed of his or her interest in the product on the date shown in the statement; and

(ii) the amounts on which that information is based might change; and

(iii) before disposing of that product, the product holder should seek information from the product issuer on the withdrawal benefit at that time;

(i) a statement informing the product holder that the product issuer is obliged to provide a member with any information that he or she reasonably requires to understand his or her benefit entitlements;

(j) a statement of the way in which a product holder is able to gain access to information in relation to his or her investment in the financial product.

7.9.19A Withdrawal benefit—fees, charges or expenses

(1) For subsection 1017D(5A) of the Act, in providing details of a deduction for fees, charges or expenses in accordance with paragraph 7.9.19(g), the amount must be stated in dollars.

(2) If ASIC determines that, for a compelling reason, it is not possible to state the amount of a deduction in dollars the amount of the deduction may be set out as a description of the fees, charges or expenses as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(3) If ASIC determines that, for a compelling reason, it is not possible to state the amount of a deduction in dollars, or to set out the amount as a percentage, the product issuer may provide:

(a) a statement informing the holder of the product that amounts for fees, charges or expenses are applicable; and

(b) if information about access to the information about the amount of the deduction is not provided in the statement mentioned in paragraph 7.9.19(h)—details of the means by which a product holder can gain access to information relating to the amount of the deduction.

(4) A determination under subregulation (2) or (3) must be:

(a) in writing; and

(b) published in the *Gazette*.

7.9.19B Withdrawal benefit—fees, charges and expenses

(1) For subsection 1017D(5A) of the Act, this regulation applies to details of a deduction for fees, charges or expenses in accordance with paragraph 7.9.19(g).

(2) If ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars:

(a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or

(b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or

(c) would not be in the interests of a product holder, or a class of product holders;

the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(3) If ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the information as an amount in dollars, or to describe the amount as a percentage:

(a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or

(b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or

(c) would not be in the interests of a product holder, or a class of product holders;

the product issuer must provide the information in subregulation (4).

(4) If subregulation (3) applies, the product issuer must provide:

(a) a statement informing the product holder that amounts for fees, charges or expenses are applicable; and

(b) if information about access to the information is not provided in the statement mentioned in paragraph 7.9.19(i)—details of the means by which a product holder can gain access to information relating to the amount of the deduction.

(5) A determination under subregulation (2) or (3) must be:

(a) in writing; and

(b) published in the *Gazette*.

7.9.20 Specific requirements for certain periodic statements: superannuation funds (other than self managed superannuation funds)

(1) For paragraph 1017D(5)(g) of the Act, a periodic statement for a member of a fund (other than a self managed superannuation fund) must include the following details:

(a) the amount of the member’s contributions during the reporting period;

(b) the amount of benefits rolled‑over or otherwise transferred into the fund during the reporting period;

(c) the amount of withdrawals during the reporting period;

(d) the information about costs of transactions mentioned in regulation 7.9.75;

(e) the amount of any allotment of employer contributions during the reporting period;

(f) the amount of any allotment of net earnings during the reporting period (including, for a unitised product, the presentation of changes in price as amounts in dollars);

(g) the rate of any allotment of net earnings during the reporting period;

(h) the amount of bonuses that have accrued at the end of the reporting period;

(i) the amount of the sum assured;

(j) the amount payable in the event of the member’s death:

(i) at the end of the reporting period; or

(ii) on the first day of the next reporting period;

or the method by which that amount is worked out;

(k) for a reporting period (within the meaning of subsection 1017D(2) of the Act) commencing before 1 July 2004—details, including the amount or method of working out, of other significant benefits, including, in particular, disability benefits;

(ka) for a reporting period (within the meaning of subsection 1017D(2) of the Act) commencing on or after 1 July 2004:

(i) details of other significant benefits, including disability benefits, and the amount of the benefits at the end of the reporting period, or the method of working out the amount of the benefits; and

(ii) if the periodic statement includes an amount mentioned in subparagraph (i)—a statement informing the holder of the product that:

(A) the details of the significant benefit reflects the situation for the member on the date shown in the statement and the amount might change; and

(B) the issuer is obliged to provide product holders with any information they reasonably require for the purpose of understanding their benefit entitlements; and

(iii) details of the means by which a product holder is able to gain access to information relating to the amount of a significant benefit;

(kb) if, in providing details of other significant benefits for a reporting period, a deduction for fees, charges or expenses has been made or might be made—details of the deduction;

(l) if the trustee is aware, or ought reasonably to be aware, of contributions that are due and payable during the reporting period but have not been paid to the fund at, or shortly before, the date of issue of the report, details of the amount of those contributions and of action that the trustee has taken, or proposes to take, to have the contributions paid;

(m) the net amount of Government co‑contribution received during the reporting period;

(n) for a regulated superannuation fund—a statement of long‑term returns, in accordance with regulation 7.9.20AA, of:

(i) the MySuper product or investment option within a choice product in which a member is invested; or

(ii) the sub‑plan, or, if none, the fund in which the member holds an interest;

(o) for a regulated superannuation fund, if the trustee is required to make publicly available a product dashboard for the investment option, under section 1017BA of the Act—the latest product dashboard for the investment option.

(2) For paragraph (1)(g), if the earnings rate for members of the fund is reflected in the price of units of the fund, rather than being credited or debited against the accounts of members, an earnings rate allotted to members in respect of a period is taken to be a change in the value of the members’ units being determined by the trustee in respect of that period.

(2A) For paragraph (1)(m), the periodic statement may state separately:

(a) the amount of Government co‑contributions received; and

(b) the amount of low income superannuation contributions received; and

(c) the amount of low income superannuation tax offsets received.

Note: See section 12B of the *Superannuation (Government Co‑contribution for Low Income Earners) Act 2003* for the way in which a law that applies in relation to a Government co‑contribution applies in relation to a low income superannuation tax offset.

(3) A nil amount need not be disclosed.

7.9.20AA Specific requirements for certain periodic statements: superannuation funds (other than self managed superannuation funds)—long‑term returns

(1) For paragraph 7.9.20(1)(n), this regulation sets out requirements that apply to a trustee of a regulated superannuation fund (other than a self managed fund).

(1A) This regulation does not apply if:

(a) the superannuation product is a non‑investment or accumulation life insurance policy that is offered through the regulated superannuation fund; or

(b) the superannuation product has no investment component (also known as a risk‑only superannuation product); or

(c) the statement is a periodic statement to be given to a member of the regulated superannuation fund for a reporting period mentioned in paragraph 1017D(2)(d) of the Act.

(8) The trustee must provide the following, in the periodic statement for a reporting period that is provided from 1 July 2011, to each member of the regulated superannuation fund:

(a) if the member is invested in an investment option at the end of the reporting period—a statement of the long‑term returns of the investment option;

(b) if the member is not invested in an investment option at the end of the reporting period—a statement of the long term returns of the sub‑plan, or, if none, the fund in which the member holds an interest at the end of the reporting period.

(9) For paragraph (8)(a), the long‑term returns must be stated as:

(a) the compound average effective rate of net earnings of the investment option for the period of 5 years ending at the end of the last financial year or reporting period before the provision of the periodic statement; and

(b) the compound average effective rate of net earnings of the investment option for the period of 10 years ending at the end of that financial year or reporting period.

(10) For paragraph (8)(b), the long‑term returns must be stated as:

(a) the compound average effective rate of net earnings of the sub‑plan or fund for the period of 5 years ending at the end of the last financial year or reporting period before the provision of the periodic statement; and

(b) the compound average effective rate of net earnings of the sub‑plan or fund for the period of 10 years ending at the end of that financial year or reporting period.

(11) The trustee must include in the periodic statement, near to the statement of long‑term returns, a statement to the effect that the returns are not the returns of the member’s investment in the investment option, sub‑plan or fund.

General requirements

(12) For subregulations (3), (4), (9) and (10), if the investment option, sub‑plan or fund has been in operation for less than the 5‑year or 10‑year period to be reported on, the trustee must provide:

(a) the long‑term return for the period in which the investment option, sub‑plan or fund has been in operation; and

(b) the date on which the investment option, sub‑plan or fund came into operation.

(13) If the long‑term returns are provided in the periodic statement, they must be positioned near to the statement of the rate of any allotment of earnings during the reporting period.

(14) The long‑term returns must be presented in a clear, concise and effective manner.

7.9.20A Details of other significant benefits—disclosure of fees, charges or expenses

(1) For subsection 1017D(5A) of the Act, in providing details of a deduction for fees, charges or expenses in accordance with paragraph 7.9.20(1)(kb):

(a) the amount must be stated in dollars; or

(b) if ASIC determines that, for a compelling reason, it is not possible to state the amount of a deduction in dollars the amount of the deduction may be set out as a description of the fees, charges or expenses as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate); or

(c) if ASIC determines that, for a compelling reason, it is not possible to state the amount of a deduction in dollars, or to set out the amount as a percentage, the product issuer may provide:

(i) a statement informing the holder of the product that amounts for fees, charges or expenses are applicable; and

(ii) if information about the deduction is not provided in the statement mentioned in sub‑subparagraph 7.9.20(1)(ka)(ii)(B)—details of the means by which a product holder can gain access to information relating to the amount.

(2) A determination under paragraph (1)(b) or (c) must be:

(a) in writing; and

(b) published in the *Gazette*.

7.9.20B Other significant benefits—disclosure of fees, charges or expenses

(1) For subsection 1017D(5A) of the Act, this regulation applies to details of a deduction for fees, charges or expenses mentioned in paragraph 7.9.20(1)(kb).

(2) If ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the amount of the deduction in dollars:

(a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or

(b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or

(c) would not be in the interests of a product holder, or a class of product holders;

the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(3) If ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the amount of a deduction in dollars, or, to describe the amount as a percentage:

(a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or

(b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or

(c) would not be in the interests of a product holder, or a class of product holders;

the product issuer must provide the information in subregulation (4).

(4) If subregulation (3) applies, the product issuer must provide:

(a) a statement informing the product holder that amounts for fees, charges or expenses are applicable; and

(b) if information about the deduction is not provided in the statement mentioned in sub‑subparagraph 7.9.20(1)(ka)(ii)(B)—details of the means by which a product holder can gain access to information relating to the amount of the deduction.

(5) A determination under subregulation (2) or (3) must be:

(a) in writing; and

(b) published in the *Gazette*.

7.9.21 Specific requirements in particular cases: member (other than capital guaranteed member) of fund other than a self managed superannuation fund

(1) For paragraph 1017D(5)(g) of the Act, and in addition to regulations 7.9.19 and 7.9.20, a periodic statement for a member (other than a capital guaranteed member) of a fund (other than a self managed superannuation fund) must include the following details:

(a) if the fund is an unfunded defined benefits fund—details of the surcharge debt account kept by the trustee, under subsection 16(2) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, for the member, including:

(i) the balance of the account at the start of the reporting period; and

(ii) the amount debited to the account for superannuation contributions surcharge assessed, by the Commissioner of Taxation, to be payable on the member’s surchargeable contributions; and

(iii) the amount of interest debited, under subsection 16(4) of that Act, to the account during the reporting period; and

(iv) the balance of the account at the end of the reporting period;

(b) if the trustee reduced the member’s benefits in connection with payment of a superannuation contributions surcharge or an advance instalment of surcharge:

(i) the amount deducted; and

(ii) if there is a difference between the amount deducted and the amount assessed under subsection 15(1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15(2) of that Act—a statement explaining the difference;

(c) a description of the nature, effect and significant features of surcharge debt accounts.

(2) A nil amount need not be disclosed.

7.9.22 Specific requirements: capital guaranteed funds and RSAs

(1) For paragraph 1017D(5)(g) of the Act, and in addition to regulations 7.9.19 and 7.9.20, a periodic statement for a member of a capital guaranteed fund must include the following details:

(a) a statement that outlines the means by which the fund is to be maintained as a capital guaranteed fund and sets out the name of the institution providing the investments that back the fund;

(b) a statement that outlines the effect of the lower‑risk/lower‑return nature of the product on possible benefits in the long term;

(c) a statement that the member may wish to consider:

(i) other superannuation arrangements that may provide a greater return over the long term; and

(ii) seeking advice on alternative investment arrangements that may be more suitable.

(2) For paragraph 1017D(5)(g) of the Act, and in addition to regulation 7.9.19, a periodic statement for an RSA holder must include the following details:

(a) a statement that outlines the effect of the lower‑risk/lower‑return nature of the product on possible benefits in the long term;

(b) a suggestion that the RSA holder may wish to consider:

(i) other superannuation arrangements that may provide a greater return over the long term; and

(ii) seeking advice on alternative investment strategies that may be more suitable.

7.9.23 Information for capital guaranteed fund: benefits reach $10 000

For paragraph 1017D(5)(g) of the Act, and in addition to regulations 7.9.19 and 7.9.22, if the amount of the benefits of a member in a capital guaranteed fund at the end of a reporting period is at least $10 000, the periodic statement for that reporting period must include the following details:

(a) a statement of that fact;

(b) a statement that the information contained in the periodic statement is important and that the notice must be read carefully;

(c) a statement that outlines the effect of the lower‑risk/lower‑return nature of the product on possible benefits in the long term;

(d) a statement that the member may wish to consider:

(i) other superannuation arrangements that may provide a greater return over the long term; and

(ii) seeking advice on alternative investment arrangements that may be more suitable.

7.9.24 Modification of Act: pensioners, members subject to compulsory protection of small amounts and members with small amounts that are expected to grow quickly

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to a superannuation entity or an RSA to which this Subdivision applies as set out in Part 7 of Schedule 10A.

Subdivision 5.3—Periodic statements for retail clients for financial products that have an investment component: information for RSAs

7.9.25 Application of Subdivision 5.3

This Subdivision applies in relation to an RSA provider.

7.9.26 Specific requirements where applicable: RSAs

(1) For paragraph 1017D(5)(g) of the Act, and in addition to regulation 7.9.19, a periodic statement for an RSA holder must include details of the following matters in respect of the RSA holder so far as they are applicable:

(a) the amount of the RSA holder’s contributions during the reporting period;

(b) the amount of employer contributions during the reporting period;

(c) the amount of benefits rolled‑over or transferred into the RSA during the reporting period;

(d) the amount of withdrawals during the reporting period;

(e) information about the cost of transactions mentioned in Division 8;

(f) the amount of interest credited to the RSA during the reporting period;

(g) the annual effective rate of net interest applied to the RSA during the reporting period;

(h) a statement of:

(i) the annual effective rate of net earnings in each of the most recent reporting periods that, in total, constitute a period of at least 5 years; and

(ii) the compound average effective rate of net earnings for the period of 5 years ending at the end of the reporting period;

(i) the effect of the RSA holder‑protection standards under the RSA Regulations;

(j) the amount of bonuses that have accrued at the end of the reporting period;

(k) if a risk insurance product is held by the RSA provider—the amount of the sum assured;

(l) the circumstances when benefits may be paid to an eligible rollover fund, the effect of that payment and the contact details of the eligible rollover fund;

(m) the amount payable in the event of the RSA holder’s death:

(i) at the end of the reporting period; or

(ii) on the first day of the next reporting period;

or the method by which that amount is worked out;

(n) the amount, or method of working out, of other benefits including, in particular, disability benefits;

(o) if the RSA provider reduced the RSA holder’s benefits in connection with payment of a superannuation contributions surcharge or an advance instalment of surcharge:

(i) the amount deducted; and

(ii) if there is a difference between the amount deducted and the amount assessed under subsection 15(1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15(2) of that Act—a statement explaining the difference;

(p) the net amount of Government co‑contribution received during the reporting period.

(2) A nil amount need not be disclosed.

(3) If, at the end of a reporting period, an RSA has not been in existence for 5 years, the references in paragraph (1)(h) to 5 years are taken to be references to the whole period of existence of the RSA.

7.9.27 Modification of Act: periodic statements for RSA holders

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to an RSA to which this Subdivision applies as set out in Part 8 of Schedule 10A.

7.9.28 Information for RSA: amount reaches $10 000

For paragraph 1017D(5)(g) of the Act, if the amount of an RSA at the end of a reporting period is at least $10 000, the periodic statement for that reporting period must include the following, in addition to the details mentioned in regulations 7.9.19 and 7.9.22:

(a) a statement of that fact;

(b) a statement that the information contained in the periodic statement is important and that the notice must be read carefully;

(c) a statement that outlines the effect of the lower‑risk/ lower‑return nature of the RSA on possible benefits in the long term;

(d) a suggestion that the RSA holder may wish to consider:

(i) other superannuation arrangements that may provide a greater return over the long term; and

(ii) seeking advice on alternative investment strategies that may be more suitable.

Subdivision 5.4—Periodic statements for retail clients for financial products that have an investment component: additional information for superannuation entities and RSA providers

7.9.29 Application of Subdivision 5.4

This Subdivision applies in relation to a superannuation entity and an RSA provider.

7.9.30 Additional information for change to choices

(1) For paragraph 1017D(5)(g) of the Act, a periodic statement for a holder of a financial product must include, if relevant, either of the following details (in addition to the details mentioned in regulation 7.9.20 or 7.9.26, as appropriate):

(a) details of:

(i) other investment strategies available to the holder (if applicable); and

(ii) other contribution levels available to the holder; and

(iii) other insurance coverage available to the holder in relation to the financial product;

(b) a statement:

(i) that the details in paragraph (a) are available on request from the responsible person; and

(ii) about how to ask for the details.

(2) The details or statement must relate to:

(a) an interest in the same sub‑plan; or

(b) if there is no sub‑plan—an interest in the same superannuation entity or an RSA.

(3) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to a superannuation entity and an RSA provider as set out in Part 9 of Schedule 10A.

Subdivision 5.4A—Periodic statements for retail clients for financial products that have an investment component: additional information for margin lending facilities

7.9.30A Application of Subdivision 5.4A

(1) This Subdivision applies in relation to the provider of a margin lending facility.

(2) For the purposes of this Subdivision, subsection 1017D(5) of the Act is modified to omit paragraphs (a) to (f).

Note: Paragraph 1020G(1)(c) of the Act provides that the regulations may provide that Part 7.9 of the Act applies as if specified provisions were omitted, modified or varied as specified in the regulations.

7.9.30B Details to be included in periodic statements for margin lending facilities

For paragraph 1017D(5)(g) of the Act, a periodic statement for a holder of a financial product must include the following details about the margin lending facility:

(a) the outstanding loan amount;

(b) the loan credit limit;

(c) the current interest rate, and any changes to the interest rate since the last statement was provided;

(d) an itemised list of the property by which the credit is secured, including:

(i) the value of each item used for calculating the current LVR; and

(ii) the loan to value ratio (if any) of each property item listed;

(e) a summary of the loan to security ratios, showing separately:

(i) the allowable loan to security ratio; and

(ii) the maximum loan to security ratio, including any buffer allowed under the terms of the facility; and

(iii) the current LVR;

(f) a summary of all transactions affecting the margin lending facility during the reporting period.

Subdivision 5.5—Fund information for retail clients for financial products that have an investment component: superannuation

7.9.31 Application of Subdivision 5.5

This Subdivision applies in relation to:

(a) a regulated superannuation fund; and

(b) an approved deposit fund; and

(c) a pooled superannuation trust.

7.9.31A Trustee of superannuation entity must provide fund information to holders of interests in the entity

For the purposes of paragraph 1017DA(1)(a) of the Act, the trustee of a superannuation entity must provide the holder of a superannuation product (being an interest in that entity) with the following fund information relating to the entity and any relevant sub‑plan (within the meaning of section 1017C of the Act):

(a) if the entity is not a self managed superannuation fund—the name and ABN of each outsourced service provider that has provided, at any time in the previous 12 months, a service which may affect a material business activity of the entity;

(b) if the entity is not a self managed superannuation fund—the following information about each member of the key management personnel of the entity:

(i) the member’s name;

(ii) the member’s qualifications;

(iii) a summary of the member’s experience as a trustee or board member, including the periods during which the member served as a trustee or board member;

(c) if the entity is not a self managed superannuation fund—the record of attendance at board meetings for each director of the entity for:

(i) the last 7 financial years; or

(ii) if a director has served for a period of less than 7 years—that period;

(d) the fund information specified in Subdivisions 5.6 and 5.7 of this Division that is applicable to the entity.

7.9.32 Fund information must be provided for each fund reporting period

(1) For the purposes of subsection 1017DA(1) of the Act, fund information must be provided, in accordance with this regulation, to the product holder, for each fund reporting period during which the holder holds the product.

(2) The following provisions apply in relation to fund reporting periods:

(a) each reporting period lasts for:

(i) a period not exceeding 1 year, fixed by the issuer; or

(ii) a longer period fixed by ASIC on the application of the issuer to which the period relates;

(b) the first reporting period starts when the holder acquired the product;

(c) each subsequent reporting period starts at the end of the preceding reporting period.

(3) Fund information for a fund reporting period must be provided as soon as practicable after, and in any event within 6 months after, the end of the reporting period.

(5) Fund information in relation to a particular product holder need not all be provided in respect of the same fund reporting period.

Fund information must be provided on website and, if holder elects, in hard copy or electronic copy

(6) The trustee must provide fund information for a fund reporting period to a product holder:

(a) by making the fund information publicly available on the superannuation entity’s website; and

(b) if the holder elects to have a hard copy or electronic copy of the fund information—by sending the fund information to the holder, in that form, until the holder notifies the trustee that a hard copy or electronic copy is no longer required.

(7) Fund information for a fund reporting period must be readily accessible from the entity’s website.

(8) Subregulations (6) and (7) do not apply to a self managed superannuation fund.

7.9.33 Use of more than 1 document

For the purposes of subsection 1017DA(1) of the Act, a reference in Subdivisions 5.5 to 5.7 of this Division to fund information:

(a) includes 2 or more documents that include all of the information required by those Subdivisions; and

(b) is to be read as if subsections 1013L(1), (2), (3), (5) and (7) of the Act were included in those Subdivisions, and referred to fund information instead of a Product Disclosure Statement.

Subdivision 5.6—Fund information for retail clients for financial products that have an investment component: fund information for regulated superannuation funds and approved deposit funds

7.9.34 Application of Subdivision 5.6

This Subdivision applies in relation to:

(a) a regulated superannuation fund; and

(b) an approved deposit fund.

7.9.35 General requirement

Fund information includes all information that the responsible person reasonably believes a product holder would reasonably need for the purpose of:

(a) understanding the management and financial condition of the fund and of the relevant sub‑plan (if any); and

(b) understanding the investment performance of the relevant sub‑plan or, if none, of the fund.

7.9.36 Specific requirements in all cases

Fund information includes all of the following items of information:

(a) the contact details of the fund;

(b) in respect of the relevant sub‑plan or, if none, of the fund—a description of:

(i) the investment strategy of the fund trustee, having regard to the requirements of paragraph 52(2)(f) of the SIS Act; and

(ii) the investment objectives.

7.9.37 Specific requirements in particular cases

(1) Fund information includes all of the following, so far as they are applicable:

(a) in respect of the relevant sub‑plan or, if none, of the fund—the names of investment managers appointed by the trustee;

(b) in the case of a standard employer‑sponsored fund that is not a public offer superannuation fund and does not have a trustee approved under subsection 92(10) of the SIS Act:

(i) if the trustee of the fund is a body corporate, the name of that body corporate and the names of all its directors during the whole or any part of the reporting period and, in respect of each of those directors, details of how and by whom they were appointed;

(ii) if the trustees of the fund are individuals, the names of the trustees of the fund during the whole or any part of the relevant reporting period and, in respect of each of those trustees, details of how and by whom they were appointed;

(c) in the case of a fund other than a fund mentioned in paragraph (b):

(i) the name of each corporate trustee of the fund during the relevant reporting period; and

(ii) in respect of the relevant policy committee (if any), details of the committee (including the names of the committee members as at the end of that reporting period and, in respect of each of the members, details of how and by whom they were appointed);

(d) a statement as to whether or not any indemnity insurance has been taken out by the trustee;

(f) in respect of the relevant sub‑plan or, if none, of the fund—a statement of assets as at the end of:

(i) the relevant reporting period; and

(ii) the immediately preceding reporting period;

that includes all information that the responsible person reasonably believes a member would reasonably need to understand the asset allocation at those times;

(g) details of:

(i) each investment that has a value in excess of 5% of the total assets of the relevant sub‑plan or, if none, of the fund; and

(ii) each combination of investments that the trustee knows or ought reasonably to know are invested in, directly or indirectly, a single enterprise or single group of associated enterprises and that have a combined value in excess of 5% of the total assets of the relevant sub‑plan or, if none, of the fund;

(h) a statement regarding the funds policy toward the use of derivative securities;

(i) if the derivatives charge ratio of the fund (as defined in the SIS Regulations) exceeded 5% at any time during the reporting period:

(i) the derivatives charge ratio as at the end of the reporting period; and

(ii) the highest derivatives charge ratio attained during the reporting period; and

(iii) an explanation of why the derivatives charge ratio exceeded 5%; and

(iv) an explanation of the meaning of derivatives charge ratio in, or to the effect of the following:

‘The derivatives charge ratio is the percentage of the total market value of the assets of the fund (other than cash) that the trustee has charged as security for derivatives investments made by the trustee.’;

(k) if the fund maintains reserves—in respect of the relevant sub‑plan or, if none, of the fund, details of movements of reserves during the most recent reporting periods that, in total, constitute at least 3 years;

(l) if the net earnings of the fund are allotted to members’ accounts—in respect of the relevant sub‑plan or, if none, of the fund, the manner in which the allotment is made;

(m) if the fund maintains reserves—in respect of the relevant sub‑plan or, if none, of the fund, a description of the management strategy of the fund trustee in relation to the reserves, having regard to the requirements of paragraph 52(2)(g) of the SIS Act;

(n) details of any penalties imposed on the responsible person under:

(i) section 38A of the SIS Act; or

(ii) section 182 of the RSA Act;

(o) if the fund is:

(i) a defined benefit fund; and

(ii) the contributions paid by the employer‑sponsor in the reporting period are less than the amount that an actuary has approved as sufficient contributions in that period; and

(iii) the difference is material;

in respect of the relevant sub‑plan or, if none, of the fund—a statement to the effect that the matters stated in subparagraphs (ii) and (iii) apply, and statements of:

(iv) the consequences for the fund of the shortfall; and

(v) any action that the trustee has taken, or proposes to take, in relation to the matter;

(p) the ultimate source (including, for example, the fund’s reserves, the members’ accounts or the employer) from which payments in connection with superannuation contributions surcharges or advance instalments of surcharge will be drawn;

(q) if there are circumstances in which the trustee would pay the member’s benefit to an eligible rollover fund:

(i) details of those circumstances; and

(ii) the contact details of the eligible rollover fund; and

(iii) a statement of the effect of the payment of benefits to the eligible rollover fund.

(1A) Subregulation (1) does not apply to a self managed superannuation fund. Fund information for a self managed superannuation fund includes the ultimate source (including, for example, the fund’s reserves, the members’ accounts or the employer) from which payments in connection with superannuation contributions surcharges or advance instalments of surcharge will be drawn.

(2) A nil amount need not be disclosed.

(3) For subparagraph (1)(g)(ii), investments in a trust are taken not to be invested in the trustee of the trust.

7.9.39 Benefits determined by life insurance products

(1) Paragraphs 7.9.37(1)(e), (f) and (g) do not apply to funds from which the benefits paid to each member are wholly determined by reference to life insurance products.

(2) If:

(a) subregulation (1) does not apply only because shares in the life insurance company issuing the life insurance products were acquired because the company was demutualised; and

(b) the shares have been held for not more than 18 months after the date of acquisition;

paragraphs 7.9.37(1)(e), (f) and (g) do not apply to funds from which the benefits paid to each individual member would otherwise be wholly determined by reference to life insurance products.

(3) If subregulation (1) or (2) applies, the fund information must include the reason why the information for paragraphs 7.9.37(1)(e), (f) and (g) has not been given.

Subdivision 5.7—Fund information for retail clients for financial products that have an investment component: fund information for pooled superannuation trusts

7.9.40 Application of Subdivision 5.7

This Subdivision applies in relation to a pooled superannuation trust.

7.9.41 Specific requirements in all cases

Fund information includes the following:

(a) in respect of the pooled superannuation trust—a description of the investment strategy of the pooled superannuation trust trustee, having regard to:

(i) the requirements of paragraph 52(2)(f) of the SIS Act; and

(ii) the investment objectives of the pooled superannuation trust;

(b) a statement to the effect that other information is available on request.

7.9.42 Specific requirements in particular cases

(1) Subject to subregulations (2) and (3), fund information includes the following, so far as they are applicable:

(a) in respect of the pooled superannuation trust—the names of investment managers appointed by the trustee;

(b) the name of each approved trustee of the pooled superannuation trust during the relevant reporting period;

(d) in respect of the pooled superannuation trust—a statement of assets as at the end of:

(i) the relevant reporting period; and

(ii) the immediately preceding reporting period;

that includes sufficient information to enable unit‑holders to understand the asset allocation at those times;

(e) details of:

(i) each investment that has a value in excess of 5% of the total assets of the pooled superannuation trust; and

(ii) details of each combination of investments that the trustee knows or ought reasonably to know are invested, directly or indirectly, in a single enterprise or single group of associated enterprises and that have a combined value in excess of 5% of the total assets of the pooled superannuation trust;

(f) in respect of the pooled superannuation trust—the effective rate of net earnings of the pooled superannuation trust in the most recent reporting periods that, in total, constitute a period of at least 3 years;

(g) the information about costs of transactions mentioned in regulation 7.9.75;

(h) details of any penalties imposed on the trustee under:

(i) section 38A of the SIS Act; or

(ii) section 182 of the RSA Act.

(2) A nil amount need not be disclosed.

(3) For subparagraph (1)(e)(ii), investments in a trust are taken not to be invested in the trustee of the trust.

Subdivision 5.8—Ongoing disclosure of material changes and significant events

7.9.43 Modification of Act: disclosure of material changes and significant events in relation to superannuation products and RSAs

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to:

(a) a regulated superannuation fund (other than a self managed superannuation fund); and

(b) an approved deposit fund (other than an excluded approved deposit fund); and

(c) a pooled superannuation trust; and

(d) an RSA;

as set out in Part 10 of Schedule 10A.

7.9.44 Benefits to be paid to eligible rollover fund

(1) For subsection 1017DA(1) of the Act, if the benefits of a superannuation product holder or an RSA holder will be paid (otherwise than under a payment split) to an eligible rollover fund unless the holder chooses, within a specified period, another superannuation entity, an exempt public sector superannuation scheme or an RSA to which those benefits will be paid, the responsible person must give a notice to the product holder within a reasonable period to allow a decision to be made.

(2) The notice must include:

(a) information about the payment to the eligible rollover fund that will assist the product holder to decide between having the benefits paid to that other superannuation entity, the exempt public sector superannuation scheme, the RSA or the eligible rollover fund; and

(b) so much of the following information as is relevant:

(i) an explanation why the product issuer (the ***transferor***) intends to pay the product holder’s benefits to the eligible rollover fund if the product holder does not make the choice within the period;

(ii) a statement of the effect of the payment of benefits to the eligible rollover fund;

(iii) the contact details of the eligible rollover fund;

(iv) subject to subregulation (3), the amount, of the product holder’s benefits that will be paid from the transferor;

(v) a statement to the effect that, if the product holder chooses a superannuation entity, exempt public sector superannuation scheme or RSA that refuses to accept the payment of the product holder’s benefit, or the product holder makes no choice within the specified period, the responsible person will pay the product holder’s benefits to the eligible rollover fund.

(3) For subparagraph (2)(b)(iv), the product issuer may inform a product holder of the approximate amount of the product holder’s benefits if, at the time the information is to be given, the responsible person cannot determine the exact amount of the product holder’s benefits that will be paid from the superannuation entity or RSA.

(4) This regulation does not require the responsible person of the transferor to provide information about RSAs, exempt public sector superannuation schemes or superannuation entities other than the eligible rollover fund.

(5) The notice may be given in writing or electronic form.

(6) In this regulation:

***responsible person*** means:

(a) a trustee of a superannuation entity; or

(b) an RSA provider.

Subdivision 5.8A—Information in relation to inactive superannuation accounts

7.9.44A Meaning of *inactive*

In this Subdivision, a member of a regulated superannuation fund has an account that is ***inactive*** in relation to a choice product or a MySuper product for a period if the member has an account that is inactive in relation to the product for the period within the meaning of subsection 68AAA(3) of the SIS Act.

7.9.44B Notices about insurance—inactivity

(1) This regulation is made for the purposes of paragraph 1017DA(1)(a) of the Act.

Application

(2) This regulation applies if:

(a) a member of a regulated superannuation fund holds a choice product or a MySuper product offered by the fund; and

(b) the fund provides a benefit to, or in respect of, the memberunder the product by taking out or maintaining insurance; and

(c) the member has not made an election, under subsection 68AAA(2) of the SIS Act, that the benefit will be provided to, or in respect of, the member under the product by taking out or maintaining insurance even if the member’s account is inactive in relation to the product for a continuous period of 16 months; and

(d) if under the governing rules of the fund the benefit will not be provided to, or in respect of, the member under the product by taking out or maintaining insurance if the member’s account is inactive for a period of less than 16 months—the member has not made an election under the governing rules of the fund that the benefit will be provided in that way even if the member’s account is inactive in relation to the product for that lesser period.

(3) However, this regulation does not apply in relation to:

(a) a defined benefit member; or

(b) an ADF Super member (within the meaning of the *Australian Defence Force Superannuation Act 2015*); or

(c) a person who would be an ADF Super member apart from the fact that the regulated superannuation fund is or was, for the purposes of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*, a chosen fund for contributions for the person’s superannuation by the Commonwealth; or

(d) a member to whom the employer‑sponsor contribution exception applies under section 68AAE of the SIS Act.

Insurance inactivity notices

(4) Each trustee of the regulated superannuation fund must ensure that the member is given an insurance inactivity notice in relation to the benefit for each occasion on which one of the following paragraphs is satisfied:

(a) the member’s account has been continuously inactive in relation to the product under which the benefit is provided for a period and, were the member’s account to continue to be inactive in relation to the product for a further period of 7 months, the fund would cease to provide the benefit by taking out or maintaining insurance either under the governing rules of the fund or because of the application of section 68AAA of the SIS Act;

(b) the member’s account has been continuously inactive in relation to the product under which the benefit is provided for a period and, were the member’s account to continue to be inactive in relation to the product for a further period of 4 months, the fund would cease to provide the benefit by taking out or maintaining insurance either under the governing rules of the fund or because of the application of section 68AAA of the SIS Act;

(c) the member’s account has been continuously inactive in relation to the product under which the benefit is provided for a period and, were the member’s account to continue to be inactive in relation to the product for a further period of 1 month, the fund would cease to provide the benefit by taking out or maintaining insurance either under the governing rules of the fund or because of the application of section 68AAA of the SIS Act.

(5) For the purposes of subregulation (4), an ***insurance inactivity notice*** in relation to the benefit is a notice in writing given to the member:

(a) stating the length of the continuous period for which the member’s account has been inactive in relation to the product under which the benefit is provided; and

(b) explaining that the member’s account will be active in relation to the product if an amount, such as a contribution, is paid into the account; and

(c) stating the date on which, if there is no activity, the benefit will cease to be provided; and

(d) stating:

(i) the amount of insurance fee charged in relation to the product for the fund’s most recent completed year of income; and

(ii) the amount of insurance fee likely to be charged in relation to the product for the fund’s current year of income; and

(e) explaining whether the benefit will cease to be provided:

(i) under the governing rules of the fund; or

(ii) because of the application of section 68AAA of the SIS Act; and

(f) setting out:

(i) whether or not it is possible for the member to elect to continue to be provided the benefit; and

(ii) if it is possible for the member to do so—the method by which the member can make the election.

Time for giving notice

(6) If a trustee of a regulated superannuation fund is required under subregulation (4) to ensure that a member of the fund is given a notice in relation to a benefit provided to the member under a product offered by the fund, the notice must be given:

(a) if paragraph (4)(a) is satisfied—within the period of 2 weeks after the day on which that paragraph is satisfied; and

(b) if paragraph (4)(b) is satisfied—within the period of 2 weeks after the day on which that paragraph is satisfied; and

(c) if paragraph (4)(c) is satisfied—within the period of 2 weeks after the day on which that paragraph is satisfied.

7.9.44C Notices about insurance—right to cease insurance cover

(1) This regulation is made for the purposes of paragraph 1017DA(1)(a) of the Act.

Application

(2) This regulation applies if:

(a) a member of a regulated superannuation fund holds a choice product or a MySuper product offered by the fund; and

(b) the fund provides a benefit to, or in respect of, the memberunder the product by taking out or maintaining insurance; and

(c) either:

(i) the member has made an election, under subsection 68AAA(2) of the SIS Act, that the benefit will be provided to, or in respect of, the member under the product by taking out or maintaining insurance even if the member’s account is inactive in relation to the product for a continuous period of 16 months; or

(ii) if under the governing rules of the fund the benefit will not be provided to, or in respect of, the member under the product by taking out or maintaining insurance if the member’s account is inactive for a period of less than 16 months—the member has made an election under the governing rules of the fund that the benefit will be provided in that way even if the member’s account is inactive in relation to the product for that lesser period.

(3) However, this regulation does not apply in relation to:

(a) a defined benefit member; or

(b) an ADF Super member (within the meaning of the *Australian Defence Force Superannuation Act 2015*); or

(c) a person who would be an ADF Super member apart from the fact that the regulated superannuation fund is or was, for the purposes of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*, a chosen fund for contributions for the person’s superannuation by the Commonwealth; or

(d) a member to whom the employer‑sponsor contribution exception applies under section 68AAE of the SIS Act.

(4) Each trustee of the regulated superannuation fund must ensure that the member is given a notice about rights to cease insurance in relation to the benefit:

(a) within 2 weeks after the day on which the member makes the election mentioned in subparagraph (2)(c)(i) or (ii) in relation to the benefit; and

(b) after the first notice about rights to cease insurance in relation to the benefit is given, at regular intervals of no more than 15 months.

(5) For the purposes of subregulation (4), a ***notice about rights to cease insurance*** in relation to a benefit is a notice in writing given to the member:

(a) explaining that the member has elected for the benefit to continue to be provided:

(i) under the governing rules of the fund; or

(ii) because of the application of section 68AAA of the SIS Act; and

(b) stating the date on which, and the manner in which, the member made that election; and

(c) explaining what the member needs to do if the member wishes to cease to obtain the benefit.

Subdivision 5.9—Information on request: members

7.9.45 Regulated superannuation funds, approved deposit funds and pooled superannuation trusts

(1) This regulation applies in relation to:

(a) a regulated superannuation fund (other than a self managed superannuation fund); and

(b) an approved deposit fund (other than an excluded approved deposit fund); and

(c) a pooled superannuation trust.

(2) For paragraph 1017C(5)(a) of the Act, the following are prescribed documents:

(a) the governing rules of the fund or pooled superannuation trust;

(b) audited accounts of the fund or pooled superannuation trust, together with (whether or not specifically requested) the auditor’s report in relation to the accounts;

(c) for a fund—the most recent actuarial report (as referred to in regulation 9.30 of the SIS Regulations) on the fund, and any subsequent written advice by an actuary to the trustee, to the extent that those documents are relevant to:

(i) the overall financial condition of the fund; or

(ii) the entitlements of a person;

(d) the most recent fund information provided under regulation 7.9.32 to product holders of interests in the fund or the trust.

Note: See also Subdivision 2.4.3 of the SIS Regulations in relation to the calculation of derivatives charge ratio (which relates to fund information referred to in regulation 7.9.37 of this instrument).

7.9.46 RSAs

(1) This regulation applies in relation to an RSA.

(2) For paragraph 1017C(5)(a) of the Act, the terms and conditions of the RSA are a prescribed document.

Subdivision 5.10—Information on request: payments

7.9.47 Modification of Act: charges for information requested

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to a superannuation entity or an RSA provider as set out in Part 11 of Schedule 10A.

Subdivision 5.12—Periodic report when product holder ceases to hold product: superannuation products and RSAs

7.9.49 Application of Subdivision 5.12

For paragraph 1017D(5)(g) of the Act, this Subdivision applies in relation to:

(a) superannuation products; and

(b) RSAs.

7.9.50 Meaning of *exit reporting period*

In this Subdivision, ***exit reporting period***, in relation to a person who ceases to hold a product to which this Subdivision applies, means the reporting period mentioned in paragraph 1017D(2)(d) of the Act.

7.9.51 Time for compliance

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to a fund as set out in Part 12 of Schedule 10A.

7.9.52 General requirement

For paragraph 1020G(2)(b) of the Act, subsections 1017D(2) and (4) of the Act are modified, in its application in relation to a person who ceases to hold a superannuation product or an RSA (other than a product issued by a capital guaranteed fund) by requiring the issuer of the product to give all information to:

(a) if the person is alive—the person; or

(b) if the person is deceased—each person receiving a benefit as a result of the person’s death;

that the trustee reasonably believes such a person would reasonably need for the purpose of understanding his or her investment in the financial product.

7.9.53 Information on death of product holder

For paragraph 1017D(5)(g) of the Act, if a person ceases by death to hold a superannuation product (other than an interest in a pooled superannuation trust) or an RSA, the periodic report given to each person receiving a benefit from the issuer of the product as a result of the person’s death must include:

(a) a statement setting out details (in summary form) of arrangements that the issuer has made to deal with inquiries and information about the dispute resolution system that covers complaints; or

(b) a statement that the details are available on request.

7.9.54 Specific requirements in all cases

For paragraph 1017D(5)(g) of the Act, if a reporting period is the exit reporting period, the issuer of a superannuation product (other than the trustee of a self managed superannuation fund or pooled superannuation trust) must include in the periodic report given to a person who ceases, otherwise than by death to hold the product:

(a) the information mentioned in regulation 7.9.19; and

(b) in relation to a death or disability benefit that ceases or reduces, because the person has ceased to hold the product:

(i) either:

(A) the amount of the death or disability benefit immediately before the person ceased to hold the product or at the end of the last reporting period; or

(B) the method of working out the death or disability benefit; and

(ii) whether a continuation option is available to the person and, if it is, details of the option, a contact person who is available to discuss the option and a telephone number for the contact person.

7.9.55 Specific requirements in particular cases

(1) For paragraph 1017D(5)(g) of the Act, if a reporting period is the exit reporting period, the issuer of a superannuation product (other than the trustee of a self managed superannuation fund or pooled superannuation trust) must include in the periodic report given to a person who ceases, otherwise than by death to hold the product, the information mentioned in regulation 7.9.20.

(2) A nil amount need not be disclosed.

7.9.56 Exceptions to exit reporting period provisions: superannuation products and RSAs

This Subdivision does not apply in relation to a superannuation product holder who has been provided with the relevant information in the circumstances described in Part 13 of Schedule 10A.

7.9.57 Exception—members subject to compulsory protection of small amounts

For paragraph 1017D(5)(g) of the Act, if a protected holder of a superannuation product or RSA ceases to hold the product, a periodic statement must include the following information for the exit reporting period:

(a) the contact details of the product provider;

(b) the amount of the product holder’s withdrawal benefit;

(c) the amount of any deduction, from the product holder’s benefits, in connection with payment of a superannuation contributions surcharge, or an advance instalment of surcharge, during the exit reporting period;

(d) if there is a difference between the amount deducted and the amount assessed under subsection 15(1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, or between the amount deducted and the amount determined under subsection 15(2) of that Act—a statement explaining the difference;

(e) for a superannuation product provided by an unfunded defined benefits fund—details of the surcharge debt account kept by the issuer, under subsection 16(2) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, for the holder including:

(i) the balance of the account at the start of the exit reporting period; and

(ii) the amount debited to the account during the exit reporting period for superannuation contributions surcharge that is assessed, by the Commissioner of Taxation, to be payable on the member’s surchargeable contributions; and

(iii) the amount of interest debited to the account, under subsection 16(4) of that Act, during the exit reporting period; and

(iv) the balance of the account at the end of the exit reporting period.

7.9.58 Information to be given in cases other than death of RSA holder

(1) For paragraph 1017D(5)(g) of the Act, if a reporting period for an RSA is the exit reporting period to which paragraph 1017D(2)(d) of the Act applies for an RSA holder who ceases to be an RSA holder, otherwise than by death:

(a) the RSA provider must give the RSA holder the information mentioned in regulation 7.9.19; and

(b) regulation 7.9.22 does not apply.

(2) A nil amount need not be disclosed.

7.9.59 Information to be given where applicable

(1) For paragraph 1017D(5)(g) of the Act, if a reporting period for an RSA is the exit reporting period to which paragraph 1017D(2)(d) of the Act applies for an RSA holder who ceases to be an RSA holder, otherwise than by death, the RSA provider must give the RSA holder:

(a) the information mentioned in regulation 7.9.26 (other than paragraphs 7.9.26(1)(h), (i), (l) and (m); and

(b) in the case of a death benefit that ceases or reduces, or will cease or reduce, because the person has closed the RSA:

(i) either:

(A) the amount of the death benefit immediately before the person closed the RSA or at the end of the last RSA holder reporting period; or

(B) the method of working out the death benefit; and

(ii) whether a continuation option for insurance cover is available to the person and, if it is, details of the option, a contact person who is available to discuss the option and a telephone number for the contact person.

(2) A nil amount need not be disclosed.

7.9.60 Modification of Act: exceptions to exit reporting period provisions

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to an RSA as set out in Part 13 of Schedule 10A.

Division 5AA—General requirements for financial disclosure

7.9.60A Modification of Act: disclosure

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to the obligation to give information about financial products as set out in Part 14 of Schedule 10A.

7.9.60B Disclosure of transactions in periodic statements

(1) This regulation applies to the following periodic statements:

(a) for a financial product other than a superannuation product, a managed investment product, a foreign passport fund product or an investment life insurance product—a periodic statement in relation to a reporting period commencing on or after 1 July 2005;

(b) for a superannuation product:

(i) if the periodic statement is not an exit statement—a periodic statement in relation to a reporting period commencing on or after 1 July 2005; and

(ii) if the periodic statement is an exit statement—a periodic statement issued on or after 1 July 2006;

(c) for a managed investment product:

(i) if the periodic statement is not an exit statement—a periodic statement in relation to a reporting period commencing on or after 1 July 2006; and

(ii) if the periodic statement is an exit statement—a periodic statement issued on or after 1 July 2007;

(d) for an investment life insurance product:

(i) if the periodic statement is not an exit statement—a periodic statement in relation to a reporting period commencing on or after 1 July 2005; and

(ii) if the periodic statement is an exit statement—a periodic statement issued on or after 1 July 2006.

(2) For paragraph 1017D(5)(c) of the Act, the periodic statement must include a brief description of each transaction in relation to the product during the reporting period.

(3) The amount of a transaction must include, if applicable:

(a) GST; and

(b) stamp duty; and

(c) income tax, after deductions have been taken into account.

(4) The description of a contribution paid into a superannuation account must be sufficient to identify the source of the contribution, if that information has been recorded by the fund.

(5) A transaction (other than a contribution) of the same kind as another transaction may be described with the other transaction in a single item in the periodic statement if:

(a) it is practicable to do so; and

(b) the items are described together on a consistent basis in the periodic statement.

Example: If a member incurs a weekly management cost, the transactions may be grouped consistently on a monthly basis in the member’s periodic statement.

(6) For a superannuation product, a managed investment product, a security in a CCIV or a foreign passport fund product, the only fees and costs that need to be itemised in a periodic statement are the fees and costs shown in the fees and costs template for a Product Disclosure Statement in Part 2 of Schedule 10.

(7) The fees and costs mentioned in subsection (6) must be described using the terms used in the template.

Division 5AB—Short‑Form Product Disclosure Statements

7.9.61AA Modification of the Act: Short‑Form Product Disclosure Statements

Definition of Short‑Form Product Disclosure Statement

(1) For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 9 of the Act were modified by inserting the following definition in the appropriate position:

“***Short‑Form Product Disclosure Statement***, or ***Short‑Form PDS***, means a short‑form Product Disclosure Statement that complies with the requirements of Division 3A of Part 7.9.”

| Column 1 | Column 2 | Column 3 |
| --- | --- | --- |
| Item | Provisions of Act |  |
| 1 | paragraph 951C(1)(c) | Part 7.7 |
| 2 | paragraph 992C(1)(c) | Part 7.8 |
| 3 | paragraph 1020G(1)(c) | Part 7.9 |

Definition of Supplementary Short‑Form Product Disclosure Statement

(2) For the provisions of the Act set out in column 2 of the following table, the Parts of the Act specified in column 3 apply as if section 9 of the Act were modified by inserting the following definition in the appropriate position:

“***Supplementary Short‑Form Product Disclosure Statement***, or ***Supplementary Short‑Form PDS***, has the meaning given by section 1017L.”

|  |  |  |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Item | Provisions of Act |  |
| 1 | paragraph 951C(1)(c) | Part 7.7 |
| 2 | paragraph 992C(1)(c) | Part 7.8 |
| 3 | paragraph 1020G(1)(c) | Part 7.9 |

Further modifications in Schedule 10BA

(3) For paragraph 951C(1)(c) of the Act, Part 7.7 of the Act is modified in its application in relation to Short‑Form Product Disclosure Statements as set out in Schedule 10BA.

(4) For paragraph 992C(1)(c) of the Act, Part 7.8 of the Act is modified in its application to Short‑Form Product Disclosure Statements as set out in Schedule 10BA.

(5) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application to Short‑Form Product Disclosure Statements as set out in Schedule 10BA.

Division 5A—Dealing with money received for financial product before the product is issued

7.9.61A Lost application money

(1) This regulation applies if:

(a) a product provider is not able to return money in compliance with subsection 1017E(4) of the Act; and

(b) the product provider is not able to issue or transfer a financial product to, or in accordance with the instructions of, the person who paid that money in compliance with subsection 1017E(4); and

(c) the money is to be transferred to ASIC to be dealt with under Part 9.7 of the Act.

(2) This regulation also applies if:

(a) money is taken out of an account mentioned in subsection 1017E(2) of the Act by a product provider for the purpose of returning it to the person by whom it was paid in compliance with paragraph 1017E(3)(a); and

(b) the product provider is not able to return the money in compliance with subsection 1017E(4).

(3) For paragraph 1017E(3)(d) of the Act, the situations mentioned in subregulations (1) and (2) are situations in which money may be taken out of an account mentioned in section 1017E.

(4) For paragraph 1017E(4)(c) of the Act, the product provider must, after taking the money out of the account:

(a) transfer the money to ASIC to be dealt with under Part 9.7 of the Act; and

(b) give ASIC any information in the possession of the product provider that could reasonably assist ASIC to assess a claim by a person that the person is entitled to the money.

7.9.61B Issue of substitute insurance product

(1) This regulation applies if:

(a) money is paid to acquire an insurance product (the ***new product***); and

(b) the product provider issues another product (the ***other product***) which is the same as the new product except for the date on which it ceases to have effect; and

(c) the product provider has not issued the new product.

(2) For paragraph 1017E(3)(d) of the Act, the situation mentioned in subregulation (1) is a situation in which money may be taken out of an account mentioned in section 1017E.

(3) For paragraph 1017E(4)(c) of the Act, the product provider must, after taking the money out of the account:

(a) issue the new product before the date on which the other product ceases to have effect; or

(b) return the money to the person by whom it was paid before the date on which the other product ceases to have effect.

7.9.61C Cheques

For paragraph 1020G(1)(c) of the Act, Part 7.9 applies as if section 1017E of the Act were modified by adding, after subsection 1017E(6):

‘(7) For this section, if a payment is made by cheque, the payment is taken to have been paid to, and received by, the product provider when the cheque is honoured.’.

Division 5B—Confirming transactions

7.9.61D Transactions involving superannuation products

(1) For paragraph 1020G(1)(c) of the Act, this regulation applies in relation to the following financial products:

(a) an interest in a regulated superannuation fund that is not a public offer superannuation fund;

(b) an RSA that has been issued to the product holder because of the operation of subsection 52(4) of the RSA Act;

(c) an interest in an eligible rollover fund of which the product holder became a member under section 243 of the SIS Act;

(d) an interest in an eligible rollover fund of which the product holder became a member in the circumstances mentioned in section 89 of the RSA Act;

(e) an interest in a public offer superannuation fund that is not a successor fund if:

(i) the product holder is a standard employer‑sponsored member of the fund; or

(ii) the product holder is a person who became a member of the fund in the circumstances mentioned in regulation 7.9.06B.

(2) Part 7.9 of the Act applies in relation to the financial products as if the following subsection were inserted after subsection 1017F(5A) of the Act:

‘(5B) For a financial product mentioned in regulation 7.9.61D of the *Corporations Regulations 2001*:

(a) subsection (5A) does not apply if the responsible person in relation to a transaction involving the financial product provides the holder of the financial product with a facility that is able to be accessed by the holder:

(i) by phone; or

(ii) by writing; or

(iii) by another method that the responsible person knows, or reasonably believes, that the product holder is able to use; and

(b) confirmation may be provided by means of the facility mentioned in paragraph (a).’.

(3) Part 7.9 of the Act applies in relation to the financial products as if paragraph 1017F(6)(a) of the Act were replaced by the following paragraph:

‘(a) must be:

(i) by telephone; or

(ii) by writing; or

(iii) by another method that the responsible person knows, or reasonably believes, that the product holder is able to use; and’.

Division 5C—CGS depository interests

7.9.61E Meaning of *CGS depository interest information website*

For the purposes of the definition of ***CGS depository interest information website*** in subsection 1020AH(1) of the Act, the website prescribed is www.australiangovernmentbonds.gov.au.

Division 6—Confirmation of transactions

7.9.62 Confirmation of transactions not required

(1) For paragraph 1017F(4)(e) of the Act, a transaction is not required to be confirmed by the trustee of a superannuation fund, an approved deposit fund or pooled superannuation trust if:

(a) the transaction relates to the termination of a superannuation product; and

(b) the trustee has provided information in accordance with section 1017D of the Act and Subdivision 5.12 of these Regulations about having left the superannuation fund, approved deposit fund or pooled superannuation trust.

(1A) For paragraph 1017F(4)(e) of the Act, a transaction is not required to be confirmed by the trustee of a superannuation fund if the transaction relates to a superannuation product provided by a self managed superannuation fund.

(2) For paragraph 1017F(4)(e) of the Act, a transaction is not required to be confirmed to the product holder by an RSA provider if:

(a) the transaction relates to an RSA; and

(b) the trustee has provided information in accordance with section 1017D of the Act and Subdivision 5.12 of these Regulations about closing the RSA.

(3) For paragraph 1017F(4)(e) of the Act, the following transactions in relation to a financial product are not required to be confirmed:

(a) debiting for fees, taxes or charges in respect of the financial product or other transactions involving the financial product;

(b) debiting for charges or duties on deposits into, or withdrawals from, the financial product that are payable under a law of the Commonwealth or of a State or Territory;

(c) debiting an amount from a basic deposit product if:

(i) the holder of the product has been given a periodic statement under section 1017D of the Act not later than 6 months after the transaction occurs; and

(ii) the periodic statement contains the information about the transaction that is required by that section;

(d) crediting an amount to a basic deposit product if:

(i) the holder of the product has been given a periodic statement under section 1017D of the Act not later than 6 months after the transaction occurs; and

(ii) the periodic statement contains the information about the transaction that is required by that section.

(4) For paragraph 1017F(4)(e) of the Act, the following transactions in relation to a financial product are not required to be confirmed:

(a) a transaction that is required or authorised by a law of the Commonwealth or of a State or Territory;

(b) a transaction:

(i) consisting solely of an additional contribution towards the financial product; and

(ii) in relation to which the holder has agreed to the timing and amount, or method of calculating the amount, of the additional contribution;

(c) a transaction:

(i) consisting solely of a withdrawal from the financial product; and

(ii) in relation to which the holder has agreed to the timing and amount, or method of calculating the amount, of the withdrawal;

(d) a transaction:

(i) consisting solely of the acquisition of managed investment products; and

(ii) in relation to which the holder has agreed to the timing and amount, or method of calculating the amount, of the acquisition; and

(iii) in relation to which the holder of the managed investment products, before agreeing to the acquisition, already held or had agreed to acquire managed investment products that were interests in the same registered scheme as the managed investment products that are to be acquired under the agreement;

(da) a transaction:

(i) consisting solely of the acquisition of foreign passport fund products; and

(ii) in relation to which the holder has agreed to the timing and amount, or method of calculating the amount, of the acquisition; and

(iii) in relation to which the holder of the foreign passport fund products, before agreeing to the acquisition, already held or had agreed to acquire foreign passport fund products that were interests in the same notified foreign passport fund as the foreign passport fund products that are to be acquired under the agreement;

(e) a transaction that relates to:

(i) a superannuation product or an RSA; and

(ii) a superannuation surcharge liability for a product holder arising under section 10 of the *Superannuation Contribution Tax (Assessment and Collections) Act 1997*;

(g) a transaction consisting of:

(i) the generating by a financial product of a financial return or other benefit for the holder of the product; or

(ii) the payment to that holder of that return or other benefit, if the holder has agreed to the method by which the payment will be made; or

(iii) crediting negative interest to a member’s notional account in a superannuation fund, approved deposit fund or pooled superannuation trust account;

(h) a transaction that relates to:

(i) a superannuation product or an RSA; and

(ii) a Government co‑contribution arising under section 6 of the *Superannuation (Government Co‑contribution for Low Income Earners) Act 2003*.

(5) For paragraph 1017F(4)(e) of the Act, a transaction in relation to a financial product is not required to be confirmed if:

(a) the transaction is debiting an amount from a basic deposit product in the circumstances in paragraph (3)(c); and

(b) the transaction involves the use of a facility for making non‑cash payments that is linked to the basic deposit product; and

(c) the amount is debited from the basic deposit product for the purpose of making a payment.

(6) For paragraph 1017F(4)(e) of the Act, a transaction in relation to a financial product is not required to be confirmed if:

(a) the transaction is crediting an amount to a credit facility; and

(b) the transaction involves the use of a facility for making non‑cash payments that is linked to the credit facility; and

(c) the amount is credited to the credit facility for the purpose of making a payment.

7.9.63 Confirmation of transactions: precise costs of transaction not known

(1) For subparagraph 1017F(8)(c)(iii) of the Act, the confirmation of a transaction of a financial product is not required to include details of the amount payable by the holder of the financial product if the amount is not known at the time of the confirmation.

(2) For subparagraph 1017F(8)(c)(iv) of the Act, the confirmation of a transaction of a financial product is not required to give details of the taxes and stamp duties payable in relation to the transaction if the amount of the taxes and stamp duties is not known at the time of the confirmation.

(3) For paragraph 1017F(9)(c) of the Act, section 1017F of the Act is modified in relation to its application to a transaction of a financial product as set out in Part 15 of Schedule 10A.

7.9.63A Persons who must confirm transactions

(1) For paragraph 1017F(9)(a) of the Act, this regulation modifies subsection 1017F(2) of the Act to change the person required to provide confirmation of a transaction.

(2) A transaction:

(a) that is not the issue of a financial product (other than a derivative that is not a warrant); and

(b) in which a financial services licensee deals in the financial product on behalf of the holder of the financial product; and

(c) by which the holder acquires or disposes of all or part of the financial product;

must be confirmed by the financial services licensee.

(3) A transaction:

(a) to which subregulation (2) does not apply; and

(b) by which a financial product is issued to a holder;

must be confirmed by the issuer of the financial product.

(4) A transaction:

(a) that is a sale pursuant to an offer to which section 1012C of the Act applies; and

(b) to which subregulation (2) does not apply; and

(c) by which a holder acquires a financial product;

must be confirmed by the seller of the financial product.

(5) A transaction:

(a) to which subregulation (2) does not apply; and

(b) by which the holder of the financial product disposes of all or part of the financial product to the issuer of the financial product;

must be confirmed by the issuer of the financial product.

(6) A transaction that:

(a) relates to a financial product held by a particular holder; and

(b) occurs while that holder holds the financial product; and

(c) is not the acquisition or a disposal of all or part of the financial product;

must be confirmed by the issuer of the financial product.

7.9.63B Content of confirmation of transactions—general

(1) For paragraph 1017F(8)(d) of the Act, this regulation applies in relation to a transaction that is the acquisition or disposal of a financial product.

(2) The confirmation of the transaction must identify:

(a) the financial product; and

(b) the number or amount of financial products that are the subject of the transaction.

(3) If the transaction takes place in the ordinary course of business on a licensed market, the confirmation of the transaction must also identify each licensed market of which the responsible person is a participant.

(4) If the responsible person is dealing on their own behalf with a person who is not a financial services licensee, the confirmation of the transaction must also state that the responsible person is dealing in that way.

(5) Subregulation (4) does not apply if:

(a) the transaction is the issue of a product; and

(b) the responsible person is the product issuer.

(6) If:

(a) the financial product is able to be traded on a market in which the responsible person is a participant; and

(b) the transaction did not take place in the ordinary course of business on a licensed market in which the responsible person is a participant;

the confirmation of the transaction must also include a statement to that effect.

(7) If the transaction took place on‑market, the confirmation of the transaction must also include the name by which that market is generally known.

(8) If the transaction involves more than one financial product, the confirmation of the transaction must also include the price per unit of the financial products.

(9) For paragraph 1017F(9)(c) of the Act, paragraph 1017F(8)(a) of the Act is modified in its application to a transaction involving a basic deposit product (other than an acquisition or disposal of the product) by omitting ‘and the holder’.

7.9.63C Confirmation of transaction—multiple transactions

(1) For paragraph 1017F(9)(b) of the Act, subregulation (2) applies in relation to a transaction if:

(a) the responsible person is a participant of a licensed market; and

(b) the participant has complied with all of the participant’s obligations in relation to the transaction under the market integrity rules and the operating rules of the licensed market; and

(c) the transaction forms part of a series of transactions made to complete an order placed with a financial services licensee; and

(d) the holder of the product has given to the financial services licensee, in relation to that order or all orders (or all orders included in a class in which that order is included) placed with the financial services licensee by the holder, prior authorisation to give to the client a single confirmation in respect of a series of transactions carried out under the order instead of an individual confirmation in respect of each transaction in the series.

(2) Subsection 1017F(5) of the Act is taken to be satisfied if, in respect of the transaction:

(a) the financial services licensee gives to the holder a single confirmation in respect of the series of transactions in which the transaction is included that:

(i) is in accordance with the authorisation; and

(ii) subject to subregulation (4), complies with the Act; and

(b) the confirmation is given:

(i) as soon as practicable; or

(ii) otherwise as permitted by the market integrity rules or the operating rules of that licensed market.

(3) For paragraph 1017F(9)(c) of the Act, subregulation (4) applies in relation to a transaction if:

(a) the responsible person is a participant of a licensed market; and

(b) the participant has complied with all of the participant’s obligations in relation to the transaction under the market integrity rules and the operating rules of the licensed market; and

(c) the transaction forms part of a series of transactions made to complete an order placed with a financial services licensee; and

(d) the holder of the product has given to the financial services licensee, in relation to that order or all orders (or all orders included in a class in which that order is included) placed with the financial services licensee by the holder, prior authorisation to give to the client a single confirmation in respect of the series of transactions that specifies the average price per unit of financial products acquired or disposed of in the series of transactions, instead of an individual confirmation in respect of each transaction in the series, that specifies the price per unit of the financial products acquired or disposed of in the transaction to which each confirmation relates.

(4) Subregulation 7.9.63B(7) is taken to be satisfied if, in respect of the transaction:

(a) the financial services licensee gives the confirmation to the holder in accordance with the authorisation; and

(b) unless otherwise provided by the market integrity rules or the operating rules of the licensed market, the financial services licensee, if requested to do so by the client, also gives to the holder a document that specifies the price per unit of the financial products sold or bought in each transaction in the series.

(5) For this regulation, an authorisation given by a person to a financial services licensee:

(a) must be given orally, or in writing, by the person; and

(b) is effective until it is revoked, either orally or in writing, by the person.

(6) If a person gives an oral authorisation to a financial services licensee, or revokes an authorisation orally, the financial services licensee must:

(a) make a written record of the authorisation or revocation; and

(b) send a copy of the written record to the person.

(7) In this regulation:

***order*** means an instruction, or a series of instructions, to acquire or dispose of financial products.

7.9.63D Confirmation of transaction—information about cooling‑off period

(1) For paragraph 1017F(8)(d) of the Act, this regulation applies in relation to a transaction:

(a) that is the acquisition of a financial product to which:

(i) regulation 7.9.14, 7.9.66 or 7.9.68 applies; and

(ii) to which regulation 7.9.64 does not apply; or

(b) relating to an RSA to which subsection 1012I(2) of the Act applies, other than:

(i) an acquisition to which subsection 52(5) of the RSA Act applies; or

(ii) a transaction in which the product holder disposes of the holder’s interest in the product before the time that confirmation of the acquisition is required under section 1017F of the Act.

(2) The confirmation of the transaction must identify information about any cooling‑off regime that applies in respect of acquisitions of the product (whether the regime is provided for by a law or otherwise).

7.9.63E Confirmation of transaction—facility that provides written confirmation

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies to all financial products and transactions as if subsection 1017F(5) of the Act were modified by omitting:

‘An arrangement under which the holder may request or require another person to provide a confirmation does not count as a facility that satisfies paragraph (b).’

and inserting:

‘An arrangement under which the holder may request or require another person (other than the responsible person or a person acting on behalf of the responsible person) to provide a confirmation does not count as a facility that satisfies paragraph (b).’.

7.9.63F Confirmation of transaction—acquisition of financial product

(1) For subparagraph 1017F(8)(c)(iii) of the Act, this regulation applies in relation to the confirmation of a transaction that is the acquisition of a financial product.

(2) The details of the transaction relating to the amount paid or payable by the holder in relation to the transaction need include only the amount the holder is required to pay to acquire the product.

7.9.63G Confirmation of transaction—disposal of financial product

(1) For paragraph 1017F(8)(d) of the Act, this regulation applies in relation to the confirmation of a transaction that is the disposal of a financial product.

(2) The confirmation must include the amount paid or payable to the holder as a result of the disposal.

7.9.63H Certain product issuers and regulated persons must meet appropriate dispute resolution requirements—self managed superannuation funds

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies in relation to a self managed superannuation fund as if section 1017G of the Act were omitted.

7.9.63I Confirmation of transaction in electronic form

(1) For subparagraph 1017F(6)(a)(ii) of the Act, a confirmation of a transaction that is to be given in electronic form must, as far as practicable, be presented in a way that will allow the person to whom it is given to keep a copy of it so that the person can have ready access to it in the future.

(2) A confirmation of a transaction that is to be given in electronic form must be presented in a way that clearly identifies the information that is part of the confirmation.

Division 7—Cooling‑off periods

7.9.64 Cooling‑off periods not to apply

(1) For paragraph 1019A(2)(a) of the Act, the following subclasses of financial products are excluded from paragraph 1019A(1)(a) of the Act:

(a) a financial product offered or issued under a distribution reinvestment plan or switching facility;

(b) a financial product the acquisition of which is an additional contribution made under an existing agreement or contract;

(c) a financial product issued as consideration for an offer made under a takeover bid under Chapter 6 of the Act;

(d) an interim contract of insurance within the meaning of subsection 11(2) of the *Insurance Contracts Act 1984*;

(e) a managed investment product if, at the time the product is issued, the managed investment scheme to which the product relates is not liquid (or if the scheme is not a registered scheme at that time, would not be liquid if the scheme was a registered scheme at that time);

(ea) a security in a CCIV if, at the time the security is issued, section 1230H of the Act (about when a sub‑fund is liquid) applies to the sub‑fund of the CCIV to which the security is referable;

(f) a superannuation product that is issued in relation to a superannuation entity that is not a public offer superannuation entity, other than;

(i) a superannuation product taken to be issued because of regulation 7.1.04E; or

(ii) an annuity or pension taken to be issued because of subregulation 7.9.02(4);

(fa) a superannuation product that is issued in relation to:

(i) a public offer superannuation entity mentioned in paragraph 7.6.01(1)(b), (c) or (d); or

(ii) a public offer superannuation entity that is a successor fund in relation to the transfer of benefits to that fund; or

(iii) a public offer superannuation entity that is an eligible rollover fund and in relation to which the superannuation product is issued pursuant to Part 24 of the SIS Act or Part 9 of the RSA Act;

(fb) a superannuation product that is a pension issued by a superannuation fund the rules of which do not allow a member to receive accumulated benefits in a form other than a pension from that fund;

(g) a risk insurance product that is:

(i) of less than 12 months duration; and

(ii) a renewal of an existing product on the terms and conditions to which the product is currently subject;

(h) a managed investment product in relation to which subsection 1016D(1) of the Act applies;

(ha) a foreign passport fund product in relation to which subsection 1016D(1) of the Act applies;

(hb) a security in a CCIV in relation to which subsection 1016D(1) of the Act applies;

(i) a managed investment product:

(i) to which Chapter 6D of the old Corporations Act applied; and

(ii) that was listed before the FSR commencement.

(2) For paragraph 1020G(1)(a) of the Act, a reference in paragraph 1019A(3)(a) of the Act to a client does not include a person who holds a superannuation product as a standard employer‑sponsor member.

7.9.64A Notification of exercise of right of return—risk insurance products

For paragraph 1019B(2)(c) of the Act, a right of return may be exercised in relation to a risk insurance product by notifying the responsible person in a way permitted by the responsible person.

7.9.65 Return of financial product: general

(1) For subsection 1019B(5A) of the Act, the right to return the risk insurance product for an event that will start and end within the 14 day period mentioned in subsection 1019B(3) of the Act (and to have money paid to acquire the risk insurance product repaid) cannot be exercised at any time after the end of the period starting when the risk insurance product was provided and ending on the earlier of:

(a) the 14‑day period mentioned in subsection 1019B(3) of the Act; and

(b) the start of the event.

Example: Short‑term travel insurance.

(1A) For subsection 1019B(5A) of the Act, if:

(a) a person acquires an interest in a managed investment scheme; and

(b) the interest is a managed investment product or a foreign passport fund product; and

(c) the person acquires one or more other interests in that managed investment scheme in the course of the same transaction;

the person cannot exercise a right to return the product otherwise than by returning all of those interests.

Note: For the purposes of the Act and these Regulations, managed investment schemes include notified foreign passport funds: see section 1213E of the Act.

(2) In this regulation:

***event*** means the commencement of the process in relation to which the risk insurance product was entered into.

Examples:

1 For insurance on household goods during removal, the commencement of loading a transportation vehicle is the event.

2 For travel insurance, the commencement of the journey is the event.

7.9.66 Return of financial product: superannuation and RSAs

(2) For subsection 1019B(2) of the Act, it is a requirement of the exercise of the right to return a superannuation product or RSA that, if the money to be repaid includes:

(a) restricted non‑preserved benefits within the meaning of the SIS Regulations; or

(b) preserved benefits within the meaning of the SIS Regulations;

the holder of the product must nominate a superannuation entity or RSA into which the money representing restricted non‑preserved benefits or preserved benefits is to be repaid.

(3) The right of return is taken to have been exercised only on receipt by the responsible person of the nomination.

(4) The holder must make the nomination not later than 1 month after notifying the responsible person of the right to exercise the right of return.

(5) The holder must notify the responsible person in writing or by electronic means.

(6) For subsection 1019B(7) of the Act, if:

(a) a holder nominates a superannuation entity or RSA; and

(b) the superannuation entity or RSA does not accept the nomination;

the responsible person may rollover or transfer the holder’s benefits to an eligible rollover fund.

(7) For subsection 1019B(7) of the Act, if the right of return is exercised, the responsible person must return the money as directed.

7.9.67 Variation of amount to be repaid

(1) For subsection 1019B(8) of the Act, the amount to be repaid on an exercise of the right to return a financial product is to be varied in accordance with this regulation.

Investment‑linked product

(2) If:

(a) the financial product is:

(i) an investment‑linked product within the meaning of the *Insurance Contracts Act 1984*; or

(ii) a managed investment product; or

(iia) a foreign passport fund product; or

(iib) a security in a CCIV; or

(iii) a superannuation product (subject to the governing rules of the issuer of the superannuation product relevant to the redemption of superannuation interests); and

(b) on the day on which the responsible person receives notification from the product holder exercising the holder’s right to return, the amount that would have been the price at which the product was acquired (the ***allocation price***) if the product had been acquired on that day is less than the allocation price on the day on which the product was acquired;

the amount that would otherwise be repaid may be reduced by the adjustment amount.

(3) If:

(a) the financial product is:

(i) an investment‑linked product within the meaning given by the *Insurance Contracts Act 1984*; or

(ii) a managed investment product; or

(iia) a foreign passport fund product; or

(iib) a security in a CCIV; or

(iii) a superannuation product; and

(b) on the day on which the responsible person receives notification from the product holder exercising the holder’s right to return, the amount that would have been the price at which the product was acquired (the ***allocation price***) if the product had been acquired on that day is greater than the allocation price on the day on which the product was acquired;

the amount that would otherwise be repaid is increased by the adjustment amount.

(4) For subregulations (2) and (3), the ***adjustment amount*** is the difference between:

(a) the price at which the product was acquired; and

(b) the price at which the product could be acquired on the day on which the responsible person receives notification from the product holder exercising the holder’s right to return.

(5) If the price referred to in paragraph (4)(b) is not determined under the relevant contract or legal relationship on the day on which the responsible person receives notification from the product holder exercising the holder’s right to return, the amount to be repaid and the adjustment amount is to be determined:

(a) on the basis of the most recent day on which a price was calculated under the contract or legal relationship; or

(b) if there is no day of that kind, as soon as practicable after the product issuer receives the notification.

Tax

(6) If:

(a) tax or duty of any kind has been paid, or is payable, by the responsible person because of the issue of the financial product; and

(b) either:

(i) if the tax or duty has been paid, the responsible person is unable to obtain a refund of the tax or duty; or

(ii) if the tax or duty has not been paid, the tax or duty does not cease to be payable as a result of the exercise of the right to return the financial product;

the amount that would otherwise be repaid is reduced by the amount of the tax or duty.

Certain financial products

(7) The amount that would otherwise be repaid in relation to the return of a financial product (other than an RSA) may be reduced to account for reasonable administrative and transaction costs (other than the payment of commissions or similar benefits) incurred by the responsible person that:

(a) are reasonably related to the acquisition of the financial product and the subsequent termination of the contract or legal relationship; and

(b) do not exceed the true cost of an arms’ length transaction.

Financial product issued for specific period

(8) If:

(a) the financial product is:

(i) a risk insurance product; or

(ii) that part of a financial product that is a risk insurance product; and

(b) either:

(i) the financial product has been issued for a specific period; or

(ii) the premium for the financial product has been paid in relation to cover for a specific period; and

(c) a proportion of that period has already passed when the right to return the risk insurance product is exercised;

the amount that would otherwise be repaid may be reduced by a proportion equal to the proportion of the period that has passed.

General

(9) If the financial product is subject to a distribution to which subregulation 7.9.70(2) applies, the amount that would otherwise be repaid may be reduced by the amount of that distribution.

7.9.68 Modification of section 1019B of the Act: client includes standard employer‑sponsor

(1) For paragraph 1020G(1)(c) of the Act, subsection 1019A(1) and paragraph 1019A(3)(a) of the Act are modified so that a reference in those provisions to a client includes a standard employer‑sponsor in respect of the issue of a superannuation product to an employee of the standard employer‑sponsor as a standard employer‑sponsored member in accordance with subparagraph 1016A(2)(b)(iii) of the Act.

(2) For paragraph 1020G(1)(c) of the Act, subsection 1019B(1) of the Act is modified in its application to the issue of a superannuation product mentioned in subregulation (1) as if a reference in subsection 1019B(1) to money paid to acquire a financial product were a reference to all monies paid in relation to the superannuation product.

(3) For subsection 1019B(2) of the Act, it is a requirement of the exercise of the right to return a superannuation product mentioned in subregulation (1) that, if the monies to be repaid include employer contributions (whether or not they are mandated employer contributions), the standard employer‑sponsor must nominate a superannuation fund, approved deposit fund or RSA into which the employer contributions are to be repaid.

(4) The right of return is taken to have been exercised only on receipt by the responsible person of the nomination.

(5) The standard employer‑sponsor must make the nomination not later than 1 month after notifying the responsible person of the right to exercise the right of return.

(6) The standard employer‑sponsor must notify the responsible person in writing or by electronic means.

(7) For subsection 1019B(7) of the Act, if the right of return is exercised by a standard employer‑sponsor under this regulation, the responsible person must return the money as directed.

(8) For subsection 1019B(7) of the Act, if the right of return is exercised by a standard employer‑sponsor under this regulation, and if the monies to be repaid include monies paid in relation to the superannuation product by the standard employer‑sponsored member (including monies rolled over or transferred from another superannuation entity or RSA) (the ***relevant monies***) the relevant monies are to be paid by the responsible person:

(a) in respect of benefits defined under the SIS Regulations as a restricted non‑preserved benefits or preserved benefits (***restricted monies***)—to a superannuation entity or RSA as directed by the standard employer‑sponsored member; or

(b) in respect of any other relevant monies paid by the standard employer‑sponsored member—as directed by the standard employer‑sponsored member.

(9) For subsection 1019B(7) of the Act, if:

(a) a financial product mentioned in this regulation is subject to the nomination of a further superannuation entity or RSA; and

(b) the application in relation to the issue of a financial product is not accepted by the nominated superannuation entity or RSA;

the responsible person may rollover or transfer the holder’s benefits to an eligible rollover fund.

7.9.69 Modification of provisions of Division 5 of Part 7.9 of the Act: terms of contract

(1) For paragraph 1020G(2)(a) of the Act, this regulation applies in relation to the following financial products:

(a) an investment‑linked product within the meaning of the *Insurance Contracts Act 1984*;

(b) a managed investment product;

(ba) a foreign passport fund product;

(c) a superannuation product;

(d) a security in a CCIV.

(2) Division 5 of Part 7.9 of the Act is modified to the extent necessary to provide that a contract or legal relationship governing the issue and redemption of the financial product is taken to include a provision that:

(a) a product holder may have the right to return a financial product under the Act; and

(b) the product issuer does not contravene any terms of the contract or legal relationship by complying with a request to return a financial product made in accordance with the Act; and

(c) the amount to be repaid following the exercise of the right to return a financial product is the amount calculated in accordance with the Act.

(3) Division 5 of Part 7.9 of the Act, and the regulations made for, or relating to, provisions of that Division, are also modified to the extent necessary to give effect to the modification set out in subregulation (2).

7.9.70 Modification of provisions of Division 5 of Part 7.9 of the Act: distributions

(1) For paragraph 1020G(2)(a) of the Act, this regulation applies in relation to the holder of:

(a) an investment‑linked product within the meaning of the *Insurance Contracts Act 1984*; or

(b) a managed investment product; or

(ba) a foreign passport fund product; or

(c) a superannuation product; or

(d) a security in a CCIV.

(2) A reference in paragraph 1019B(5)(a) of the Act to a right or power does not include the making of a distribution to the holder.

Division 8—Other requirements

7.9.71 Modification of section 1017D of the Act: use of more than 1 document

For paragraph 1020G(1)(c) of the Act, section 1017D of the Act is modified:

(a) so that a reference in those sections to a periodic statement includes 2 or more documents that include all of the information required by those sections; and

(b) as if subsections 1013L(1), (2), (3), (5) and (7) of the Act were included in that section, and referred to a periodic statement instead of a Product Disclosure Statement.

7.9.71A Periodic statements—exemption for passbook accounts

For paragraph 1020G(1)(b) of the Act, a basic deposit product (***an account***) for which the holder of the product is provided with, and keeps, a document commonly referred to as a ‘passbook’ is exempt from section 1017D of the Act if, under the terms of the operation of the account:

(a) the client has a right to a reasonable opportunity to present the passbook to the issuer; and

(b) the issuer enters particulars of each transaction involving the account including the amount of the transaction and the current balance of the account; and

(c) there is no fee associated with the passbook or the entry of particulars into the passbook.

7.9.72 Modification of section 1017D of the Act: information already given

For paragraph 1020G(1)(c) of the Act section 1017D of the Act is modified so that if:

(a) a financial product is a superannuation product or an RSA; and

(b) the issuer has provided information in accordance with Subdivisions 5.2 and 5.3; and

(c) that information has also been provided in accordance with subsection 1017D(5A) of the Act;

paragraphs 1017D(5)(a), (b), (d) and (e) are omitted.

7.9.73 Reporting periods: general

For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act is modified in its application in relation to financial products as set out in Part 16 of Schedule 10A.

7.9.74 Form of application

(1) For paragraph (c) of the definition of ***eligible application*** in subsection 1016A(1) of the Act, an application form for a financial product, for use by a client, that is attached to, accompanying or derived from a Product Disclosure Statement must require the following information:

(a) the applicant’s name;

(b) the applicant’s date of birth;

(c) the applicant’s address.

(2) An application form for a financial product, for use by an employer that is applying as a prospective standard employer‑sponsor, that is attached to, accompanying or derived from a Product Disclosure Statement must require the employer’s name and address.

7.9.74A Periodic statements—requirement to state information as amounts in dollars

(1) For paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if subsection 1017D(5A) were modified to read as follows:

‘(5A) Unless in accordance with the regulations and a determination by ASIC:

(a) information to be disclosed in accordance with paragraphs (5)(a), (b), (c), (d) and (e) must be stated as amounts in dollars; and

(b) any other information in relation to amounts paid by the holder of the financial product during the period must be stated as amounts in dollars.’.

(2) For paragraph 1020G(1)(a) of the Act, the issuer of a financial product does not have to provide the information mentioned in subsection 1017D(5A) of the Act in the form required by that subsection, in a periodic statement prepared before 1 January 2005.

(3) For subsection 1017D(5A) of the Act, as modified in accordance with subregulation (1), if ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state information to be disclosed in accordance with paragraphs 1017D(5)(a), (b), (c), (d) and (e) of the Act as an amount in dollars:

(a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or

(b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or

(c) would not be in the interests of a client, or a class of clients;

the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(4) For subsection 1017D(5A) of the Act, as modified in accordance with subregulation (1), if ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state information to be disclosed in accordance with paragraphs 1017D(5)(a), (b), (c), (d) and (e) of the Act as an amount in dollars, or to describe the amount as a percentage:

(a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or

(b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or

(c) would not be in the interests of a client, or a class of clients;

the information may be set out as a description of the method of calculating the charge or benefit (including worked dollar examples, unless that is inappropriate).

(5) A determination under subregulation (3) or (4) must be:

(a) in writing; and

(b) published in the *Gazette*.

7.9.75 Content of periodic statements: costs of transactions

(1) For paragraph 1017D(5)(g) of the Act, the prescribed details in relation to a financial product include:

(a) the amounts paid by the holder of the financial product in respect of the financial product during the period; and

(b) if the amounts paid in respect of the financial product, and the amounts paid in respect of other financial products, are paid into a common fund, and amounts are deducted from the common fund by way of expenses, fees and charges:

(i) a proportion of the amount deducted that is actually or notionally attributable to the product holder’s interest; and

(ii) if applicable—a statement informing the product holder that the notional proportion of the amount may not give an accurate estimate of the effect of the deduction on the product holder’s interest; and

(c) a statement informing the product holder:

(i) that there is a dispute resolution mechanism that covers complaints by holders of the product; and

(ii) of the means by which a product holder is able to gain access to that mechanism; and

(d) a statement that further information in relation to the financial product is available on request, and the means by which the product holder can gain access to that information; and

(e) in relation to a superannuation product (other than a self managed superannuation fund), a managed investment product or a foreign passport fund product—the details set out in Part 3 of Schedule 10.

(1A) However, for a periodic statement mentioned in an item of the table that is issued for the financial product mentioned in the item, and issued at a time described in the item, the prescribed details set out in paragraph (1)(b) are not required to be included if the statement includes, or is accompanied by, statements to the effect that:

(a) amounts for fees, expenses or charges have been deducted from a common fund to which the product relates in relation to the reporting period; and

(b) those deductions are borne indirectly by the holders of the product, and may affect the return to the holders; and

(c) further information about the deductions can be obtained by contacting the issuer of the product.

| Item | Kind of statement | Product | Statement issued |
| --- | --- | --- | --- |
| 1 | Periodic statement other than exit statement | Superannuation product to which Division 4C of this Part applies | in relation to a reporting period commencing before 1 July 2005 |
| 2 | Exit statement | Superannuation product to which Division 4C of this Part applies | before 1 July 2006 |
| 3 | Periodic statement other than exit statement | Financial product other than superannuation product to which Division 4C of this Part applies | in relation to a reporting period commencing before 1 July 2006 |
| 4 | Exit statement | Financial product other than superannuation product to which Division 4C of this Part applies | before 1 July 2007 |

(2) For paragraph (1)(a), an amount has been paid in respect of a financial product if:

(a) the product holder has paid an amount in respect of the product; or

(b) an amount has been deducted from:

(i) a payment made by the product holder; or

(ii) a payment made to the product holder; or

(c) the product holder has paid an amount or an amount has been deducted or debited as a fee, expense or charge in relation to the financial product; or

(d) an amount is held on the product holder’s behalf under the financial product (excluding any amounts referred to in paragraph (1)(b) deducted from a common fund).

(3) For paragraph 1017D(5A)(a) of the Act, subregulations (4) and (5) apply in relation to a financial product that has:

(a) an opening or closing balance mentioned in paragraph 1017D(5)(a) of the Act; or

(b) the termination value mentioned in paragraph 1017D(5)(b) of the Act; or

(c) an increase in contributions mentioned in paragraph 1017D(5)(d) of the Act; or

(d) a return on investment mentioned in paragraph 1017D(5)(e) of the Act.

(4) If ASIC determines that, for a compelling reason, it is not possible to state the amount in dollars, the amount may be described as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(5) If ASIC determines that, for a compelling reason, it is not possible to state the amount in dollars, or to describe the amount as a percentage, the periodic statement must include:

(a) a statement informing the holder of the product that the amount is applicable; and

(b) details of the means by which a product holder is able to gain access to information relating to the amount.

(6) A determination under subregulation (4) or (5) must be:

(a) in writing; and

(b) published in the *Gazette*.

7.9.75A Ways of giving information

(1) For paragraph 1017B(3)(c) of the Act, the following are ways in which a responsible person may notify a holder:

(a) notifying the holder in any way agreed to by the holder;

(b) notifying the holder’s agent in any way agreed to by the agent.

(2) For paragraph 1017D(6)(c) of the Act, the following are ways of giving a periodic statement to a holder:

(a) making the periodic statement available to the holder in any way agreed to by the holder;

(b) making the periodic statement available to the holder’s agent in any way agreed to by the agent.

(3) For paragraph 1017DA(2)(c) of the Act, the following are ways in which information mentioned in subsection 1017DA(1) of the Act may be provided to a person:

(a) in writing;

(b) electronically;

(c) providing the information to the person in any way agreed to by the person;

(d) making the information available to the person’s agent in any way agreed to by the agent;

(e) making the information publicly available on the superannuation entity’s website.

(4) If a provision of the Act or these Regulations imposes additional requirements in relation to a matter in subregulation (1), (2) or (3), the ways of notifying a holder, giving a periodic statement and providing information are subject to the requirements.

Note: Regulation 7.9.75B is an example of an additional requirement.

(5) For this regulation, a notification, a periodic statement or information may be given or sent to a person’s agent only if the agent is not acting as the person’s agent in one of the capacities mentioned in subsection 1015C(3) of the Act.

7.9.75B Information in electronic form

(1) For:

(a) paragraph 1017B(3)(b) of the Act; and

(b) paragraph 1017D(6)(b) of the Act; and

(c) paragraph 1017DA(2)(c) of the Act;

a notification, statement or information that is to be given in electronic form must, as far as practicable, be presented in a way that will allow the person to whom it is given to keep a copy of it so that the person can have ready access to it in the future.

(2) A notification or statement that is to be given in electronic form must be presented in a way that clearly identifies the information that is part of the notification or statement.

7.9.75C Periodic statements—disclosure of amounts

(1) For paragraph 1017D(5A)(b) of the Act, this regulation applies to a periodic statement prepared on or after 1 January 2005 in relation to an amount mentioned in paragraph 7.9.75(1)(a) or (b) of these Regulations.

(2) If ASIC determines that, for a compelling reason, it is not possible to state the amount in dollars the amount may be described as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(3) If ASIC determines that, for a compelling reason, it is not possible to state the amount in dollars, or to describe the amount as a percentage, the periodic statement must include:

(a) a statement informing the holder of the product that the amount is applicable; and

(b) details of the means by which a product holder is able to gain access to information relating to the amount.

(4) A determination under subregulation (2) or (3) must be:

(a) in writing; and

(b) published in the *Gazette*.

7.9.75D Periodic statements—disclosure of amounts

(1) For paragraph 1017D(5A)(b) of the Act, this regulation applies to a periodic statement prepared on or after 1 January 2005 in relation to an amount mentioned in paragraph 7.9.75(1)(a) or (b) of these Regulations.

(2) If ASIC determines that, for a compelling reason based on the nature of a financial product or service, or the nature of the information, to state the amount of the deduction in dollars:

(a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or

(b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or

(c) would not be in the interests of a product holder, or a class of product holders;

the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

(3) If ASIC determines that, for a compelling reason, based on the nature of a financial product or service, or the nature of the information, to state the amount of a deduction in dollars, or to describe the amount as a percentage:

(a) would impose an unreasonable burden on a product issuer, or a class of product issuers; or

(b) would impose an unreasonable burden on a product issuer, or a class of product issuers, within a period specified in the determination; or

(c) would not be in the interests of a product holder, or a class of product holders;

the periodic statement must include the information in subregulation (4).

(4) If subregulation (3) applies, the periodic statement must include:

(a) a statement informing the product holder that the amount is applicable; and

(b) details of the means by which a product holder is able to gain access to information relating to the amount.

(5) A determination under subregulation (2) or (3) must be:

(a) in writing; and

(b) published in the *Gazette*.

7.9.76 Consents to certain statements

(1) For subsection 1013K(2) of the Act, the period for which a person must keep a consent or a copy of a consent is 7 years from the date of the consent.

(2) The copy of the consent may be kept:

(a) in its physical form; or

(b) in an electronic form that is capable of being reproduced in physical form.

7.9.77 Alternative dispute resolution requirements—product issuer that is not a financial services licensee

(1) For subparagraph 1017G(2)(a)(i) of the Act, ASIC must take the following matters into account when considering whether to make or approve standards or requirements relating to internal dispute resolution:

(a) Australian/New Zealand Standard AS/NZS 10002:2014 *Guidelines for complaint management in organizations* published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force or existing on 29 October 2014;

(b) any other matter ASIC considers relevant.

(2) ASIC may:

(a) vary or revoke a standard or requirement that it has made in relation to an internal dispute resolution procedure; and

(b) vary or revoke the operation of a standard or requirement that it has approved in its application to an internal dispute resolution procedure.

7.9.77A Dispute resolution requirement—obligation to cooperate with AFCA

For the purposes of paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if subsection 1017G(1) of the Act were modified by inserting the following paragraph after paragraph 1017G(1)(d):

; and (e) take reasonable steps to cooperate with AFCA in resolving any complaint (other than a superannuation complaint) under the AFCA scheme to which the issuer or regulated person is a party, including by:

(i) giving reasonable assistance to AFCA in resolving the complaint; and

(ii) identifying, locating and providing to AFCA any documents and information that AFCA reasonably requires for the purposes of resolving the complaint; and

(iii) giving effect to any determination made by AFCA in relation to the complaint.

7.9.78 Additional statement: trustee required to provide benefits

(1) For paragraph 1017D(5)(g) of the Act, the prescribed details in relation to a superannuation product for which there is in force a notice under subregulation 6.17A(4) of the SIS Regulations, are:

(a) the person, persons or class, or classes, of persons mentioned in the notice; and

(b) the fact that, in accordance with the notice, the trustee will pay a benefit in respect of the member, on or after the death of the member, to the person, persons or class, or classes, of persons mentioned in the notice if:

(i) the person, or each person, mentioned in the notice is the legal personal representative or a dependant of the member; and

(ii) the proportion of the benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the notice or a statement under regulation 6.17B of the SIS Regulations; and

(iii) the notice is in effect; and

(c) the statement of the member about:

(i) the proportion of the benefit that will be paid to the person, or to each person, mentioned in the notice; or

(ii) how that proportion is to be determined; and

(d) the fact that the member may confirm, amend or revoke the notice in accordance with subregulation 6.17A(5) of the SIS Regulations; and

(e) the date when the notice ceases to have effect under paragraph 6.17A(7)(a) or (b) of the SIS Regulations.

(2) The periodic statement must also include information that the member may use to confirm, amend or revoke the notice.

(3) In this regulation, a reference to a notice includes a reference to the notice as confirmed, or amended, under subregulation 6.17A(5) of the SIS Regulations.

7.9.80B Short selling of certain warrants

For paragraph 1020B(1)(d) of the Act, a financial product that is transferable and is:

(a) a derivative; or

(b) a financial product that would, apart from the effect of paragraph 761D(3)(c) of the Act, be a derivative and is excluded from that paragraph only because it is a security described in paragraph 92(5)(c) of the Act; or

(c) a legal or equitable right or interest in an interest in a managed investment scheme of the kind mentioned in paragraph 764A(1)(ba) of the Act;

is prescribed.

Note: Paragraph 764A(1)(ba) of the Act refers to a managed investment scheme that is not a registered scheme, other than a scheme (whether or not operated in this jurisdiction) in relation to which none of paragraphs 601ED(1)(a), (b) and (c) of the Act are satisfied.

Division 9—Additional requirements for transfer of lost members and lost RSA holders

7.9.81 Lost members

(1) For paragraph 1020G(1)(c) of the Act, this regulation applies in relation to a restricted issue of a relevant financial product if:

(a) the issue is mentioned in paragraph 1016A(2)(c) of the Act; and

(b) the recipient is a lost member.

(2) Part 7.9 of the Act applies in relation to the restricted issue as if paragraph 1016A(2)(c) of the Act included an obligation on the trustee of the fund that is applying for the issue on behalf of the recipient to give to the trustee that is to issue the financial product:

(a) a statement that the recipient is a lost member; and

(b) if the recipient has specifically asked the trustee making the application not to disclose information of a specified kind—a statement to that effect; and

(c) all information in the possession of the trustee making the application that could reasonably help the other trustee to locate or identify the recipient, other than information of a kind that the recipient has specifically asked the trustee not to disclose.

7.9.82 Lost RSA holders

(1) For paragraph 1020G(1)(c) of the Act, this regulation applies in relation to a restricted issue of a relevant financial product if:

(a) the issue is mentioned in paragraph 1016A(2)(d) of the Act; and

(b) the recipient is a lost RSA holder.

(2) Part 7.9 of the Act applies in relation to the restricted issue as if paragraph 1016A(2)(d) of the Act included an obligation on the RSA provider that is applying for the issue on behalf of the recipient to give to the trustee that is to issue the financial product:

(a) a statement that the recipient is a lost RSA holder; and

(b) if the recipient has specifically asked the RSA holder not to disclose information of a specified kind—a statement to that effect; and

(c) all information in the possession of the RSA holder that could reasonably help the trustee to locate or identify the recipient, other than information of a kind that the recipient has specifically asked the RSA holder not to disclose.

Division 11—Superannuation to which arrangements apply under the Family Law Act 1975

7.9.84 Definitions for Division 11

In this Division:

***adjusted base amount***, in relation to a non‑member spouse on a day, means the adjusted base amount applicable to the non‑member spouse on that day worked out under regulation 47 of the *Family Law (Superannuation) Regulations 2001*.

***base amount***, in relation to a non‑member spouse means the amount mentioned in regulation 45 of the *Family Law (Superannuation) Regulations 2001*.

***base amount payment split***, in relation to a superannuation interest, means a payment split under which a base amount is allocated to the non‑member spouse in relation to the superannuation interest under Part VIIIB or VIIIC of the *Family Law Act 1975*.

***flag lifting agreement*** means a flag lifting agreement within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*.

***member spouse***, in relation to a superannuation interest that is subject to a payment split, means the person who is the member spouse within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975* in relation to the interest.

***non‑member spouse***, in relation to a superannuation interest that is subject to a payment split, means the person who is the non‑member spouse within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975* in relation to the interest.

***payment split*** means a payment split within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*.

***payment split notice*** means a notice given by a product issuer under:

(a) regulation 7A.03 of the SIS Regulations; or

(b) regulation 4A.03 of the RSA Regulations.

***percentage‑only interest*** means percentage‑only interest within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*.

***percentage payment split***, in relation to a superannuation interest, means a payment split under a superannuation agreement, flag lifting agreement or splitting order that specifies a percentage that is to apply to all splittable payments in respect of the superannuation interest.

***splitting order*** means a splitting order within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*.

***superannuation agreement*** means a superannuation agreement within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*.

***superannuation interest*** means a superannuation interest within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*.

7.9.85 Application of Division 11

This Division applies in relation to a superannuation interest.

7.9.86 Acquisition of financial product

For paragraph 761E(7)(a) of the Act, if:

(a) a person is a non‑member spouse; and

(b) an entitlement to a benefit in relation to a superannuation interest under a payment split is first issued, granted or otherwise made available to that person;

the person is taken to have been issued with a superannuation product or an RSA as appropriate.

7.9.87 Modification of Act: Product Disclosure Statement in relation to superannuation interest under Family Law Act

(1) Subject to subregulation (4), for paragraph 1020G(1)(c) of the Act, paragraph 1012F(b) of the Act is modified in its application in relation to:

(a) a superannuation interest; and

(b) the non‑member spouse who acquires the superannuation interest;

in accordance with subregulation (2).

(2) Paragraph 1012F(b) is taken to require a regulated person to give the non‑member spouse a Product Disclosure Statement when the regulated person gives a payment split notice to the non‑member spouse.

(3) If paragraph 1012F(b), as modified in accordance with subregulation (2), applies in relation to a superannuation interest, regulation 7.9.04 does not apply in relation to the interest and the non‑member spouse.

(4) For paragraph 1020G(1)(a) of the Act, if the governing rules of a superannuation entity do not provide for a non‑member spouse to become a member of a superannuation fund in relation to the superannuation entity, section 1012B is modified by adding, after subsection 1012B(1):

‘(1A) This section does not apply in relation to:

(a) a superannuation interest; and

(b) the non‑member spouse who acquires the superannuation interest;

if the governing rules of a superannuation entity do not provide for a non‑member spouse to become a member of a superannuation fund in relation to the superannuation entity.’.

7.9.88 Statement content in relation to superannuation interest under Family Law Act: superannuation fund

(1) For subparagraphs 1017DA(1)(a)(ii) and (iii), and paragraph 1017DA(1)(b), of the Act, a trustee of a superannuation entity that is a product issuer must give to a non‑member spouse in relation to a superannuation product issued under a payment split a statement providing the following information:

(a) the contact details for the product issuer;

(b) if the interest is not a percentage‑only interest and the payment split is a base amount payment split:

(i) the base amount allocated to the non‑member spouse under the relevant agreement, flag lifting agreement or splitting order; and

(ii) the method by which the base amount will be adjusted on an ongoing basis; and

(iii) whether the governing rules of the fund would allow the non‑member spouse to become a member of the superannuation entity; and

(iv) information about the options available to the non‑member spouse in relation to the interest under Part 7A of the SIS Regulations;

(c) if the interest is not a percentage‑only interest and the payment split is a percentage payment split:

(i) the percentage that is to apply to all splittable payments in respect of the interest; and

(ii) whether the governing rules of the fund would allow the non‑member spouse to become a member of the superannuation entity; and

(iii) information about the options available to the non‑member spouse in relation to the interest under Part 7A of the SIS Regulations;

(d) if the interest is a percentage‑only interest:

(i) the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order; and

(ii) if the payment is under a superannuation agreement or flag lifting agreement, whether the percentage is to apply for the purposes of subparagraph 90XJ(1)(b)(i) or 90YN(1)(b)(i) (as the case may be) of the *Family Law Act 1975*; and

(iii) if the payment split is under a splitting order, whether the order is made under paragraph 90XT(1)(c) or 90YY(1)(c) (as the case may be) of the *Family law Act 1975*;

(e) the circumstances in which the entitlement of the non‑member spouse will become payable;

(g) information about the dispute resolution system that covers complaints by holders of the product and about how that system may be accessed;

(h) details of any amounts payable by the non‑member spouse in respect of the payment split, and arrangements for the payment of any such amounts.

(2) For paragraph 1017DA(2)(b) of the Act, the statement mentioned in subregulation (1) is to be provided by a regulated person when the regulated person gives a payment split notice to the non‑member spouse.

7.9.89 Statement content in relation to superannuation interest under Family Law Act: RSA

(1) For subparagraphs 1017DA(1)(a)(ii) and (iii), and paragraph 1017DA(1)(b), of the Act, an RSA provider that is a product issuer must give to a non‑member spouse in relation to an RSA issued under a payment split a statement providing the following information:

(a) the contact details for the product issuer;

(b) if the payment split is a base amount payment split:

(i) the base amount allocated to the non‑member spouse under the relevant superannuation agreement, flag lifting agreement or splitting order; and

(ii) the method by which the base amount will be adjusted on an ongoing basis;

(c) if the payment split is a percentage payment split, the percentage that is to apply to all splittable payments in respect of the interest;

(d) the circumstances in which the entitlement of the non‑member spouse will become payable;

(e) the options available under Part 4A of the RSA Regulations in relation to the non‑member spouse’s entitlement in respect of the interest;

(g) information about the dispute resolution system that covers complaints by holders of the product and about how that system may be accessed;

(h) details of any amounts payable by the non‑member spouse in respect of the payment split, and arrangements for the payment of any such amounts.

(2) For paragraph 1017DA(2)(b) of the Act, the statement mentioned in subregulation (1) is to be provided by a regulated person when the regulated person gives a payment split notice to the non‑member spouse.

7.9.90 Information for existing holders of superannuation products and RSAs in relation to superannuation interest

(1) For paragraph 1020G(1)(c) of the Act, this regulation applies in relation to a non‑member spouse.

(2) The definition of ***concerned person*** in subsection 1017C(9) of the Act is modified by adding after paragraph (a) of the definition:

‘(aa) is a non‑member spouse in relation to a superannuation product or an RSA that is issued in relation to a payment split; or’.

7.9.91 Periodic statements for retail clients for financial products that have an investment component—general

(1) For paragraph 1020G(1)(a) of the Act, this regulation applies in relation to a non‑member spouse who holds a superannuation or RSA by way of a payment split.

(2) The product issuer in relation to the superannuation product or RSA is not required to comply with:

(a) paragraphs 1017D(5)(a) to (f) of the Act; and

(b) regulation 7.9.72 and subregulation 7.9.75(1).

7.9.92 Periodic statements for retail clients for financial products that have an investment component—superannuation interest other than percentage‑only interest

(1) For paragraph 1017D(5)(g) of the Act, this regulation applies if:

(a) an interest in a superannuation product is subject to a base amount payment split; and

(b) the interest is not a percentage‑only interest; and

(c) the interest is in the growth phase; and

(d) none of the following has occurred under Part 7A of the SIS Regulations:

(i) a new membership interest has been created for the non‑member spouse in relation to the payment split;

(ii) the transferable benefits of the non‑member spouse have been transferred or rolled out of the superannuation fund;

(iii) the amount to which the non‑member spouse is entitled under the payment split has been paid, as a lump sum, to the non‑member spouse.

(2) This regulation also applies if:

(a) an interest in an RSA is subject to a base amount payment split; and

(b) the interest is in the growth phase; and

(c) none of the following has occurred under Part 4A of the RSA Regulations:

(i) a new RSA has been opened for the non‑member spouse;

(ii) the transferable benefits of the non‑member spouse have been transferred or rolled out of the RSA;

(iii) the amount to which the non‑member spouse is entitled under the payment split has been paid, as a lump sum, to the non‑member spouse.

(3) The periodic statement for the member spouse and the non‑member spouse must include the following information:

(a) the value of the adjusted base amount applicable to the non‑member spouse at the end of the reporting period;

(b) the amount of the adjustment in the reporting period;

(c) the method used to calculate the adjustment, including the applicable interest rate required under regulation 48 of the *Family Law (Superannuation) Regulations 2001*.

7.9.93 Trustees of superannuation entities—additional obligation to provide information in relation to superannuation interest

(1) For paragraph 1017DA(2)(a) of the Act, no information is to be provided to a non‑member spouse under section 1017DA of the Act if the governing rules of a superannuation entity do not provide for the non‑member spouse to become a member of a superannuation fund in relation to the superannuation entity.

(2) For paragraph 1017DA(2)(b) of the Act, if the governing rules of a superannuation entity provide for a non‑member spouse to become a member of a superannuation fund in relation to the superannuation entity:

(a) information is to be provided to the non‑member spouse under section 1017DA of the Act (and Subdivisions 5.5 to 5.7 of Part 7.9 of these Regulations) when the payment split notice is given to the non‑member spouse; and

(b) the information is to be provided with the payment split notice.

7.9.94 Division 5 of Part 7.9 of the Act not to apply in relation to non‑member spouse

For paragraph 1019A(2)(c) of the Act, Division 5 of Part 7.9 of the Act does not apply in relation to the issue of a superannuation product or RSA to a non‑member spouse who acquires the superannuation interest by means of a payment split.

Note: The non‑member spouse may also wish to acquire an interest in the superannuation fund, or become an RSA holder, by making an application. In that case, regulation 7.9.94 would not apply and Division 5 of Part 7.9 of the Act would apply to the extent that that Division provides.

Division 12—Medical indemnity insurance

7.9.95 Medical indemnity insurance—exemption from product disclosure provisions

For paragraph 1020G(1)(b) of the Act, a medical indemnity insurance product is exempt from the provisions of Part 7.9 of the Act, until the earlier of:

(a) the date specified in a notice, lodged with ASIC by the issuer of the product, that indicates that the issuer of the product wants the provisions of Part 7.9 of the Act to apply in relation to the product from that date; and

(b) 11 March 2004.

Division 13—Unsolicited offers to purchase financial products off market

Subdivision A—Modifying provisions of Part 7.9 of the Act: offers to purchase securities in certain proprietary companies

7.9.95A Offers to which this Subdivision applies

For the purposes of paragraph 1020G(1)(c) of the Act, this Subdivision applies in relation to an offer for the purchase of securities of a proprietary company if:

(a) at the time the offer is made, the company:

(i) has one or more CSF shareholders; and

(ii) is an eligible CSF company; and

(b) Division 5A of Part 7.9 of the Act applies to the offer.

7.9.95B Duration and withdrawal of the offer

Part 7.9 of the Act applies in relation to the offer as if subsections 1019G(1) and (2) of the Act were modified by omitting “1 month” and inserting “14 days”.

7.9.95C Varying the terms of the offer

Part 7.9 of the Act applies in relation to the offer as if section 1019H of the Act were modified by replacing that section with the following:

1019H Varying terms of offer

(1) An offeror may vary the terms of an offer to which this Division applies for the purchase of securities in a proprietary company if:

(a) the variation is:

(i) to improve the consideration offered under the offer; or

(ii) to extend the period that the offer remains open at any time before the end of that period; and

(b) the variation will apply to each offeree that has not accepted the offer before the variation is made.

(2) The variation may only be made by sending a supplementary offer document in printed or electronic form to:

(a) if the variation is to improve the consideration offered under the offer—each offeree in accordance with paragraphs 1019E(1)(a) and (b); or

(b) if the variation is to extend the period that the offer remains open—each offeree that has not accepted the offer in accordance with paragraphs 1019E(1)(a) and (b).

(3) The supplementary offer document must:

(a) identify the offer to which it relates; and

(b) describe the variation; and

(c) be worded and presented in a clear, concise and effective manner.

(4) The terms of the offer cannot be varied otherwise than under this section.

(5) This section does not:

(a) affect the offeror’s obligation under section 1019J to update the market value of the financial product to which the offer relates; or

(b) prevent the offeror from withdrawing the offer in accordance with section 1019G or paragraph 1019J(2)(a) and making another offer on different terms; or

(c) prevent the offeree from making a counter‑offer on different terms.

7.9.95D Rights if requirements not complied with

Part 7.9 of the Act applies in relation to the offer as if subsection 1019K(1) of the Act were modified by inserting after paragraph 1019K(1)(b) of the Act:

(ba) in a situation where section 1019H applies:

(i) subsection 1019H(2) was not complied with; or

(ii) the supplementary offer document did not comply with subsection 1019H(3); or

(iii) there was a misleading or deceptive statement in the supplementary offer document;

Subdivision B—Other matters

7.9.96 Percentage increase or decrease in the market value of a product

For paragraph 1019J(1)(c) of the Act, 50% is specified.

7.9.97 Off‑market trading by professional investors etc

(1) For subparagraph 1019D(1)(d)(viii) of the Act, the following circumstances are specified:

(a) the offer mentioned in subsection 1019D(1) of the Act is to:

(i) a professional investor; or

(ii) a person who has net assets of at least the amount specified in regulations made for the purposes of subparagraph 761G(7)(c)(i) of the Act; or

(iii) a person who has gross income for each of the last 2 financial years of at least the amount specified in regulations made for the purposes of subparagraph 761G(7)(c)(ii) of the Act; or

(iv) a business that is not a small business within the meaning of subsection 761G(12) of the Act;

(b) the minimum amount payable for securities on acceptance of the offer by the person to whom the offer is made is at least $500 000;

(c) for a financial product other than securities, the offer for the financial product is for an amount that equals or exceeds the amount specified in regulations made for the purposes of paragraph 761G(7)(a) of the Act.

(2) For paragraph (b), in calculating the amount payable for securities, disregard any amount payable or paid to the extent to which it is to be paid, or was paid, out of money lent by the person offering the securities or an associate of the person offering the securities.

7.9.97A Information in offer document if payment is to be made in instalments

(1) For paragraph 1019I(2)(f) of the Act, the following information is specified for an offer document if payment for the financial products mentioned in the document is to be made in instalments:

(a) the amount of each instalment;

(b) when each instalment will be paid;

(c) how many instalments will be paid;

(d) how each instalment will be paid;

(e) the following text, replacing X with the total present value of the instalments and Y with the total current value of the financial products:

‘Money loses value over time. In this case, the value of the total instalment payments being offered to you is approximately the same as being paid a single amount of $X today. $X represents the ‘present day value’ of the instalment payments. Commonwealth legislation sets out a method for calculating the present value of the offer, using the rate of interest of 1.1% per month. You can assess this offer by comparing the present day value of the instalment payments ($X) with the total market price of your shares or other financial products ($Y).

‘In general, if the present day value of the instalment payments being offered is less than the market price of your shares or other financial products, then this offer may not be fair to you.’

(2) For this regulation, the ***total present value*** of a series of instalment payments is the amount:

A formula to work out the total present value of a series of instalment payments

where:

***n*** is the number of instalment payments to be made.

***Rp*** is the amount of instalment payment number *p*, where each instalment payment is assigned a number from l to *n*.

***tp*** is the number of whole months between the date of offer and the date that the instalment number *p* is due.

(3) For this regulation, the ***total current value*** of a financial product is the market value for the product on the date of offer as mentioned in paragraph 1019I(2)(b) of the Act or the fair estimate of the value of the product on the date of offer as mentioned in paragraph 1019I(2)(c) of the Act, as applicable.

(4) For this regulation, all money amounts must be represented in Australian currency.

Division 14—Exemptions from Parts 7.7, 7.8 and 7.9 of the Act

7.9.98 Certain providers of financial services exempted from the requirements of Parts 7.7, 7.8 and 7.9 of the Act

For the provisions of the Act set out in column 2 of the following table, a person who is providing a financial service in the circumstances set out subsections 911A(2A) to (2E) is exempt from the operation of the Parts of the Act specified in column 3 in relation to the provision of that service.

| Column 1 | Column 2 | Column 3 |
| --- | --- | --- |
| Item | Provisions of Act |  |
| 1 | paragraph 951C(1)(a) | Part 7.7 |
| 2 | paragraph 992C(1)(a) | Part 7.8 |
| 3 | paragraph 1020G(1)(a) | Part 7.9 |

7.9.98A Exemption from application of Part 7.9 of the Act

For paragraph 1020G(1)(a) of the Act, Part 7.9 of the Act does not apply to a person to the extent that the person is:

(a) issuing or selling:

(i) a litigation funding scheme mentioned in regulation 5C.11.01; or

(ii) a litigation funding arrangement mentioned in regulation 5C.11.01; or

(b) making a recommendation to acquire:

(i) a litigation funding scheme mentioned in regulation 5C.11.01; or

(ii) a litigation funding arrangement mentioned in regulation 5C.11.01; or

(c) making an offer relating to the issue or sale of:

(i) a litigation funding scheme mentioned in regulation 5C.11.01; or

(ii) a litigation funding arrangement mentioned in regulation 5C.11.01; or

(d) advertising:

(i) a litigation funding scheme mentioned in regulation 5C.11.01; or

(ii) a litigation funding arrangement mentioned in regulation 5C.11.01.

Division 15—Disclosure in relation to short sales covered by securities lending arrangement of listed section 1020B products

7.9.99 Interpretation

(1) In this Division:

***reporting day***, in relation to a short position, means a day on which the Sydney office of ASIC is open for business.

Meaning of short position

(2) In this Division, a ***short position*** is a position in relation to a section 1020B product in a listed entity where the quantity of the product which a person has is less than the quantity of the product which the person has an obligation to deliver.

(3) In subregulation (2), the person has the product if:

(a) the person is holding the product on the person’s own behalf; or

(b) another person is holding the product on the person’s behalf; or

(c) the person has entered into an agreement to buy the product but has not received it; or

(d) the person has vested title in the product in a borrower, or in an entity nominated by the borrower, under a securities lending arrangement.

(4) In subregulation (2), the product which the person has an obligation to deliver is the product which the person:

(a) has an obligation to deliver under a sale agreement where the product has not been delivered; or

(b) has an obligation to vest title in a lender under a securities lending arrangement; or

(c) has any other non‑contingent legal obligation to deliver.

References to time

(5) A reference in this Division to a time is a reference to the legal time in Sydney, New South Wales.

7.9.100 Seller disclosure

(1) For paragraph 1020AB(3)(a) of the Act, the particulars that a seller must give in relation to a sale of a listed section 1020B product where the seller has a presently exercisable and unconditional right to vest the product in a buyer under a securities lending arrangement are as follows:

(a) the number of section 1020B products that the seller will vest in the buyer under the arrangement;

(b) a description of the product;

(c) the name of the entity that issued the product;

(d) the seller’s short position as at the close of business 3 reporting days before the day the particulars must be given under subregulation (4).

(2) For subparagraph 1020AB(3)(b)(i) of the Act, in relation to particulars mentioned in paragraphs (1)(a), (b), and (c):

(a) the seller mentioned in subparagraph 1020AB(1)(a)(i) of the Act must give the particulars at the time of entering into an agreement to sell; and

(b) the seller mentioned in subparagraph 1020AB(1)(a)(ii) of the Act must give the particulars on or before 9 am:

(i) if the sale occurs after the start of the trading day but before 7 pm—on the next trading day after entering into an agreement to sell; and

(ii) if the sale occurs after 7 pm but before the start of the next trading day—on the second trading day after entering into an agreement to sell.

(3) A reference to ***trading day*** in subregulation (2) is to a trading day of the market where the sale is executed or reported.

(4) For subparagraph 1020AB(3)(b)(i) of the Act, in relation to particulars mentioned in paragraph (1)(d), the seller must give the particulars:

(a) on or before 9 am on the third reporting day after entering into the agreement to sell that causes the short position to occur; and

(b) on or before 9 am on each subsequent reporting day as long as the seller has a short position.

(5) Paragraph (4)(b) applies whether or not the particulars about the short position have changed from that given on the previous day.

(6) For subparagraph 1020AB(3)(b)(ii) of the Act, in relation to particulars mentioned in paragraph (1)(d), the seller must give the particulars in the form required by ASIC.

(7) For subparagraphs 1020AB(4)(a)(ii) and (b)(ii) of the Act, in relation to the particulars mentioned in paragraph (1)(d), the entity is ASIC.

(8) For subparagraph 1020AB(4)(b)(ii) of the Act, and in relation to the particulars other than the particulars mentioned in paragraph (1)(d), if the operator of the licensed market mentioned in subparagraph 1020AB(1)(a)(ii) of the Act (***operator 1***) appoints the operator of another licensed market (***operator 2***), in writing, as operator 1’s agent for the purpose of receiving any of those particulars, operator 2 is the entity for those particulars.

7.9.100A Seller disclosure of existing short position

(1) If a seller has a short position which arises from an agreement to sell, entered into before commencement of this regulation, the seller must give particulars about the short position as at the close of business on the day this regulation commences:

(a) on or before 9 am on the third reporting day after commencement of this regulation; and

(b) on or before 9 am on each subsequent reporting day as long as the seller has a short position.

(2) The particulars must be given to ASIC in the form required by ASIC.

7.9.101 Licensee disclosure

(1) For paragraph 1020AC(2)(a) of the Act, the particulars that a financial services licensee must give in relation to information given to the licensee under section 1020AB of the Act in relation to a sale of a listed section 1020B product is the information specified in paragraphs 7.9.100(1)(a), (b) and (c).

(2) For paragraph 1020AC(2)(b) of the Act:

(a) the time for disclosure of the information is on or before 9 am:

(i) if the information is given to the licensee after the start of the trading day but before 7 pm—on the next trading day after the licensee is given the information under section 1020AB of the Act; and

(ii) if the information is given to the licensee after 7 pm but before the start of the next trading day—on the second trading day after the licensee is given the information under section 1020AB of the Act; and

(b) the manner for disclosure of the information is by electronic transmission to the operator.

(3) A reference to ***trading day*** in subregulation (2) is to a trading day of the market where the information is given.

(4) For paragraph 1020AC(3)(b) of the Act, and in relation to the particulars mentioned in paragraph 1020AC(3)(a) of the Act, if the operator of the licensed market mentioned in paragraph 1020AC(1)(a) of the Act (***operator 1***) appoints the operator of another licensed market (***operator 2***), in writing, as operator 1’s agent for the purpose of receiving any of those, operator 2 is the entity for those particulars.

7.9.102 Public disclosure of information

(1) For paragraph 1020AD(2)(a) of the Act, the particulars which the operator of a licensed market must publicly disclose in relation to information given to the operator under section 1020AB or 1020AC of the Act in relation to a sale of a listed section 1020B product are the total number of each kind of section 1020B product that has been sold on a particular day and disclosed to the operator under section 1020AB or 1020AC of the Act.

(1A) For paragraph 1020AD(2)(a) of the Act, the particulars which ASIC must publicly disclose in relation to information given to it under section 1020AB of the Act in relation to a sale of a listed section 1020B product are the total of all short positions in a product issued by a listed entity that have been disclosed to ASIC under section 1020AB of the Act on the previous reporting day.

(2) For subparagraph 1020AD(2)(b)(i) of the Act, the time for the disclosure of the information mentioned in subregulation (1) is:

(a) if the information is given to the licensee after the start of the trading day but before 7 pm—on the next trading day after the day the agreements to sell were entered into; and

(b) if the information is given to the licensee after 7 pm but before the start of the next trading day—on the second trading day after the day the agreements to sell were entered into.

(3) A reference to ***trading day*** in subregulation (2) is to a trading day of the market in relation to which the operator is responsible for disclosure of the information.

(3A) For subparagraph 1020AD(2)(b)(i) of the Act, the time for the disclosure of the information mentioned in subregulation (1A) is the first reporting day after the day the information is received.

(4) For subparagraph 1020AD(2)(b)(ii) of the Act, the manner of public disclosure of the information mentioned in subregulation (1) is by publication:

(a) on the operator’s website; or

(b) in any other form that is easily accessible by the public.

(5) For subparagraph 1020AD(2)(b)(ii) of the Act, the manner of public disclosure of the information mentioned in subregulation (1A) is by publication:

(a) on ASIC’s website; or

(b) in any other form that is readily accessible by the public.

Part 7.10—Market misconduct and other prohibited conduct relating to financial products and financial services

7.10.01 Meaning of *Division 3 financial products—*excluded superannuation products

For the purposes of paragraph (e) of the definition of ***Division 3 financial products*** in subsection 1042A(1) of the Act, superannuation products provided by a superannuation entity that is not a public offer entity are prescribed.

Note: This means that these superannuation products are not Division 3 financial products.

7.10.02 Professional standards schemes

For subsection 1044B(2) of the Act, a scheme and any modifications to the scheme set out in the following table are prescribed.

Note: Column 2 of the table below is included for information only.

| Prescribed professional standards schemes | | |
| --- | --- | --- |
| Item | Column 1 Scheme | Column 2 Date prescribed |
| 1 | The CPA Australia Ltd Professional Standards (Accountants) Scheme, published in the New South Wales Government Gazette No. 98, 30 August 2019  Note: This Scheme was formerly the CPA Australia Ltd Professional Standards (Accountants) Scheme, published in the New South Wales Government Gazette No. 138, 22 December 2017. | 22 October 2019 |
| 2 | Chartered Accountants Australia and New Zealand Professional Standards Scheme, published in the New South Wales Government Gazette No. 72, 12 July 2019  Note: This Scheme is a national Scheme which replaces 7 previous State and Territory Schemes of the same name. | 22 October 2019 |
| 3 | The Law Society of New South Wales Professional Standards Scheme, published in the New South Wales Government Gazette No. 87, 7 September 2018, including as modified by the extension published in the New South Wales Government Gazette No. 311, 14 July 2023  Note: This Scheme was formerly the Law Society of New South Wales Scheme, published in the New South Wales Government Gazette No. 78, 27 July 2012, including as modified by the extension published in the New South Wales Government Gazette No. 72, 30 June 2017. | The Scheme—26 March 2019  The extension—the day the *Treasury Laws Amendment (Professional Standards Schemes) Regulations 2023* commence |
| 4 | The New South Wales Bar Association Professional Standards Scheme, published in the New South Wales Government Gazette No. 179, 20 December 2019  Note: This scheme was formerly the New South Wales Bar Association Scheme, published in the New South Wales Government Gazette No. 17, 5 March 2015, including as modified by the amendments published in the New South Wales Government Gazette No. 123, 10 November 2017. | 1 July 2020 |
| 6 | The Law Institute of Victoria Limited Professional Standards Scheme, published in the Victoria Government Gazette No. G 11, 17 March 2022  Note: This Scheme was formerly the Law Institute of Victoria Limited Scheme, published in the Victoria Government Gazette No. G 16, 21 April 2016, including as modified by the extension published in the Victoria Government Gazette No. G 9, 4 March 2021. | 1 July 2022 |
| 7 | The Victorian Bar Professional Standards Scheme, published in the Victoria Government Gazette No. G 16, 18 April 2019  Note: This Scheme was formerly the Victorian Bar Professional Standards Scheme, published in the Victoria Government Gazette No. S 134, 24 April 2014. | 22 October 2019 |
| 8 | The Bar Association of Queensland Professional Standards Scheme, approved as described in the *Professional Standards (Bar Association of Queensland Professional Standards Scheme) Notice 2019* (Qld), 18 February 2019  Note: This Scheme was formerly the Bar Association of Queensland Scheme, published in the Queensland Government Gazette No. 40, 24 June 2013, including as modified by the extension published in the Queensland Government Gazette No. 60, 23 March 2018. | 26 March 2019 |
| 10 | The Queensland Law Society Professional Standards Scheme, approved as described in the *Professional Standards (The Queensland Law Society Professional Standards Scheme) Notice 2021* (Qld), 17 December 2021  Note: The Scheme was formerly the Queensland Law Society Professional Standards Scheme, approved as described in the *Professional Standards (Queensland Law Society Professional Standards Scheme) Notice 2016* (Qld), 30 June 2016, including as modified by the extension published in the Queensland Government Gazette No. 63, 23 April 2021. | 1 July 2022 |
| 12 | The Law Society of Western Australia Professional Standards Scheme, published in the Western Australian Government Gazette No. 62, 7 May 2019  Note: This Scheme was formerly the Law Society of Western Australia Scheme, published in the Western Australian Government Gazette No. 54, 11 April 2014. | 22 October 2019 |
| 13 | The Western Australian Bar Association Professional Standards Scheme, published in the Western Australian Government Gazette No. 63, 24 April 2020  Note: This scheme was formerly the Western Australian Bar Association Scheme, published in the Western Australian Government Gazette No. 57, 17 April 2014, including as modified by the extension published in the Western Australian Government Gazette No. 196, 21 December 2018. | 1 July 2020 |
| 15 | The Law Society of South Australia Professional Standards Scheme, published in the South Australian Government Gazette No. 5, 20 January 2022  Note: This Scheme was formerly the Law Society of South Australia Professional Standards Scheme, published in the South Australian Government Gazette No. 21, 5 April 2017, including as modified by the amendments published in the South Australian Government Gazette No. 77, 21 November 2017. | 1 July 2022 |
| 16 | The South Australian Bar Association Professional Standards Scheme, published in the South Australian Government Gazette No. 15, 10 March 2022  Note: This Scheme was formerly the South Australian Bar Association Inc Professional Standards Scheme, published in the South Australian Government Gazette No. 35, 30 May 2017. | 1 July 2022 |
| 19 | The Institute of Public Accountants Professional Standards Scheme, published in the Victoria Government Gazette No. S 598, 27 October 2021  Note: This Scheme was formerly the Institute of Public Accountants Professional Standards Scheme, published in the Victoria Government Gazette No. G 42, 18 October 2018, including as modified by the extension published in the Victoria Government Gazette No. S 695, 24 December 2020. | 22 March 2022 |
| 20 | The Association of Consulting Surveyors National Professional Standards Scheme, published in the New South Wales Government Gazette No. 90, 1 May 2020 | 1 July 2020 |
| 21 | The Australian Property Institute Valuers Limited Professional Standards Scheme, published in the New South Wales Government Gazette No. 214, 21 May 2021 | 1 September 2021 |

7.10.03 Exemption for market participants of qualifying gas trading exchange

For paragraph 1045A(1)(a) of the Act, a person is exempt from Part 7.10 of the Act if the person:

(a) is a participant in relation to a qualifying gas trading exchange; and

(b) is engaging in trading activities in relation to qualifying gas exchange products on a qualifying gas trading exchange.

Part 7.10B—Financial services compensation scheme of last resort

7.10B.50 Reporting by CSLR operator if sub‑sector levy cap could be exceeded (or further exceeded)

For the purposes of subsection 1069F(4) of the Act, the following information is prescribed for a notice about a revised claims, fees and costs estimate for a levy period and a sub‑sector that has come into force and could cause the sub‑sector levy cap for the levy period and sub‑sector to be exceeded (or further exceeded):

(a) the number of applications made under section 1066 of the Act that underpin the revised estimate;

(b) the total amount of compensation that (having regard to actuarial principles) will be payable under section 1063 of the Act for those applications;

(c) the portion of the sum of AFCA’s unpaid fees that (having regard to actuarial principles) will be attributable to the sub‑sector and that underpins the revised estimate.

7.10B.55 Reporting by CSLR operator after the end of each levy period

For the purposes of subsection 1069G(1) of the Act, the following matters are prescribed for a report for a levy period:

(a) the CSLR operator’s estimate of the costs for the financial services compensation scheme of last resort for the levy period, including the following:

(i) each claims, fees and costs estimate (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*) for the levy period;

(ii) for the first levy period—the estimate under section 11 of that Act;

(iii) for each of the first 4 levy periods—any revised estimate under section 12 of that Act that is made before the time of preparing the report and that has not been included in an earlier report;

(b) the CSLR operator’s approach to determining each of these estimates;

(c) the number of applications made under section 1066 of the Act during the levy period;

(d) the number of payments of amounts of compensation under section 1063 of the Act during the levy period, and the total of those amounts;

(e) the number of applications made under section 1066 of the Act by persons during the levy period for which the persons are not eligible under section 1064 of the Act for compensation;

(f) the number of applications made under section 1066 of the Act by persons during the levy period for which, at the time of preparing the report, it is too early for the persons to be notified under section 1068 of the Act of:

(i) offers of compensation; or

(ii) ineligibility for compensation;

(g) the average time taken after the CSLR operator receives an application made under section 1066 of the Act by a person during the levy period for the CSLR operator to notify the person under section 1068 of the Act:

(i) of an offer of compensation; or

(ii) that the person is not eligible for compensation;

(h) an analysis of the applications made under section 1066 of the Act during the levy period that includes details of:

(i) the kinds of products or services covered by the relevant AFCA determinations to which the applications relate; and

(ii) the kinds of providers of those products or services; and

(iii) any patterns or trends;

(i) the number of notifications under subsection 1069F(3) of the Act (about a sub‑sector levy cap being exceeded (or further exceeded)) during the levy period;

(j) for each sub‑sector—the total amount of levy paid that was imposed by the *Financial Services Compensation Scheme of Last Resort Levy Act 2023* across all persons for the levy period and the sub‑sector;

(k) the number of determinations made under section 1069H of the Act for the levy period that:

(i) under subsection 1069H(4) of the Act, specify that levy needs to be imposed by subsection 8(3) of the *Financial Services Compensation Scheme of Last Resort Levy Act 2023* (about special levy for just the primary sub‑sector); or

(ii) under subsection 1069H(5) of the Act, specify that levy needs to be imposed by section 9 of that Act (about special levy to be spread across several sub‑sectors);

(l) for each determination referred to in paragraph (k):

(i) details of the determination; and

(ii) details about the levy paid as a result of the determination.

Note 1: Information about the matters in each of these paragraphs is required by subsection 1069G(1) of the Act to be included in each report.

Note 2: The estimates referred to in subparagraphs (a)(ii) and (iii) are of unpaid claims, and AFCA’s fees, for complaints given to AFCA before the accumulation recovery day.

Part 7.11—Title and transfer

Division 1—Preliminary

7.11.01 Definitions

In this Part:

***associate***, in relation to a broker or participant, means:

(a) if the broker or participant:

(i) is a member of a firm of brokers or participants; and

(ii) is not a broker’s agent or a participant’s agent;

any other member of the firm; or

(b) if:

(i) the broker or participant is the agent or employee of another broker or participant; and

(ii) the other broker or participant is not a member of a firm of brokers or participants;

the other broker or participant; or

(c) if:

(i) the broker or participant is the agent or employee of another broker or participant; and

(ii) the other broker or participant is a member of a firm of brokers or participants;

any member of that firm.

***ASTC subregister*** means a subregister of Division 4 financial products maintained in accordance with the ASTC operating rules.

***beneficial owner***, in relation to Division 3 securities, means a person for whom a licensed trustee company, a Public Trustee of a State or Territory, or a company listed in Schedule 9 holds (whether alone or together with any other person or persons) the Division 3 securities in trust in the ordinary course of its business.

***broker*** means an Australian financial services licensee who is a participant of a financial market.

***broker’s agent*** means:

(a) the agent of a broker; or

(b) the employee of a broker.

***duly completed***, in relation to a transfer document, includes the requirements set out in regulation 7.11.05.

***duly completed Part 1*** means a transfer document that has been duly completed in accordance with Part 1 of Form 1, 2, 3, 5, 6 or 7.

***execution time***, in relation to a transfer document, means:

(a) for a sufficient transfer under regulation 7.11.11—the time when the transfer document was stamped with a stamp purporting to be that of the transferee’s broker; and

(b) for a sufficient transfer under regulation 7.11.12 or 7.11.13—the time when the transfer document was executed by the transferor.

***identification code***, in relation to a participant, means a code that, for the purposes of the ASTC operating rules, is:

(a) the participant’s identification code; or

(b) one of its identification codes.

***in accordance with*** includes to the effect of.

***issuer of a Division 4 financial product*** means:

(a) the issuer in relation to the product; or

(b) any other person identified as an issuer, or treated as an issuer, under the ASTC operating rules.

***market licensee***, in relation to securities specified in a transfer document, means the market licensee that operates the market for the securities.

7.11.03 Arrangements about Division 4 financial products

(1) A financial product is a ***Division 4 financial product*** if the financial product is:

(a) a Division 3 security other than a security mentioned in paragraph 1073A(1)(e) of the Act; or

(b) declared by ASIC, under section 1075A of the Act, to be a financial product the transfer of which will be effected through ASTC under these Regulations.

(2) Subregulations (3) to (8) apply in relation to a class of Division 4 financial products that is admitted to quotation.

(3) A Division 4 financial product in the class of Division 4 financial products is not taken to have stopped being quoted merely because of a temporary suspension of quotation of the class.

(4) If:

(a) there is a suspension of the quotation of a Division 4 financial product in the class; and

(b) during the suspension, the issuer in relation to the Division 4 financial product ceases to be included in the official list of the market licensee on which the Division 4 financial product is traded;

the Division 4 financial product is taken to stop being quoted when the issuer ceases to be included in the official list.

(5) Subregulation (4) does not limit the circumstances in which a Division 4 financial product in the class may be taken to have stopped being quoted on a financial market of a market licensee.

(6) For the provisions mentioned in subregulation (8), if:

(a) a Division 4 financial product stops being quoted on a financial market of a market licensee; and

(b) the ASTC operating rules provide that the Division 4 financial product is to be taken to continue to be quoted for a specified period;

the Division 4 financial product is taken to be quoted during the period.

(7) For the provisions mentioned in subregulation (8), if:

(a) a Division 4 financial product has been issued; and

(b) the Division 4 financial product:

(i) is approved, by a market licensee, to be admitted to quotation on a financial market of the market licensee; and

(ii) has not yet been quoted; and

(c) the ASTC operating rules provide that the Division 4 financial product is taken to be quoted for a specified period;

the Division 4 financial product is taken to be quoted during the period.

(8) The provisions are:

(a) the definitions of:

(i) ASTC certificate cancellation provisions; and

(ii) ASTC‑regulated transfer; and

(iii) ASTC subregister; and

(iv) proper ASTC transfer; and

(b) section 653A of the Act; and

(c) Part 7.11 of the Act; and

(d) regulations made for the purposes of Part 7.11 of the Act.

7.11.04 Arrangements for forms

(1) A reference in this Part to a form by number is a reference to:

(a) the form numbered in that way in Schedule 2A; or

(b) a form that has the same effect.

(2) If a form in Schedule 2A refers to the full name of the transferor of Division 3 securities, the reference includes a reference to the name of the person shown in the records of the issuer in relation to those securities as the holder of those securities.

7.11.05 Document duly completed in accordance with a particular form

(1) Subject to subregulation (2), a document is not ***duly completed*** in accordance with one of Forms 1, 2, 3, 4, 5, 6, 7 and 8, or a part of one of those forms, unless the following requirements are met:

(a) the document must purport to state the transferee’s name and address where the form or part requires that information;

(b) the document must bear a stamp that purports to be the transferor’s broker’s stamp where the form or part requires that information;

(c) the document must bear a stamp that purports to be the transferee’s broker’s stamp where the form or part requires that information;

(d) the document must bear a stamp that purports to be a market licensee’s stamp where the form or part requires that information.

(2) If a document (the ***first document***) relates to particular Division 3 securities, the following paragraphs apply for the purposes of determining whether the first document and another document (the ***second document***) are, together or with 1 or more other documents, a sufficient transfer of the Division 3 securities:

(a) the first document is not duly completed in accordance with Part 3 of Form 1, 2, 3, 5, 6 or 7 unless it:

(i) bears a stamp that purports to be the transferee’s broker’s stamp where that part refers to the transferee’s broker’s stamp; and

(ii) sets out a string of characters that purports to be the transfer consolidation number of the first document where that part refers to the transferee’s broker’s stamp;

(b) the second document is not duly completed in accordance with Part 1 of Form 4 or 8 unless it sets out a string of characters that purports to be the transfer consolidation number of the first document where that part refers to a transfer consolidation number or transfer consolidation numbers (whether or not it sets out 1 or more strings of characters that do not purport to be the transfer consolidation number);

(c) the second document can be duly completed in accordance with Part 1 of Form 4 or 8 even if it does not set out correctly the number of Division 3 securities to which it relates.

Note: If the document mentioned in subregulation (1), or the documents mentioned in subregulation (2), are a sufficient transfer of the Division 3 securities, the document or documents become ***transfer documents*** for this Part.

7.11.06 Stamping of documents

(1) In this Part (other than regulation 7.11.40):

(a) a reference to the stamping of a document is a reference to stamping in ink; and

(b) a reference to a stamp on a document, or to a stamp borne by a document, is a reference to a stamp stamped on the document in ink.

(2) A reference in regulation 7.11.40 to the stamping of a document is a reference to stamping the document in any manner.

Examples:

1 Stamping in ink.

2 Affixing a stamp.

3 Impressing a stamp.

7.11.07 Application of Division 3 of Part 7.11 of the Act to certain bodies

(1) For subparagraph 1073C(a)(ii) of the Act, the Westpac Banking Corporation is prescribed.

(2) For subparagraph 1073C(b)(iii) of the Act, the Australian Gas Light Company is prescribed.

Note: The effect of section 1073C of the Act is that Division 3 of Part 7.11 of the Act applies to bodies prescribed for that section as if they were companies.

7.11.08 Interests in registered schemes

For paragraph 1073A(1)(c) of the Act, an interest in a registered scheme is an ***interest in a registered scheme*** if the interest:

(a) is an interest in a managed investment scheme that is registered under section 601EB of the Act; and

(b) is quoted on the financial market of the Australian Stock Exchange Limited.

Division 2—Application of Part 7.11

7.11.09 Application

This Part applies to conduct engaged in in this jurisdiction or otherwise.

Division 3—Transfer of Division 3 securities effected otherwise than through a prescribed CS facility

7.11.10 Application of Division 3

This Division is made under section 1073D of the Act, and applies to transfers of Division 3 securities effected otherwise than through a prescribed CS facility.

7.11.11 Sufficient transfer: general

(1) A document is a ***sufficient transfer*** of Division 3 assets if it:

(a) relates to those assets; and

(b) is duly completed in accordance with the documentation in any of the following subparagraphs:

(i) Parts 1 and 2 of Form 1;

(ii) Part 1 of Form 1 and Parts 1 and 2 of Form 2 or Form 3;

(iii) Parts 1 and 3 of Form 1 and both parts of Form 4;

(iv) Part 1 of Form 1, Parts 1 and 3 of Form 2 or Form 3 and both parts of Form 4.

(2) A document is a ***sufficient transfer*** of Division 3 rights if it:

(a) relates to those rights; and

(b) is duly completed in accordance with the documentation in any of the following subparagraphs:

(i) Parts 1 and 2 of Form 5;

(ii) Part 1 of Form 5 and Parts 1 and 2 of Form 6 or Form 7;

(iii) Parts 1 and 3 of Form 5 and both parts of Form 8;

(iv) Part 1 of Form 5, Parts 1 and 3 of Form 6 or Form 7 and both parts of Form 8.

7.11.12 Sufficient transfer of Division 3 assets: licensed trustee company or Public Trustee of a State or Territory

(1) This regulation applies to the transfer of Division 3 assets, otherwise than by way of sale, gift or exchange, by:

(a) a licensed trustee company; or

(b) a Public Trustee of a State or Territory; or

(c) a company mentioned in Schedule 9;

whether alone or together with any other person or persons, to the beneficial owner of the Division 3 assets.

(2) A document is a sufficient transfer of the Division 3 assets if it:

(a) relates to those assets; and

(b) is completed in accordance with Form 9.

7.11.13 Sufficient transfer of Division 3 rights: licensed trustee company or Public Trustee of a State or Territory

(1) This regulation applies to the transfer of Division 3 rights, otherwise than by way of sale, gift or exchange, by:

(a) a licensed trustee company; or

(b) a Public Trustee of a State or Territory; or

(c) a company mentioned in Schedule 9;

whether alone or together with any other person or persons, in favour of the beneficial owner of those rights.

(2) A document is a sufficient transfer of the Division 3 rights if it:

(a) relates to those rights; and

(b) is completed in accordance with Form 10.

7.11.14 Sufficient transfer

(1) A document that is a sufficient transfer of Division 3 assets may be used:

(a) as a proper instrument of transfer for section 1071B of the Act; and

(b) as an instrument of transfer for the purposes of any other law or instrument governing or relating to those assets.

(2) A document that is a sufficient transfer of Division 3 rights may be used as an instrument of transfer of those rights for the purposes of any law or instrument governing or relating to those rights.

7.11.15 Transferee’s execution of transfer of Division 3 assets

(1) If Division 3 assets are transferred by means of a sufficient transfer:

(a) the transferee is taken to have agreed at the execution time to accept the Division 3 assets subject to the terms and conditions on which the transferor held them at that time; and

(b) the terms and conditions are the terms and conditions applicable as between:

(i) the issuer in relation to the Division 3 assets; and

(ii) the holder for the time being of the Division 3 assets.

(2) If the Division 3 assets are shares, the transferee is also taken to have agreed, at the execution time:

(a) to become a member of the issuer; and

(b) to be bound, on being registered as the holder of the shares, by the issuer’s constitution.

7.11.16 Transferee’s execution of transfer of Division 3 rights

(1) If Division 3 rights relating to Division 3 assets are transferred by means of a sufficient transfer, the transferee is taken:

(a) to have applied at the execution time to the issuer in relation to the Division 3 assets for the issue to the transferee of the Division 3 assets; and

(b) to have agreed at the execution time to accept the Division 3 assets subject to the terms and conditions on which the issuer offers them for subscription.

(2) If the Division 3 assets are shares, the transferee is also taken to have agreed, at the execution time:

(a) to become a member of the issuer; and

(b) to be bound, on being registered as the holder of the shares, by the issuer’s constitution.

7.11.17 Transfer document that purports to bear stamp of transferor's broker

(1) This regulation applies if a transfer document relating to Division 3 assets or Division 3 rights:

(a) is a duly completed Part 1; and

(b) bears a stamp that purports to be a stamp of the transferor’s broker (the ***designated broker***).

(2) Each associate (if any) of the designated broker is taken to have warranted:

(a) that the statements in the transfer document that purport to be certified by the designated broker are accurate; and

(b) that the transferor is:

(i) the registered holder of, or entitled to be registered as the holder of, the Division 3 assets; or

(ii) is entitled to the Division 3 rights;

and is legally entitled or authorised to sell or dispose of the Division 3 assets or Division 3 rights.

(3) If the designated broker is not a broker’s agent, the designated broker is taken to have warranted:

(a) that the statements in the transfer document that purport to be certified by the designated broker are accurate; and

(b) that the transferor is:

(i) the registered holder of, or entitled to be registered as the holder of, the Division 3 assets; or

(ii) is entitled to the Division 3 rights;

and is legally entitled or authorised to sell or dispose of the Division 3 assets or Division 3 rights.

(4) The following additional arrangements apply if the transfer document has been duly completed in accordance with Part 1 of Form 1 or Form 5:

(a) if, when the transfer document was stamped with the stamp mentioned in paragraph (1)(b), the designated broker had authority to sell the Division 3 assets or Division 3 rights, on the transferor’s behalf, to:

(i) the transferee; or

(ii) particular persons who include, or particular classes of persons at least one of which includes, the transferee; or

(iii) any person at all;

the designated broker is taken to have been authorised to execute, and to have executed, the transfer document on the transferor’s behalf;

(b) each associate (if any) of the designated broker is liable to indemnify:

(i) the issuer in relation to the Division 3 assets or Division 3 rights; and

(ii) the transferor; and

(iii) the transferee; and

(iv) the transferee’s broker;

against any loss or damage arising if:

(v) the stamp mentioned in paragraph (1)(b) is not the designated broker’s stamp; or

(vi) apart from paragraph (a), the designated broker was not authorised to execute the transfer document on the transferor’s behalf;

(c) if the designated broker is not a broker’s agent, the designated broker is liable to indemnify:

(i) the issuer in relation to the Division 3 assets or Division 3 rights; and

(ii) the transferor; and

(iii) the transferee; and

(iv) the transferee’s broker;

against any loss or damage arising if:

(v) the stamp mentioned in paragraph (1)(b) is not the designated broker’s stamp; or

(vi) apart from paragraph (a), the designated broker was not authorised to execute the transfer document on the transferor’s behalf.

7.11.18 Warranties by market licensee if transfer document purports to bear its stamp

(1) This regulation applies if a transfer document:

(a) has been duly completed in accordance with Part 1 of Form 3 or Form 7; and

(b) bears a stamp that purports to be a stamp of a market licensee.

(2) The market licensee is taken to have warranted that:

(a) the statements in the transfer document that purport to be certified by a market licensee are accurate; and

(b) the transferor is:

(i) the registered holder of, or entitled to be registered as the holder of, the Division 3 assets; or

(ii) entitled to the Division 3 rights;

and is legally entitled or authorised to sell or dispose of the Division 3 assets or Division 3 rights.

7.11.19 Indemnities by market licensee and broker if transfer document purports to bear their stamps

(1) This regulation applies if:

(a) a transfer document (the ***first document***) relating to Division 3 assets or Division 3 rights:

(i) has been duly completed in accordance with Part 1 of Form 1 or Form 5; and

(ii) bears a stamp that purports to be the stamp of the transferor’s broker; and

(b) another transfer document:

(i) relates to any or all of the Division 3 assets or Division 3 rights; and

(ii) has been duly completed in accordance with Part 1 of Form 3 or Form 7; and

(iii) bears a stamp that purports to be the stamp of a market licensee.

(2) The market licensee is liable to indemnify:

(a) the issuer in relation to the Division 3 assets or Division 3 rights; and

(b) the transferor in relation to the other document; and

(c) the transferee in relation to the other document; and

(d) the broker of the transferee in relation to the other document;

against any loss or damage arising if:

(e) the stamp mentioned in subparagraph (1)(a)(ii) is not the stamp of the transferor’s broker; or

(f) apart from paragraph 7.11.17(4)(a), the designated broker was not authorised to execute the first document on behalf of the transferor in relation to the first document.

(3) Each associate (if any) of the transferor’s broker is liable to indemnify the market licensee against any loss or damage arising as mentioned in subregulation (2).

(4) If the transferor’s broker is not a broker’s agent, the transferor’s broker is liable to indemnify the market licensee against any loss or damage arising as mentioned in subregulation (2).

(5) Nothing in this regulation limits the operation of anything in regulation 7.11.17 or 7.11.18 or of anything else in this regulation.

7.11.20 Joint and several warranties and liabilities

(1) If 2 or more persons are taken to have warranted in the terms mentioned in paragraphs 7.11.17(2)(a) and (b) or 7.11.17(3)(a) and (b), the persons are taken to have warranted jointly and severally.

(2) If 2 or more persons are liable as mentioned in paragraph 7.11.17(4)(b) or (c), or subregulation 7.11.19(3) or (4), the persons are liable jointly and severally.

7.11.21 Registration of certain instruments

(1) This regulation applies if a sufficient transfer under this Part is lodged with a company for the purpose of:

(a) registering a transfer of Division 3 assets; or

(b) obtaining the issue of Division 3 assets.

(2) If the sufficient transfer is a transfer under regulation 7.11.11, the company and its officers are, in the absence of knowledge to the contrary, entitled to assume without inquiry that:

(a) a stamp on the transfer document that purports to be the transferor’s broker’s stamp is the stamp of that broker; and

(b) a stamp on the transfer document that purports to be the transferee’s broker’s stamp is the stamp of that broker; and

(c) a stamp on the transfer document that purports to be the stamp of a market licensee is the stamp of that market licensee.

(3) If the sufficient transfer is a transfer under regulation 7.11.12 or 7.11.13, the company and its officers are, in the absence of knowledge to the contrary, entitled to assume without inquiry that:

(a) at the execution time, the licensed trustee company, a Public Trustee of a State or Territory, or a company listed in Schedule 9 named in the instrument held (whether alone or together with any other person or persons) in the ordinary course of its business, in trust for or on behalf of the transferee, the Division 3 assets or Division 3 rights to which the sufficient transfer relates; and

(b) the transfer was not made by way of a sale, gift or exchange of the Division 3 assets or Division 3 rights.

7.11.22 Details to be included in instrument of transfer

(1) For subsection 1071B(3) of the Act, for a transfer of unquoted securities, the State or Territory in this jurisdiction in which the company is taken to be registered is a prescribed detail.

(2) In this regulation:

***unquoted securities*** means securities (within the meaning of subsection 1071A(1) of the Act) that are not admitted to quotation on any of the financial markets operated by the Australian Stock Exchange Limited, Bendigo Stock Exchange Limited or National Stock Exchange of Australia Limited.

Division 4—Transfer of Division 4 financial products effected through prescribed CS facility

7.11.23 Application of Division 4

This Division is made under sections 1074A and 1074E of the Act, and applies to transfers of Division 4 financial products effected through ASTC.

Note: ASTC—the ASX Settlement and Transfer Corporation Pty Limited—is a prescribed CS facility: see regulation 1.0.02AB.

7.11.24 Application of ASTC operating rules

If the ASTC operating rules include provisions determining:

(a) which participant effected a proper ASTC transfer; or

(b) when a proper ASTC transfer takes effect;

those provisions have effect for this Division.

7.11.25 Participant’s authority to enter into transaction continues despite client’s death

(1) This regulation applies if:

(a) a person authorises a participant to enter into a transaction involving the disposal of a Division 4 financial product (for example, a sale); and

(b) the person dies before the participant enters into the transaction; and

(c) the authority is still in force immediately before the person dies.

(2) The authority continues, despite the person’s death, as if the person were still alive.

(3) If the participant enters into the transaction while the authority so continues, the transaction is binding on the person’s legal representative.

(4) The authority can be revoked by the person’s legal representative in any way that the person could have revoked it while the person was alive.

7.11.26 Authority to enter into transaction gives authority to transfer

(1) This regulation applies if a person authorises a participant to enter into a transaction involving the disposal of a Division 4 financial product (for example, a sale).

(2) The person is taken to have authorised the participant to effect any proper ASTC transfer of the Division 4 financial product that the participant effects, whether or not the transfer has any connection with the transaction.

Note: The transfer may have no connection with the transaction because of the operation of the provisions of the ASTC operating rules mentioned in subregulation 7.5.41(1).

(3) The authority that the person is taken by subregulation (2) to have given:

(a) is revoked if, before the transaction is entered into, the authority to enter into the transaction is revoked or otherwise ceases to have effect; and

(b) cannot otherwise be revoked.

(4) If the person dies after the transaction is entered into, the authority:

(a) continues in force, despite the person’s death, as if the person were still alive; and

(b) cannot be revoked.

(5) If:

(a) the authority mentioned in subregulations (1) and (2) is given to a participant (the ***transacting participant***) in a financial market; and

(b) under the market licensee’s operating rules, a participant in a clearing and settlement facility (the ***clearing participant***) has the function of completing the relevant transaction;

the clearing participant has the same authority as the transacting participant has under subregulations (1) and (2).

7.11.27 Effect of proper ASTC transfer on transferee: Division 4 financial products other than rights

(1) If a proper ASTC transfer of a Division 4 financial product (other than rights) takes effect at a particular time:

(a) the transferee is taken to have agreed at that time to accept the Division 4 financial product subject to the terms and conditions on which the transferor held them immediately before that time; and

(b) the terms and conditions are the terms and conditions applicable as between the issuer in relation to, and the holder for the time being of, the Division 4 financial product.

(2) If the Division 4 financial product is shares, the transferee is also taken to have agreed at that time:

(a) to become a member of the issuer; and

(b) to be bound by the issuer’s constitution.

(3) If the Division 4 financial product is an interest in a managed investment scheme, the transferee is also taken to have agreed at that time:

(a) to become a member of the managed investment scheme; and

(b) to be bound by the constitution of the managed investment scheme to the extent that:

(i) the transferee will comply with any requirement imposed on the transferee by the constitution; and

(ii) the transferee will not impede compliance by another person with any requirement imposed on the other person by the constitution.

(4) In this regulation:

***right*** means a right, whether existing or future, and whether contingent or not, of a person to have any of the following issued to the person, whether or not on payment of any money or for any other consideration:

(a) a share in a company (including a body to which section 1073C of the Act applies);

(b) a debenture of a company (including a body to which section 1073C of the Act applies);

(c) an interest in a registered scheme mentioned in regulations made under paragraph 1073A(1)(c) of the Act.

7.11.28 Effect of proper ASTC transfer on transferee: rights

(1) If a proper ASTC transfer of a Division 4 financial product that is rights (other than rights that relate to an interest in a managed investment scheme) takes effect at a particular time, the transferee is taken:

(a) to have applied at that time to the issuer in relation to the rights for the issue to the transferee of the Division 4 financial product to which the rights relate; and

(b) to have agreed at that time to accept the Division 4 financial product to which the rights relate subject to the terms and conditions on which the issuer offers them for subscription.

(2) If the Division 4 financial product to which the rights (other than rights that relate to an interest in a managed investment scheme) relate is shares, the transferee is also taken to have agreed, at that time:

(a) to become a member of the issuer; and

(b) to be bound, on being registered as the holder of the shares, by the issuer’s constitution.

(3) If the Division 4 financial product is a right to an interest in a managed investment scheme, the transferee is also taken to have agreed at that time:

(a) to have applied at that time to the responsible entity in relation to the rights for the issue to the transferee of the interest in a managed investment scheme to which the rights relate; and

(b) to have agreed at that time to accept the interest in a managed investment scheme to which the rights relate subject to the terms and conditions on which they are offered by the responsible entity; and

(c) to become a member of the managed investment scheme; and

(d) to be bound by the constitution of the managed investment scheme to the extent that:

(i) the transferee will comply with any requirement imposed on the transferee by the constitution; and

(ii) the transferee will not impede compliance by another person with any requirement imposed on the other person by the constitution.

(4) In this regulation:

***right*** means a right, whether existing or future, and whether contingent or not, of a person to have any of the following issued to the person, whether or not on payment of any money or for any other consideration:

(a) a share in a company (including a body to which section 1073C of the Act applies);

(b) a debenture of a company (including a body to which section 1073C of the Act applies);

(c) an interest in a registered scheme mentioned in regulations made under paragraph 1073A(1)(c) of the Act.

7.11.29 Warranties by participant if identification code is included in transfer document

(1) This regulation applies if the transfer document for a proper ASTC transfer of a Division 4 financial product includes a participant’s identification code as the identification code of the participant effecting the transfer.

(2) If the participant is the transferor, the participant is taken to have warranted that:

(a) the transfer was effected by the participant; and

(b) the transferor was legally entitled or authorised to transfer the Division 4 financial product.

(3) Subregulation (4) applies if:

(a) the participant is not the transferor; and

(b) the transfer is pursuant to a transaction in relation to which, or to transactions in relation to each of which, one of the following conditions is satisfied:

(i) the transaction was entered into in the ordinary course of trading on a financial market;

(ii) the transaction is, under the operating rules of a market licensee, described, or to be described, as ‘special’ when it is reported to the market licensee.

(4) The participant is taken to have warranted that:

(a) the transferor was legally entitled or authorised to transfer the Division 4 financial product; and

(b) the transfer was effected by the participant; and

(c) the participant was authorised by the transferor to effect the transfer.

(5) Subregulation (6) applies if:

(a) the participant is not the transferor; and

(b) the transfer is not pursuant to a transaction in relation to which, or to transactions in relation to each of which, one of the following conditions is satisfied:

(i) the transaction was entered into in the ordinary course of trading on a financial market;

(ii) the transaction is, under the operating rules of a market licensee, described, or to be described, as ‘special’ when it is reported to the market licensee.

(6) The participant is taken to have warranted that:

(a) the transfer was effected by the participant; and

(b) the participant was authorised by the transferor to effect the transfer.

7.11.30 Indemnities in respect of warranted matters: transfer not effected by the participant

(1) This regulation applies if:

(a) a participant is taken by regulation 7.11.29 to have warranted, in relation to a proper ASTC transfer of a Division 4 financial product, that the transfer was effected by the participant; and

(b) the transfer was not effected by the participant.

(2) The participant is liable to indemnify each of the following against any loss or damage arising from the transfer not having been effected by the participant:

(a) the issuer in relation to the Division 4 financial product;

(b) the transferor;

(c) the transferee;

(d) if a participant acted as the transferee’s agent in the transfer—that participant;

(e) the prescribed CS facility operated by ASTC;

(f) if TNS Clearing Pty Limited is the counter‑party in the transaction—TNS Clearing Pty Limited;

(g) if Options Clearing House Pty Limited is the counter‑party in the transaction—Options Clearing House Pty Limited.

(3) For this regulation, the effect of regulation 7.11.26 is to be disregarded in determining whether a person:

(a) was legally entitled or authorised to transfer Division 4 financial products; or

(b) was authorised by another person to effect a transfer of Division 4 financial products.

7.11.31 Indemnities in respect of warranted matters: transferor not legally entitled or authorised to transfer Division 4 financial products

(1) This regulation applies if:

(a) a participant is taken by regulation 7.11.29 to have warranted, in relation to a proper ASTC transfer of a Division 4 financial product, that the transferor was legally entitled or authorised to transfer the Division 4 financial product; and

(b) the transferor was not legally entitled or authorised to transfer the Division 4 financial product.

(2) The participant is liable to indemnify each of the following against any loss or damage arising from the transferor not having been legally entitled or authorised to transfer the Division 4 financial product:

(a) the issuer in relation to the Division 4 financial product;

(b) the transferee;

(c) if a participant acted as the transferee’s agent in the transfer—that participant;

(d) the prescribed CS facility operated by ASTC;

(e) if TNS Clearing Pty Limited is the counter‑party in the transaction—TNS Clearing Pty Limited;

(f) if Options Clearing House Pty Limited is the counter‑party in the transaction—Options Clearing House Pty Limited.

(3) For this regulation, the effect of regulation 7.11.26 is to be disregarded in determining whether a person:

(a) was legally entitled or authorised to transfer Division 4 financial products; or

(b) was authorised by another person to effect a transfer of Division 4 financial products.

7.11.32 Indemnities in respect of warranted matters: participant not authorised to effect transfer

(1) This regulation applies if:

(a) a participant is taken by regulation 7.11.29 to have warranted, in relation to a proper ASTC transfer of a Division 4 financial product, that the participant was authorised by the transferor to effect the transfer; and

(b) the participant was not authorised by the transferor to effect the transfer.

(2) The participant is liable to indemnify each of the following against any loss or damage arising from the participant not having been authorised by the transferor to effect the transfer:

(a) the issuer in relation to the Division 4 financial product;

(b) the transferor;

(c) the transferee;

(d) if a participant acted as the transferee’s agent in the transfer—that participant;

(e) the prescribed CS facility operated by ASTC;

(f) if TNS Clearing Pty Limited is the counter‑party in the transaction—TNS Clearing Pty Limited;

(g) if Options Clearing House Pty Limited is the counter‑party in the transaction—Options Clearing House Pty Limited.

(3) For this regulation, the effect of regulation 7.11.26 is to be disregarded in determining whether a person:

(a) was legally entitled or authorised to transfer Division 4 financial products; or

(b) was authorised by another person to effect a transfer of Division 4 financial products.

7.11.33 Joint and several warranties and liabilities

(1) If 2 or more persons are taken to have warranted in the terms mentioned in subregulation 7.11.29(2), (4) or (6), the persons are taken to have warranted jointly and severally.

(2) If 2 or more persons are liable as mentioned in regulation 7.11.30, 7.11.31 or 7.11.32, the persons are liable jointly and severally.

7.11.34 ASTC entitled to assume its operating rules complied with

(1) This regulation applies if the prescribed CS facility operated by ASTC assumes without inquiry, in the absence of knowledge to the contrary, that anything purporting to be done under the ASTC operating rules in connection with a transfer of a Division 4 financial product has been done in accordance with those rules.

(2) If the prescribed CS facility operated by ASTC assumes, in reliance on subregulation (1), that a thing was done in accordance with the ASTC operating rules, the thing is taken to have been done in accordance with those rules.

(3) If the prescribed CS facility operated by ASTC:

(a) acts on behalf of the issuer in relation to a Division 4 financial product; and

(b) as part of that function assumes, in reliance on subregulation (1), that a thing was done in accordance with the ASTC operating rules;

the issuer is also taken to assume, and to be entitled to assume, that the thing was done in accordance with the ASTC operating rules.

7.11.35 ASTC‑regulated transfer not to be registered unless proper ASTC transfer

(1) The issuer in relation to a Division 4 financial product must not register, or otherwise give effect to, an ASTC‑regulated transfer of the Division 4 financial product unless the transfer is a proper ASTC transfer.

(2) Subregulation (1) has effect despite anything in:

(a) the issuer’s constitution; or

(b) a deed relating to debentures; or

(c) the constitution of a registered scheme; or

(d) a deed relating to interests.

7.11.36 Issuer not to refuse to register proper ASTC transfer

The issuer in relation to a Division 4 financial product must not:

(a) refuse or fail to register a proper ASTC transfer of the Division 4 financial product; or

(b) refuse or fail to give effect to a proper ASTC transfer of the Division 4 financial product.

7.11.37 Determination of who holds Division 4 financial products for the purposes of meeting

(1) This regulation applies to a meeting of the holders of securities of a body corporate if some or all of the securities are Division 4 financial products.

(2) The convener of the meeting may determine that all the securities of the body corporate that are Division 4 financial products at a specified time before the meeting are taken, for the purposes of the meeting, to be held by the persons who held them at the specified time.

(3) The specified time:

(a) must satisfy any applicable requirements of the ASTC operating rules; but

(b) in any case, must not be more than 48 hours before the meeting.

(4) The convenor must make a determination:

(a) in accordance with any applicable requirements of the ASTC operating rules as to the way in which it must be made; but

(b) in any case, before notice of the meeting is given.

(5) The convenor must include particulars of the determination in the notice of the meeting.

(6) However, a failure to include particulars of the determination in the notice of the meeting does not invalidate the determination.

(7) The convenor’s determination has effect accordingly despite anything in:

(a) the Act; and

(b) these Regulations; and

(c) any other law (written or unwritten) that applies to the meeting; and

(d) any document that applies to the meeting (for example, the body corporate’s constitution or any relevant trust deed).

7.11.38 Determination of who holds Division 4 financial products in class of Division 4 financial products for the purposes of meeting

(1) This regulation applies to a meeting of the holders of a class of securities of a body corporate if some or all of the securities in that class are Division 4 financial products.

(2) The convener of the meeting may determine that all the securities of the body corporate in the relevant class that are Division 4 financial products at a specified time before the meeting are taken, for the purposes of the meeting, to be held by the persons who held them at the specified time.

(3) The specified time:

(a) must satisfy any applicable requirements of the ASTC operating rules; but

(b) in any case, must not be more than 48 hours before the meeting.

(4) The convenor must make a determination:

(a) in accordance with any applicable requirements of the ASTC operating rules as to the way in which it must be made; but

(b) in any case, before notice of the meeting is given.

(5) The convenor must include particulars of the determination in the notice of the meeting.

(6) However, a failure to include particulars of the determination in the notice of the meeting does not invalidate the determination.

(7) The convenor’s determination has effect accordingly despite anything in:

(a) the Act; and

(b) these Regulations; and

(c) any other law (written or unwritten) that applies to the meeting; and

(d) any document that applies to the meeting (for example, the body corporate’s constitution or a relevant trust deed).

7.11.39 Determination of who holds Division 4 financial products for the purposes of conferring security benefits

(1) If the ASTC operating rules include provisions relating to the determination, for the purposes of conferring security benefits, of who holds or is taken to hold Division 4 financial products at a particular time, those provisions have effect accordingly despite anything in:

(a) the Act; and

(b) these Regulations; and

(c) any other law (written or unwritten) that applies to the conferral; and

(d) any document that applies to the conferral (for example, the body corporate’s constitution or a relevant trust deed).

(2) In subregulation (1), ***conferring a security benefit*** means:

(a) paying or transferring money or property to a person because the person holds or held a Division 4 financial product; or

(b) issuing securities to a person because the person holds or held a Division 4 financial product; or

(c) conferring a right on a person because the person holds or held a Division 4 financial product.

Division 5—Offences

7.11.40 Stamping of broker’s stamp on sufficient transfer

(1) A broker must not stamp with a broker’s stamp a document (a ***transfer document***) that:

(a) relates to Division 3 securities; and

(b) may be used as a sufficient transfer under this Part;

unless the transfer document relates to a sale or purchase of the Division 3 securities, in the ordinary course of the broker’s business, for a consideration of not less than their unencumbered market value at the time of the sale or purchase.

(2) A person must not stamp a transfer document with a stamp that purports to be that of the transferor’s broker unless:

(a) the stamp is the stamp of the transferor’s broker; and

(b) apart from paragraph 7.11.17(4)(a), the transferor’s broker is authorised to execute the document on the transferor’s behalf; and

(c) the person is:

(i) the transferor’s broker; or

(ii) authorised to stamp the document on the transferor’s broker’s behalf.

(3) A market licensee must not stamp with a stamp of the market licensee a document that may be used as a sufficient transfer under this Part of Division 3 securities unless:

(a) a duly completed Part 1, relating to the Division 3 securities, has been lodged with the issuer in relation to the Division 3 securities; or

(b) the market licensee holds a duly completed Part 1 that:

(i) bears a certificate that purports to be that of the transferor’s broker; and

(ii) states that a duly completed Part 1, relating to the Division 3 securities, has been lodged or will be lodged with the issuer in relation to the Division 3 securities.

(4) A person must not execute a document that:

(a) may be used as a sufficient transfer under regulation 7.11.12 or 7.11.13; and

(b) relates to a transfer of Division 3 securities:

(i) made by way of a sale, gift or exchange of the Division 3 securities; or

(ii) to or in favour of a person who is not the beneficial owner of the Division 3 securities.

(5) A person who is not a licensed trustee company, a Public Trustee of a State or Territory, or a company listed in Schedule 9 must not knowingly cause, authorise or permit to be executed a document that:

(a) relates to Division 3 securities; and

(b) may be used as a sufficient transfer under regulation 7.11.12 or 7.11.13;

but is not a sufficient transfer under that regulation.

(6) A person must not knowingly lodge or cause to be lodged with a company a document that has been:

(a) stamped in contravention of subregulation (1), (2) or (3); or

(b) executed in contravention of subregulation (4);

for the purpose of securing the registration of the transfer of, or the issue of, Division 3 securities to the transferee named in the document.

7.11.41 Inclusion of identification codes in proper ASTC transfers

A person must not include a participant’s identification code in a document that may be used to effect a proper ASTC transfer unless:

(a) the person:

(i) is the participant; or

(ii) is authorised so to include the identification code by the participant; and

(b) if:

(i) the identification code is so included as the identification code of the participant effecting the transfer; and

(ii) the participant is not the transferor;

the participant is, apart from the effect of regulation 7.11.26, authorised by the transferor to effect the transfer.

7.11.42 Contravention by participant of the ASTC certificate cancellation provisions relating to use of cancellation stamps

A participant must not, intentionally or recklessly, contravene the ASTC certificate cancellation provisions by affixing, or failing to affix, a cancellation stamp to a certificate or other document of title to a Division 4 financial product.

Division 6—Civil liability

7.11.43 Contravention by participant of the ASTC certificate cancellation provisions

(1) This regulation applies to a person who suffers loss or damage because of conduct of a participant that was engaged in a contravention of the ASTC certificate cancellation provisions.

(2) The person may, unless the person was involved in the contravention, recover the amount of the loss or damage by action against the participant, whether or not the participant has been convicted of an offence in respect of the contravention.

(3) An action under subregulation (2) must be begun within 6 years after the day on which the cause of action arose.

(4) This regulation does not affect a liability that a person has under any other law.

(5) For section 1310B of the Act, an action under subregulation (2) is taken to be a proceeding in respect of loss or damage arising out of a contravention of the Act.

Part 7.12—Miscellaneous

7.12.01 Destruction of records by ASIC

For paragraph 1101D(b) of the Act, the period of possession is 7 years.

Chapter 8—Mutual recognition of securities offers

Part 8.1—Preliminary

8.1.01 Meaning of *foreign recognition scheme*

For the definition of ***foreign recognition scheme*** in subsection 1200A(1) of the Act, the provisions of Subpart 6 of Part 9 of the Financial Markets Conduct Act 2013 of New Zealand and the Financial Markets Conduct Regulations 2014 of New Zealand comprise a foreign recognition scheme.

8.1.02 Meaning of *offeror—*prescribed offer and kind of person

For the purposes of subparagraph (c)(ii) of the definition of ***offer*** in section 9 of the Act:

(a) an offer of an interest in a managed investment scheme governed by the laws of New Zealand is prescribed as a kind of offer; and

(b) for that offer, if the scheme is a managed investment scheme within the meaning of the Financial Markets Conduct Act 2013 of New Zealand—the offeror is the manager of the managed investment scheme as defined in that Act.

8.1.03 Meaning of *recognised jurisdiction*

For the definition of ***recognised jurisdiction*** in subsection 1200A(1) of the Act, New Zealand is prescribed.

Part 8.2—Foreign offers that are recognised in this jurisdiction

Division 1—Recognised offers

8.2.01 Prescribed offer (Act s 1200C(4))

For subsection 1200C(4) of the Act an offer of a security is a prescribed offer in relation to New Zealand if a disclosure document (as defined in the Financial Markets Conduct Act 2013 of New Zealand) must be prepared in accordance with:

(a) the Financial Markets Conduct Act 2013 of New Zealand; or

(b) the Financial Markets Conduct Regulations 2014 of New Zealand.

Note: For the purpose of Chapter 8 of the Act and Chapter 8 of these regulations, a security does not include all of the financial products defined as securities in the Financial Markets Conduct Act 2013 of New Zealand—see the definition of ***securities*** in subsection 92(7) of the Act. For example, a security does not include an interest in a superannuation scheme or a life insurance policy.

8.2.02 Prescribed warning statements (Act s 1200E)

(1) For paragraph 1200E(a) of the Act, the following statements are prescribed:

(a) this offer to Australian investors is a recognised offer made under Australian and New Zealand law. In Australia, this is Chapter 8 of the *Corporations Act 2001* and Regulations. In New Zealand, this is Subpart 6 of Part 9 of the Financial Markets Conduct Act 2013 of New Zealand and the Financial Markets Conduct Regulations 2014 of New Zealand;

(b) this offer and the content of the offer document are principally governed by New Zealand, rather than Australian, law. In the main, the Financial Markets Conduct Act 2013 of New Zealand and the Financial Markets Conduct Regulations 2014 of New Zealand set out how the offer must be made;

(c) there are differences in how securities and financial products are regulated under New Zealand, as opposed to Australian, law. For example, the disclosure of fees for managed investment schemes is different under New Zealand law;

(d) the rights, remedies and arrangements for compensation available to Australian investors in New Zealand securities and financial products may differ from the rights, remedies and arrangements for compensation for Australian securities and financial products;

(e) both the Australian and New Zealand securities regulators have enforcement responsibilities in relation to this offer. If you need to make a complaint about this offer, please contact the Australian Securities and Investments Commission (ASIC). The Australian and New Zealand regulators will work together to settle your complaint;

(f) the taxation treatment of New Zealand securities and financial products is not the same as that for Australian securities and products;

(g) if you are uncertain about whether this investment is appropriate for you, you should seek the advice of an appropriately qualified financial advisor.

(2) For paragraph 1200E(a) of the Act, the following additional warning statements are prescribed for offers involving the payment of proceeds, from securities or financial products, that are not Australian dollars:

(a) The offer may involve a currency exchange risk. The currency for the security or financial product is in dollars that are not Australian dollars. The value of the security or financial product will go up and down according to changes in the exchange rate between those dollars and Australian dollars. These changes may be significant;

(b) If you receive any payments in relation to the security or financial product that are not in Australian dollars, you may incur significant fees in having the funds credited to a bank account in Australia in Australian dollars.

(3) For paragraph 1200E(a) of the Act, the following additional warning statement is prescribed for offers involving securities and financial products, able to be traded on a financial market:

If the security or financial product is able to be traded on a financial market and you wish to trade the security or financial product through that market, you will have to make arrangements for a participant in that market to sell the security or financial product on your behalf. If the financial market is a foreign market that is not licensed in Australia (such as a securities market operated by the New Zealand Exchange Limited (NZX)) the way in which the market operates, the regulation of participants in that market and the information available to you about the security or financial product and trading may differ from Australian licensed markets.

8.2.03 Prescribed details to be given in warning statements (Act s 1200E(b))

For paragraph 1200E(b) of the Act, if a matter is referred to in an item of the Table, the details in the item are prescribed for the matter.

|  |  |  |
| --- | --- | --- |
| Item | Matter | Details to be provided |
| 1 | An offer to invest in a managed investment scheme is subject to an obligation to provide for a dispute resolution process | Details of the dispute resolution process available in relation to that offer |
| 2 | An offer is subject to continuous disclosure obligations | Details of the availability of the continuous disclosure notices that relate to that offer |
| 3 | An offer of a product that is currently listed or is to be listed on a financial market | Details of the financial market on which the product is listed, or on which it is proposed to be listed |

8.2.04 Prescribed home regulators (Act s 1200G(13) and (14))

For subsections 1200G(13) and (14) of the Act:

(a) an authority referred to in an item of the Table is prescribed as a home regulator for New Zealand; and

(b) each matter listed in the item in relation to the authority is prescribed as a matter in relation to which the authority is to be regarded as the home regulator.

|  |  |  |
| --- | --- | --- |
| Item | Authority | Matter(s) in relation to which the authority is to be regarded as the home regulator |
| 1 | Registrar of Financial Service Providers of New Zealand | Each matter mentioned in:  (a) items 1 to 4 of the Table at subsection 1200G(9) of the Act; or  (b) item 4 of the Table at subsection 1200N(1) of the Act |
| 2 | Financial Markets Authority of New Zealand | Each matter mentioned in items 5 to 7 of the Table at subsection 1200G(9) of the Act |

Division 4—Modification of the Act in relation to its application to recognised offers for interests in New Zealand managed investment schemes (Act s 1020G, 1200M)

8.4.01 Modification of Part 7.9 of the Act—New Zealand offer documents replace Product Disclosure Statements

For section 1020G of the Act, Part 7.9 of the Act is modified in its application in relation to managed investment schemes as set out in Part 18 of Schedule 10A.

8.4.02 Modification of Part 6D.2 of the Act and Part 7.9 of the Act—certain disclosure obligations not to apply

For section 1200M of the Act, Part 6D.2 of the Act and Part 7.9 of the Act are modified in relation to their application in respect of a recognised offer or a proposed offer of securities that may become a recognised offer as set out in Part 1 of Schedule 10AA.

Chapter 8A—Asia Region Funds Passport

Part 8A.4—Notified foreign passport funds

Division 1—Becoming a notified foreign passport fund

8A.4.10 Rejecting a notice of intention—name of fund identical to another or unacceptable

(1) For the purposes of subparagraphs 1213B(5)(a)(i), (ii), (iii) and (iv) of the Act, the rules for ascertaining whether a name is identical with another name are the rules set out in Part 1 of Schedule 6.

(2) For the purposes of subparagraph 1213B(5)(a)(v) of the Act, a name is unacceptable for registration under the regulations if it is unacceptable under the rules set out in Part 2 of Schedule 6.

Division 4—Providing key information in relation to notified foreign passport funds

8A.4.40 Register of members—purposes for which a person may obtain and use a copy

For the purposes of paragraph 1213K(2)(c) (and paragraph 1213L(3)(a)) of the Act, the following purposes are prescribed:

(a) soliciting a donation from a member of a notified foreign passport fund;

(b) soliciting a member of a notified foreign passport fund by a person who is authorised to assume or use the word stockbroker or sharebroker in accordance with section 923B of the Act;

(c) gathering information about the personal wealth of a member of a notified foreign passport fund;

(d) making an offer that satisfies paragraphs 1019D(1)(a) to (d) of the Act;

(e) making an invitation that, were it an offer to purchase a financial product, would be an offer that satisfies paragraphs 1019D(1)(a) to (d) of the Act.

Note: Section 1019D of the Act deals with unsolicited offers to purchase financial products off‑market.

8A.4.45 Destruction of records by ASIC—period before documents may be destroyed

For the purposes of paragraph 1213Q(b) of the Act, the period of possession is 7 years.

Part 8A.5—Register of passport funds

8A.5.10 Prescribed details for the Register of Passport Funds

Prescribed details of Australian passport funds

(1) For the purposes of paragraph 1214(3)(a) of the Act, the following details are prescribed for each Australian passport fund:

(a) the APFRN for the fund;

(b) the name of the fund;

(c) the ARSN of the registered scheme that constitutes the fund;

(ca) the ARFN of the sub‑fund of a CCIV that constitutes the fund;

(d) a statement that the fund is registered as an Australian passport fund;

(e) the date on which the fund was registered as an Australian passport fund;

(f) if the fund has or had a name in a participating economy (including Australia) that is different from its current name in Australia, then for each name that the fund has or had in a participating economy:

(i) that name; and

(ii) the name of each participating economy in which the fund has or had that name; and

(iii) for each such economy—the start date and (if applicable) the end date of each period during which the fund has or had that name in that economy;

(g) the name, ACN and ABN (if any) of the operator of the fund;

(h) if the fund has at any time had an operator with a name, ACN or ABN that is different from the name, ACN or ABN (as the case requires) mentioned in paragraph (g):

(i) that other name, ACN or ABN; and

(ii) the start date and the end date of each period during which an operator of the fund has had that other name, ACN or ABN;

(i) the review date for the fund;

(j) for each financial year for the fund—the name of each auditor of a financial report for the fund for that year;

(k) for each review period for the fund for which the fund is required under section 15 of the Passport Rules for this jurisdiction to conduct an implementation review—the name of the implementation reviewer.

(2) For the purposes of paragraph 1214(3)(b) of the Act, the following details are prescribed for each fund that has been deregistered as an Australian passport fund:

(a) the details that were prescribed for the fund under subregulation (1) immediately before the fund was deregistered, except for the details that were prescribed under paragraph (1)(d);

(b) a statement that the fund has been deregistered;

(c) the date on which the fund was deregistered;

(d) a statement indicating which of the following the fund was deregistered under:

(i) Division 2 of Part 5C.10 of the Act (deregistration as an Australian passport fund as a result of deregistration as a registration scheme);

(ii) Subdivision A of Division 1 of Part 8A.7 of the Act (voluntary deregistration);

(iii) Subdivision B of Division 1 of Part 8A.7 of the Act (deregistration initiated by ASIC).

Prescribed details of notified foreign passport funds

(3) For the purposes of paragraph 1214(3)(a) of the Act, the following details are prescribed for each notified foreign passport fund:

(a) the NFPFRN for the fund and any other unique number for the fund allocated to the fund by ASIC;

(b) the name of the fund;

(c) a statement that the fund is a notified foreign passport fund;

(d) the name of the home economy for the fund;

(e) the date on which the fund became a notified foreign passport fund;

(f) if the fund has or had a name in a participating economy (including Australia) that is different from its current name in Australia, then for each name that the fund has or had in a participating economy:

(i) that name; and

(ii) the name of each participating economy in which the fund has or had that name; and

(iii) for each such economy—the start date and (if applicable) the end date of each period during which the fund has or had that name in that economy;

(g) the name and ARBN of the operator of the fund;

(h) if the fund has at any time had an operator with a name or ARBN that is different from the name or ARBN (as the case requires) mentioned in paragraph (g):

(i) that other name or ARBN; and

(ii) the start date and the end date of each period during which an operator of the fund has had that other name or ARBN;

(i) the review date for the fund;

(j) for each financial year for the fund—the name of each auditor of a report for the fund for that year that is prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund;

(k) for each review period for the fund for which the fund is required under section 15 of the Passport Rules for this jurisdiction to conduct an implementation review—the name of the implementation reviewer.

(4) For the purposes of paragraph 1214(3)(b) of the Act, the following details are prescribed for each fund that has been removed as a notified foreign passport fund:

(a) the details that were prescribed for the fund under subregulation (3) immediately before the fund was removed, except for the details that were prescribed under paragraph (3)(c);

(b) a statement that the fund has been removed;

(c) the date on which the fund was removed;

(d) a statement indicating which of the following the fund was removed under:

(i) Subdivision A of Division 2 of Part 8A.7 of the Act (voluntarily denotification);

(ii) Subdivision B of Division 2 of Part 8A.7 of the Act (denotification as a result of deregistration as a passport fund in the home economy for the fund).

Part 8A.7—Deregistration and denotification

8A.7.10 Authority

This Part is made under section 1216L of the Act.

8A.7.15 Continued application of Corporations legislation to deregistered Australian passport funds

(1) During the transition period for a fund that has been deregistered as an Australian passport fund, each of the following continues to apply in relation to the fund as if it were an Australian passport fund:

(a) Part 1.2A and any provisions of the Act dealing with disclosing entities;

(b) Chapters 2C, 2D, 2F, 2G, 2M, 2N and 2P;

(c) Chapters 6, 6A, 6B, 6C and 6CA;

(d) Chapter 7;

(e) Part 8A.1, Part 8A.2, section 1212B, Part 8A.5, Part 8A.6, Part 8A.7 and Part 8A.8;

(f) Chapter 9;

(g) the remaining provisions of the Corporations legislation, to the extent that they apply:

(i) in relation to a provision mentioned in paragraphs (a) to (f); or

(ii) in relation to compliance with or enforcement of a provision mentioned in paragraphs (a) to (f).

Note: A fund may be deregistered as an Australian passport fund under Division 1 of Part 8A.7 of the Act or under Division 2 of Part 5C.10 of the Act.

(2) In this regulation, the ***transition period*** for a fund that has been deregistered as an Australian passport fund is the period:

(a) beginning on the day on which the fund is deregistered as an Australian passport fund (see subsection 1216D(3) of the Act); and

(b) ending on the last day on which there are any protected members of the fund.

(3) A person is a ***protected member*** of a fund that has been deregistered as an Australian passport fund if the person became a member of the fund (whether in this jurisdiction or any host economy for the fund):

(a) after the fund became an Australian passport fund; or

(b) on the expectation that the fund would become an Australian passport fund.

(4) For the purposes of the definition of ***protected member*** in subregulation (3), ignore any member of the fund that:

(a) is, or has at any time been, the operator of the fund; or

(b) is a related party of an entity that is, or has at any time been, the operator of the fund.

(5) If a fund has been deregistered as an Australian passport fund, a reference to the ***operator*** in relation to the fund in:

(a) this regulation; or

(b) any provision of the Corporations legislation the application of which is continued under subregulation (1);

is a reference to the responsible entity for the registered scheme that constitutes the fund or, if the fund has ceased to be a registered scheme, the entity or entities that control the fund.

8A.7.20 Continued application of Corporations legislation to funds that have been removed as notified foreign passport funds

(1) During the transition period for a fund that has been removed as a notified foreign passport fund, each of the following continues to apply in relation to the fund as if it were a notified foreign passport fund:

(a) Part 1.2A and any provisions of the Act dealing with disclosing entities;

(b) Chapters 2C, 2D, 2F, 2G, 2M, 2N and 2P;

(c) Chapters 6, 6A, 6B, 6C and 6CA;

(d) Chapter 7;

(e) Part 8A.1, Part 8A.2, Divisions 2, 3 and 4 of Part 8A.4, Part 8A.5, Part 8A.6, Part 8A.7 and Part 8A.8;

(f) Chapter 9;

(g) the remaining provisions of the Corporations legislation, to the extent that they apply:

(i) in relation to a provision mentioned in paragraphs (a) to (f); or

(ii) in relation to compliance with or enforcement of a provision mentioned in paragraphs (a) to (f).

Note: A fund may be removed as a notified foreign passport fund under Division 2 of Part 8A.7 of the Act.

(2) In this regulation, the ***transition period*** for a fund that has been removed as a notified foreign passport fund is the period:

(a) beginning on the day on which the fund is removed as a notified foreign passport fund (see subsection 1216J(3)); and

(b) ending on the last day on which there are any protected members of the fund.

(3) A person is a ***protected member*** of a fund that has been removed as a notified foreign passport fund if the person became a member of the fund (whether in this jurisdiction or any other participating economy for the fund):

(a) after the fund became a notified foreign passport fund; or

(b) on the expectation that the fund would become a notified foreign passport fund.

(4) For the purposes of the definition of ***protected member*** in subregulation (3), ignore any member of the fund that:

(a) is, or has at any time been, the operator of the fund; or

(b) is a related party of an entity that is, or has at any time been, the operator of the fund.

(5) If a fund has been removed as a notified foreign passport fund, a reference to the ***operator*** in relation to the fund in:

(a) this regulation; or

(b) any provision of the Corporations legislation the application of which is continued under subregulation (1);

is a reference to the operator of the regulated CIS that constitutes the fund or, if the fund has ceased to be a regulated CIS, the entity or entities that control the fund.

Chapter 8B—Corporate collective investment vehicles

Part 8B.4—Corporate finance and financial reporting for CCIVs

Division 1—Shares

8B.4.10 Cross investment between sub‑funds of a CCIV—restriction for circular cross‑investment

For the purposes of subsection 1230R(1) of the Act, a CCIV must not acquire, in respect of a sub‑fund of the CCIV (the ***acquiring sub‑fund***), one or more shares referable to another sub‑fund of the CCIV (the ***issuing sub‑fund***) if, at the time of the proposed acquisition, the assets of the issuing sub‑fund:

(a) directly include; or

(b) indirectly include, through one or more interposed sub‑funds of the CCIV;

one or more shares referable to the acquiring sub‑fund.

Note: Paragraph (b) applies if, for example, at the time of the proposed acquisition:

(a) the assets of the issuing sub‑fund include shares referable to sub‑fund C of the CCIV; and

(b) the assets of sub‑fund C include shares referable to sub‑fund D of the CCIV; and

(c) the assets of sub‑fund D include shares referable to the acquiring sub‑fund.

In this example, sub‑funds C and D are each interposed sub‑funds.

8B.4.15 Cross investment between sub‑funds of a CCIV—requirements and restrictions on membership rights

(1) For the purposes of paragraph 1230T(3)(b) of the Act, a CCIV’s entitlement, as described in subsection 1230T(2) of the Act, to vote:

(a) in respect of each share that the CCIV has acquired in respect of a sub‑fund of the CCIV (the ***first sub‑fund***) and that is referable to another sub‑fund of the CCIV (the ***second sub‑fund***); and

(b) as a member of the second sub‑fund on a resolution (the ***relevant resolution***) at a meeting of the members of the second sub‑fund;

is subject to the requirement and restriction mentioned in subregulation (2).

(2) For the purposes of subregulation (1), there is:

(a) a requirement that the CCIV must vote, in respect of each such share, on the relevant resolution in the way determined by resolution of the members of the first sub‑fund; and

(b) a restriction that the CCIV must not vote, in respect of each such share, on the relevant resolution if a resolution that determines the way the CCIV must vote on the relevant resolution is not made by the members of the first sub‑fund.

Division 4—Financial reports and audit of CCIVs

8B.4.40 Keeping financial records for sub‑funds—further requirement for cross‑investment

(1) For the purposes of paragraph 1232A(1)(c) of the Act, the written financial records that a CCIV must keep, for each sub‑fund of the CCIV, must comply with the further requirement set out in subregulation (2).

(2) Those records must correctly and clearly identify and explain all cross‑investment between the sub‑fund and any other sub‑fund of the CCIV.

8B.4.45 Annual financial reports for sub‑funds—further requirement for cross‑investment

(1) For the purposes of subsection 1232D(3) of the Act, a retail CCIV’s financial report for a sub‑fund (the ***reporting sub‑fund***) for a financial year must comply with:

(a) the further requirements set out in subregulation (2) to the extent that the assets of the reporting sub‑fund include shares in the CCIV referable to another sub‑fund of the CCIV; and

(b) the further requirements set out in subregulation (3) to the extent that the assets of another sub‑fund of the CCIV include shares in the CCIV referable to the reporting sub‑fund.

Requirements for the reporting sub‑fund as an investor sub‑fund

(2) The report must ensure that disclosures of the following are included in the notes to the financial statements of the reporting sub‑fund for the financial year:

(a) the total number of shares in the CCIV that:

(i) are assets of the reporting sub‑fund; and

(ii) are referable to other sub‑funds of the CCIV at the end of the financial year;

(b) the total valueof those shares at the end of the financial year and expressed in Australian dollars;

(c) so much of each of the totals in paragraphs (a) and (b) as relates to the shares referable to each of those other sub‑funds.

Requirements for the reporting sub‑fund as an investee sub‑fund

(3) The report must ensure that disclosures of the following are included in the notes to the financial statements of the reporting sub‑fund for the financial year:

(a) for the shares in the CCIV referable to the reporting sub‑fund of the CCIV:

(i) the total number of those shares that are assets of other sub‑funds of the CCIV at the start of the financial year; and

(ii) the total number of those shares that become assets of one or more other sub‑funds of the CCIV at any time during the financial year; and

(iii) the total number of those shares that cease to be assets of one or more other sub‑funds of the CCIV at any time during the financial year; and

(iv) the total number of those shares that are assets of other sub‑funds of the CCIV at the end of the financial year;

(b) all of the following:

(i) for the shares covered by subparagraph (a)(i)—the total value of those shares at the start of the financial year and expressed in Australian dollars;

(ii) for the shares covered by subparagraph (a)(ii)—the total value of those shares, worked out using the value of each share at the time the share becomes an asset as mentioned in that subparagraph, and expressed in Australian dollars;

(iii) for the shares covered by subparagraph (a)(iii)—the total value of those shares, worked out using the value of each share at the time the share ceases to be an asset as mentioned in that subparagraph, and expressed in Australian dollars;

(iv) for the shares covered by subparagraph (a)(iv)—the total value of those shares at the end of the financial year and expressed in Australian dollars;

(c) so much of each of the totals in paragraphs (a) and (b) as relates to the shares that are assets of each of those other sub‑funds of the CCIV.

8B.4.50 Combining financial reports, and directors’ reports etc., for sub‑funds of the same CCIV

(1) This regulation deals with how the provisions (the ***reporting provisions***) of Part 2M.3 of the Act (as modified by Chapter 8B of the Act) apply to a retail CCIV.

(2) For the purposes of section 343 and subsection 1243A(1) of the Act, this regulation modifies the operation of the reporting provisions to the extent that, apart from those modifications, the reporting provisions could not alternatively apply to:

(a) a single financial report for a financial year covering one or more sub‑funds of the CCIV; or

(b) a single directors’ report for a financial year covering one or more sub‑funds of the CCIV; or

(c) a single financial report for a half‑year covering one or more sub‑funds of the CCIV; or

(d) a single auditor’s report on the financial report referred to in paragraph (a) of this subregulation; or

(e) a single concise report (see paragraph 1232H(1)(b) of the Act) for a financial year covering one or more sub‑funds of the CCIV.

Note 1: Not all of the sub‑funds of the CCIV need to be covered by one of these single reports if the CCIV chooses. The reporting provisions will continue to apply, unmodified by this regulation, for any sub‑funds not covered by the report.

Note 2: All of the sub‑funds covered by one of these single reports must be sub‑funds of the same CCIV. The report cannot cover sub‑funds of different CCIVs, even if the CCIVs share the same corporate director.

(3) The report referred to in paragraph (2)(d) must be prepared by a single auditor, audit firm or audit company.

(4) Each single report referred to in subregulation (2) must be prepared so that each of the matters covered by the report is shown so that the matter is clearly identifiable for each of the sub‑funds covered by the report.

Part 8B.5—Operating a CCIV

8B.5.10 Who may hold CCIV assets—minimum standards and other requirements

(1) For the purposes of subsection 1234G(2) of the Act, the money and property of a CCIV may be held by a person other than the CCIV if:

(a) the corporate director of the CCIV is satisfied that the minimum standards in subregulation (2) are met:

(i) for the person; and

(ii) for the period in which the person is engaged to perform the function of holding the money and property of the CCIV; and

(b) the corporate director monitors the person’s compliance with the minimum standards during that period; and

(c) the corporate director undertakes a review of the person’s compliance with the minimum standards every 13 months starting on the day the person is engaged to perform the function of holding the money and property of the CCIV; and

(d) the corporate director makes available to ASIC, on request, the outcomes of the review.

(2) For the purposes of subregulation (1), the minimum standards for holding the money and property of a CCIV are met for a person and a period if:

(a) during the period, the person has adequate capacity and resources to hold the money and property of the CCIV; and

(b) in the case that the person performs other functions for the CCIV at any time during the period—the person has in place, at that time, adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the person in performing the other functions.

8B.5.15 Holding money and property of a CCIV on trust—exception

(1) For the purposes of subsection 1234K(1) of the Act, subsection 1234H(1) of the Act does not apply to the class of assets that is the money or property of a CCIV that is held outside of Australia in another jurisdiction in the circumstance mentioned in subregulation (2)

(2) For the purposes of subregulation (1), the circumstance is that:

(a) it is not reasonable for the money or property of the CCIV to be held on trust under the laws in force in the other jurisdiction; and

(b) there are adequate safeguards in place for protecting the money or property of the CCIV, including if the person holding the money or property of the CCIV becomes insolvent.

8B.5.20 Holding money and property of a CCIV separately—exception and other requirements for certain classes of assets

(1) For the purposes of subsections 1234K(1) and (2) of the Act, subsections 1234J(1) to (3) of the Act do not apply in relation to the class of assets of a sub‑fund of a CCIV that consists of assets that:

(a) are of any of the following kinds (the ***prescribed assets***):

(i) Australian or foreign currency;

(ii) rights to Australian or foreign currency that is held in a deposit‑taking facility made available by an ADI (within the meaning of the *Banking Act 1959*);

(iii) rights to Australian or foreign currency that is held in a deposit‑taking facility made available by a body corporate that is authorised to carry on a banking business (within the meaning of that Act) in a foreign country;

(iv) securities;

(v) derivatives; and

(b) are held in accordance with the requirements mentioned in subregulation (2).

(2) For the purposes of subregulation (1), the following requirements apply in relation to the holding, by a person, of assets of a sub‑fund of a CCIV that are prescribed assets:

(a) a requirement that the person holds the prescribed assets separately from any money or property of the person;

(b) a requirement that there are adequate safeguards in place for the protection of the prescribed assets, including if the assets of another sub‑fund of the CCIV or the assets of another entity are subject to external administration;

(c) a requirement that the person do all things necessary to ensure that not holding the prescribed assets in accordance with subsections 1234J(1) to (3) of the Act does not restrict the CCIV’s capacity to exercise any rights in respect of the prescribed assets;

(d) a requirement that the person do all things necessary to ensure that a reconciliation of the prescribed assets occurs:

(i) each business day; or

(ii) if it is ordinary and reasonable, in commercial practice, to reconcile assets of the same class less frequently—as frequently as reconciliation of assets of that class would occur in accordance with that practice;

(e) if there is a discrepancy in the reconciliation of the prescribed assets—a requirement that the person do all things necessary to rectify the discrepancy within the period of 2 business days starting after the day the person identifies, or becomes aware of, the discrepancy;

(f) a requirement that the person:

(i) keep adequate records of the prescribed assets; and

(ii) provide reasonable assistance to the corporate director of the CCIV.

Note: For the purposes of paragraph (e), one of the ways a discrepancy may be rectified is through the provision of additional property by the CCIV at the request of the person holding the property.

Chapter 9—Miscellaneous

Part 9.1—Registers and registration of documents

9.1.01 Prescribed registers

For subsections 1274A(2), (3) and (4) of the Act, the following registers are prescribed:

(a) the register of companies registered under section 118 or 601BD of the Act or the registration of which is continued by section 1378 of the Act;

(b) the register of Disqualified Company Directors and Other Officers kept under section 1274AA of the Act;

(c) the Australian Register of Company Charges kept under section 265 of the Act;

(d) the register of registered Australian bodies kept under Division 1 of Part 5B.2 of the Act;

(e) the register of foreign companies registered under Division 2 of Part 5B.2 of the Act;

(f) the register of names reserved under section 152 of the Act;

(g) the Register of Licence Holders kept under section 789 of the Act;

(h) the register of managed investment schemes registered under section 601EB of the Act;

(i) the Register of Futures Licensees kept under section 1155 of the Act;

(ia) the Register of Passport Funds that is established and maintained in accordance with section 1214 of the Act;

(j) the Register of Auditors kept under section 1285 of the Act;

(m) the register in respect of financial services licensees mentioned in subsection 922A(2) of the Act;

(n) the register in respect of authorised representatives of financial services licensees mentioned in subsection 922A(2) of the Act;

(o) the register in respect of persons against whom a banning order or disqualification order is made mentioned in subsection 922A(2) of the Act;

(p) the register relating to trustees for debenture holders kept under section 283BCA of the Act;

(q) the Register of Relevant Providers maintained under section 922Q of the Act.

9.1.02 Prescribed information

For subsections 1274A(3) and (4) of the Act, the following information is prescribed:

(a) in relation to each company (other than a CCIV) registered under section 118 or 601BD of the Act or the registration of which is continued by section 1378 of the Act:

(i) its full name, the date of its registration and its registration number;

(ii) whether it is a public company or a proprietary company;

(iii) whether it is a company limited by shares, a company limited by guarantee, a company limited by both shares and guarantee, an unlimited company or a no liability company;

(iv) its contact address;

(iva) its principal place of business;

(v) its registered office;

(vi) its officers;

(vii) any scheme of arrangement it has entered into with its creditors, its placement under voluntary administration, a deed of company arrangement, restructuring or receivership, or its liquidation;

(viii) its paid‑up and unpaid capital;

(ix) its deregistration;

(x) any charges on its property that have been lodged with ASIC or entered in the Australian Register of Company Charges;

(aa) in relation to each CCIV registered under section 118 of the Act as modified by section 1222C of the Act:

(i) the name and address of the corporate director of the CCIV;

(ii) the name and address of the auditor of the corporate director of the CCIV;

(iii) the name and ARFN of each sub‑fund of the CCIV;

(iv) if the CCIV is a retail CCIV—the name and address of the auditor of the compliance plan forthe retail CCIV;

(v) the date of any amendment of the constitution or compliance plan of the CCIV;

(vi) any deregistration of the CCIV or a sub‑fund of the CCIV;

(vii) the name and address of the auditor of the CCIV;

(b) in relation to the Register of Disqualified Company Directors and Other Officers—orders and notices registered under section 1274AA of the Act;

(c) in relation to the Australian Register of Company Charges—each charge registered under subsection 265(2) of the Act;

(d) in relation to each body registered in the register of registered Australian bodies:

(i) its full name, the date of its incorporation and its registration number;

(ii) the class of the body in its place of origin and whether the liability of members of the body is limited;

(iii) its contact address;

(iiia) its principal place of business;

(iv) its registered office;

(v) its registered office or principal place of business in its place of origin;

(vi) its officers;

(vii) any scheme of arrangement it has entered into with its creditors, its placement under voluntary administration or a deed of company arrangement or receivership or its liquidation;

(viii) its paid‑up and unpaid capital;

(ix) its deregistration;

(x) any charges on its property that have been lodged with ASIC or entered in the Australian Register of Company Charges;

(e) in relation to each company entered in the register of foreign companies:

(i) its full name, the date and place of its incorporation or registration in its place of origin and its registration number;

(ii) the class of the foreign company in its place of origin and whether the liability of its members is limited;

(iii) its contact address;

(iiia) its principal place of business;

(iv) its registered office;

(v) its registered office or principal place of business in its place of origin;

(vi) its officers;

(vii) its agent;

(viii) any scheme of arrangement it has entered into with its creditors, its placement under voluntary administration or a deed of company arrangement or receivership or its liquidation;

(ix) its paid‑up and unpaid capital;

(x) its deregistration;

(xi) any charges on its property that have been lodged with ASIC or entered in the Australian Register of Company Charges;

(f) in relation to the register of reserved or registered names—a name entered in that register, the number allocated to that name and the date on which the entry was made;

(g) in relation to the Register of Licence Holders—each licence holder registered under section 783 or 784 of the Act;

(h) in relation to each registered scheme:

(i) the ARSN of the scheme;

(ii) the name of the scheme;

(iii) the date of registration of the scheme under Part 5C.1 of the Act;

(iiia) its contact address;

(iiib) its principal place of business;

(iv) the name and address of the registered office of the responsible entity of the scheme;

(v) the name and address of the auditor of the scheme’s compliance plan;

(vi) the date of any amendment of the constitution or compliance plan of the scheme;

(vii) any winding up of the scheme under Part 5C.9 of the Act;

(viia) any deregistration of the scheme under Part 5C.10 of the Act;

(viii) the name and address of the auditor of the scheme;

(ha) in relation to each fund entered in the Register of Passport Funds—the information about the fund that must be included on the Register of Passport Funds under paragraph 1214(3)(a) or (b) of the Act;

(i) in relation to the Register of Futures Licensees—the name of each registered futures licensee;

(j) in relation to the Register of Auditors—the name of each registered auditor;

(m) in relation to the register in respect of financial services licensees mentioned in subsection 922A(2) of the Act:

(i) all of the information in the register which ASIC considers appropriate for a person to search in accordance with subsection 1274A(3) of the Act; or

(ii) all of the information in the register which ASIC considers appropriate to make available in accordance with subsection 1274A(4) of the Act;

(n) in relation to the register in respect of authorised representatives of financial services licensees mentioned in subsection 922A(2) of the Act:

(i) all of the information in the register which ASIC considers appropriate for a person to search in accordance with subsection 1274A(3) of the Act; or

(ii) all of the information in the register which ASIC considers appropriate to make available in accordance with subsection 1274A(4) of the Act;

(o) in relation to the register in respect of persons against whom a banning order or disqualification order is made mentioned in subsection 922A(2) of the Act:

(i) all of the information in the register which ASIC considers appropriate for a person to search in accordance with subsection 1274A(3) of the Act; or

(ii) all of the information in the register which ASIC considers appropriate to make available in accordance with subsection 1274A(4) of the Act;

(p) in relation to the register relating to trustees for debenture holders kept under section 283BCA of the Act:

(i) all of the information in the register which ASIC considers appropriate for a person to search in accordance with subsection 1274A(3) of the Act; or

(ii) all of the information in the register which ASIC considers appropriate to make available in accordance with subsection 1274A(4) of the Act;

(q) in relation to the Register of Relevant Providers:

(i) all of the information in the Register (other than a relevant provider’s date and place of birth) which ASIC considers appropriate for a person to search in accordance with subsection 1274A(3) of the Act; or

(ii) all of the information in the Register (other than a relevant provider’s date and place of birth) which ASIC considers appropriate to make available in accordance with subsection 1274A(4) of the Act.

Part 9.2—Registration of auditors

Division 2—Registration

9.2.01 Practical experience in auditing (Act s 1280(2))

For subparagraph 1280(2)(b)(ii) of the Act, each of the following is prescribed practical experience in auditing:

(a) during the 5 years immediately before the date of the application, at least 3 000 hours work in auditing under the direction of a registered company auditor, including:

(i) appraising the operations of companies and forming opinions on the matters specified in sections 307, 308 and 309 of the Act; and

(ii) at least 750 hours spent supervising audits of companies;

(b) practical experience that, in the opinion of ASIC, is equivalent to the practical experience mentioned in paragraph (a);

(c) work of the kind and duration mentioned in paragraph (a) that was done under previous laws corresponding to sections 307, 308 and 309 of the Act.

9.2.02 Prescribed universities and institutions (Act ss 1280(2A))

For paragraph 1280(2A)(a) of the Act:

(a) the universities mentioned in Part 1 of the table are prescribed; and

(b) the institution mentioned in Part 2 of the table is prescribed.

| Part 1 | University |
| --- | --- |
| 101 | Australian Catholic University |
| 102 | Australian National University |
| 103 | Bond University |
| 104 | Central Queensland University |
| 105 | Charles Darwin University |
| 106 | Charles Sturt University |
| 107 | Curtin University of Technology |
| 108 | Deakin University |
| 109 | Edith Cowan University |
| 110 | Griffith University |
| 111 | Flinders University of South Australia |
| 112 | James Cook University |
| 113 | La Trobe University |
| 114 | Macquarie University |
| 115 | Monash University |
| 116 | Murdoch University |
| 117 | Queensland University of Technology |
| 118 | Royal Melbourne Institute of Technology University |
| 119 | Southern Cross University |
| 120 | Swinburne University of Technology |
| 121 | University of Adelaide |
| 122 | University of Ballarat |
| 123 | University of Canberra |
| 124 | University of Melbourne |
| 125 | University of Newcastle |
| 126 | University of New England |
| 127 | University of New South Wales |
| 128 | University of Notre Dame Australia |
| 129 | University of Queensland |
| 130 | University of South Australia |
| 131 | University of Southern Queensland |
| 132 | University of Sydney |
| 133 | University of Tasmania |
| 134 | University of Technology, Sydney |
| 135 | University of the Sunshine Coast |
| 136 | University of Western Australia |
| 137 | University of Western Sydney |
| 138 | University of Wollongong |
| 139 | Victoria University |
| Part 2 | Institution |
| 201 | Avondale College |

9.2.03 Prescribed courses (Act s 1280(2A))

For paragraph 1280(2A)(c) of the Act, the courses prescribed are:

(a) the following courses conducted by The Institute of Chartered Accountants in Australia:

(i) Audit and Assurance in the CA Program;

(ii) Financial Reporting and Assurance in the CA Program;

(iii) Accounting 2 in the Professional Year Program;

(iv) Audit and EDP Module in the Professional Year Program;

(v) an audit module in the Professional Year Program conducted before 1986 that is equivalent to a course mentioned in subparagraph (i), (ii), (iii) or (iv); and

(b) the following courses in the CPA Program conducted by CPA Australia:

(i) Assurance Services and Auditing;

(ii) Advanced Audit and Assurance; and

(c) the following courses conducted by, or on behalf of, the National Institute of Accountants:

(i) Issues in Auditing and Professional Practice in the Graduate Certificate in Professional Accounting, offered by the University of New England in conjunction with the National Institute of Accountants;

(ii) Issues in Auditing and Professional Practice in the Degree of Master of Commerce (Professional Accounting), offered by the University of New England in conjunction with the National Institute of Accountants.

Division 2A—Conditions on registration

9.2.08 Kinds of conditions (Act s 1289A)

For subsection 1289A(1) of the Act, the following kinds of conditions are specified:

(a) conditions relating to the minimum amount and nature of continuing or other professional education that must be undertaken by a registered company auditor;

(b) conditions relating to the periodic or other review of the audit and audit‑related work of a registered company auditor as part of a quality assurance or review program;

(c) conditions relating to having a current policy of professional indemnity insurance for claims against a registered company auditor in relation to audits conducted under the Act;

(d) conditions relating to establishing and maintaining a system for resolving complaints made against a registered company auditor by audit clients in relation to audits conducted under the Act.

Part 9.2A—Authorised audit companies

Division 1—Registration

9.2A.01 Application for registration as authorised audit company (Act s 1299A)

For subsection 1299A(2) of the Act, the information is:

(a) the following information about the applicant:

(i) the applicant’s name;

(ii) the applicant’s ABN or ACN;

(iii) the address of the applicant’s registered office;

(iv) the address of the principal place at which the applicant proposes to practise as an auditor;

(v) the address of each other place (if any) at which the applicant proposes to practise as an auditor; and

(b) the following information about each director of the applicant:

(i) the director’s name and address;

(ii) the director’s registration number as a registered company auditor; and

(c) the following statements:

(i) a statement to the effect that none of the directors of the applicant have been disqualified from managing a company under Part 2D.6 of the Act;

(ii) a statement to the effect that each share in the applicant is held and beneficially owned by an individual or by the legal personal representative of an individual;

(iii) a statement of whether the applicant’s constitution allows a share in the applicant to be held and beneficially owned by a person other than an individual or the legal personal representative of an individual;

(iv) a statement to the effect that a majority of the votes that may be cast at a general meeting of the applicant attach to shares in the applicant that are held and beneficially owned by individuals who are registered company auditors;

(v) a statement to the effect that the applicant is not a Chapter 5 body corporate; and

(d) the name and address of each person who performs a chief executive officer function (within the meaning of section 295A of the Act) in relation to the applicant; and

(e) the following details about the applicant’s professional indemnity insurance policy for claims that may be made against the applicant in relation to the audit of companies and registered schemes under the Act:

(i) the insurer’s name;

(ii) the policy number;

(iii) the terms and conditions of the policy.

9.2A.03 Annual statements by authorised audit company (Act s 1299G)

(1) For subsection 1299G(1A) of the Act, the information is:

(a) whether the information about the company on the Register of Authorised Audit Companies under section 1299E of the Act is correct; and

(b) a statement of whether the company has, at all times in the relevant period, met the requirements of paragraphs 1299B(a), (b), (c) and (e) of the Act; and

(c) if the company has not, at all times in the relevant period, met the requirements of paragraphs 1299B(a), (b), (c) and (e) of the Act—details about the way in which the company did not meet the requirements; and

(d) the following details about the company’s professional indemnity insurance policy for claims that may be made against the applicant in relation to the audit of companies and registered schemes under the Act:

(i) the insurer’s name;

(ii) the policy number;

(iii) the terms and conditions of the policy; and

(e) information about criminal proceedings (if any) that have been taken against the company in the relevant period; and

(f) for each director of the company and each employee of the company who is a registered company auditor, details of criminal or disciplinary proceedings (if any) that have been taken against the director or employee in the relevant period (including exclusion from practice as an auditor or liquidator or suspension of registration as an auditor or liquidator); and

(g) a statement of whether the company has resigned or been removed from office as an auditor during the relevant period; and

(h) if the company has resigned or been removed from office as an auditor during the relevant period, the following details about each resignation or removal:

(i) the name and ACN of the corporation, registered scheme, disclosing entity or financial services licensee being audited;

(ii) the date of the company’s resignation or removal from office;

(iii) the reason for the company’s resignation or removal from office; and

(i) a statement of whether a director or employee of the company has resigned or been removed from office as a liquidator during the relevant period; and

(j) if a director or employee of the company has resigned, or has been removed from office as a liquidator, during the relevant period, the following details about each resignation or removal:

(i) the name and ACN of the corporation, registered scheme, disclosing entity or financial services licensee being liquidated;

(ii) the date of the resignation or removal from office;

(iii) the reason for the resignation or removal from office; and

(k) a list of the 10 audits, including the approximate dollar value of the fees, for which the company has received the highest audit engagement fees in the relevant period.

(2) In this regulation:

***relevant period*** means the period of 12 months to which the statement relates under subsection 1299G(1) of the Act.

Part 9.4A—Register and index

9.4A.01 Definitions for Part 9.4A

In this Part, unless the contrary intention appears:

***index*** means an instrument, prepared for subsection 1306(4) of the Act, that is an index of members of a corporation, registered scheme or notified foreign passport fund.

***register*** means an instrument, prepared for subsection 1306(4) of the Act, that is any of the following:

(a) register of members of a corporation;

(b) register of holders of debentures of a corporation;

(c) register of members of a registered scheme;

(ca) register of members of a notified foreign passport fund;

(d) register of holders of options of a corporation;

(e) register of information about relevant interests kept under section 672DA of the Act.

9.4A.02 Register and index must be kept up to date: subsection 1306(4A) of the Act

(1) A corporation that is an issuer in relation to a financial product and that is required to keep 1 or more registers must ensure that the registers and indexes (if any) are, at any time, not more than 20 business days out of date.

(2) If a person notifies a corporation that is an issuer in relation to a financial product and that is required to keep 1 or more registers that the person wishes to inspect a register or index, the corporation must ensure that, at the beginning of the business day following the day on which it receives the notice, the register or index that the person wishes to inspect is not more than 5 business days out of date.

Part 9.4AB—Infringement notices

9.4AB.01 Prescribed offences (Act s 1317DAN)

(1) This regulation is made for the purposes of paragraph 1317DAN(c) of the Act.

(2) An alleged offence based on any of the following provisions of the Act is subject to an infringement notice:

(a) subsections 792B(1), (2), (3), (4) and (5);

(b) subsections 821B(1), (2), (3) and (4);

(c) subsection 912DAA(1);

(ca) subsection 912DAC(1);

(d) subsection 1351(2).

9.4AB.02 Prescribed civil penalty provisions (Act s 1317DAN)

(1) This regulation is made for the purposes of paragraph 1317DAN(d) of the Act.

(2) The following civil penalty provisions of the Act are subject to an infringement notice:

(a) subsections 188(1) and (2);

(aa) subsection 912DAB(8);

(b) subsection 941A(3);

(c) subsections 941B(4);

(d) subsection 946A(4);

(e) section 962P;

(f) subsection 962U(3);

(g) subsections 963E(1) and (2);

(h) subsection 963G(1);

(i) section 963J;

(j) section 963K;

(k) subsection 964A(1);

(l) subsections 964D(1) and (2);

(m) subsection 964E(1);

(n) subsection 985E(1);

(o) section 985L;

(p) subsection 1012A(5);

(q) subsection 1012B(6);

(r) subsection 1012C(11);

(s) subsection 1017BA(4B).

Part 9.5—Delegation of powers and functions under the Act

9.5.01 Prescribed functions (Law s 1345A(1))

For subsection 1345A(1) of the Act, the functions and powers of the Minister under the following provisions of the Act are prescribed:

(a) subsection 147(2) or 601DC(2) (Names available with Minister’s consent);

(b) subsection 921G(2) (Approving or refusing to approve foreign qualifications);

(ba) subsection 921G(4) (Specifying courses);

(c) Part 9.7 (Unclaimed property).

Part 9.7—Unclaimed property

9.7.01 Entitlement to unclaimed property

(1) This regulation sets out how to work out the interest for paragraph 1341(3A)(a) of the Act.

(2) If the unclaimed money is paid to ASIC in more than one payment, the interest is to be worked out separately for each payment.

(3) The interest is to be worked out for the period (the ***interest period***) that:

(a) starts on the later of:

(i) 1 July 2013; and

(ii) the day when the unclaimed money was paid to ASIC; and

(b) ends on the 14th day after ASIC last authorised the unclaimed money to be paid under subsection 1341(1) or (2) of the Act.

(4) The interest is to be worked out by adding together the interest for each financial year during the interest period.

(5) The interest for each financial year is worked out using the following formula, and rounding the result to the nearest cent:

start formula start fraction Amount times Days interest payable times Interest rate over Days in the financial year end fraction end formula

where:

***amount*** means the amount of unclaimed money plus the interest (if any) worked out for each earlier financial year for which interest is payable.

***days interest payable*** means the number of days in the financial year for which interest is payable.

***days in the financial year*** means the number of days in the financial year.

***interest rate***, for a financial year, means:

(a) the percentage change in the All Groups CPI between the 2 March quarters most recently published before the first day of the financial year (rounded up to 4 decimal places); or

(b) if that percentage change is less than 0%—0%.

Part 9.10—Fees imposed by the Corporations (Fees) Act 2001 and the Corporations (Review Fees) Act 2003

9.10.01 Penalty for failure to pay review fee on time—prescribed penalty (Act s 1364)

(1) This regulation is made for the purposes of paragraph 1364(2)(n) of the Act.

(2) The penalty for the failure to pay a review fee is:

(a) if payment is received within 1 month after the due date—$65; and

(b) if payment is not received within 1 month after the due date—$270.

Note: The date on which a service fee is due and payable is worked out under subsection 1351(3) of the Act.

Part 9.12—Matters relating to regulations

9.12.01 Exemptions from Chapter 7

Subsection 1043A(1) of the Act does not have effect in relation to the following:

(a) the obtaining by a director of a share qualification;

(b) the application for, and acquisition under that application of, financial products of a body corporate by, or by a trustee for, employees of that body, or of a body corporate that is related to the first‑mentioned body under a superannuation scheme, pension fund or other scheme established solely or primarily for the benefit of the employees;

(c) a transaction entered into by a person in accordance with his or her obligations under an underwriting agreement;

(d) a person holding the office of:

(i) personal representative of a deceased person; or

(ii) liquidator; or

(iii) trustee under Parts IV, X and XI of the *Bankruptcy Act 1966*;

in respect of a transaction entered into by the person in good faith in the performance of the functions of the office;

(e) a sale of financial products under:

(i) a mortgage or charge of the financial products; or

(ii) a mortgage, charge, pledge or lien of documents of title to the financial products.

9.12.02 Exemption from provisions of Chapter 7—CLS Bank

(1) For section 1368 of the Act, the following provisions of Chapter 7 of the Act do not have effect in relation to the following transactions by CLS participants in the facility operated CLS Bank International:

(a) section 794E—settlement of non‑cash payments between CLS participants;

(b) Part 7.3—settlement of non‑cash payments between CLS participants in relation to the provision or transfer of:

(i) a security, or a managed investment product; or

(ii) a financial product mentioned in paragraph 764A(1)(ba), (c), (j) or (k) of the Act.

(2) Subregulation (1) is subject to the conditions set out in this regulation.

(3) CLS Bank International must:

(a) operate under section 25A of the Federal Reserve Act of the United States of America; and

(b) be regulated as a bank by the Board of Governors of the Federal Reserve System of the United States of America.

(4) An Australian entity that is a CLS participant in the facility operated by CLS Bank International:

(a) must be regulated by APRA; and

(b) must not use the services of CLS Bank International as a retail client.

(5) CLS Bank International must tell the Reserve Bank of Australia in writing as soon as practicable after any of the following circumstances happen:

(a) CLS Bank International receives a request for an Australian entity to become a CLS participant in the facility it operates;

(b) CLS Bank International proposes approving an additional Australian entity or Australian resident as a shareholder;

(c) CLS Bank International notifies the Board of Governors of the Federal Reserve System of the United States of America of a proposed change in the character or nature of the facility or a significant change in its operations;

(d) material regulatory action is taken against CLS Bank International in any other jurisdiction.

(6) In this regulation:

***Australian entity*** includes:

(a) an Australian ADI that is permitted under section 66 of the *Banking Act 1959* to assume or use:

(i) the word bank, banker or banking; or

(ii) any other word (whether or not in English) that is of like import to a word referred to in subparagraph (i); or

(b) a financial services licensee.

***CLS participant*** in the facility operated by CLS Bank International means a person who, under the facility’s operating rules, is allowed to participate directly in the facility, with or without the authority of another such person.

***material regulatory action***, for the facility operated by CLS Bank International, means:

(a) any action by the Board of Governors of the Federal Reserve System of the United States of America that requires CLS Bank International to cease, suspend or vary its operations or to take any other action in the nature of a sanction or corrective action in relation to either the operation of the facility or CLS Bank International; or

(b) regulatory action that is likely to affect Australian CLS participants in the facility or any Australian operations of CLS Bank International.

9.12.03 Partial exemption of foreign‑based market licensees from certain notification obligations

(1) This regulation sets out the extent to which, for section 1368 of the Act, specified provisions of the Act have effect in relation to a market licensee whose licence was granted under subsection 795B(2) of the Act.

(2) Paragraph 792B(2)(b) of the Act has effect only to the extent that:

(a) the participant in the market against whom disciplinary action is taken is in this jurisdiction; or

(b) the activity giving rise to the disciplinary action may significantly affect:

(i) another participant in the market who is in this jurisdiction; or

(ii) a client, of a participant in the market, whom the market licensee believes to be in this jurisdiction.

(3) Paragraph 792B(2)(c) of the Act has effect only to the extent that:

(a) the person suspected of the contravention or impending contravention of the market’s operating rules or the Act is a participant in the market who is in this jurisdiction; or

(b) the contravention or impending contravention may significantly affect:

(i) a participant in the market who is in this jurisdiction; or

(ii) a client, of a participant in the market, whom the market licensee believes to be in this jurisdiction.

(4) In spite of subregulation (3), paragraph 792B(2)(c) of the Act has effect only to the extent of requiring inclusion in the notice to ASIC of information that, under the regulatory regime applying to financial markets in the foreign country in which the market licensee’s principal place of business is located, it is permissible for the market licensee to include in the notice.

(5) Subregulation (4) is subject to the conditions that:

(a) the market licensee gives notice of the contravention or impending contravention to a body responsible for the regulation of financial markets in the foreign country in which the market licensee’s principal place of business is located as soon as practicable after suspecting the commission of the contravention, or the likelihood of the impending contravention; and

(b) the notice to that body includes the information mentioned in subparagraphs 792B(2)(c)(i), (ii) and (iii) of the Act; and

(c) the market licensee informs ASIC of the following:

(i) the giving of the notice mentioned in paragraph (a);

(ii) the name and address of the regulatory body to whom it was given;

(iii) when the notice was given; and

(d) arrangements exist for that body to give notice to ASIC about the contravention or impending contravention that includes the information that it is not permissible for the market licensee to include in the notice it gives to ASIC under subregulation (4).

9.12.03A Exemption from provisions of Chapter 7—compliance with ASIC exemptions

(1) For paragraph 1368(a) of the Act, Division 2 of Part 7.7A of the Act does not have effect in relation to a person to whom one of the following exemptions made by ASIC is stated to apply:

(a) ASIC Class Order [CO 05/736];

(b) ASIC Class Order [CO 05/1122];

(c) ASIC Class Order [CO 08/01];

(d) ASIC Class Order [CO 11/1227].

(2) The Division does not have effect subject to the condition that the person complies with the conditions set out in the exemption which applies to the person.

9.12.04 Exemption from provisions of Chapter 7—carbon unit auctions

(1) For paragraph 1368(a) of the Act, section 791A of the Act does not have effect in relation to a person if:

(a) the person is engaged, by the Clean Energy Regulator, to assist in the conduct of the auction of carbon units under the *Clean Energy Act 2011*; and

(b) in conducting or assisting in the conduct of the auction, the person engages in conduct that constitutes operating a financial market.

(2) For paragraph 1368(a) of the Act, section 820A of the Act does not have effect in relation to a person if:

(a) the person is engaged, by the Clean Energy Regulator, to assist in the conduct of the auction of carbon units; and

(b) in conducting or assisting in the conduct of the auction, the person engages in conduct that constitutes operating a clearing and settlement facility.

9.12.05 Exemption from provisions of Chapter 7—gas trading exchange

(1) For paragraph 1368(a) of the Act, section 791A of the Act does not have effect in relation to the operator of a qualifying gas trading exchange carrying out its role of operating a market in qualifying gas exchange products on the qualifying gas trading exchange.

(2) For paragraph 1368(a) of the Act, section 820A of the Act does not have effect in relation to the operator of a qualifying gas trading exchange carrying out its role in relation to clearing and settlement arrangements for qualifying gas exchange products on the qualifying gas trading exchange.

Chapter 10—Repeals, transitional matters and application provisions

Part 10.2—Transitional arrangements relating to Financial Services Reform legislation

Division 1—Preliminary

10.2.01 Application of Part 10.2

For Part 10.2 of the Act, this Part deals with matters of a transitional, saving or application nature relating to amendments made by the *Financial Services Reform Act 2001* and the transition from the application of the old legislation to the application of the new legislation.

Note: Part 10.2 contains a number of regulation‑making powers that relate to matters of a transitional, saving and application nature.

10.2.02 Definitions

In this Part:

***old Corporations Regulations*** means these Regulations as in force immediately before the FSR commencement.

Note: Section 9 and Part 10.2 of the Act include a number of definitions of words and expressions that are relevant to the operation of this Part. They have the same meanings when used in this Part.

Part 10.2 also includes several expressions that have particular meanings in the context of particular provisions or circumstances, including ***relevant old legislation***, ***relevant new legislation*** and ***transition period***.

10.2.02A References to transition periods

In these Regulations, unless the contrary intention appears, a reference to a transition period includes a transition period that has been extended under section 1437 of the Act.

10.2.02B References to the application of Division 2 of Part 7.9 of the Act

In these Regulations, unless the contrary intention appears:

(a) a reference to Division 2 of Part 7.9 of the Act not applying to or in relation to a financial product is taken to refer only to circumstances in which that Division does not apply because of the effect of a provision of Part 10.2 of the Act; and

(b) a reference to a financial product to which, or in relation to which, Division 2 of Part 7.9 of the Act applies is taken to include any financial product except a financial product to which that Division does not apply because of the effect of a provision of Part 10.2 of the Act.

Division 1A—Treatment of proposed markets that have not started to operate by the FSR commencement

10.2.02C Proposed markets

For paragraph 1412(1)(b) of the Act, the following markets are identified:

(a) a market in futures contracts proposed to be operated by Atriax Limited;

(b) a market in futures contracts proposed to be operated by Hong Kong Futures Exchange Limited;

(c) a market in securities proposed to be operated by Bloomberg L.P;

(d) a market in futures contracts proposed to be operated by The London Metal Exchange;

(e) a market in futures contracts proposed to be operated by Credit Suisse First Boston (Europe) Limited;

(f) a market in securities proposed to be operated by Eurex Deutschland;

(g) a market in futures contracts proposed to be operated by Eurex Deutschland.

Division 2—Transitional arrangements relating to business rules or listing rules

Subdivision 2.1—Business rules

10.2.03 Amendment of business rules of securities exchange before FSR commencement

(1) This regulation applies if:

(a) an amendment was made, by way of rescission, alteration or addition, to the business rules of a securities exchange before the FSR commencement; and

(b) written notice of the amendment was lodged in accordance with subsection 774(1) of the old Corporations Act before the FSR commencement; and

(c) the period of 28 days in relation to the amendment, mentioned in subsection 774(5) of the old Corporations Act, had not expired before the FSR commencement; and

(d) the Minister had not decided, before the FSR commencement, whether to disallow the whole or a specified part of the amendment under subsection 774(5) of the old Corporations Act.

Note: The period of 28 days in paragraph (c) is the period in which the Minister may disallow the whole or a specified part of the amendment.

(2) On and after the FSR commencement, section 793E of the Act has effect in relation to the amendment as if the amendment were a change to the operating rules of a licensed market mentioned in section 793D of the Act.

(3) For subregulation (2):

(a) the securities exchange is to be treated, under sections 793D and 793E of the Act, as a market licensee that has lodged written notice of the change with ASIC; and

(b) ASIC is taken to have complied with its obligations to the Minister under section 793E of the Act; and

(c) the Minister is taken to have been given the notice of the change on the day on which written notice of the amendment was lodged in accordance with subsection 774(1) of the old Corporations Act.

10.2.04 Amendment of SCH business rules before FSR commencement

(1) This regulation applies if:

(a) an amendment was made, by way of rescission, alteration or addition, to the SCH business rules before the FSR commencement; and

(b) written notice of the amendment was given in accordance with subsection 779C(1) of the old Corporations Act before the FSR commencement; and

(c) the period of 28 days in relation to the amendment, mentioned in subsection 779C(5) of the old Corporations Act, had not expired before the FSR commencement; and

(d) the Minister had not decided, before the FSR commencement, whether to disallow the whole or a specified part of the amendment under subsection 779C(5) of the old Corporations Act.

Note: The period of 28 days in paragraph (c) is the period in which the Minister may disallow the whole or a specified part of the amendment.

(2) On and after the FSR commencement, section 822E of the Act has effect in relation to the amendment as if the amendment were a change to the operating rules of a licensed CS facility mentioned in section 822D of the Act.

(3) For subregulation (2):

(a) the securities clearing house is to be treated, under sections 822D and 822E of the Act, as a licensed CS facility that has lodged written notice of the change with ASIC; and

(b) ASIC is taken to have complied with its obligations to the Minister under section 822E of the Act; and

(c) the Minister is taken to have been given the notice of the change on the day on which written notice of the amendment was given in accordance with subsection 779C(1) of the old Corporations Act.

10.2.05 Amendment of SEGC business rules before FSR commencement

(1) This regulation applies if:

(a) a change is made to the SEGC’s operating rules before the FSR commencement; and

(b) written notice of the amendment was given in accordance with subsection 928(1) of the old Corporations Act before the FSR commencement; and

(c) the period of 28 days in relation to the amendment, mentioned in subsection 928(5) of the old Corporations Act, had not expired before the FSR commencement; and

(d) the Minister had not decided, before the FSR commencement, whether to disallow the whole or a specified part of the amendment under subsection 928(5) of the old Corporations Act.

Note: The period of 28 days in paragraph (c) is the period in which the Minister may disallow the whole or a specified part of the amendment.

(2) On and after the FSR commencement, section 890H of the Act has effect in relation to the amendment as if the amendment were a change to the SEGC’s operating rules mentioned in section 890G of the Act.

(3) For subregulation (2):

(a) the SEGC is to be treated, under sections 890G and 890H of the Act, as having lodged written notice of the change with ASIC; and

(b) ASIC is taken to have complied with its obligations to the Minister under section 890H of the Act; and

(c) the Minister is taken to have been given the notice of the change on the day on which written notice of the amendment was given in accordance with subsection 928(1) of the old Corporations Act.

10.2.06 Amendment of business rules of futures body before FSR commencement

(1) This regulation applies if:

(a) an amendment was made, by way of rescission, alteration or addition, to the business rules of any of a futures body before the FSR commencement; and

(b) written notice of the amendment was given in accordance with subsection 1136(1) of the old Corporations Act before the FSR commencement; and

(c) the period of 28 days in relation to the amendment, mentioned in subsection 1136(5) of the old Corporations Act, had not expired before the FSR commencement; and

(d) the Minister had not decided, before the FSR commencement, whether to disallow the whole or a specified part of the amendment under subsection 1136(5) of the old Corporations Act.

Note: The period of 28 days in paragraph (c) is the period in which the Minister may disallow the whole or a specified part of the amendment.

(2) On and after the FSR commencement, section 793E of the Act has effect in relation to the amendment as if the amendment were a change to the operating rules of a licensed market mentioned in section 793D of the Act.

(3) For subregulation (2):

(a) the futures body is to be treated, under sections 793D and 793E of the Act, as a market licensee that has lodged written notice of the change with ASIC; and

(b) ASIC is taken to have complied with its obligations to the Minister under section 793E of the Act; and

(c) the Minister is taken to have been given the notice of the change on the day on which written notice of the amendment was given in accordance with subsection 1136(1) of the old Corporations Act.

Subdivision 2.2—Listing rules

10.2.07 Amendment of listing rules of securities exchange before FSR commencement

(1) This regulation applies if:

(a) a securities exchange made or adopted an amendment, by way of rescission, alteration or addition, to its listing rules before the FSR commencement; and

(b) written notice of the amendment was lodged in accordance with subsection 774(1) of the old Corporations Act before the FSR commencement; and

(c) the period of 28 days in relation to the amendment, mentioned in subsection 774(5) of the old Corporations Act, had not expired before the FSR commencement; and

(d) the Minister had not decided, before the FSR commencement, whether to disallow the whole or a specified part of the amendment under subsection 774(5) of the old Corporations Act.

Note: The period of 28 days in paragraph (c) is the period in which the Minister may disallow the whole or a specified part of the amendment.

(2) On and after the FSR commencement, section 793E of the Act has effect in relation to the amendment as if the amendment were a change to the operating rules of a licensed market mentioned in section 793D of the Act.

(3) For subregulation (2):

(a) the securities exchange is to be treated, under sections 793D and 793E of the Act, as a market licensee that has lodged written notice of the change with ASIC; and

(b) ASIC is taken to have complied with its obligations to the Minister under section 793E of the Act; and

(c) the Minister is taken to have been given the notice of the change on the day on which written notice of the amendment was lodged in accordance with subsection 774(1) of the old Corporations Act.

Division 3—Status of directions and notices

10.2.08 Direction to securities exchange to comply with ongoing requirements

(1) This regulation applies if the Minister published a notice under subsection 769B(1) of the old Corporations Act before the FSR commencement, directing a securities exchange to do specified things.

(2) On and after the FSR commencement, the notice is taken to be a direction to a market licensee under subsection 794A(1) of the Act.

10.2.09 Notice to securities exchange of need to prohibit trading

(1) This regulation applies if ASIC gave a notice to a securities exchange under subsection 775(1) of the old Corporations Act before the FSR commencement, stating the Commission’s opinion that it is necessary to prohibit trading in particular securities.

(2) On and after the FSR commencement, the notice is taken to be written advice given to a market licensee under subsection 794D(1) of the Act.

(3) ASIC is taken to have complied with its obligation under subsection 794D(1) of the Act to give a statement setting out reasons for making the direction.

10.2.10 Notice to securities exchange prohibiting trading

(1) This regulation applies if ASIC gave a notice to a securities exchange under subsection 775(2) of the old Corporations Act before the FSR commencement, prohibiting trading in particular securities.

(2) On and after the FSR commencement, the notice is taken to be a direction to a market licensee under subsection 794D(2) of the Act.

(3) ASIC is taken to have complied with its obligation under subsection 794D(2) of the Act to give a statement setting out reasons for making the direction.

10.2.11 Direction to futures exchange—orderly market

(1) This regulation applies if ASIC gave a notice to a futures exchange under subsection 1138(1) of the old Corporations Act before the FSR commencement.

(2) On and after the FSR commencement, the notice is taken to be written advice given to a market licensee under subsection 794D(1) of the Act.

(3) ASIC is taken to have complied with its obligations under section 794D of the Act in relation to the period before giving the written advice.

(4) ASIC is taken to have complied with its obligations under subsection 794D(5) of the Act if it complies with those obligations as soon as practicable after the FSR commencement.

Division 4—Assistance to ASIC

10.2.12 Obligations of securities exchange: disciplinary action

(1) This regulation applies if:

(a) a securities exchange was required, before the FSR commencement, to lodge written particulars under subsection 776(2) of the old Corporations Act of disciplinary action it had taken; and

(b) the securities exchange had not complied with the requirement before the FSR commencement; and

(c) the period for compliance had not expired before the FSR commencement.

(2) On and after the FSR commencement, the requirement is taken to be a requirement under paragraph 792B(2)(b) of the Act.

(3) The market licensee to which subregulation (2) relates is taken to have complied with its obligations under paragraph 792B(2)(b) of the Act if it complies with those obligations as soon as practicable after the FSR commencement.

10.2.13 Obligations of securities exchange: particulars of contravention

(1) This regulation applies if:

(a) a securities exchange was required, before the FSR commencement, to lodge a statement under subsection 776(2A) of the old Corporations Act in relation to a contravention of the securities exchange’s business rules or listing rules; and

(b) the securities exchange had not complied with the requirement before the FSR commencement; and

(c) the period for compliance had not expired before the FSR commencement.

(2) On and after the FSR commencement, the requirement is taken to be a requirement under paragraph 792B(2)(c) of the Act.

(3) The market licensee to which subregulation (2) relates is taken to have complied with its obligations under paragraph 792B(2)(c) of the Act if it complies with those obligations as soon as practicable after the FSR commencement.

10.2.14 Obligations of securities exchange: information about listed disclosing entity

(1) This regulation applies if:

(a) a securities exchange was required, before the FSR commencement, to give ASIC a document under subsection 776(2B) of the old Corporations Act containing information about a listed disclosing entity; and

(b) the securities exchange had not complied with the requirement before the FSR commencement; and

(c) the period for compliance had not expired before the FSR commencement.

(2) On and after the FSR commencement, the requirement is taken to be a requirement under subsection 792C(1) of the Act.

(3) The market licensee to which subregulation (2) relates is taken to have complied with its obligations under subsection 792C(1) of the Act if it complies with those obligations as soon as practicable after the FSR commencement.

10.2.15 Obligations of securities clearing house: disciplinary action

(1) This regulation applies if:

(a) the securities clearing house was required under section 779E of the old Corporations Act, before the FSR commencement, to lodge written particulars relating to disciplinary action; and

(b) the securities clearing house had not complied with the requirement before the FSR commencement; and

(c) the period for compliance had not expired before the FSR commencement.

(2) On and after the FSR commencement, the requirement is taken to be a requirement under paragraph 821B(2)(b) of the Act.

10.2.16 Obligations of futures body: disciplinary action

(1) This regulation applies if:

(a) a futures body was required, before the FSR commencement, to lodge written particulars under subsection 1139(2) of the old Corporations Act of disciplinary action it had taken; and

(b) the futures body had not complied with the requirement before the FSR commencement; and

(c) the period for compliance had not expired before the FSR commencement.

(2) On and after the FSR commencement, the requirement is taken to be a requirement under:

(a) if the futures body has become a market licensee after the FSR commencement—paragraph 792B(2)(b) of the Act; or

(b) if the futures body has become a CS facility licensee after the FSR commencement—paragraph 821B(2)(b) of the Act.

(3) The market licensee or CS facility licensee to which subregulation (2) relates is taken to have complied with its obligations under subsection 792C(1) of the Act if it complies with those obligations as soon as practicable after the FSR commencement.

10.2.17 Obligations of futures body: particulars of contravention

(1) This regulation applies if:

(a) a futures body was required, before the FSR commencement, to lodge a statement under subsection 1139(2A) of the old Corporations Act in relation to a contravention of the futures exchange’s business rules or listing rules; and

(b) the futures body had not complied with the requirement before the FSR commencement; and

(c) the period for compliance had not expired before the FSR commencement.

(2) On and after the FSR commencement, the requirement is taken to be a requirement under paragraph 792B(2)(c) of the Act.

(3) The market licensee to which subregulation (2) relates is taken to have complied with its obligations under paragraph 792B(2)(c) of the Act if it complies with those obligations as soon as practicable after the FSR commencement.

10.2.18 Obligations of clearing house for futures exchange: information about listed disclosing entity

(1) This regulation applies if:

(a) a clearing house for a futures exchange was required, before the FSR commencement, to give ASIC particulars of action under subsection 1139(3) of the old Corporations Act; and

(b) the clearing house had not complied with the requirement before the FSR commencement; and

(c) the period for compliance had not expired before the FSR commencement.

(2) On and after the FSR commencement, subsection 1139(4) of the old Corporations Act, as in force immediately before the FSR commencement, continues to have effect in relation to the clearing house in its capacity as a market licensee.

Division 5—Special reports

10.2.19 Special report by securities exchange about compliance with ongoing requirements

(1) This regulation applies if:

(a) a securities exchange was required, before the FSR commencement, to give ASIC a special report under subsection 769D(1) of the old Corporations Act; and

(b) the securities exchange had not complied with the requirement before the FSR commencement; and

(c) the period for compliance had not expired before the FSR commencement.

(2) On and after the FSR commencement, the requirement is taken to be a requirement under subsection 794B(1) of the Act.

10.2.20 Special report by securities exchange about compliance with ongoing requirements: ASIC requirements

(1) This regulation applies if:

(a) a securities exchange was required, before the FSR commencement, to give ASIC a special report under subsection 769D(1) of the old Corporations Act; and

(b) ASIC had not complied with its obligations to the Minister under section 769D of the old Corporations Act before the FSR commencement; and

(c) the period for compliance had not expired before the FSR commencement.

(2) On and after the FSR commencement, ASIC’s obligations to the Minister are taken to be obligations under subsection 794B(1) of the Act.

Division 5A—Transactions by holder of financial services licence or a representative of the holder of such a licence

10.2.20A References to financial service licensee

(1) For section 1444 of the Act, a reference in section 1043K of the Act to a financial services licensee includes a reference to a regulated principal mentioned in item 1, 3 or 8 of the table in section 1430 of the Act.

(2) Subregulation (1) ceases to apply in relation to a regulated principal at the end of the transition period in relation to the regulated principal.

Division 5B—Obligation to pay money into account

10.2.20B Financial products quoted on Australian Stock Exchange Limited

(1) For section 1444 of the Act, this regulation applies in relation to a person that is:

(a) a regulated principal mentioned in item 1 of the table in section 1430 of the Act (including a person to whom Part 7.6 of the old Corporations Act applies); and

(b) a participant of Australian Stock Exchange Limited.

(2) In addition to section 866 of the old Corporations Act, the regulated principal must:

(a) operate a special purpose interest‑bearing trust account; and

(b) designate the account to be a Special Purpose Trust Account; and

(c) ensure that the Special Purpose Trust Account is:

(i) with an Australian ADI; or

(ii) of a kind mentioned in subregulation 7.8.01(2).

(3) The regulated principal must withdraw from an account maintained for section 866 of the old Corporations Act an amount equal to two‑thirds of:

(a) if the regulated principal maintains 2 or more accounts for that section—the lowest aggregate of the balances in the accounts during the 3 months ending on the quarter day last past; or

(b) if the regulated principal maintains 1 account for that section—the lowest balance in the account during the 3 months ending on the quarter day last past.

(4) Subject to subregulations (5) and (6), the regulated principal must:

(a) deposit the amount mentioned in subregulation (3) into the regulated principal’s Special Purpose Trust Account; and

(b) keep the amount on deposit.

(5) A deposit need not be lodged or kept for subregulation (4) if, apart from this subregulation, the amount of the deposit would be less than $3 000.

(6) If, because of subregulation (3), the amount of a deposit to be lodged and kept in the regulated principal’s Special Purpose Trust Account increases, the regulated principal must lodge the amount of the increase within 5 business days after the relevant quarter day that is the last day of the period by reference to which the amount required to be lodged is calculated.

(7) An amount deposited in the Special Purpose Trust Account under subregulation (4) is also taken to be monies held in an account maintained by the regulated principal for section 866 of the old Corporations Act.

(8) If money is held in an account under subregulation (4):

(a) the interest on the account is the income of SEGC; and

(b) the regulated principal must pay the interest to SEGC, less any amount paid in relation to account establishment fees, account keeping fees, government taxes or other duties.

Division 6—Self‑listing

10.2.21 Status of arrangements for self‑listing

On and after the FSR commencement, arrangements entered into by a securities exchange under subsection 772B(2) of the old Corporations Act are taken to be arrangements entered into under subsection 798C(2) of the Act.

10.2.22 Status of exemption relating to self‑listing

(1) On and after the FSR commencement, an exemption given by ASIC under paragraph 772B(6)(a) of the old Corporations Act continues in force as if it were an exemption given under paragraph 798D(1)(a) of the Act.

(2) On and after the FSR commencement, a declaration made by ASIC under paragraph 772B(6)(b) of the old Corporations Act continues in force as if it were a declaration made under paragraph 798D(1)(b) of the Act.

Division 7—Decisions about membership of futures exchange

10.2.23 Status of notice to applicant

(1) This regulation applies if:

(a) a futures exchange was required, before the FSR commencement, to give an applicant for membership of the futures exchange a notice under subsection 1135(1) of the old Corporations Act; and

(b) the futures exchange had not complied with the requirement before the FSR commencement; and

(c) the period for compliance had not expired before the FSR commencement.

(2) On and after the FSR commencement, subsection 1135(1) of the old Corporations Act, as in force immediately before the FSR commencement, continues to have effect in relation to the futures exchange in its capacity as a market licensee.

10.2.24 Status of notice to ASIC

(1) This regulation applies if:

(a) a futures exchange was required, before the FSR commencement, to give ASIC a notice under subsection 1135(1) of the old Corporations Act; and

(b) the futures exchange had not complied with the requirement before the FSR commencement; and

(c) the period for compliance had not expired before the FSR commencement.

(2) On and after the FSR commencement, subsection 1135(1) of the old Corporations Act, as in force immediately before the FSR commencement, continues to have effect in relation to the futures exchange in its capacity as a market licensee.

Division 8—National Guarantee Fund

10.2.25 Status of claim against the National Guarantee Fund

(1) This regulation applies if:

(a) a person made a claim in relation to a matter, before the FSR commencement, under a provision of any of the following Divisions of the old Corporations Act:

(i) Division 6 of Part 7.10 (dealing with contract guarantees);

(ii) Division 6A of Part 7.10 (dealing with securities loans guarantees);

(iii) Division 6B of Part 7.10 (dealing with net obligations);

(iv) Division 6C of Part 7.10 (dealing with transfer service delivery guarantees);

(v) Division 7 of Part 7.10 (dealing with unauthorised transfer);

(vi) Division 7A of Part 7.10 (dealing with contraventions of SCH certificate cancellation provisions);

(vii) Division 8 of Part 7.10 (dealing with insolvent members); and

(b) the claim had not been withdrawn, or finally determined in accordance with the old Corporations Act, before the FSR commencement.

(2) On and after the FSR commencement:

(a) Division 1, and Divisions 6 to 9, of Part 7.10 of the old Corporations Act continue to have effect in relation to the claim; and

(b) regulations made for Part 7.10 of the old Corporations Act, as in force immediately before the FSR commencement, continue to have effect in relation to the claim; and

(c) Part 7.5 of the Act has effect in relation to a matter to which paragraphs (a) and (b) do not apply.

10.2.26 Entitlement to make claim against the National Guarantee Fund

(1) This regulation applies if:

(a) a person could have made a claim in relation to a matter, before the FSR commencement, under a provision of any of the following Divisions of the old Corporations Act:

(i) Division 6 of Part 7.10 (dealing with contract guarantees);

(ii) Division 6A of Part 7.10 (dealing with securities loans guarantees);

(iii) Division 6B of Part 7.10 (dealing with net obligations);

(iv) Division 6C of Part 7.10 (dealing with transfer service delivery guarantees);

(v) Division 7 of Part 7.10 (dealing with unauthorised transfer);

(vi) Division 7A of Part 7.10 (dealing with contraventions of SCH certificate cancellation provisions);

(vii) Division 8 of Part 7.10 (dealing with insolvent members); and

(b) the person did not make the claim before the FSR commencement.

(2) On and after the FSR commencement:

(a) Division 1, and Divisions 6 to 9, of Part 7.10 of the old Corporations Act continue to have effect in relation to the person; and

(b) regulations made for Part 7.10 of the old Corporations Act continue to have effect in relation to the person; and

(c) Part 7.5 of the Act has effect in relation to a matter to which paragraphs (a) and (b) do not apply.

(3) However, the person cannot make a claim under section 949 or 950, or Division 6A, 6B or 6C of Part 7.10, of the old Corporations Act after 30 September 2005.

10.2.27 Status of future claim against the National Guarantee Fund

(1) This regulation applies if:

(a) a matter related to conduct that occurred before the FSR commencement; and

(b) a person could, if Part 7.10 of the old Corporations Act had not been repealed, have made a claim in relation to the matter under any of the following Divisions of the old Corporations Act on or after the FSR commencement:

(i) Division 6 of Part 7.10 (dealing with contract guarantees);

(ii) Division 6A of Part 7.10 (dealing with securities loans guarantees);

(iii) Division 6B of Part 7.10 (dealing with net obligations);

(iv) Division 6C of Part 7.10 (dealing with transfer service delivery guarantees);

(v) Division 7 of Part 7.10 (dealing with unauthorised transfer);

(vi) Division 7A of Part 7.10 (dealing with contraventions of SCH certificate cancellation provisions);

(vii) Division 8 of Part 7.10 (dealing with insolvent members).

(2) On and after the FSR commencement:

(a) Division 1, and Divisions 6 to 9, of Part 7.10 of the old Corporations Act continue to have effect in relation to the matter and the person; and

(b) regulations made for Part 7.10 of the old Corporations Act continue to have effect in relation to the matter and the person; and

(c) Part 7.5 of the Act has effect in relation to a matter to which paragraphs (a) and (b) do not apply.

(3) However, the person cannot make a claim under section 949 or 950, or Division 6A, 6B or 6C of Part 7.10, of the old Corporations Act after 30 September 2005.

10.2.27A Expenditure of excess funds from National Guarantee Fund

(1) For section 1444 of the Act, this regulation applies to a purpose in relation to a payment to be made out of a development account if:

(a) the purpose was approved under subsection 945(3) of the old Corporations Act; and

(b) the approval was in force immediately before the FSR commencement.

(2) The purpose is taken to be an approved purpose for subregulation 7.5.88(1).

(3) If the purpose approved under subsection 945(3) of the old Corporations Act included conditions relating to the payment to which the approval related, the conditions are taken to be conditions determined under subregulation 7.5.88(3).

Division 9—Claims against fidelity funds

10.2.28 Status of claim against fidelity fund

(1) This regulation applies if:

(a) a person made a claim in relation to a matter, before the FSR commencement, under Part 7.9 or Part 8.6 of the old Corporations Act; and

(b) the claim had not been withdrawn, or finally determined in accordance with the old Corporations Act, before the end of the transition period within the meaning of subsection 1414(2) of the Act.

(2) After the end of the transition period:

(a) Part 7.9 or Part 8.6 of the old Corporations Act (as appropriate), as in force immediately before the FSR commencement, continues to have effect in relation to the claim; and

(b) regulations made for Part 7.9 or Part 8.6 of the old Corporations Act (as appropriate), as in force immediately before the FSR commencement, continue to have effect in relation to the claim.

10.2.29 Entitlement to make claim against fidelity fund

(1) This regulation applies if:

(a) a person could have made a claim in relation to a matter, before the FSR commencement, under Part 7.9 or Part 8.6 of the old Corporations Act; and

(b) the person did not make the claim before the end of the transition period within the meaning of subsection 1414(2) of the Act.

(2) After the end of the transition period:

(a) Part 7.9 or Part 8.6 of the old Corporations Act (as appropriate), as in force immediately before the FSR commencement, continues to have effect in relation to the claim; and

(b) regulations made for Part 7.9 or Part 8.6 of the old Corporations Act (as appropriate), as in force immediately before the FSR commencement, continue to have effect in relation to the claim.

10.2.29A Status of incomplete claim against fidelity fund

(1) This regulation applies if:

(a) a person made a claim in relation to a matter, after the FSR commencement, under Part 7.9 or Part 8.6 of the old Corporations Act; and

(b) the claim had not been withdrawn, or finally determined in accordance with the old Corporations Act, before the end of the transition period within the meaning of subsection 1414(2) of the Act.

(2) After the end of the transition period:

(a) Part 7.9 or Part 8.6 of the old Corporations Act (as appropriate), as in force immediately before the FSR commencement, continues to have effect in relation to the claim; and

(b) regulations made for Part 7.9 or Part 8.6 of the old Corporations Act (as appropriate), as in force immediately before the FSR commencement, continue to have effect in relation to the claim.

10.2.30 Status of future claim against fidelity fund

(1) This regulation applies if:

(a) a matter related to conduct that occurred before the FSR commencement; and

(b) a person could, if Part 7.9 or 8.6 of the old Corporations Act had not been repealed, have made a claim in relation to the matter under Part 7.9 or Part 8.6 of the old Corporations Act after the end of the transition period within the meaning of subsection 1414(2) of the Act.

(2) After the end of the transition period:

(a) Part 7.9 or Part 8.6 of the old Corporations Act (as appropriate), as in force immediately before the FSR commencement, continues to have effect in relation to the claim; and

(b) regulations made for Part 7.9 or Part 8.6 of the old Corporations Act (as appropriate), as in force immediately before the FSR commencement, continue to have effect in relation to the claim.

Division 10—Status of netting markets

10.2.31 Netting markets

(1) This regulation applies to:

(a) an approved special stock market that was, immediately before the FSR commencement, a netting market within the meaning of the *Payment Systems and Netting Act 1998*; and

(b) an exempt stock market that was, immediately before the FSR commencement, a netting market within the meaning of the *Payment Systems and Netting Act 1998*; and

(c) an exempt futures market that was, immediately before the FSR commencement, a netting market within the meaning of the *Payment Systems and Netting Act 1998*.

(2) On and after the FSR commencement, the market is taken to be a netting market for the purposes of that Act.

(3) Subregulation (2) ceases to apply to the market if the market has not become:

(a) the person conducting an Australian financial services licensee; or

(b) an Australian market licensee;

by the end of the transition period.

(4) Subregulations (2) and (3) do not prevent a market mentioned in subregulation (1) from applying for netting market approval during the transition period in relation to the market.

Note: The transition period is explained in sections 1418 and 1421 of the Act.

10.2.32 Netting market approval granted before the FSR commencement

On and after the FSR commencement, a netting market approval granted:

(a) under the *Payment Systems and Netting Act 1998*; and

(b) in relation to a market other than a market mentioned in subregulation 10.2.31(1) before the FSR commencement;

is taken to continue in force.

Division 11—Status of listed securities

10.2.33 Securities of exempt stock markets

(1) This regulation applies to a listed security, within the meaning of the SIS Act, that was, immediately before the FSR commencement, a share, unit, bond or debenture, right or other security, listed for quotation in the official list of an exempt stock market.

(2) On and after the FSR commencement, the share, unit, bond or debenture, right or other security is taken to be a listed security for the purposes of the SIS Act.

(3) Subregulation (2) ceases to apply if:

(a) the person conducting the exempt stock market to which the share, unit, bond or debenture, right or other security relates becomes:

(i) an Australian financial services licensee; or

(ii) an Australian market licensee; or

(b) the exempt stock market to which the share, unit, bond or debenture, right or other security relates ceases to operate.

Division 12—Miscellaneous

10.2.34 Preservation of nomination of body corporate as SEGC

On and after the FSR commencement, the nomination of the SEGC that continued to have effect in accordance with section 1390 of the old Corporations Act continues to have effect.

Division 13—Regulated principals

10.2.35 Definitions

In this Division:

***amended Corporations Act*** means the Act as in force after the FSR commencement.

***associate***, in relation to a principal, means:

(a) if the principal is a body corporate:

(i) a director or secretary of the principal; and

(ii) a related body corporate; and

(iii) a responsible officer of the principal; and

(b) if the principal is a natural person:

(i) a person with whom the principal carries on a financial services business in partnership; and

(ii) a director or proposed director of a body corporate:

(A) of which the principal is also a director or proposed director; and

(B) that carries on a financial services business; and

(c) if the principal is a trustee of a trust to which subsection 761FA(1) of the amended Corporations Act applies—another trustee of that trust with whom the principal carries on a financial services business.

***financial services activities*** means:

(a) any conduct or activities that constitute:

(i) carrying on a financial services business; or

(ii) operating a financial market; or

(iii) operating a clearing and settlement facility; and

(b) any conduct or activities:

(i) that were engaged in before the FSR commencement; and

(ii) to which paragraph (a) would apply if they were engaged in after the FSR commencement; and

(c) any conduct or activities:

(i) that were engaged in:

(A) after the FSR commencement; and

(B) before the relevant provisions of the amended Corporations Act applied to the conduct or any of the activities; and

(ii) to which paragraph (a) would apply if they were engaged in after the relevant provisions of the amended Corporations Act applied to the conduct or activities.

***regulator*** means any of the following bodies:

(a) ASIC;

(b) a body that had any of the functions of ASIC before ASIC was created;

(c) APRA;

(d) a body that had any of the functions of APRA before APRA was created;

(e) the Australian Competition and Consumer Commission;

(f) a body that had any of the functions of the Australian Competition and Consumer Commission before the Australian Competition and Consumer Commission was created.

10.2.35A Streamlined licensing procedure for certain regulated principals

For subparagraph 1433(1)(b)(i) of the Act, each of the following is a regulated principal to whom section 1433 of the Act applies:

(a) a regulated principal mentioned in item 14 of the table in subregulation 10.2.38(2);

(b) a regulated principal mentioned in item 15 of the table in subregulation 10.2.38(2).

10.2.36 Persons who are not covered by section 1433 of the Act

For subsection 1433(3) of the Act, a person who is a member of a class of persons identified in an item in Schedule 11 is not covered by section 1433 of the Act:

(a) if a period is mentioned in the item—during that period; or

(b) if there is no period mentioned in the item—while the person remains a member of that class of persons.

10.2.37 Variation of conditions on financial services licence

(1) If:

(a) a person lodges an application for a financial services licence; and

(b) subsection 1433(2) of the Act applies in relation to the application;

the person may, at any time before ASIC grants or refuses to grant the financial services licence, lodge with ASIC in the prescribed form an application under paragraph 914A(2)(b) of the Act to vary the conditions on the financial services licence so that the financial services, or class of financial services, that the financial services licence will authorise the person to provide is increased (despite the fact that the financial services licence has not yet been granted).

(2) If:

(a) a person lodges an application for a financial services licence; and

(b) subsection 1433(2) of the Act applies in relation to the application; and

(c) the person has also lodged with ASIC the application under paragraph 914A(2)(b) of the Act mentioned in subregulation (1); and

(d) ASIC proposes to grant the financial services licence and vary the conditions in accordance with the applications;

ASIC may, instead of issuing the licence and subsequently varying the conditions on the licence, grant the financial services licence subject to conditions that include the conditions that would otherwise be mentioned in the variation.

(3) If ASIC acts under subregulation (2), ASIC is not required to notify the licensee separately of the variation to the conditions in accordance with subsection 914A(1) of the Act.

10.2.38 Persons taken to be regulated principals: giving of incidental advice and previously exempt persons

(1) For item 9 of the table in section 1430 of the Act, a person is a regulated principal if, immediately before the FSR commencement, the person is a person described in column 2 of one of the items in the following table.

(2) The regulated activities of that person are as specified in column 3 of that item, and the relevant old legislation is as specified in column 4 of that item.

| Regulated principals and regulated activities | | | |
| --- | --- | --- | --- |
| Item | These persons are *regulated principals* | These are the regulated principal’s *regulated activities* | This is the *relevant old legislation* (if any) |
| 1 | A person who first conducts an activity, to which subsection 77(5) of the old Corporations Act would have applied if that subsection had not been repealed, after the FSR commencement. | The activities to which subsection 77(5) of the old Corporations Act would have applied if that subsection had not been repealed. | Subsection 77(5) of the old Corporations Act, and any associated provisions. |
| 2 | A person who conducts an exempt stock market within the meaning of the old Corporations Act that, if carried on after the FSR commencement, would be required by the amended Corporations Act (apart from Subdivision D of Division 1 of Part 10.2) to be covered by an Australian financial services licence. | The activities that the declaration (as in force immediately before the FSR commencement) under section 771 of the old Corporations Act authorised the person to carry on. | Sections 767 and 771 of the old Corporations Act, and any associated provisions. |
| 3 | A person who conducts an exempt futures market within the meaning of the old Corporations Act that, if carried on after the FSR commencement, would be required by the amended Corporations Act (apart from Subdivision D of Division 1 of Part 10.2) to be covered by an Australian financial services licence. | The activities that the declaration (as in force immediately before the FSR commencement) under section 1127 of the old Corporations Act authorised the person to carry on. | Sections 1123 and 1127 of the old Corporations Act, and any associated provisions. |
| 4 | A person who carries on an activity, not mentioned in item 2 or 3, that was the subject of an exemption under the old Corporations Act, or any other relevant old legislation prior to the FSR commencement, that, if carried on after the FSR commencement, would be required by the amended Corporations Act (apart from Subdivision D of Division 1 of Part 10.2) to be covered by an Australian financial services licence. | The activities that were covered by the exemption. | The provision that created the exemption, and any associated provisions. |
| 5 | A holder of a futures brokers licence within the meaning of the old Corporations Act. | The activities that the licence (as in force immediately before the FSR commencement) authorised the person to carry on. | Parts 8.3, 8.4 (other than section 1210) and 8.5 of the old Corporations Act, sections 1266 and 1267 of the old Corporations Act, and any associated provisions. |
| 6 | A holder of a futures advisers licence within the meaning of the old Corporations Act. | The activities that the licence (as in force immediately before the FSR commencement) authorised the person to carry on. | Parts 8.3 and 8.4 (other than section 1210) of the old Corporations Act, section 1267 of the old Corporations Act, and any associated provisions. |
| 7 | A person whose licence is suspended under subsection 827(1) of the old Corporations Act (whether the suspension occurred before, on or after the FSR commencement) | (a) While the suspension is in force—no activities  (b) If the suspension ceases to be in force on or before 10 March 2004, and from the time the suspension ceases to be in force—the activities that the licence (as in force immediately before it was suspended) authorised the person to carry on | All relevant old legislation in relation to the kind of licence |
| 8 | A person whose licence is suspended under subsection 1192(1) of the old Corporations Act (whether the suspension occurred before, on or after 11 March 2002) | (a) While the suspension is in force—no activities  (b) If the suspension ceases to be in force on or before 10 March 2004, and from the time the suspension ceases to be in force—the activities that the licence (as in force immediately before it was suspended) authorised the person to carry on | All relevant old legislation in relation to the kind of licence |
| 9 | A person whose registration is suspended under section 25 of the *Insurance (Agents and Brokers) Act 1984* | (a) While the suspension is in force—no activities  (b) If the suspension ceases to be in force on or before 10 March 2004, and from the time the suspension ceases to be in force—the activities that the licence (as in force immediately before it was suspended) authorised the person to carry on | All of the provisions of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement, and any associated provisions |
| 10 | A person whose registration is suspended under section 25 of the *Insurance (Agents and Brokers) Act 1984* who is covered by a specification in writing by ASIC under subsection 25(3) of that Act | (a) While the specification is in force—such of the person’s activities as ASIC specifies in writing under subsection 25(3) of the *Insurance (Agents and Brokers) Act 1984*  (b) If the suspension ceases to be in force on or before 10 March 2004, and from the time the suspension ceases to be in force—the activities that the registration (immediately before it was suspended) authorised the person to carry on | All of the provisions of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement, and any associated provisions |
| 11 | A person whose registration is suspended under section 31H of the *Insurance (Agents and Brokers) Act 1984* | (a) While the suspension is in force—no activities  (b) If the suspension ceases to be in force on or before 10 March 2004, and from the time the suspension ceases to be in force—the activities that the registration (immediately before it was suspended) authorised the person to carry on | All of the provisions of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement, and any associated provisions |
| 12 | A person whose registration is suspended under section 31H of the *Insurance (Agents and Brokers) Act 1984* who is covered by a specification in writing by ASIC under subsection 31H(3) of that Act | (a) While the specification is in force—such of the person’s activities as ASIC specifies in writing under subsection 31H(3) of the *Insurance (Agents and Brokers) Act 1984*  (b) If the suspension ceases to be in force on or before 10 March 2004, from the time the suspension ceases to be in force—the activities that the registration (immediately before it was suspended) authorised the person to carry on | All of the provisions of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement, and any associated provisions |
| 13 | A person who was a registered insurance broker within the meaning of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement, if:  (a) the person’s registration under that Act expired because of the operation of subsection 21(3) of that Act; and  (b) either:  (i) it is less than 8 weeks after the registration expired; or  (ii) the person applied for renewal of registration within 8 weeks after the registration expired | The person’s business as an insurance broker, within the meaning of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement, carried on from the date that the registration ceased to have effect | All the provisions of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement, and any associated provisions |
| 14 | A person who:  (a) conducts activities that, if carried on after the FSR commencement, would be required by the amended Corporations Act (apart from Subdivision D of Division 1 of Part 10.2) to be covered by an Australian financial services licence; and  (b) is an Australian ADI, a life company under the *Life Insurance Act 1995*, a general insurer under the *Insurance Act 1973* or an approved trustee under the *Superannuation Industry (Supervision) Act 1993* | The class of activities lawfully carried on by the person immediately before the FSR commencement that, if carried on after the FSR commencement, would be required by the amended Corporations Act (apart from Subdivision D of Division 1 of Part 10.2) to be covered by an Australian financial services licence | For a body that was an insurer within the meaning of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement—all the provisions of that Act as then in force, and any associated provisions  In any other case—subject to any regulations made for the purposes of this item, there is no relevant old legislation |
| 15 | A person described in column 2 of items 1 to 5 of the table in subsection 1430(1) of the Act, who carries on other activities:  (a) that are not regulated activities for the purpose of items 1 to 5 of the table; and  (b) that, if carried on after the FSR commencement, would (apart from Subdivision D of Division 1 of Part 10.2 of the Act) be required by the amended Corporations Act to be covered by an Australian financial services licence | The class of activities lawfully carried on by the person immediately before the FSR commencement that were not authorised by the pre‑FSR licence or registration but would (apart from Subdivision D of Division 1 of Part 10.2 of the Act) be required by the amended Corporations Act to be covered by an Australian financial services licence | There is no relevant old legislation |

10.2.39 Reference to offer covered by Australian financial services licence: section 911A of the Act

(1) For section 1444 of the Act, this regulation applies in relation to:

(a) a regulated principal; and

(b) a representative of a regulated principal within the meaning of subsection 1436(1) of the Act.

(2) A reference in paragraph 911A(2)(b) of the Act to a financial services licensee includes a regulated principal.

(3) A reference in paragraph 911A(2)(b) of the Act to an authorised representative includes a representative of a regulated principal.

(4) A reference in paragraph 911A(2)(b) of the Act to an offer covered by a financial services licensee’s Australian financial services licence includes an offer within the regulated activities of the regulated principal.

(5) Subregulations (2), (3) and (4) cease to apply in relation to the regulated principal and the representative at the end of the transition period in relation to the regulated principal.

10.2.40 Reference to financial services licensee: section 911A of the Act

(1) This regulation applies in relation to the following provisions of the Act:

(a) subparagraph 911A(2)(f)(viii);

(b) subparagraph 911A(2)(f)(ix);

(c) paragraph 911A(3)(a);

(d) paragraph 911A(3)(c).

(2) A reference in those provisions to a financial services licensee includes a regulated principal.

(3) Subregulation (2) ceases to apply in relation to a regulated principal at the end of the transition period in relation to the regulated principal.

10.2.40A Need for an Australian financial services licence

(1) For section 1444 of the Act, paragraphs 911A(2)(ea), (eb) and (ec) of the Act do not apply in relation to a regulated principal and its regulated activities.

(2) For section 1444 of the Act, subparagraphs 7.6.01(1)(e)(iii) and (iv) and subparagraph 7.6.01(1)(o)(iv) do not apply in relation to a regulated principal and its regulated activities.

(4) This regulation ceases to apply in relation to a regulated principal and its regulated activities at the end of the period of 2 years starting on the FSR commencement.

10.2.41 Reference to second principal: section 911B of the Act

(1) For section 1444 of the Act, subparagraph 911B(1)(b)(iv) of the Act does not apply if the second principal is a regulated principal.

(2) Subregulation (1) ceases to apply in relation to a regulated principal at the end of the transition period in relation to the regulated principal.

10.2.42 Reference to financial services licensee: section 916D of the Act

(1) For section 1444 of the Act, section 916D of the Act is taken to prohibit a regulated principal from being the authorised representative of a financial services licensee if the authorisation would authorise the regulated principal to provide financial services that are within the regulated principal’s regulated activities.

(2) Subregulation (1) ceases to apply in relation to the regulated principal at the end of the transition period in relation to the regulated principal.

10.2.43 Status of insurance agent: section 1436A of the Act

For section 1436A of the Act, and to avoid doubt, if an insurer is:

(a) a financial services licensee; and

(b) a principal mentioned in paragraph 1436A(2)(d) in relation to an insurance agent mentioned in paragraph 1436A(2)(a);

the insurance agent is taken not to be a representative of the insurer under section 910A of the Act.

10.2.44A Obligation to cite licence number in documents

(1) This regulation applies if:

(a) a person who has not been granted a financial services licence prepares any document in connection with the provision of financial services or the business of providing financial services; and

(b) the document does not include a licence number for the person; and

(c) the person is granted a licence after preparing the document.

(2) For section 1444 of the Act, section 912F of the Act does not apply to the document.

(3) If the document is a periodic statement under section 1017D of the Act, subregulation (2) ceases to apply at the end of 3 years after the FSR commencement.

(4) If the document is not a periodic statement under section 1017D of the Act, subregulation (2) ceases to apply at the end of 2 years after the FSR commencement.

10.2.46 When Australian financial services licence may be granted

(1) For section 1444 of the Act, on and after the FSR commencement:

(a) section 913B of the Act is taken to authorise ASIC to specify, in an Australian financial services licence, a date (later than the date on which the licence is granted) from which the licence takes effect; and

(b) the financial services licence is taken for all purposes not to have been granted until the specified date.

(2) Paragraph (1)(a) ceases to apply 2 years after the FSR commencement.

Note: Generally, providers of financial services (other than new entrants to the industry) will have 2 years from the FSR commencement to obtain a licence under the new regime. During this transition period, the existing legislative regime (if any) will be preserved for, and will continue to apply to, those providers.

The arrangements for the transition period are set out in Subdivision D of Division 1 of Part 10.2 of the Corporations Act.

Therefore, there will be an individual date at which the new legislative regime will begin to apply to those providers. The date will be some time between the FSR commencement and the end of the transition period (2 years after the FSR commencement), and may be the date on which the provider is granted an Australian financial services licence. It may be appropriate, in some cases, for the date of effect of the Australian financial services licence to be later than the date on which the licence is physically granted.

This arrangement ceases to apply 2 years after the end of the FSR commencement. However, the date of effect of a licence will not be affected by the end of the arrangement.

10.2.46A When Australian financial services licence may be varied

(1) For section 1444 of the Act, on and after the FSR commencement:

(a) subsection 914A(1) of the Act is taken to authorise ASIC to specify a date (later than the date on which conditions are imposed on an Australian financial services licence) from which the imposition of the conditions takes effect; and

(b) the conditions are taken for all purposes not to have been imposed until the specified date.

(2) For section 1444 of the Act, on and after the FSR commencement:

(a) subsection 914A(1) of the Act is taken to authorise ASIC to specify a date (later than the date on which additional conditions are imposed on an Australian financial services licence) from which the imposition of the additional conditions takes effect; and

(b) the additional conditions are taken for all purposes not to have been issued until the specified date.

(3) For section 1444 of the Act, on and after the FSR commencement:

(a) subsection 914A(1) of the Act is taken to authorise ASIC to specify a date (later than the date on which conditions imposed on an Australian financial services licence are varied or revoked) from which the variation or revocation takes effect; and

(b) the conditions are taken for all purposes not to have been varied or revoked until the specified date.

(4) For section 1444 of the Act, on and after the FSR commencement:

(a) subsection 915A(1) of the Act is taken to authorise ASIC to specify a date (later than the date on which an Australian financial services licence is varied) from which the variation takes effect; and

(b) the financial services licence is taken for all purposes not to have been varied until the specified date.

(5) Paragraphs (1)(a), (2)(a), (3)(a) and (4)(a) cease to apply 2 years after the FSR commencement.

10.2.47A Modification of pre‑FSR authority

(1) For section 1444 of the Act, this regulation applies if a person:

(a) is a regulated principal in relation to 2 or more regulated activities; and

(b) holds an authority under the relevant old legislation in relation to those regulated activities; and

(c) either:

(i) becomes a financial services licensee in relation to 1 or more of those regulated activities; or

(ii) is exempt from the requirement to hold a financial services licence in relation to 1 or more of those regulated activities.

(2) ASIC may vary the authority to take account of the fact that the person has become a financial services licensee, or is exempt from the requirement to hold a financial services licence.

(3) ASIC must not vary the authority unless ASIC has given the person an opportunity:

(a) to appear at a hearing before ASIC that takes place in private; and

(b) to make submissions and give evidence to ASIC in relation to the matter.

(4) ASIC must give written notice of the variation to the person.

(5) The variation takes effect when the written notice of the variation is given to the person.

Division 14—Financial services disclosure

10.2.48 Obligation to give Financial Services Guide for service arranged before application of Part 7.7 of the Act

For section 1444 of the Act, sections 941A and 941B of the Act are taken not to require a person to give a client a Financial Services Guide in accordance with Division 2 of Part 7.7 of the Act in relation to a financial service (the ***new financial service***) if, before the person became subject to Part 7.7 of the Act in relation to the provision of the new financial service:

(a) the person was a regulated principal, or a representative of a regulated principal within the meaning of subsection 1436(1) of the Act, whose regulated activities included the provision of financial services of the same kind as the new financial service; and

(b) the person entered into an agreement with the client, to provide the new financial service; and

(c) the client took all of the steps necessary for the person to be able to provide the new financial service.

Note: When Part 7.7 of the Act begins to apply to a person, the person will be under an obligation to provide a Financial Services Guide to a retail client to which it provides financial services. The Financial Services Guide should be given before the financial service is provided (see sections 941A, 941B and 941D of the Act).

However, this could create difficulties if the person, or an authorised representative, has an existing client, and has entered into an arrangement with the client before Part 7.7 started to apply. The obligation to give a Financial Services Guide would arise when Part 7.7 begins to apply, but, under the arrangement, the financial service might have to be provided very shortly afterwards. This might make the giving of the Financial Services Guide in accordance with section 941D difficult.

10.2.48A Obligation to give a Financial Services Guide for a custodial and depository service

(1) For section 1444 of the Act, sections 941A and 941B of the Act are taken not to require a person to give a Financial Services Guide to a client, in accordance with Division 2 of Part 7.7 of the Act, in relation to a financial service (the ***new financial service***), if:

(a) the new financial service constitutes:

(i) the provision of a custodial or depository service under section 766E of the Act; or

(ii) dealing in a financial product that is held on trust for or on behalf of the client as a necessary part of the custodial or depository service; or

(iii) issuing, to the client, a financial product that is a beneficial interest in a financial product held on trust for or on behalf of the client as a necessary part of the custodial or depository service; and

(b) the person entered into the arrangement under which the custodial or depository service is provided, before the FSR commencement; and

(c) the arrangement continued unaltered after the person became subject to Part 7.7 of the Act.

(2) For paragraph (1)(c), an arrangement is taken to continue unaltered if:

(a) the person holds, under the arrangement, financial products that are different financial products from those held under the arrangement before the person became subject to Part 7.7 of the Act; and

(b) none of the different financial products is held on instruction from the client.

(3) Subparagraph (1)(a)(ii) does not apply to dealing in a financial product if the dealing consists of the issue of a financial product to a person other than the client to whom the custodial or depository service is provided.

10.2.49 Obligation to give Financial Services Guide in relation to existing clients

(1) For section 1444 of the Act, section 941D of the Act is taken not to require a person to give a client a Financial Services Guide in relation to a financial service (the ***new financial service***) within the period specified in that section if, in the period of 6 months ending on the day immediately before Part 7.7 of the Act first applies to the person in relation to the provision of financial services of the same kind as the new financial service, the person had provided a financial service to the client of the same kind as the new financial service.

(2) For subregulation (1), section 941D of the Act is also taken to require the person to give the client the Financial Services Guide:

(a) as soon as is reasonably practicable; and

(b) in any event, within the period of 14 days starting on the day on which the person would have been required by section 941D of the Act to provide a Financial Services Guide if subregulation (1) did not apply.

(3) This regulation ceases to apply in relation to the person at the end of 14 days after the day on which Part 7.7 of the Act first applies to the person in relation to the provision of financial services of the same kind as the new financial service.

10.2.50 Content of Financial Services Guide for an authorised representative that is a regulated principal or a representative of a regulated principal

(1) This regulation applies if a person:

(a) is a regulated principal, or a representative of a regulated principal within the meaning of subsection 1436(1) of the Act; and

(b) is also in the transition period in the capacity of:

(i) a regulated principal; or

(ii) a representative of a regulated principal; and

(c) is also a financial services licensee or an authorised representative of a financial services licensee.

(2) Paragraphs 942B(2)(c) and 942C(2)(d) of the Act are taken to require the person:

(a) to provide a statement, in addition to a Financial Services Guide, to the effect that the person is able to provide financial services as:

(i) a regulated principal; or

(ii) a representative of a regulated principal; and

(b) to include in the statement:

(i) a brief description of the kinds of financial services provided in that capacity; and

(ii) the name of each regulated principal (if any) on whose behalf the financial services are provided.

(3) For subregulation (2):

(a) section 940C of the Act is taken to apply in relation to the statement; and

(b) the following matters are also taken to apply in relation to the person:

(i) any regulations or other instruments in force for section 940C;

(ii) any interpretation provisions that apply for section 940C;

(iii) any provisions relating to liability (civil or criminal) that apply for section 940C (whether or not they also apply or applied for other purposes);

(iv) any provisions that limit, or that otherwise affect, the operation of section 940C (whether or not they also limit or limited, or affect or affected, the operation of other provisions); and

(c) for Part 7.7 of the Act, the statement:

(i) is taken not to be a part of the Financial Services Guide; and

(ii) is taken not to be a statement that the person is required to include in a Financial Services Guide.

(4) The person must not fail to give the statement in accordance with this regulation.

Penalty:

(a) for an individual—50 penalty units; and

(b) for a body corporate—500 penalty units.

10.2.50A Treatment of arrangements under which a person can instruct another person to acquire a financial product

(1) For section 1444 of the Act, this regulation applies in relation to a custodial arrangement (within the meaning of section 1012IA of the Act) in which the client is the holder of a superannuation product issued to the client by the provider.

(2) Section 1012IA of the Act does not apply to a regulated acquisition (within the meaning of that section) that occurs under the custodial arrangement.

(3) Subregulation (2) ceases to apply at the end of 2 years after the FSR commencement.

Division 15—Other provisions relating to conduct etc

10.2.51 Sale offers that need disclosure

For section 1444 of the Act:

(a) section 707 of the old Corporations Act applies in relation to managed investment products:

(i) issued before the FSR commencement; and

(ii) sold during the transitional period in relation to the products; and

(b) section 707 of the Act applies in relation to managed investment products:

(i) issued on or after the FSR commencement; and

(ii) sold during the transitional period in relation to the products; and

(c) section 1012C of the Act does not apply in relation to a financial product that is issued before the end of the transition period in relation to the financial product, other than:

(i) a security that is not also a warrant; and

(ii) a managed investment product that is not also a warrant.

10.2.52 Offers that do not need disclosure: small scale offerings

(1) For section 1444 of the Act, this regulation applies in relation to managed investment products:

(a) issued or sold before the end of the transition period in relation to the managed investment products; and

(b) for which:

(i) a disclosure document under Chapter 6D of the old Corporations Act was not required because of the operation of section 708 of the old Corporations Act (other than subsection 708(1)); or

(ii) a disclosure document was lodged with ASIC under Chapter 6D of the old Corporations Act.

(2) A reference in subsection 1012E(8) of the Act to issues and sales that should be disregarded includes issues or sales of the managed investment products.

10.2.52A Offers that do not need disclosure

(1) For section 1444 of the Act, this regulation applies in relation to an offer of a financial product if:

(a) the financial product is described in subsection 1012E(1) of the Act; and

(b) the financial product was offered before Division 2 of Part 7.9 of the Act applied to the product; and

(c) a disclosure document was not required under Chapter 6D of the old Corporations Act, in the course of the offer of the financial product; and

(d) the disclosure document was not required in accordance with a provision of section 708 of the old Corporations Act (other than subsection 708(1)).

(2) The offer is taken to comply with the condition set out in paragraph 1012E(9)(c) of the Act.

10.2.53 Money other than loans: financial services licensee who formerly held dealer’s licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who is a regulated principal mentioned in item 1 of the table in section 1430 of the Act, and whose financial services licence covers regulated activities for a regulated principal of that kind in relation to money:

(a) received by the person before the end of the transition period in relation to the person in the capacity of a regulated principal of that kind; and

(b) to which subsection 867(1) of the old Corporations Act applied.

(2) Sections 866 to 871 of the old Corporations Act, and any associated provisions, continue to apply to the regulated principal, after the end of the transition period in relation to:

(a) the person in the capacity of a regulated principal of that kind; and

(b) the money;

as if the regulated principal were a licensee within the meaning of Part 7.6 of the old Corporations Act.

(3) Subdivision A of Division 2 of Part 7.8 of the Act, and any associated provisions, apply in relation to the regulated principal as if the money were money to which that Subdivision applied.

(4) A regulated principal must choose whether to deal with the money in accordance with the arrangements mentioned in subregulation (2) or the arrangements mentioned in subregulation (3).

(5) For this regulation, compliance with the arrangements chosen by a regulated principal is also taken to be compliance with the arrangements that the regulated principal did not choose.

10.2.54 Money other than loans: financial services licensee who formerly held futures broker’s licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who is a regulated principal mentioned in item 3 of the table in section 1430 of the Act, and whose financial services licence covers regulated activities for a regulated principal of that kind, in relation to:

(a) money received by the person before the end of the transition period in relation to the person in the capacity of a regulated principal of that kind and to which section 1209 of the old Corporations Act applied; and

(b) money received by the person after the end of the transition period in relation to the person in the capacity of a regulated principal of that kind as a result of:

(i) the payment of interest, dividends or other income from the investment of money mentioned in paragraph (1)(a); or

(ii) the realisation of an investment of money mentioned in paragraph (1)(a); and

(c) money received by the person under subsection 1209(5A) of the old Corporations Act after the end of the transition period in relation to the person in the capacity of a regulated principal of that kind.

(2) Section 1209 of the old Corporations Act, and any associated provisions, continue to apply in relation to the regulated principal after the end of the transition period in relation to:

(a) the person in the capacity of a regulated principal of that kind; and

(b) the money;

as if the regulated principal were a futures broker within the meaning of the old Corporations Act.

(3) Subdivision A of Division 2 of Part 7.8 of the Act, and any associated provisions, apply in relation to the regulated principal as if the money were money to which that Subdivision applied.

(4) A regulated principal must choose whether to deal with the money in accordance with the arrangements mentioned in subregulation (2) or the arrangements mentioned in subregulation (3).

(5) For this regulation, compliance with the arrangements chosen by a regulated principal is also taken to be compliance with the arrangements that the regulated principal did not choose.

10.2.55 Money other than loans: financial services licensee who was formerly a registered insurance broker

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who is a regulated principal mentioned in item 5 of the table in section 1430 of the Act, and whose financial services licence covers regulated activities for a regulated principal of that kind, in relation to:

(a) money:

(i) received by the person before the end of the transition period in relation to the person in their capacity as a regulated principal of that kind; and

(ii) to which section 26 of the *Insurance (Agents and Brokers) Act 1984* applied; and

(b) money received by the person after the end of the transition period in relation to the person in the capacity of a regulated principal of that kind as a result of:

(i) the payment of interest, dividends or other income from the investment of money mentioned in paragraph (1)(a); or

(ii) the realisation of an investment of money mentioned in paragraph (1)(a).

(2) Section 26 of the *Insurance (Agents and Brokers) Act 1984*, and any associated provisions, continues to apply in relation to the regulated principal after the end of the transition period in relation to:

(a) the person in the capacity of a regulated principal of that kind; and

(b) the money;

as if the regulated principal were a registered insurance broker within the meaning of the *Insurance (Agents and Brokers) Act 1984*.

(3) Subdivision A of Division 2 of Part 7.8 of the Act, and any associated provisions, apply in relation to the regulated principal as if the money were money to which that Subdivision applied.

(4) A regulated principal must choose whether to deal with the money in accordance with the arrangements mentioned in subregulation (2) or the arrangements mentioned in subregulation (3).

(5) For this regulation, compliance with the arrangements chosen by a regulated principal is also taken to be compliance with the arrangements that the regulated principal did not choose.

10.2.56 Money other than loans: financial services licensee who ceases to be licensed

(1) For section 1444 of the Act, this regulation applies in relation to money held by a financial services licensee in an account maintained under any of the following provisions:

(a) section 866 of the old Corporations Act;

(b) section 1209 of the old Corporations Act;

(c) section 26 of the *Insurance (Agents and Brokers) Act 1984*.

(2) If any of paragraphs 981F(a) to (d) of the Act applies to the financial services licensee, any money held by the financial services licensee in an account mentioned in subregulation (1) is to be dealt with as if it were held by the licensee in an account maintained for section 981B of the Act.

10.2.57 Loan money: financial services licensee who formerly held dealer’s licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who is a regulated principal mentioned in item 1 of the table in section 1430 of the Act, and whose financial services licence covers regulated activities for a regulated principal of that kind, in relation to money:

(a) received by the person before the end of the transition period in relation to the person in the capacity of a regulated principal of this kind; and

(b) to which section 872 of the old Corporations Act applied.

(2) Section 872 of the old Corporations Act, and any associated provisions, continue to apply in relation to the regulated principal after the end of the transition period in relation to:

(a) the person in the capacity of a regulated principal of that kind; and

(b) the money;

as if the person were a dealer within the meaning of the old Corporations Act.

10.2.58 Other property of clients: financial services licensee who formerly held dealer’s licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who is a regulated principal mentioned in item 1 of the table in section 1430 of the Act, and whose financial services licence covers regulated activities for a regulated principal of this kind, in relation to scrip:

(a) received by the person before the end of the transition period in relation to the person in the capacity of a regulated principal of that kind; and

(b) to which section 873 of the old Corporations Act applied.

(2) Section 873 of the old Corporations Act, and any associated provisions, continue to apply in relation to the regulated principal after the end of the transition period in relation to:

(a) the person in the capacity of a regulated principal of that kind; and

(b) the scrip;

as if the person was still the holder of a dealers licence within the meaning of the old Corporations Act.

10.2.59 Other property of clients: financial services licensee who formerly held futures broker’s licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who is a regulated principal mentioned in item 3 of the table in section 1430 of the Act, and whose licence covers regulated activities for a regulated principal of that kind, in relation to property:

(a) received by the person before the end of the transition period in relation to the person in the capacity of a regulated principal of that kind; and

(b) to which section 1209 or 1214 of the old Corporations Act applied.

(2) Sections 1209 and 1214 of the old Corporations Act, and any associated provisions, continue to apply in relation to the regulated principal after the end of the transition period in relation to:

(a) the person in the capacity of a regulated principal of that kind; and

(b) the property;

as if the licensee were a futures broker within the meaning of the old Corporations Act.

10.2.60 Special provisions relating to insurance: financial services licensee who was formerly a registered insurance broker

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who is a regulated principal mentioned in item 5 of the table in section 1430 of the Act, and whose financial services licence covers regulated activities for a regulated principal of that kind, in relation to:

(a) money:

(i) received by the person before the end of the transition period in relation to the person in the capacity of a regulated principal of that kind; and

(ii) to which section 27 of the *Insurance (Agents and Brokers) Act 1984* applied; and

(b) contracts of insurance arranged or effected by the person (either directly or through another person) before the end of the transition period in relation to the person in the capacity of a regulated principal of that kind; and

(c) proposed contracts of insurance of the kind mentioned in paragraph (b).

(2) Section 27 (other than subsections 27(3) and (5)) of the *Insurance (Agents and Brokers) Act 1984*, and any associated provisions, continue to apply to the regulated principal after the end of the transition period in relation to:

(a) the person in the capacity of a regulated principal of that kind; and

(b) the money;

as if the licensee were a registered insurance broker within the meaning of the *Insurance (Agents and Brokers) Act 1984*.

(3) Subsection 27(3) of the *Insurance (Agents and Brokers) Act 1984*, and any associated provisions, continue to apply to the regulated principal after the end of the transition period in relation to the person in the capacity of a regulated principal of that kind, in relation to contracts of insurance mentioned in paragraph (1)(b).

(4) Subsection 27(5) of the *Insurance (Agents and Brokers) Act 1984*, and any associated provisions, continue to apply to the regulated principal after the end of the transition period in relation to the person in the capacity of a regulated principal of that kind, in relation to contracts of insurance, or proposed contracts of insurance, mentioned in paragraphs (1)(b) and (c) for which:

(a) the risk or part of the risk to which the contract or proposed contract relates is accepted by or on behalf of an insurer; and

(b) the person has not been informed of, and has not otherwise ascertained, the amount of a premium or an instalment of a premium to be paid in connection with the contract or proposed contract;

as if the person was still a registered insurance broker within the meaning of the *Insurance (Agents and Brokers) Act 1984*.

10.2.61 Obligation to report: financial services licensee who formerly held a futures broker’s licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee whose financial services licence covers regulated activities for a regulated principal of the kind mentioned in item 3 of the table in section 1430 of the Act, in relation to:

(a) money that is held by the licensee in an account maintained under section 1209 of the old Corporations Act; and

(b) property that is held by the licensee under section 1209 or 1214 of the old Corporations Act.

(2) Section 1207 of the old Corporations Act, and any associated provisions, continue to apply in relation to the regulated principal after the end of the transition period in relation to:

(a) the person in the capacity of a regulated principal of that kind; and

(b) the money;

as if the person were a futures broker.

10.2.62 Reporting in relation to dealings in derivatives: financial services licensee who formerly held a dealer’s licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who is a regulated principal mentioned in item 3 of the table in section 1430 of the Act, and whose financial services licence covers regulated activities for a regulated principal of that kind, in relation to:

(a) a futures contract within the meaning of section 72 of the old Corporations Act that was acquired by the licensee on behalf of a client before the end of the transition period in relation to the person in the capacity of a regulated principal of that kind; and

(b) authority to operate a discretionary account within the meaning of section 61 of the old Corporations Act that was given to the licensee before the end of the transition period in relation to the person in the capacity of a regulated principal of that kind.

(2) Section 1207 of the old Corporations Act, and any associated provisions, continue to apply in relation to the regulated principal after the end of the transition period in relation to:

(a) the person in the capacity of a regulated principal of that kind; and

(b) futures contracts mentioned in paragraph (1)(a) that have not been disposed of by the end of a particular month; and

(c) discretionary accounts mentioned in paragraph (1)(b) for which the authority remained in force during part of a particular month;

as if the person were a futures broker.

10.2.63 Financial statements of financial services licensee: general

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who is not a regulated principal mentioned in any the following items of the table in section 1430 of the Act:

(a) item 1;

(b) item 3;

(c) item 5;

(d) item 7.

(2) Subdivision C of Division 6 of Part 7.8 of the Act applies in relation to the financial services licensee as if the first day of the first financial year in relation to the licensee, in its capacity as licensee, commenced on:

(a) if the person prepares financial statements for the entire financial year in which the person became a financial services licensee—the first day of that financial year; or

(b) if paragraph (a) does not apply—the day on which the person became a financial services licensee.

10.2.64 Financial statements of financial services licensees who were certain regulated principals

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who is a regulated principal mentioned in any of the following items of the table in section 1430 of the Act:

(a) item 1;

(b) item 3;

(c) item 5;

(d) item 7.

(2) Subdivision C of Division 6 of Part 7.8 of the Act applies in relation to the financial services licensee as if the financial services licensee had been a financial services licensee on and from the first day of the financial year in which the person became a financial services licensee.

(3) If the financial services licensee was, immediately before becoming a financial services licensee, a regulated principal mentioned in item 1 of the table in section 1430 of the Act:

(a) section 860 of the old Corporations Act, and any associated provisions, continue to apply in relation to the most recent financial year that ended before the financial year in which the licensee became a financial services licensee, as if the licensee were a person who held a securities dealers licence within the meaning of the old Corporations Act; and

(b) section 860 of the old Corporations Act does not apply in relation to the licensee in relation to the financial year in which the licensee became a financial services licensee.

(4) If the financial services licensee was, immediately before becoming a financial services licensee, a regulated principal mentioned in item 3 of the table in section 1430 of the Act:

(a) section 1218 of the old Corporations Act, and any associated provisions, continue to apply in relation to the licensee in relation to the most recent financial year that ended before the financial year in which the licensee became a financial services licensee as if the licensee were a futures broker within the meaning of the old Corporations Act; and

(b) section 1218 of the old Corporations Act does not apply in relation to the licensee in relation to the financial year in which the licensee became a financial services licensee.

(5) If the financial services licensee was, immediately before becoming a financial services licensee, a regulated principal mentioned in item 5 of the table in section 1430 of the Act:

(a) section 25A of the *Insurance (Agents and Brokers) Act 1984*, and any associated provisions, continue to apply in relation to the licensee in relation to the most recent accounting period (within the meaning of that Act) that ended before the accounting period in which the licensee became a financial services licensee, as if the licensee were a registered insurance broker; and

(b) section 25A of the *Insurance (Agents and Brokers) Act 1984* does not apply in relation to the licensee in relation to the accounting period in which the licensee became a financial services licensee.

(6) If the financial services licensee was, immediately before becoming a financial services licensee, a regulated principal mentioned in item 7 of the table in section 1430 of the Act:

(a) section 31J of the *Insurance (Agents and Brokers) Act 1984*, and any associated provisions, continue to apply in relation to the licensee in relation to the most recent accounting period (within the meaning of that Act) that ended before the accounting period in which the licensee became a financial services licensee as if the licensee were a registered foreign insurance agent; and

(b) section 31J of the *Insurance (Agents and Brokers) Act 1984* does not apply in relation to the licensee in relation to the accounting period in which the licensee became a financial services licensee.

10.2.65 Auditors: certain financial services licensee who formerly held dealer’s licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who:

(a) is a regulated principal mentioned in item 1 of the table in section 1430 of the Act, and whose financial services licence covers regulated activities for a regulated principal of that kind; and

(b) is not a body corporate (other than a proprietary company) to which section 327 of the old Corporations Act applies.

(2) If:

(a) there was no vacancy in the office of auditor of the regulated principal at the end of the transition period in relation to the person in the capacity of a regulated principal of that kind; and

(b) an auditor of the regulated principal would be eligible to continue to act as auditor of the financial services licensee;

the auditor of the regulated principal is taken to have been appointed under section 990B of the Act as auditor of the licensee when the regulated principal became a financial services licensee in relation to the regulated activities of a regulated principal of that kind.

(3) If:

(a) there was no vacancy in the office of auditor of the regulated principal at the end of the transition period in relation to the person in the capacity of a regulated principal of that kind; and

(b) the auditor of the regulated principal would not be eligible to continue to act as auditor of the financial services licensee;

the auditor of the regulated principal is taken to have ceased to hold office at the time when the regulated principal became a financial services licensee in relation to the regulated activities of a regulated principal of that kind.

(4) If:

(a) there was no vacancy in the office of auditor of the regulated principal at the end of the transition period in relation to the person in the capacity of a regulated principal of that kind; and

(b) the auditor of the regulated principal would be eligible to continue to act as auditor of the financial services licensee; and

(c) ASIC had previously consented to the removal or resignation of the auditor under section 858 of the old Corporations Act on a specified date after the regulated principal became a financial services licensee in relation to the regulated activities of a regulated principal of that kind;

the auditor of the regulated principal is taken to have been appointed under section 990B of the Act when the regulated principal became a financial services licensee in relation to the regulated activities of a regulated principal of that kind, and ASIC is taken to have specified the date mentioned in paragraph (c) under section 990H of the Act.

(5) If there was a vacancy in the office of the auditor of the regulated principal mentioned in item 1 of the table in section 1430 of the Act when the regulated principal became a financial services licensee in relation to the regulated activities of a regulated principal of that kind, the licensee must appoint an auditor within 14 days after the day on which the vacancy occurred in accordance with subsections 990B(4) and (5) of the Act.

(6) Subregulation (5) does not apply to a financial services licensee in relation to which an auditor has already been appointed under section 990B of the Act.

10.2.66 Auditors: certain financial services licensees who held a futures broker’s licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who:

(a) is a regulated principal mentioned in item 3 of the table in section 1430 of the Act; and

(b) whose financial services licence covers regulated activities for a regulated principal of that kind; and

(c) is not a body corporate (other than a proprietary company) in relation to which section 327 of the old Corporations Act applies.

(2) If:

(a) there was no vacancy in the office of auditor of the regulated principal at the end of the transition period in relation to the person in the capacity of a regulated principal of that kind; and

(b) an auditor of the regulated principal would be eligible to continue to act as auditor of the financial services licensee;

the auditor of the regulated principal is taken to have been appointed under section 990B of the Act as auditor of the licensee when the regulated principal became a financial services licensee in relation to the regulated activities of a regulated principal of that kind.

(3) If:

(a) there was no vacancy in the office of auditor of the regulated principal at the end of the transition period in relation to the person in the capacity of a regulated principal of that kind; and

(b) the auditor of the regulated principal would not be eligible to continue to act as auditor of the financial services licensee;

the auditor of the regulated principal is taken to have ceased to hold office at the time when the regulated principal became a financial services licensee in relation to the regulated activities of a regulated principal of that kind.

(4) If:

(a) there was no vacancy in the office of auditor of the regulated principal at the end of the transition period in relation to the person in the capacity of a regulated principal of that kind; and

(b) the auditor of the regulated principal would be eligible to continue to act as auditor of the financial services licensee; and

(c) ASIC had previously consented to the removal or resignation of the auditor under section 1216 of the old Corporations Act on a specified date after the regulated principal became a financial services licensee in relation to the regulated activities of a regulated principal of that kind;

the auditor of the regulated principal is taken to have been appointed under section 990B of the Act when the regulated principal became a financial services licensee in relation to the regulated activities of a regulated principal of that kind, and ASIC is taken to have specified the date mentioned in paragraph (c) under section 990H of the Act.

(5) If there was a vacancy in the office of the auditor of a regulated principal mentioned in item 3 of the table in section 1430 of the Act when the regulated principal became a financial services licensee in relation to the regulated activities of a regulated principal of that kind, the licensee must appoint an auditor within 14 days after the day on which the vacancy occurred in accordance with subsections 990B(4) and (5) of the Act.

(6) Subregulation (5) does not apply to a financial services licensee in relation to which an auditor has already been appointed under section 990B of the Act.

10.2.67 Auditor’s report in certain matters: financial services licensee who formerly held a dealer’s licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee:

(a) who is a regulated principal mentioned in item 1 of the table in section 1430 of the Act; and

(b) whose financial services licence covers regulated activities for a regulated principal of that kind.

(2) Section 990K of the Act applies in relation to an auditor of a financial services licensee mentioned in subregulation (1) as if subsection 990K(2) required the auditor to give a report on any matter that, in the opinion of the auditor:

(a) adversely affected the ability of the licensee to meet its obligations as a securities dealer before the time that it became a financial services licensee in relation to the regulated activities mentioned in item 1 of the table in section 1430 of the Act; or

(b) constitutes, or may constitute, a contravention of the condition of the dealers licence held by the licensee before the time that it became a financial services licensee in relation to the regulated activities mentioned in item 1 of the table in section 1430 of the Act; or

(c) constitutes, or may constitute, a contravention of section 856, 866, 867, 868, 869, 870, 871, 872 or 873, or Part 7.7 of the old Corporations Act.

10.2.68 Auditor’s report on certain matters: financial services licensee who formerly held a futures broker’s licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee:

(a) who is a regulated principal mentioned in item 3 of the table in section 1430 of the Act; and

(b) whose financial services licence covers regulated activities for a regulated principal of that kind.

(2) Section 990K of the Act applies in relation to an auditor of a financial services licensee mentioned in subregulation (1) as if subsection 990K(2) required the auditor to give a report on any matter that, in the opinion of the auditor:

(a) adversely affected the ability of the licensee to meet its obligations as a futures broker before the time that it became a financial services licensee in relation to the regulated activities mentioned in item 3 of the table in section 1430 of the Act; or

(b) constitutes, or may constitute, a contravention of the condition of the futures brokers licence held by the licensee before the time that it became a financial services licensee in relation to the regulated activities mentioned in item 3 of the table in section 1430 of the Act; or

(c) constitutes, or may constitute, a contravention of section 1209, 1213 or 1214 of the old Corporations Act.

10.2.69 Auditor’s report on certain matters: financial services licensee who was formerly a registered insurance broker

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee:

(a) who is a regulated principal mentioned in item 5 of the table in section 1430 of the Act; and

(b) whose financial services licence covers regulated activities for a regulated principal of that kind.

(2) Section 990K of the Act applies in relation to an auditor of the financial services licensee as if subsection 990K(2) required the auditor to give a report on any matter that, in the opinion of the auditor, constitutes, or may constitute, a contravention of section 25C, 26 or 27 of the *Insurance (Agents and Brokers) Act 1984*.

10.2.70 Priority to clients’ orders: financial services licensee who held a dealers licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee:

(a) who is a regulated principal mentioned in item 1 of the table in section 1430 of the Act; and

(b) whose financial services licence covers regulated activities for a regulated principal of that kind;

in relation to instructions to buy or sell securities (as defined for the purposes of Part 7.4 of Chapter 7 of the old Corporations Act) that were received by the licensee from a client who was not an associate of the licensee before the end of the transition period in relation to the person in the capacity of a regulated principal of that kind.

(2) Section 844 of the old Corporations Act, and any associated provisions, continue to apply in relation to the regulated principal after the end of the transition period in relation to the person entering into a transaction in securities of the same class as those to which the instructions relates as if the person were a dealer within the meaning of the old Corporations Act.

(3) This regulation applies until the regulated principal has complied with the instructions.

10.2.71 Sequencing of instructions to deal through licensed markets: financial services licensee who formerly held a futures brokers licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee:

(a) who is a regulated principal mentioned in item 3 of the table in section 1430 of the Act; and

(b) whose financial services licence covers regulated activities for a regulated principal of that kind;

in relation to instructions to deal in a class of futures contracts (within the meaning of section 72 of the old Corporations Act) that were received by the licensee before the licensee became a financial services licensee.

(2) Section 1266 of the old Corporations Act (other than subsections 1266(7) and (8)), and any associated provisions, continue to apply in relation to the regulated principal after the end of the transition period in relation to the person entering into a transaction in derivatives of the same class as those to which the instructions relates as if the person were a futures broker within the meaning of the old Corporations Act.

(3) This regulation applies until the regulated principal has complied with the instructions.

10.2.72 Records relating to instructions to deal through licensed markets: financial services licensee who held a futures brokers licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee:

(a) who is a regulated principal mentioned in item 3 of the table in section 1430 of the Act; and

(b) whose financial services licence covers regulated activities for a regulated principal of that kind;

in relation to instructions to deal in futures contracts (within the meaning of section 72 of the old Corporations Act) that were received by the licensee before the end of the transition period in relation to the person in the capacity of a regulated principal of that kind.

(2) Subsections 1266(7) and (8) of the old Corporations Act, and any associated provisions, continue to apply in relation to the regulated principal after the end of the transition period in relation to the person in the capacity of a regulated principal of that kind as if the person were a futures broker within the meaning of the old Corporations Act.

10.2.73 Dealing with non‑licensees: financial services licensee who held a dealers licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee:

(a) who is a regulated principal mentioned in item 1 of the table in section 1430 of the Act; and

(b) whose financial services licence covers regulated activities for a regulated principal of that kind, in relation to a transaction of sale or purchase of securities (as defined for the purposes of Part 7.4 of the old Corporations Act) with a non‑dealer (within the meaning of the old Corporations Act) that was entered into by the licensee, on the licensee’s own account, before the end of the transition period (within the meaning of subsection 1431(1) of the Act) that applied to the person in the capacity of a regulated principal of that kind.

(2) Section 843 of the old Corporations Act, and any associated provisions, continue to apply in relation to the regulated principal after the end of the transition period in relation to the person in the capacity of a regulated principal of that kind as if the person were a dealer within the meaning of the old Corporations Act.

10.2.73A Advertising for financial products

(1) For section 1444 of the Act, this regulation applies in relation to:

(a) a financial product; or

(b) a class of financial products that includes the financial product;

for which a notice has been lodged with ASIC in accordance with paragraph 1438(3)(b) of the Act.

(2) At any time in the period of 3 months ending immediately before the date specified in the notice in accordance with paragraph 1438(3)(b) of the Act, the issuer of the financial product may decide to comply with Division 4 of Part 7.9 of the Act in relation to the financial product.

(3) If the product issuer makes the decision mentioned in subregulation (2):

(a) Division 4 of Part 7.9 of the Act applies in relation to the financial product until the date specified in the notice; and

(b) section 734 of the old Corporations Act does not apply in relation to the financial product.

Note: Under subsection 1438(5) of the Act, it is possible for the date specified in accordance with paragraph 1438(3)(b) of the Act to be changed.

(4) If the notice is lodged with ASIC less than 3 months before the date specified in the notice in accordance with paragraph 1438(3)(b) of the Act, subregulation (2) applies only during the period:

(a) starting when the notice is lodged; and

(b) ending immediately before the date specified in the notice.

10.2.73B Freezing accounts

(1) For section 1444 of the Act, this regulation applies if a person:

(a) holds or held a licence under Chapter 7 or 8 of the old Corporations Act in relation to an activity; and

(b) the licence is revoked or suspended at any time before or after the FSR commencement.

(2) Subsection 983A(3) of the Act applies to the person as if the person were a person who holds, or has at any time held, an Australian financial services licence that has been revoked or suspended.

Division 16—Product disclosure provisions for existing products during transition period

10.2.74 Financial products in the same class

(1) For subsection 1410(2) of the Act, this regulation identifies what constitutes a class of financial products for subsection 1438(1) of the Act.

(2) Subject to subregulation (2A), a managed investment product is in the same class as another financial product only if:

(a) the other financial product is a managed investment product; and

(b) both products are interests in registered schemes that have the same responsible entity; and

(c) at the FSR commencement, the responsible entity’s licence to operate registered schemes would have authorised the operation of both registered schemes.

(2A) A financial product that is an interest in a registered scheme is in the same class as another financial product if the other financial product is an interest in the same registered scheme.

(3) A derivative is in the same class as another financial product only if:

(a) the other financial product is a derivative; and

(b) either:

(i) each of the derivatives was entered into or acquired on a financial market; or

(ii) none of the derivatives was entered into or acquired on a financial market.

(4) A life risk insurance product is in the same class as another financial product only if the other financial product is a life risk insurance product.

(5) An investment life insurance product is in the same class as another financial product only if the other financial product is an investment life insurance product.

(6) An insurance product (other than a life risk insurance product or an investment life product) is in the same class as another financial product only if:

(a) the other financial product is an insurance product other than a life risk insurance product or an investment life product; and

(b) both products:

(i) provide the same kind of cover; or

(ii) provide cover in relation to the same kind of asset (for example, a motor vehicle).

(7) A superannuation interest is in the same class as another financial product only if the other financial product is a superannuation interest.

Note: ***Superannuation interest*** is defined in subsection 10(1) of the SIS Act.

(8) An RSA product is in the same class as another financial product only if the other financial product is an RSA product.

(9) A deposit product is in the same class as another financial product only if the other financial product is a deposit product.

(9A) A facility for making non‑cash payments that is related to a deposit product is in the same class as another financial product only if the other financial product is a facility for making non‑cash payments that is related to a deposit product.

Note: Non‑cash payments are explained in section 763D of the Act.

(9B) In this regulation:

***deposit product*** means a deposit‑taking facility made available by an ADI (within the meaning of the *Banking Act 1959*) in the course of its banking business (within the meaning of that Act), other than an RSA.

(10) A financial product mentioned in paragraph 764A(1)(k) of the Act is in the same class as another financial product only if the other financial product is a financial product mentioned in paragraph 764A(1)(k) of the Act.

(11) A warrant is in the same class as another financial product only if the other financial product is a warrant.

10.2.75 References to financial services licensee

(1) For section 1444 of the Act, a reference in Part 7.9 of the Act to a financial services licensee includes a regulated principal.

(2) Subregulation (1) also applies to section 761E of the Act.

(3) A reference in paragraph 761E(6)(d) of the Act to an authorised representative includes a representative of a regulated principal.

(4) A reference in paragraph (d) of the definition of ***regulated person*** in section 1011B of the Act to an authorised representative includes a representative of a regulated principal.

(5) A reference in paragraph 1015C(3)(b) of the Act to an authorised representative includes a representative of a regulated principal.

(6) A reference in paragraph 1017A(1)(c) of the Act to an authorised representative includes a representative of a regulated principal.

(7) Subregulations (1) to (6) cease to apply in relation to the regulated principal and the authorised representative at the end of the transition period in relation to the regulated principal.

10.2.76 References to retail client

(1) For section 1444 of the Act, this regulation applies if a person acquired a financial product before the FSR commencement.

(2) Subject to subregulation (3), the person is taken to have acquired the financial product as a retail client.

(3) The person is taken to have acquired the product as a wholesale client if:

(a) the person would not have acquired the product as a retail client if the product had been acquired at the FSR commencement; or

(b) the person would not have acquired the product as a retail client if the Act had applied at the time when the product was acquired.

10.2.77 References to issue of product

For section 1444 of the Act, a reference in subsection 1438(1) of the Act to financial products in a class of products that are first issued by a person after the FSR commencement does not include financial products in a class of products if the person who is, or will be, the product issuer first made an offer to issue a financial product in that class of products before the FSR commencement.

10.2.78 References to Product Disclosure Statement: offer previously accepted

(1) For section 1444 of the Act, this regulation applies:

(a) if a person:

(i) made an offer to the issuer or seller of a financial product, before Division 2 of Part 7.9 of the Act began to apply to the financial product, that involves the person, or another person, acquiring the financial product; or

(ii) accepted an offer by the issuer or seller of a financial product, before Division 2 of Part 7.9 of the Act began to apply to the financial product, to issue the financial product to the person or the other person; and

(b) if the acquisition is not completed before Division 2 of Part 7.9 of the Act began to apply to the financial product.

(2) The legislation mentioned in section 1440 of the Act in relation to the kind of financial product continues to apply in relation to the financial product to the extent necessary to allow the financial product to be acquired.

(3) Division 2 of Part 7.9 of the Act does not apply in relation to the financial product to the extent necessary to allow the financial product to be acquired.

10.2.79 References to Product Disclosure Statement: managed investment products

For section 1444 of the Act, a reference in the following provisions of the Act to a Product Disclosure Statement includes a disclosure document under Chapter 6D of the old Corporations Act:

(a) paragraph 1012C(6)(b);

(b) paragraph 1012C(8)(c);

(c) subparagraph 1012D(2)(b)(i).

10.2.80 Lodgment of Product Disclosure Statement after lodgment of notice

For section 1444 of the Act, if a person lodges with ASIC a notice under paragraph 1438(3)(b) of the Act:

(a) section 1015B of the Act is taken to authorise the person to lodge a Product Disclosure Statement before the date of effect specified in the notice; and

(b) the period mentioned in section 1016B of the Act is taken to start in relation to the person when the person lodges the Product Disclosure Statement.

10.2.81 Ongoing disclosure

For section 1444 of the Act, if:

(a) the issuer of a financial product would have had an obligation to notify the holder of a financial product of a change or event mentioned in subsection 1017B(1A) of the Act if Part 7.9 of the Act had applied at all times to the product; and

(b) the issuer would have been exempt from the obligation because regulation 7.9.16G would have applied to the issuer in relation to the product if Part 7.9 of the Act had applied at all times to the product;

regulation 7.9.16G applies to the issuer in relation to the product during the transition period for the product.

10.2.82 Money received for financial product before the product is issued: general

(1) For section 1444 of the Act, this regulation applies if:

(a) money is paid to a person before the FSR commencement to acquire a financial product (whether the money is paid by the person who is to acquire the financial product or by another person); and

(b) the person holds the money immediately after the FSR commencement.

(2) The following provisions of the relevant old legislation continue to apply in relation to the person and the money:

(a) section 722 of the old Corporations Act, and any associated provisions;

(b) Division 5 of Part 19 of the SIS Act, and any associated provisions;

(c) Division 6 of Part 5 of the RSA Act, and any associated provisions;

(d) section 37 of the *Insurance (Agents and Brokers) Act 1984* (other than subsection 37(2)), and any associated provisions.

(3) Section 1017E of the Act does not apply in relation to the person and the money.

10.2.83 Money received for financial product before the product is issued: requirement before application of subsection 37(2) of *Insurance (Agents and Brokers) Act 1984*

Section 37 of the *Insurance (Agents and Brokers) Act 1984* (other than subsection 37(2)) does not apply in relation to money to which section 1017E of the Act applies unless one of the events mentioned in subsection 1017E(3) of the Act occurs.

10.2.84 Confirmation of transactions

(1) For section 1444 of the Act, this regulation applies in relation to a financial product to which:

(a) section 1017F of the Act applies; and

(b) subsection 37(2) of the *Insurance (Agents and Brokers) Act 1984* would, but for subregulation (2), apply after the FSR commencement.

(2) Subsection 37(2) of the *Insurance (Agents and Brokers) Act 1984* does not apply in relation to the financial product.

10.2.85 Dispute resolution requirements: financial products

(1) For section 1444 of the Act, this regulation applies in relation to financial products (the ***relevant financial products***) other than financial products that are, or have been, available for acquisition at a time at which Division 2 of Part 7.9 of the Act applies to the financial products.

(2) A reference in section 1017G of the Act to financial products that are, or have been, available for acquisition does not include the relevant financial products.

10.2.86 Dispute resolution requirements: regulated principals

(1) For section 1444 of the Act, if:

(a) a regulated principal in relation to a financial product would, but for this regulation, be required by subsection 1017G(1) of the Act to have a dispute resolution system for the financial product; and

(b) the issue or sale of the financial product as mentioned in paragraph 1017G(1)(b) of the Act is within the regulated activities of the regulated principal;

section 1017G of the Act does not apply to the regulated principal in relation to the financial product.

(2) Subregulation (1) ceases to apply in relation to the regulated principal at the end of the transition period in relation to the regulated principal.

10.2.87A Meaning of *financial product advice*: exempt document or statement

(1) For subsection 1409(1) of the Act, this regulation applies to a document or statement about a financial product during the transition period that ceases on the earlier of:

(a) the date that Part 7.9 of the Act applies to the regulated person; and

(b) 2 years after the FSR commencement.

(2) The following documents and statements are prescribed under paragraph (b) of the definition of ***exempt document or statement*** in subsection 766B(9) of the Act:

(a) in relation to an interest in a managed investment scheme to which Division 2 of Part 7.9 of the Act does not apply—a disclosure document lodged under Chapter 6D of the Act;

(b) in relation to a derivative to which Division 2 of Part 7.9 of the Act does not apply—information mentioned in section 1210 of the old Corporations Act;

(c) in relation to a superannuation product to which Division 2 of Part 7.9 of the Act does not apply—information mentioned in section 153 or 159 of the SIS Act or Part 2 of the SIS Regulations as in force immediately before the FSR commencement;

(d) in relation to an RSA product to which Division 2 of Part 7.9 of the Act does not apply—information mentioned in section 56 of the RSA Act, as in force immediately before the FSR commencement;

(e) in relation to an investment life insurance product or a life risk insurance product—a document or statement that contains information given in accordance with Circular G.I.1, issued by the Insurance and Superannuation Commission in February 1996.

Division 17—Arrangements relating to enforcement of matters by ASIC

10.2.88 Definition

In this Division:

***amended Corporations Act*** means the Act as in force after the FSR commencement.

10.2.89 Financial services law

For section 761A of the Act, a provision of the relevant old legislation is not a financial services law unless the operation of the provision is expressly preserved or applied (with or without modification) in relation to the matter by a provision of these Regulations (other than this regulation).

10.2.90 ASIC may have regard to prior conduct and events

(1) For a provision of Part 7.6 of the Act mentioned in subregulation (2), ASIC is not precluded from having regard to any of the following matters in exercising its powers and performing its functions under the provision:

(a) a matter that arose at any time before the FSR commencement;

(b) a matter that arose during the transition period;

(c) a matter that arose before a person becomes subject to the amended Corporations Act in relation to:

(i) all of the person’s business; or

(ii) a particular part of the person’s business.

(2) The provisions are:

(a) paragraph 913B(1)(b); and

(b) paragraph 913B(1)(c); and

(c) subsection 913B(2); and

(d) subsection 913B(3); and

(e) paragraph 915C(1)(a); and

(f) paragraph 915C(1)(aa); and

(g) paragraph 915C(1)(b); and

(h) paragraph 920A(1)(b); and

(i) paragraph 920A(1)(ba); and

(j) paragraph 920A(1)(e); and

(k) paragraph 920A(1)(f); and

(l) regulations made for paragraph 913B(1)(d); and

(m) subsection 912C(1); and

(n) subsection 914A(1); and

(o) paragraphs 915B(1)(a), (b), (c) and (d); and

(p) paragraphs 915B(2)(a), (b) and (c); and

(q) paragraphs 915B(3)(a), (b), (c) and (d); and

(r) paragraphs 915B(4)(a), (b) and (c); and

(s) paragraph 915C(1)(d); and

(t) paragraphs 915C(2)(a) and (b); and

(u) subsection 916G(1); and

(v) paragraph 920A(1)(bb); and

(w) paragraph 920A(1)(c); and

(x) subsection 920D(1).

10.2.91 Power to act in relation to relevant old legislation

(1) This regulation applies if an instrument or another matter continues in force, after the FSR commencement, in accordance with the relevant old legislation that relates to the instrument or matter.

Examples:

1 A licence.

2 A licence condition.

3 A suspension of a registration.

Note: The ***relevant old legislation*** includes the old Corporations Act, associated provisions and, in some cases, other legislation such as the *Insurance (Agents and Brokers) Act 1984*.

(2) To avoid doubt:

(a) ASIC may exercise any of the powers, and perform any of the functions, that ASIC had immediately before the FSR commencement in relation to:

(i) a person to whom the instrument or matter applies; and

(ii) a representative of a person mentioned in subparagraph (i); and

(iii) any other person (including a person described in a capacity that came into existence, or in relation to an event that occurred, after the FSR commencement); and

(b) paragraph (a) includes the power:

(i) to issue an instrument; and

(ii) to execute an instrument.

Division 18—Specific kinds of documents in existence before FSR commencement

10.2.92 Banning orders made before FSR commencement

(1) On and after the FSR commencement, a banning order made before the FSR commencement under Division 5 of Part 7.3, or Division 5 of Part 8.3, of the old Corporations Act (the ***relevant Division***):

(a) continues in force to the extent practicable to allow it to apply to conduct or another matter:

(i) as it is described on and after the FSR commencement; or

(ii) as it is regulated on and after the FSR commencement; and

(b) is taken to be a banning order made under:

(i) the relevant Division of the old Corporations Act; and

(ii) section 920A of the Act.

(2) On and after the FSR commencement, the relevant Division of the old Corporations Act, and associated provisions, continue to apply to the extent necessary to allow the banning order to continue in force.

(3) For subregulation (2), nothing in the relevant old legislation (including the *Australian Securities and Investments Commission Act 2001*) prevents ASIC from:

(a) drafting or amending the terms of a banning order; or

(b) taking any other action permitted by Division 8 of Part 7.6 of the Act;

for the purpose of ensuring that the banning order has the same effect under the amended Corporations Act as it had under the old Corporations Act, or an effect equivalent to the effect it had under the old Corporations Act.

10.2.93 Banning orders made under relevant old legislation after FSR commencement

(1) On and after the FSR commencement, Division 5 of Part 7.3, or Division 5 of Part 8.3, of the old Corporations Act (the ***relevant Division***), and associated provisions, continue to apply to the extent necessary to allow a banning order to be made or enforced against a person in relation to:

(a) conduct or another matter that occurred before the FSR commencement; or

(b) conduct or another matter that:

(i) occurred after the FSR commencement; and

(ii) is regulated in accordance with section 1432 or 1436A of the Act.

(2) A banning order made in relation to conduct or another matter mentioned in subregulation (1) is taken to be a banning order made under:

(a) the relevant Division of the old Corporations Act; and

(b) section 920A of the Act.

(3) Subregulation (1) does not prevent ASIC from making a banning order under section 920A of the Act in relation to the same conduct or matter in relation to which a banning order is made under the relevant Division of the old Corporations Act.

(4) For subregulation (3), nothing in the Act, or the relevant old legislation (including the *Australian Securities and Investments Commission Act 2001*), prevents ASIC from:

(a) drafting or amending the terms of a banning order; or

(b) taking any other action that was permitted by the relevant Division of the old Corporations Act before the FSR commencement;

for the purpose of ensuring that the banning order has the same effect under the amended Corporations Act as it had under the old Corporations Act, or an effect equivalent to the effect it had under the old Corporations Act.

10.2.94 Banning orders made under the Act after FSR commencement

(1) On and after the FSR commencement, Division 8 of Part 7.6 of the Act is taken to authorise the making of a banning order in relation to conduct or another matter that is or may be regulated under the relevant old legislation.

(2) Subregulation (1) applies only to the extent that the relevant old legislation would have permitted the making of an order in similar terms in relation to the conduct or other matter.

(3) A banning order made in relation to conduct or another matter mentioned in subregulation (1) is taken to be a banning order made under:

(a) Division 5 of Part 7.3, or Division 5 of Part 8.3, of the old Corporations Act (the ***relevant Division***); and

(b) section 920A of the Act.

(4) Subregulation (1) does not prevent ASIC from making a banning order under the relevant Division of the old Corporations Act in relation to the same conduct or matter in relation to which a banning order is made under Division 8 of Part 7.6 of the Act.

(5) For subregulation (4), nothing in the Act, or the relevant old legislation (including the *Australian Securities and Investments Commission Act 2001*), prevents ASIC from:

(a) drafting or amending the terms of a banning order; or

(b) taking any other action permitted by Division 8 of Part 7.6 of the Act;

for the purpose of ensuring that the banning order has the same effect under the amended Corporations Act as it had under the old Corporations Act, or an effect equivalent to the effect it had under the old Corporations Act.

10.2.94A Prohibitions under paragraphs 827(1)(d) and 1192(1)(d) of the old Corporations Act made before FSR commencement

(1) For section 1444 of the Act, on and after the FSR commencement, a prohibition under paragraph 827(1)(d) or 1192(1)(d) of the old Corporations Act made before the FSR commencement:

(a) continues in force to the extent practicable to allow it to apply to conduct or another matter:

(i) as it is described on and after the FSR commencement; or

(ii) as it is regulated on and after the FSR commencement; and

(b) is taken to be a prohibition made under paragraph 827(1)(d) or 1192(1)(d) of the old Corporations Act.

(2) On and after the FSR commencement, paragraph 827(1)(d) or 1192(1)(d) of the old Corporations Act, and associated provisions, continue to apply to the extent necessary to allow the prohibition to continue in force.

(3) For subregulation (2), nothing in the relevant old legislation (including the *Australian Securities and Investments Commission Act 2001*) prevents ASIC from drafting or amending the terms of a prohibition for the purpose of ensuring that the prohibition has the same effect under the amended Corporations Act as it had under the old Corporations Act, or an effect equivalent to the effect it had under the old Corporations Act.

10.2.94B Prohibitions under paragraphs 827(1)(d) and 1192(1)(d) of the old Corporations Act made after FSR commencement

(1) For section 1444 of the Act, on and after the FSR commencement, paragraphs 827(1)(d) and 1192(1)(d) of the old Corporations Act, and associated provisions, continue to apply to the extent necessary to allow a prohibition to be made or enforced against a person in relation to:

(a) conduct or another matter that occurred before the FSR commencement; or

(b) conduct or another matter that:

(i) occurred after the FSR commencement; and

(ii) is regulated in accordance with section 1432 or 1436A of the Act.

(2) A prohibition made in relation to conduct or another matter mentioned in subregulation (1) is taken to be a prohibition made under paragraph 827(1)(d) or 1192(1)(d) of the old Corporations Act.

(3) For subregulation (2), nothing in the relevant old legislation (including the *Australian Securities and Investments Commission Act 2001*) prevents ASIC from drafting or amending the terms of a prohibition for the purpose of ensuring that the prohibition has the same effect under the amended Corporations Act as it had under the old Corporations Act, or an effect equivalent to the effect it had under the old Corporations Act.

10.2.95 Undertakings

(1) This regulation applies if:

(a) an undertaking was in force under section 93AA or 93A of the *Australian Securities and Investments Commission Act 2001* immediately before the FSR commencement; and

(b) the conduct or matter to which the undertaking relates:

(i) is not described in the same terms in the amended Corporations Act; or

(ii) is regulated in a different way under the amended Corporations Act.

(2) On and after the FSR commencement, the undertaking continues in force, to the extent practicable to allow it to apply in relation to the conduct or matter:

(a) as it is described on and after the FSR commencement; and

(b) as it is regulated on and after the FSR commencement.

(3) For subregulation (2), nothing in the relevant old legislation (including the *Australian Securities and Investments Commission Act 2001*) prevents ASIC from:

(a) drafting or amending the terms of an undertaking; or

(b) issuing a notice to a person; or

(c) taking any other action permitted by section 93AA or 93A of that Act;

for the purpose of ensuring that the undertaking has the same effect under the amended Corporations Act as it had under the old Corporations Act, or an effect equivalent to the effect it had under the old Corporations Act.

10.2.96 Registers in existence before FSR commencement

(1) Subject to subregulation (3), this regulation applies if:

(a) a register was in existence, or was required to be in existence, under the relevant old legislation:

(i) before the FSR commencement; or

(ii) after the FSR commencement, but before the amended Corporations Act began to apply to a person’s activities; and

(b) the register:

(i) is required to be maintained, after the FSR commencement, by a law other than this regulation; or

(ii) would have been required to be maintained, after the FSR commencement, by a provision of the relevant old legislation if the provision had continued in operation after the FSR commencement.

(2) To avoid doubt:

(a) the person responsible for maintaining the register may exercise any of the powers, and perform any of the functions, that the person had immediately before the FSR commencement in relation to:

(i) a person whose details appear in the register; and

(ii) any other person to whom the register relates (including a person described in a capacity that came into existence after the FSR commencement); and

(b) paragraph (a) includes the power:

(i) to amend the register; and

(ii) to include new information in the register; and

(c) this regulation does not impose any obligation on the person to exercise any of the powers or perform any of the functions.

(3) The person must maintain the register for the same period of time, and in the same manner, that would have been required if the relevant old legislation had continued in force.

10.2.97 Registers created after FSR commencement

(1) This regulation applies to a register that:

(a) ASIC is required to create after the FSR commencement under paragraph 922A(2)(b) or (c) of the Act; and

(b) relates to a matter for which:

(i) ASIC had responsibility before the FSR commencement (including a matter that was described in a different way before the FSR commencement); and

(ii) a register (an ***old register***) was in existence under the relevant old law before the FSR commencement.

(2) ASIC must include in the new register as much of the information in the old register as ASIC considers appropriate.

10.2.98 Registers, documents and things kept before FSR commencement

(1) For section 1444 of the Act, this regulation applies if:

(a) a person was required, under a provision of the relevant old legislation, to keep a register, document or other thing for a specified period; and

(b) the period had not ended before the FSR commencement.

(2) On and after the FSR commencement, the provision and the period are taken to continue in force to the extent necessary to require the person to keep the register, document or thing for the specified period.

10.2.98A Licenses, registration, etc in force before FSR commencement

(1) For section 1444 of the Act, this regulation applies if:

(a) a person held a licence (the ***old licence***) under the old Corporations Act immediately before the FSR commencement in relation to an activity; and

(b) the person holds a financial services licence that applies to the same activity; and

(c) ASIC identifies a matter that occurred, before the person held a financial services licence in relation to the activity, in relation to which ASIC would have had the power under the old Corporations Act:

(i) to suspend or cancel the old licence; or

(ii) to impose conditions on the old licence; or

(iii) to vary or revoke a condition to which the old licence was subject.

(2) On and after the FSR commencement, ASIC’s power under the Act to suspend or cancel the financial services licence mentioned in paragraph (1)(b) is taken to include the power to suspend or cancel the financial services licence:

(a) in order to achieve an outcome that ASIC could have achieved by the exercise of the power mentioned in paragraph (1)(c); and

(b) in any way that was authorised under the old Act.

(3) On and after the FSR commencement, ASIC’s power under the Act to impose conditions on the financial services licence mentioned in paragraph (1)(b) is taken to include the power to impose conditions:

(a) in order to achieve an outcome that ASIC could have achieved by the exercise of the power mentioned in paragraph (1)(c); and

(b) in any way that was authorised under the old Act.

(4) On and after the FSR commencement, ASIC’s power under the Act to vary or revoke a condition to which the financial services licence mentioned in paragraph (1)(b) is taken to include the power to vary or revoke a condition:

(a) in order to achieve an outcome that ASIC could have achieved by the exercise of the power mentioned in paragraph (1)(c); and

(b) in any way that was authorised under the old Act.

Division 19—Extension of limitation periods

10.2.99 Application of items 111 and 121 of the *Financial Services Reform (Consequential Provisions) Act 2001* to amendments of the *Australian Securities and Investments Commission Act 2001*

(1) This regulation applies in relation to:

(a) the amendment of subsection 12GF(2) of the *Australian Securities and Investments Commission Act 2001* made by item 111 of Schedule 1 to the *Financial Services Reform (Consequential Provisions) Act 2001*; and

(b) the amendment of subsection 12GM(5) of the *Australian Securities and Investments Commission Act 2001* made by item 121 of Schedule 1 to the *Financial Services Reform (Consequential Provisions) Act 2001*.

(2) The amendment applies in relation to conduct engaged in on or after the commencement of that item.

(3) The amendment also applies in relation to conduct engaged in before the commencement of that item, but only if the period that:

(a) relates to the conduct; or

(b) applied under subsection 12GF(2) or 12GM(5) before the commencement of that item;

had not ended when that item commenced.

Division 20—Rules for dealing with liability during transition period

10.2.100 Application of Division 20

(1) This Division sets out rules for determining the liability of a responsible person under:

(a) the relevant old legislation; or

(b) the amended Corporations Act;

in relation to conduct engaged in, during the transition period, by a representative in respect of more than 1 principal.

Note: The *Corporations Act 2001* has been amended by the *Financial Services Reform (Consequential Provisions) Act 2001*. The Consequential Provisions Act includes a two‑year transition period during which certain conduct, described in Part 10.2 of the Corporations Act, will be regulated under either the legal regime in force before the amendments or under the new version of the Corporations Act.

If a person continues a business during the transition period, and is to be regulated under the legal regime in force before the amendments, the person will be subject to the relevant law that regulated (or would have regulated) their conduct before the amendments. This is referred to in section 1430 of the Corporations Act as the ‘relevant old legislation’.

Therefore, after the commencement of the amendments, a person may be a ***principal*** under either or both legal regime. This Division deals with the liability of either kind of principal in relation to a client and the conduct of a representative of that principal.

(2) Nothing in this Division is intended to apply a provision of the relevant old legislation to a person that is not a regulated principal.

10.2.101 Definitions for Division 20

In this Division:

***FSR principal*** means a person to whom an Australian financial services licence has been granted.

***non‑FSR principal*** means any person who provides financial services as a principal, and who is not an FSR principal during the transitional period, including the following persons:

(a) an insurer to which paragraph 1436A(2)(d) of the Act applies (in relation to activities and insurance agents to which section 1436A of the Act applies);

(b) a regulated principal (in relation to regulated activities to which section 1431 of the Act applies).

***principal*** means an FSR principal or a non‑FSR principal.

***representative*** means a person who:

(a) provides financial services on behalf of a principal; or

(b) otherwise acts on behalf of a principal;

under the relevant old legislation, the amended Corporations Act or under any other authority.

***responsible person*** means any person who is liable, as a principal or a representative, for conduct in relation to the provision of a financial service under any law.

***transition period*** means:

(a) the period of 2 years after the FSR commencement; or

(b) if the person is subject to an exemption under section 1437 of the Act in respect of an activity, the period starting at the FSR commencement and ending on the earlier of:

(i) the person becoming regulated under the amended Corporations Act in respect of the activity; and

(ii) the end of the period of the exemption in respect of the activity.

10.2.102 Liability of responsible person: general rules

(1) If, at the time the conduct is engaged in, the person who has engaged in the conduct is not the representative of an FSR principal, the liability (if any) for the conduct is to be determined in accordance with:

(a) the relevant old legislation; or

(b) any requirement or law, other than the relevant old legislation, that applies to the conduct; or

(c) any provisions of the amended Corporations Act that apply to the conduct.

Note: A number of representatives in the financial services industry currently act:

(a) on behalf of more than one principal; or

(b) as a principal in some circumstances but as a representative in others; or

(c) in both capacities.

On this basis, it is possible that different liability regimes simultaneously apply to the representative, depending on the kind of conduct. These regimes include:

(a) the Corporations Act as in force before the FSR commencement; and

(b) the Corporations Act as in force after the FSR commencement; and

(c) the *Australian Securities and Investments Commission Act 2001*; and

(d) the *Insurance (Agents and Brokers) Act 1984*; and

(e) the common law.

(2) If, at the time the conduct is engaged in, each principal in respect of which the representative acts is an FSR principal, the liability of each person is to be determined in accordance with the amended Corporations Act as in force from time to time after the FSR commencement.

Note: The main liability provisions of the Act are in Division 6 of Part 7.6.

(3) Subregulations (4) and (5) apply if, at the time the conduct is engaged in by a person:

(a) the person is a representative in respect of more than 1 principal, and

(b) at least 1 of those principals is an FSR principal; and

(c) at least 1 of those principals is a non‑FSR principal.

(4) If, as a result of the conduct of the representative, 1 or more of the principals issues, transfers, varies, or disposes of a financial product:

(a) each of those principals is jointly and severally liable for the conduct of the representative; and

(b) the nature of the liability is to be determined in accordance with the relevant law that applies to the conduct under the relevant legal regime under which the particular principal is operating.

(5) If subregulation (4) does not apply:

(a) the liability for the conduct is to be determined in accordance with the relevant law that applies to the conduct; and

(b) section 917B and subsection 917C(4) of the Act apply in relation to the liability of an FSR principal only if the conduct is in a class of financial services that the FSR principal has authorised the representative to provide.

10.2.103 Conduct by a person who operates as representative and principal

(1) Despite anything else in this Division, or in regulation 10.2.42, if:

(a) the conduct of a representative causes a liability, loss, damage or a similar consequence to arise; and

(b) at the time the conduct is engaged in, the representative is also a principal that is authorised or permitted under any law to provide financial services in the class of financial services to which the conduct relates;

the representative is liable (whether as a principal or as a representative) to the extent that the law under which the representative provides the relevant financial services makes the representative liable.

(2) Despite regulation 10.2.42, if:

(a) the conduct of a representative causes a liability, loss, damage or a similar consequence to arise; and

(b) the representative is also a principal that is authorised or permitted to provide financial services in the same class of financial services as the financial service to which the conduct relates; and

(c) at the time the conduct occurred, the representative’s principal or principals:

(i) had authorised the representative to provide the same class of financial services; and

(ii) are liable in respect of the conduct;

the representative, and the principal or principals, are jointly and severally liable in accordance with the law under which they are liable, to the extent that the same or similar liability exists.

Note: Under regulation 10.2.42, there are some restrictions on a person who acts both as an authorised representative and as a regulated principal in respect of the same activities.

For example, if a principal is liable to a person in respect of an amount of money ($X), and the representative is also liable in respect of an amount of money ($X + $Y) in respect of the same conduct, both of them will be jointly and severally liable for $X, but the representative will be liable to pay $Y.

10.2.104 Operation of regulations 10.2.102 and 10.2.103

(1) Subject to subregulations (2) and (3), and without limiting any right or liability of a person (the ***client***), if the effect of regulations 10.2.102 and 10.2.103 is that different rights or remedies are available to different clients in relation to conduct during the transition period:

(a) to the extent that the rights or remedies available to a client against a responsible person are identical, or substantially identical, to some or all of the rights or remedies available against another responsible person for the same or related conduct, each responsible person is taken to be jointly and severally liable as between the responsible person and the client in respect of the client’s exercise of the right, or in respect of the provision of the remedy, to the extent that the law makes them liable; and

(b) to the extent that the rights or remedies available to a client against different responsible persons in respect of conduct are not identical or substantially identical, a client who may exercise a right or obtain a remedy against a responsible person is entitled to exercise the right or obtain the remedy:

(i) under each law applicable at the time the conduct is engaged in; and

(ii) against each responsible person against whom the right may be exercised or the remedy obtained.

Example: If, as a result of the same conduct, Person A is liable to a client in respect of an amount of money ($X), and Person B is also liable in respect of an amount of money ($X + $Y), both of them will be jointly and severally liable for $X, but only Person B will be liable to pay $Y.

(2) Subregulation (1) does not have the effect that:

(a) a particular person is liable more than once in relation to the conduct in respect of the same or a similar remedy; or

(b) a person is entitled to recover more than the amount of any loss or damage that the person has suffered in relation to the conduct.

(3) Nothing in this Division is intended to reduce or otherwise affect the liability of any person in relation to the person’s own conduct, whether or not:

(a) the person is a principal or a representative; and

(b) the person is authorised to do a particular thing under any licence, registration, authorisation or other authority.

(4) Nothing in this Division is intended to reduce or otherwise affect the liability of a principal that acts under a provision of the relevant old legislation.

(5) Nothing in this Division is intended to reduce or otherwise affect the liability of a person for:

(a) any offence imposed by any law; or

(b) any other criminal or civil penalty imposed under any law.

Division 21—Title and transfer

10.2.105 Loss or destruction of certificates

(1) This regulation applies if:

(a) an application was made to a company, under section 1089 of the old Corporations Act, for the issue of a duplicate certificate or document of title regarding shares, debentures or interests in a managed investment scheme; and

(b) the company did not issue a duplicate certificate or other document of title to the shares, debentures or interests before the FSR commencement.

(2) Section 1089 of the old Corporations Act, and any associated provisions, continue to apply to the extent necessary to allow the company to deal with the application.

Note: Subsections 1089(1) and (3) of the old Corporations Act included important requirements relating to the application, including time limits for compliance with the application.

10.2.106 Instrument of transfer

(1) This regulation applies if:

(a) the personal representative of a dead holder for section 1091 of the old Corporations Act completed all the steps necessary to require a company:

(i) to register a transfer; and

(ii) to pay to the personal representative any dividends or money accrued in respect of the share, debenture or interest being transferred up to the time of execution of the transfer; and

(b) the company:

(i) did not register the transfer before the FSR commencement; or

(ii) did not make some or all of the payment before the FSR commencement.

(2) Section 1091 of the old Corporations Act, and any associated provisions, continue to apply to the extent necessary to allow the company to register the transfer and make the payment.

10.2.107 Trustee etc may be registered as owner of shares

(1) This regulation applies if:

(a) a person began to hold shares in a proprietary company as trustee for, or otherwise on behalf of or on account of, a body corporate before the FSR commencement; and

(b) the person did not serve on the proprietary company the notice required under subsection 1091C(11) of the old Corporations Act before the FSR commencement; and

(c) the 1 month period mentioned in that subsection had not expired before the FSR commencement.

(2) Section 1091C of the old Corporations Act, and any associated provisions, continue to apply to the extent necessary to allow for:

(a) the person to serve the notice within the 1 month period; and

(b) the consequences of not serving the notice within the period.

10.2.108 Registration of transfer at request of transferor

(1) This regulation applies if:

(a) the transferor of a share in, debenture of, or interest made available by, a company requested the company, under subsection 1092(2) of the old Corporations Act, to carry out the obligations under that subsection; and

(b) the company did not complete all of its obligations under that subsection within the stated period.

(2) Section 1092 of the old Corporations Act, and any associated provisions, continue to apply to the extent necessary to allow for:

(a) the completion of the company’s obligations within the stated period; and

(b) the consequences of not completing the obligations within the stated period.

10.2.109 Notice of refusal to register transfer

(1) This regulation applies if:

(a) a company refused, under section 1093 of the old Corporations Act, to register:

(i) a transfer of shares in the company; or

(ii) a transfer of debentures of the company; or

(iii) a transfer of interests made available by the company; and

(b) the company did not send the transferee the notice required under that section before the FSR commencement; and

(c) the 2 month period mentioned in that section had not expired before the FSR commencement.

(2) Section 1093 of the old Corporations Act, and any associated provisions, continue to apply to the extent necessary to allow for:

(a) the completion of the company’s obligations within the 2 month period; and

(b) the consequences of not completing the obligations within the 2 month period.

10.2.110 Duties of company with respect to issue of certificates: allotment of shares or debentures or making interests available

(1) This regulation applies if:

(a) a company:

(i) allotted shares in, issued debentures of, or made available interests in the company before the FSR commencement; and

(ii) did not complete all of its obligations under paragraph 1096(1)(a) or (b) of the old Corporations Act (whether or not those obligations were affected by paragraph 1096(1A)(b) of the old Corporations Act) within the 2 month period required by subsection 1096(1) of that Act; and

(b) paragraph 1096(1A)(a) of the old Corporations Act did not apply in relation to the company during the 2 month period.

Note: Subsection 1096(1A) of the old Corporations Act referred to the possibility that the SCH business rules may include a provision to the effect that:

(a) no document is required to be completed and delivered in relation to the allotment, issue or making available of a share, debenture or interest in specified circumstances; or

(b) the only document to be completed and delivered is such document as the rules require.

(2) Section 1096 of the old Corporations Act, and any associated provisions, continue to apply to the extent necessary to allow for:

(a) the completion of the company’s obligations within the 2 month period; and

(b) a relevant person mentioned in paragraph 1096(1)(b) of the old Corporations Act to give instructions mentioned in that paragraph after the FSR commencement; and

(c) the operation of the arrangements mentioned in subsections 1096(3) and (4) of the old Corporations Act after the FSR commencement; and

(d) the consequences of not completing the obligations within the 2 month period.

10.2.111 Duties of company with respect to issue of certificates: transfer of shares, debentures or interests

(1) This regulation applies if:

(a) any of the following was lodged with a company:

(i) a transfer of shares in the company (other than a transfer that the company was entitled to refuse to register and did not register);

(ii) a transfer of debentures of the company (other than a transfer that the company was entitled to refuse to register and did not register);

(iii) a transfer of interests made available by the company (other than a transfer that the company was entitled to refuse to register and did not register); and

(b) the company was required to complete, and have ready for delivery, all appropriate certificates, debentures or other documents in accordance with subsection 1096(2) of the old Corporations Act; and

(c) the company did not complete all of its obligations under paragraph 1096(2)(a) or (b) of the old Corporations Act (whether or not those obligations were affected by subsection 1096(2A) of the old Corporations Act) within the 1 month period required by subsection 1096(2) of that Act.

Note: Subsection 1096(2A) of the old Corporations Act provided that the only document required by subsection 1096(2) of the old Corporations Act to be completed and delivered by a company in relation to an SCH‑regulated transfer is such document (if any) as the SCH business rules require to be so completed and delivered.

(2) Section 1096 of the old Corporations Act, and any associated provisions, continue to apply to the extent necessary to allow for:

(a) the completion of the company’s obligations within the 1 month period; and

(b) a transferee mentioned in paragraph 1096(2)(b) of the old Corporations Act to give instructions mentioned in that paragraph after the FSR commencement; and

(c) the operation of the arrangements mentioned in subsections 1096(3) and (4) of the old Corporations Act after the FSR commencement; and

(d) the consequences of not completing the obligations within the 1 month period.

10.2.112 Notices relating to non‑beneficial and beneficial ownership of shares

(1) This regulation applies if:

(a) a notice regarding non‑beneficial or beneficial ownership of shares was required to be given under subsection 1096A(1), (3), (4), (5) or (6) of the old Corporations Act; and

(b) the notice was not given before the FSR commencement.

(2) Section 1096A of the old Corporations Act, and any associated provisions, continue to apply to the extent necessary to allow for:

(a) the consequences of not giving the notice; and

(b) the completion of the obligation to give the notice within the period (if any) stated in the relevant subsection; and

(c) the operation of the arrangements mentioned in subsection 1096A(7) of the old Corporations Act after the FSR commencement; and

(d) the operation of the arrangements mentioned in subsection 1096A(9) of the old Corporations Act after the FSR commencement, to the extent that the arrangements relate to section 1096A of the old Corporations Act.

Note: The arrangements in subsection 1096A(9) of the old Corporations Act also related to section 216B of the old Corporations Act, which no longer exists.

10.2.113 What is a sufficient transfer of marketable securities or marketable rights: general

(1) This regulation applies if the arrangements for the due completion of a document, to make the document:

(a) a sufficient transfer of marketable securities under subsection 1101(1) of the old Corporations Act; or

(b) a sufficient transfer of marketable rights under subsection 1101(2) of the old Corporations Act;

were not completed before the FSR commencement.

(2) Section 1101 of the old Corporations Act, and any associated provisions, continue to apply to the extent necessary to allow for the document to be duly completed, and treated as a sufficient transfer, in accordance with the relevant arrangements.

(3) If the document is duly completed in accordance with the relevant arrangements, the document is also taken to be a sufficient transfer for the purposes of the Act as in force after the FSR commencement.

10.2.114 Sufficient transfer by authorised trustee corporation

(1) This regulation applies if the arrangements for the completion of a document, to make the document:

(a) a sufficient transfer of marketable securities by an authorised trustee corporation under subsection 1102(1) of the old Corporations Act; or

(b) a sufficient transfer of marketable rights by an authorised trustee corporation under subsection 1102(2) of the old Corporations Act;

were not completed before the FSR commencement.

(2) Section 1102 of the old Corporations Act, and any associated provisions, continue to apply to the extent necessary to allow for the document to be duly completed, and treated as a sufficient transfer by an authorised trustee corporation, in accordance with the relevant arrangements.

(3) If the document is duly completed in accordance with the relevant arrangements, the document is also taken to be a sufficient transfer by an authorised trustee corporation for the purposes of the Act as in force after the FSR commencement.

10.2.115 Determination of who holds quoted securities for the purposes of a meeting: determination made before FSR commencement

(1) This regulation applies if:

(a) the convenor of a meeting made a determination under subsection 1109N(2) of the old Corporations Act; and

(b) either:

(i) notice of the meeting was not sent before the FSR commencement; or

(ii) the meeting was not held before the FSR commencement.

(2) Section 1109N of the old Corporations Act, and any associated provisions, continue to apply to the extent necessary to allow for:

(a) the giving of notice of the meeting; or

(b) the holding of the meeting.

Division 22—Transitional matters under relevant old legislation: Financial Transaction Reports Act 1988

10.2.116 Cash dealer

(1) For section 1444 of the Act, the definition of ***cash dealer*** in subsection 3(1) of the *Financial Transaction Reports Act 1988* is taken to include a reference to a regulated principal mentioned in item 1 or 3 of the table in section 1430 of the Act.

(2) Subregulation (1) ceases to apply in relation to the regulated principal at the end of the transition period in relation to the regulated principal.

10.2.117 Exempt cash transaction

(1) For section 1444 of the Act, a reference in paragraph 9(4)(a) of the *Financial Transaction Reports Act 1988* to a financial services licensee includes a regulated principal mentioned in item 3 of the table in section 1430 of the Act.

(2) Subregulation (1) ceases to apply in relation to the regulated principal at the end of the transition period in relation to the regulated principal.

Division 23—Transitional matters under relevant old legislation: Income Tax Assessment Act 1936

10.2.118 Offshore banking units

(1) For section 1444 of the Act, a reference in subparagraph 128AE(2)(e)(iii) of the *Income Tax Assessment Act 1936* to a financial services licensee includes a regulated principal mentioned in item 1 or 3 of the table in section 1430 of the Act.

(2) Subregulation (1) ceases to apply in relation to the regulated principal at the end of the transition period in relation to the regulated principal.

Division 24—Transitional matters under relevant old legislation: Insurance Act 1973

10.2.119 Insurers carrying on class of insurance business

(1) For section 1444 of the Act, section 113 of the *Insurance Act 1973*, as in force immediately before the FSR commencement, and any associated provisions, continue to have effect in relation to a regulated principal:

(a) mentioned in item 6 of the table in section 1430 of the Act; and

(b) who carries on a class of insurance business that was prescribed for section 113 of the *Insurance Act 1973* immediately before the FSR commencement;

to the extent necessary to require the person to comply with that section in relation to the class of insurance business.

(2) Subregulation (1) ceases to apply in relation to the regulated principal at the end of the transition period in relation to the regulated principal.

Division 24A—Transitional matters under relevant old legislation: Insurance (Agents and Brokers) Act 1984

10.2.119A Debts of broker in relation to premiums etc

(1) For section 1444 of the Act, a reference in paragraph 27(1)(a) of the *Insurance (Agents and Brokers) Act 1984* to another registered insurance broker includes a financial services licensee.

(2) For section 1444 of the Act, a reference in paragraph 27(4)(a) of the *Insurance (Agents and Brokers) Act 1984* to another registered insurance broker includes a financial services licensee.

(3) For section 1444 of the Act, a reference in paragraph 27(5)(b) of the *Insurance (Agents and Brokers) Act 1984* to another registered insurance broker includes a financial services licensee.

10.2.119B Disqualifications made before FSR commencement

(1) For section 1444 of the Act, on and after the FSR commencement, a disqualification under subsection 25(5) or 31H(5) of the *Insurance (Agents and Brokers) Act 1984* made before the FSR commencement:

(a) continues in force to the extent practicable to allow it to apply to conduct or another matter:

(i) as it is described on and after the FSR commencement; or

(ii) as it is regulated on and after the FSR commencement; and

(b) is taken to be a disqualification made under subsection 25(5) or 31H(5) of the *Insurance (Agents and Brokers) Act 1984*.

(2) For section 1444 of the Act, on and after the FSR commencement, subsections 25(5) and 31H(5) of the *Insurance (Agents and Brokers) Act 1984*, and associated provisions, continue to apply to the extent necessary to allow the disqualification to continue in force.

(3) For subregulation (2), nothing in the relevant old legislation (including the *Australian Securities and Investments Commission Act 2001*) prevents ASIC from drafting or amending the terms of a prohibition for the purpose of ensuring that the prohibition has the same effect under the Act as it had under the relevant old legislation, or an effect equivalent to the effect it had under the relevant old legislation.

10.2.119C Disqualifications made after FSR commencement

(1) For section 1444 of the Act, on and after the FSR commencement, subsections 25(5) and 31H(5) of the *Insurance (Agents and Brokers) Act 1984*, and associated provisions, continue to apply to the extent necessary to allow a disqualification to be made or enforced against a person in relation to:

(a) conduct or another matter that occurred before the FSR commencement; or

(b) conduct or another matter that:

(i) occurred after the FSR commencement; and

(ii) is regulated in accordance with section 1432 or 1436A of the Act.

(2) A disqualification made in relation to conduct or another matter mentioned in subregulation (1) is taken to be a disqualification made under subsection 25(5) or 31H(5) of the *Insurance (Agents and Brokers) Act 1984*.

(3) For subregulation (2), nothing in the relevant old legislation (including the *Australian Securities and Investments Commission Act 2001*) prevents ASIC from drafting or amending the terms of a prohibition for the purpose of ensuring that the prohibition has the same effect under the amended Corporations Act as it had under the old legislation, or an effect equivalent to the effect it had under the old legislation.

Division 25—Transitional matters under relevant old legislation: Marine Insurance Act 1909

10.2.120 Marine policy effected through broker

For section 1444 of the Act, sections 59 and 60 of the *Marine Insurance Act 1909*, and any associated provisions, continue to have effect in relation to a marine policy effected on behalf of the assured by a broker before the FSR commencement.

Division 25A—Transitional matters under relevant old legislation: Retirement Savings Accounts Regulations 1997

10.2.120A Continuation of RSA Regulations during transition period

(1) For section 1444 of the Act, this regulation applies in relation to a financial product:

(a) to which the RSA Act applied immediately before the FSR commencement; and

(b) for which a transition period exists.

(2) The following provisions of the RSA Regulations, as in force immediately before the FSR commencement, continue to apply in relation to the financial product:

(a) Division 2.1;

(b) regulation 2.09;

(c) Divisions 2.3, 2.4, 2.5, 2.7 and 2.8;

(d) regulation 3.07;

(e) regulation 3.09 (other than paragraphs 3.09(a) and (c));

(f) regulation 4.32;

(g) regulation 4.33;

(h) regulation 6.12.

(3) Subregulation (2) ceases to apply in relation to the financial product at the end of the transition period for the financial product.

Division 25B—Transitional matters under relevant old legislation: Superannuation Industry (Supervision) Regulations 1994

10.2.120B Continuation of SIS Regulations during transition period

(1) For section 1444 of the Act, this regulation applies in relation to a financial product:

(a) to which the SIS Act applied immediately before the FSR commencement; and

(b) for which a transition period exists.

(2) The following provisions of the SIS Regulations, as in force immediately before the FSR commencement, continue to apply in relation to the financial product:

(a) Divisions 2.1 and 2.3;

(b) Subdivisions 2.4.1 and 2.4.2;

(c) Divisions 2.5, 2.7 and 2.7A;

(d) Subdivisions 2.8.1, 2.8.3, 2.8.4 and 2.8.5;

(da) regulation 3.10;

(e) regulation 4.01;

(f) regulation 5.12;

(g) regulation 5.15 (other than paragraphs 5.15(a) and (c));

(h) regulations 5.17 and 5.22;

(i) regulation 6.17;

(j) regulation 6.28;

(k) regulation 6.29;

(l) subregulation 13.07(2).

(3) Subregulation (2) ceases to apply in relation to the financial product at the end of the transition period for the financial product.

Division 27—Transitional matters under the Act (other than Chapter 7)

10.2.122 Solvency and insolvency

For section 1444 of the Act, a reference in the Act to solvency or insolvency is to be read as if subsections 95A(1) and (2) of the old Corporations Act had not been repealed on the FSR commencement.

10.2.123 Managed investment products held by 100 or more persons

For section 1444 of the Act, a reference in section 111AFA of the Act to people holding managed investment products in a class of managed investment products includes a person who holds the managed investment product as a result of an offer, relating to securities, that gave rise to an obligation to lodge a disclosure document with ASIC in relation to the securities under Chapter 6D of the old Corporations Act.

10.2.124 When a managed investment scheme must be registered

For section 1444 of the Act, subsection 601ED(2) of the Act applies in relation to a managed investment scheme as if issues of interests that:

(a) were made before the issue of the interest was covered by Division 2 of Part 7.9 of the Act; and

(b) were:

(i) issues made after 12 March 2000 that would not have needed disclosure to investors under Part 6D.2 of the old Corporations Act if the scheme were registered; or

(ii) issues mentioned in section 1477 of the Corporations Law as in force on 14 July 2001 and as continued by section 1408 of the Act;

were issues in relation to which a Product Disclosure Statement is not required to be given under Division 2 of Part 7.9.

10.2.125 Responsible entity to be a public company and hold an Australian financial services licence

(1) For section 1444 of the Act, this regulation applies in relation to a public company that is a regulated principal mentioned in item 1 of the table in section 1430 of the Act.

(2) A reference in section 601FA of the Act to a public company that holds an Australian financial services licence includes the regulated principal.

(3) Subregulation (2) ceases to apply in relation to the regulated principal at the end of the transition period in relation to the regulated principal.

10.2.126 Duties of officers of responsible entity

(1) For section 1444 of the Act, this regulation applies in relation to a responsible entity that is a regulated principal mentioned in item 1 of the table in section 1430 of the Act.

(2) A reference in subparagraph 601FD(1)(f)(ii) of the Act to a responsible entity’s Australian financial services licence includes the dealers licence of the regulated principal.

(3) Subregulation (2) ceases to apply in relation to the regulated principal at the end of the transition period in relation to the regulated principal.

10.2.127 Voidable contracts

(1) For section 1444 of the Act, this regulation applies in relation to a contract if:

(a) Chapter 6D of the old Corporations Act applies in relation to an interest in a registered scheme after the FSR commencement; and

(b) a person (the ***offeror***), in contravention of Chapter 6D of the old Corporations Act, offers the interest in the registered scheme for subscription, or issues an invitation to subscribe for the interest in the registered scheme during the transition period in relation to the registered scheme; and

(c) the contract is entered into by a person (other than the offeror) to subscribe for the interest as a result of the person accepting the offer, or of the acceptance of an offer made by the person in response to the invitation.

(2) A reference in section 601MB of the Act to a contract includes the contract mentioned in subregulation (1).

(3) Subregulation (2) ceases to apply in relation to the contract at the end of the transition period in relation to the managed investment product to which the contract mentioned in subregulation (1) relates.

10.2.128 Situations not giving rise to relevant interests

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 1 of the table in section 1430 of the Act.

(2) A reference in subsection 609(3) of the Act to a financial services licensee includes the regulated principal.

(3) A reference in subsection 609(3) of the Act to a financial services business includes the securities business of the regulated principal as defined in section 93 of the old Corporations Act.

(4) Subregulations (2) and (3) cease to apply in relation to the regulated person at the end of the transition period in relation to the regulated principal.

10.2.129 Bidder’s statement content

(1) For section 1444 of the Act, this regulation applies if:

(a) after the FSR commencement, a bidder offers managed investment products as consideration under a takeover bid; and

(b) Division 2 of Part 7.9 of the Act does not apply to the managed investment products when the bidder lodges with ASIC the bidder’s statement under section 636 of the Act.

(2) Paragraph 636(1)(g) of the Act applies to the bidder’s statement as if the managed investment products were securities other than managed investment products.

(3) Paragraph 636(1)(ga) of the Act does not apply to the bidder’s statement.

10.2.130 Continuous disclosure: other disclosing entities

For section 1444 of the Act, a reference in subparagraph 675(2)(c)(ii) of the Act to a Product Disclosure Statement, or a Supplementary Product Disclosure Statement, a copy of which has been lodged with ASIC includes:

(a) a disclosure document lodged with ASIC under Chapter 6D of the old Corporations Act; and

(b) a supplementary disclosure document, or a replacement disclosure document, lodged with ASIC under that Chapter.

10.2.131 Sale offers that need disclosure: securities issued before FSR commencement

(1) For section 1444 of the Act, this regulation applies if:

(a) securities (other than managed investment products) are sold on or after the FSR commencement; and

(b) the securities were issued before the FSR commencement.

(2) Section 707 of the old Corporations Act, and any associated provisions, continue to apply in relation to the securities.

(3) Section 707 of the Act does not apply in relation to the securities.

10.2.132 Offers that do not need disclosure: offer to sophisticated investor through licensed dealer

(1) This regulation applies in relation to a regulated principal mentioned in item 1 of the table in section 1430 of the Act.

(2) A reference in subsection 708(10) of the Act to a financial services licensee includes the regulated principal.

(3) Subregulation (2) ceases to apply in relation to the regulated principal at the end of the transition period in relation to the regulated principal.

10.2.133 Prospectus content: general disclosure test

(1) This regulation applies in relation to a regulated principal mentioned in item 1 of the table in section 1430 of the Act if the regulated principal is named in a prospectus as being involved in any way in the issue or sale of the securities to which the prospectus applies.

(2) A reference in paragraph 710(3)(e) of the Act to a person named in a prospectus as a financial services licensee includes the regulated principal.

(3) Subregulation (2) ceases to apply in relation to the regulated principal at the end of the transition period in relation to the regulated principal.

10.2.134 Prospectus content—specific disclosures

(1) This regulation applies in relation to a regulated principal mentioned in item 1 of the table in section 1430 of the Act if the regulated principal is named in a prospectus as being involved in any way in the issue or sale of the securities to which the prospectus applies.

(2) A reference in paragraph 711(4)(e) of the Act to a person named in a prospectus as a financial services licensee includes the regulated principal.

(3) Subregulation (2) ceases to apply in relation to the regulated principal at the end of the transition period in relation to the regulated principal.

10.2.135 Registers

For section 1444 of the Act, a reference in subparagraph 1274(2)(a)(ia) of the Act to a document lodged under a provision of Chapter 7 of the Act (other than section 675 or subsection 792C(1)) includes a document lodged with ASIC under a provision of Chapter 7 (other than subsection 776(2B), section 1001B or Part 7.13) or Chapter 8 of the old Corporations Act (whether the document was lodged before or after the FSR commencement).

Division 27A—Transitional matters under other legislation

10.2.135A References to authorised foreign exchange dealers

(1) For section 1444 of the Act, this regulation applies to a reference, in a law of the Commonwealth (within the meaning of Division 2 of Part 10.2 of the Act), to:

(a) an authorised foreign exchange dealer; or

(b) a person authorised to carry on business as a dealer in foreign exchange.

(2) On and after the FSR commencement, the reference is taken to include a holder of an Australian financial services licence that authorises the holder to buy and sell foreign currency.

Division 28—Retail clients and wholesale clients

10.2.136 Securities before the FSR commencement

(1) For section 1444 of the Act, this regulation applies in relation to a person:

(a) who:

(i) held pre‑FSR securities at the FSR commencement; or

(ii) acquired the pre‑FSR securities at any time after the FSR commencement under the relevant old legislation; and

(b) in relation to whom disclosure was not required under section 708 of the old Corporations Act in respect of the particular offer of the pre‑FSR securities.

(2) The person is taken to be a wholesale client in relation to the pre‑FSR securities as between the person and the issuer for the period:

(a) starting on the earlier of:

(i) the FSR commencement; and

(ii) the day on which the pre‑FSR securities were acquired; and

(b) during which the holder holds the pre‑FSR securities.

(3) Subregulation (2) applies whether or not the holder would, but for that subregulation, have become a retail client in relation to the pre‑FSR securities at some time after the FSR commencement.

Note: This regulation is meant to ensure that a person for whom disclosure was not required under Chapter 6D of the old Corporations Act (whether the Chapter applies before or after the FSR commencement, or after FSR commencement in accordance with a relevant old law) is taken to be a wholesale client in relation to those securities as between the person and the product issuer.

10.2.137 Incomplete financial services

(1) For section 1444 of the Act, this regulation applies in relation to a person who:

(a) was provided with an incomplete financial service in relation to pre‑FSR securities before the FSR commencement; and

(b) was not a retail investor in relation to the incomplete financial service.

(2) The old Corporations Act, and any associated provisions, continue to apply in relation to the incomplete financial service to the extent necessary to allow the financial service to be completed under the old Corporations Act.

(3) The amended Corporations Act does not apply in relation to the incomplete financial service to the extent necessary to allow the financial service to be completed under the old Corporations Act.

(4) In this regulation:

***incomplete financial service*** means a service:

(a) that is, or would be, a financial service under the Act, whether it was provided before or after the FSR commencement; and

(b) either:

(i) that commenced before the amended Corporations Act applied to the provider in relation to the service; or

(ii) in relation to which instructions had been received by the provider of the service from the client, or a person acting on the client’s behalf, before the amended Corporations Act applied to the provider in relation to the service; and

(c) in relation to which:

(i) the provider of the service did not need to obtain from the client any further instructions or information in order to be authorised or able to complete the provision of the service; or

(ii) the majority of activities that needed to be carried out:

(A) by the provider; or

(B) by a person acting on the instructions of the provider; or

(C) on behalf of the provider;

occurred before the amended Corporations Act applied to the provider in relation to the financial service; and

(d) completed within 4 weeks after the amended Corporations Act applies to that provider in relation to the service.

***retail investor*** means a retail investor under subregulation 7.3.02B(10) of these Regulations, as in force immediately before the FSR commencement.

10.2.138 Professional investors

(1) For section 1444 of the Act, this regulation applies in relation to:

(a) a regulated principal mentioned in item 1, 2, 3 or 4 of the table in section 1430 of the Act; or

(b) a person who:

(i) at the FSR commencement, is an exempt dealer who acts as a principal; and

(ii) is a regulated principal mentioned in item 4 of the table in regulation 10.2.38; or

(c) a person who:

(i) at the FSR commencement, is an exempt investment adviser who acts as a principal; and

(ii) is a regulated principal mentioned in item 4 of the table in regulation 10.2.38.

(2) The person is taken to be a professional investor for section 9 and paragraph 761G(7)(d) of the Act.

(3) Subject to subregulation (4), this regulation ceases to apply in relation to the person on the earlier of:

(a) the end of the transition period in relation to the person under subsection 1431(1) of the Act; and

(b) the day on which the person ceases to have the status that made the person a regulated person.

(4) If:

(a) the person is subject to an exemption or modification under section 1437 of the Act; and

(b) the exemption or modification has the effect of extending the transition period in relation to the person (generally or in respect of certain activities);

the person ceases to be a person mentioned in subregulation (1) at the end of the period of the extension.

Division 29—Effect on definitions in old Corporations Act of transition to licensed markets and licensed CS facilities

10.2.139 Approved foreign bank

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in the definition of ***approved foreign bank*** in section 9 of the old Corporations Act to a member of a futures organisation includes a participant of a licensed market for derivatives.

(3) A reference in the definition of ***approved foreign bank*** in section 9 of the old Corporations Act to an approval given by a futures organisation in accordance with its business rules (within the meaning of Chapter 8 of the old Corporations Act) includes an approval given by the operator of a licensed market for derivatives (within the meaning of section 761A of the amended Corporations Act).

10.2.140 Eligible exchange‑traded options

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in the definition of ***eligible exchange‑traded option*** in section 9 of the old Corporations Act to a futures market of a futures exchange includes a licensed market for derivatives.

10.2.141 Futures law

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in the definition of ***futures law*** in section 9 of the old Corporations Act to Chapter 8 of the old Corporations Act includes Chapter 7 of the amended Corporations Act.

10.2.142 Member organisation

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in paragraph (a) of the definition of ***member organisation*** in section 9 of the old Corporations Act to a securities exchange or a stock exchange includes a licensed market for securities.

(3) A reference in paragraph (a) of the definition of ***member organisation*** in section 9 of the old Corporations Act to the business rules of a securities exchange or a stock exchange includes the operating rules of a licensed market for securities.

(4) A reference in paragraph (b) of the definition of ***member organisation*** in section 9 of the old Corporations Act to a futures organisation includes a licensed market for derivatives.

(5) A reference in paragraph (b) of the definition of ***member organisation*** in section 9 of the old Corporations Act to a member of a futures organisation includes a participant of a licensed market for derivatives.

(6) A reference in subparagraph (b)(ii) of the definition of ***member organisation*** in section 9 of the old Corporations Act to a partnership that a futures organisation recognises as a member organisation includes a partnership that a market licensee recognises as a member organisation.

10.2.143 Non‑broker

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in the definition of ***non‑broker*** in section 9 of the old Corporations Act to a futures broker or one of 2 or more persons who together constitute a futures broker includes:

(a) a financial services licensee; and

(b) one of 2 or more persons who together constitute a financial services licensee.

10.2.144 Non‑dealer

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in the definition of ***non‑dealer*** in section 9 of the old Corporations Act to a dealer or one of 2 or more persons who together constitute a dealer includes:

(a) a financial services licensee; and

(b) one of 2 or more persons who together constitute a financial services licensee.

10.2.145 Securities law

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in the definition of ***securities law*** in section 9 of the old Corporations Act to Chapter 7 of the old Corporations Act includes Chapter 7 of the amended Corporations Act.

10.2.146 Marketable parcel

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in the definition of ***marketable parcel*** in section 761 of the old Corporations Act to a stock market of a securities exchange includes a licensed market for securities.

(3) A reference in the definition of ***marketable parcel*** in section 761 of the old Corporations Act to the relevant business rules of a stock market of a securities exchange includes the relevant operating rules of a licensed market for securities.

Division 30—Effect on certain conduct of transition to licensed markets and licensed CS facilities

10.2.147 Own account dealings and transactions: futures contracts

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in subsection 29(2) of the old Corporations Act to a member of a futures exchange includes a participant of a licensed market for derivatives.

10.2.148 Conditions of dealers licence

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 1 or 2 of the table in section 1430 of the Act.

(2) A reference in subsection 786(8) of the old Corporations Act to a member of a securities exchange includes a participant of a licensed market for securities.

(3) A reference in subsection 786(8) of the old Corporations Act to a securities exchange includes a market licensee.

(4) A reference in subsection 786(8) of the old Corporations Act to a member firm includes a participating firm.

10.2.149 Persons who are not clients

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 1 or 2 of the table in section 1430 of the Act.

(2) A reference in section 794 of the old Corporations Act to a dealer or an investment adviser includes:

(a) a financial services licensee; and

(b) one of 2 or more persons who together constitute a financial services licensee.

10.2.150 Dealings and transactions on a dealer’s own account

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 1 of the table in section 1430 of the Act.

(2) A reference in subsection 843(5) of the old Corporations Act to a dealer who is a member of a securities exchange includes a participant of a licensed market for securities.

10.2.151 Dealer to give priority to clients’ orders

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 1 of the table in section 1430 of the Act.

(2) A reference in subsection 844(2) of the old Corporations Act to a stock market of a securities exchange includes a licensed market for securities.

10.2.152 Dealers’ financial records

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 1 of the table in section 1430 of the Act.

(2) A reference in paragraph 856(10)(c) of the old Corporations Act to a dealer includes a financial services licensee.

10.2.153 Auditor to report to ASIC on certain matters

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 1 of the table in section 1430 of the Act.

(2) A reference in subsection 861(1) of the old Corporations Act to a securities exchange of which a holder is a member includes a licensed market for securities of which the regulated principal is a participant.

10.2.154 Qualified privilege for auditor

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 1 of the table in section 1430 of the Act.

(2) A reference in paragraph 863(1)(b) of the old Corporations Act to a securities exchange includes the operator of a licensed market for securities.

10.2.155 Court may freeze certain bank accounts of dealers and former dealers

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 1 of the table in section 1430 of the Act.

(2) A reference in paragraph 874(1)(b) of the old Corporations Act to the business rules of a securities exchange of which a person is or has been a member includes the operating rules of a licensed market for securities of which the regulated principal is or has been a participant.

10.2.156 Interpretation—registers

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 1 of the table in section 1430 of the Act.

(2) A reference in the definition of ***financial journalist*** in subsection 879(1) of the old Corporations Act to a licensee includes a financial services licensee.

(3) A reference in paragraph (b) of the definition of ***securities*** in subsection 879(1) of the old Corporations Act to a securities exchange includes a licensed market for securities.

(4) A reference in paragraph 879(2)(a) of the old Corporations Act to a securities exchange includes an operator of a licensed market for securities.

(5) A reference in paragraph 879(2)(a) of the old Corporations Act to a member of a securities exchange that is recognised by that securities as specialising in transactions relating to odd lots of securities exchange includes a participant of a licensed market that is recognised by the market licensee in relation to that licensed market as specialising in transactions relating to odd lots of securities.

(6) A reference in subsection 879(2) of the old Corporations Act to a member’s relevant interests in any securities includes the interests in securities of a participant mentioned in subregulation (5).

10.2.157 Conditions of futures broker’s licence: membership of futures organisation

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 of the table in section 1430 of the Act.

(2) A reference in paragraph 1148(1)(a) of the old Corporations Act to being a member of a futures organisation includes being a participant of a licensed market for derivatives.

(3) A reference in subparagraph 1148(1)(b)(i) of the old Corporations Act to being a member of no futures organisation includes being a participant of no licensed market for derivatives.

(4) A reference in subparagraph 1148(1)(b)(ii) of the old Corporations Act to a licensee’s being a member of a futures organisation, but for the suspension of the licensee’s membership of the futures organisation, includes the regulated principal’s being a participant of a licensed market for derivatives, but for the suspension of the regulated principal’s participation in the licensed market.

(5) A reference in subsection 1148(2) of the old Corporations Act to a licensee’s membership of a futures organisation includes the regulated principal’s participation in a licensed market for derivatives.

10.2.158 Futures organisation to be informed about conditions of futures brokers licence

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 of the table in section 1430 of the Act.

(2) A reference in paragraph 1152(1)(a) of the old Corporations Act to a futures organisation of which a licensee is a member includes the operator of a licensed market for derivatives of which the regulated principal is a participant.

(3) A reference in paragraph 1152(1)(b) of the old Corporations Act to a corporation that is a clearing house for a futures exchange of which a licensee is a member includes the operator of a licensed CS facility that provides its services for the clearing and settlement of transactions effected through a licensed market for derivatives of which the regulated principal is a participant.

10.2.159 Licensee to notify breach of licence condition

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 or 4 of the table in section 1430 of the Act.

(2) A reference in paragraph 1153(1)(b) of the old Corporations Act to a futures organisation of which a licensee is a member includes the operator of a licensed market for derivatives of which the regulated principal is a participant.

10.2.160 Register of Futures Licensees

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 or 4 of the table in section 1430 of the Act.

(2) A reference in paragraph 1155(3)(e) of the old Corporations Act to a futures organisation of which a licensee is a member includes the operator of a licensed market for derivatives of which the regulated principal is a participant.

10.2.161 Excluded clients

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 or 4 of the table in section 1430 of the Act.

(2) A reference in section 1159 of the old Corporations Act to a futures broker or a futures adviser includes:

(a) a financial services licensee; and

(b) one of 2 or more persons who together constitute a financial services licensee.

10.2.162 Segregation of client money and property

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 of the table in section 1430 of the Act.

(2) A reference in subparagraph 1209(5)(d)(iv) of the old Corporations Act to a clearing house for a futures exchange includes a CS facility that provides its services for the clearing and settlement of transactions effected through a licensed market for derivatives.

(3) A reference in subsection 1209(5A) of the old Corporations Act to:

(a) another broker; or

(b) a receiving broker;

includes a financial services licensee.

(4) A reference in subsection 1209(5B) of the old Corporations Act to the brokers concerned includes a financial services licensee.

10.2.163 Accounts to be kept by futures brokers

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 of the table in section 1430 of the Act.

(2) A reference in subparagraph 1213(2)(b)(vii) of the old Corporations Act to the business rules of a futures exchange includes the operating rules of a licensed market for derivatives.

(3) A reference in subparagraph 1213(2)(b)(vii) of the old Corporations Act to the futures market of a futures exchange includes a licensed market for derivatives.

(4) A reference in paragraph 1213(4)(d) of the old Corporations Act to another futures broker includes a financial services licensee.

(5) A reference in subsection 1213(5) of the old Corporations Act to a futures exchange includes an operator of a licensed market for derivatives.

(6) A reference in subsection 1213(5) of the old Corporations Act to a member includes a participant of a licensed market for derivatives.

(7) A reference in subsection 1213(5) of the old Corporations Act to recording a matter pursuant to subsection 1270(3) of the old Corporations Act includes recording a matter for section 1101C of the amended Corporations Act.

10.2.164 Property in custody of futures broker

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 of the table in section 1430 of the Act.

(2) A reference in paragraph 1214(1)(e) of the old Corporations Act to the business rules of a futures exchange that maintained or provided a futures market includes the operating rules of a licensed market for derivatives.

10.2.165 Auditor to report to ASIC in certain cases

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 of the table in section 1430 of the Act.

(2) A reference in subsection 1220(1) of the old Corporations Act to a futures exchange of which a broker is a member includes:

(a) the operator of a licensed market for derivatives; and

(b) the operator of a licensed CS facility that provides its services for the clearing and settlement of transactions effected through that licensed market.

(3) A reference in paragraph 1220(1)(b) of the old Corporations Act to a futures exchange of which a broker is a member includes:

(a) the operator of a licensed market for derivatives; and

(b) the operator of a licensed CS facility that provides its services for the clearing and settlement of transactions effected through that licensed market.

10.2.166 Defamation

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 of the table in section 1430 of the Act.

(2) A reference in paragraph 1222(1)(b) of the old Corporations Act to a futures exchange, a clearing house for a futures exchange, or a futures association includes:

(a) the operator of a licensed market for derivatives; and

(b) the operator of a licensed CS facility that provides its services for the clearing and settlement of transactions effected through a licensed market for derivatives.

10.2.167 Power of Court to restrain dealings with futures broker’s bank accounts

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 of the table in section 1430 of the Act.

(2) A reference in section 1224 of the old Corporations Act to a member of a futures organisation includes a participant of a licensed market for derivatives.

(3) A reference in subsection 1224(2) of the old Corporations Act to a futures organisation includes a market licensee.

10.2.168 Power of Court to restrain dealings with futures broker’s bank accounts

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 of the table in section 1430 of the Act.

(2) A reference in section 1226 of the old Corporations Act to a futures organisation includes the operator of a licensed market for derivatives.

10.2.169 Sequence of transmission and execution of orders

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 of the table in section 1430 of the Act.

(2) A reference in subsection 1266(1) of the old Corporations Act to a futures market includes a licensed market for derivatives.

(3) A reference in paragraph 1266(4)(c) of the old Corporations Act to the business rules of a futures organisation of which a futures broker is a member includes the operating rules of a licensed market for derivatives of which the broker is a participant.

(4) A reference in subsection 1266(5) of the old Corporations Act to a member of a futures exchange includes a participant of a licensed market for derivatives.

(5) A reference in subsection 1266(5) of the old Corporations Act to a trading floor of a futures exchange includes a trading floor of a licensed market for derivatives.

(6) A reference in subsection 1266(6) of the old Corporations Act to the business rules of a futures organisation of which a broker is a member includes the operating rules of a licensed market of which the broker is a participant.

10.2.170 Dealings by employees of futures brokers and futures advisers

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 3 or 4 of the table in section 1430 of the Act.

(2) A reference in subsection 1267(7), (9) or (10) of the old Corporations Act to a futures exchange includes a licensed market for derivatives.

Division 31—Effect on fundraising of transition to licensed markets and licensed CS facilities

10.2.171 Sale offers that need disclosure

(1) For section 1444 of the Act, this regulation applies in relation to a managed investment product.

(2) A reference in subparagraph 707(2)(b)(ii) of the old Corporations Act to a stock market of a securities exchange includes a relevant financial market.

(3) A reference in subparagraph 707(5)(a)(ii) of the old Corporations Act to a stock market of a securities exchange includes a relevant financial market on which the securities mentioned in that subparagraph were quoted.

10.2.172 Prospectus content—specific disclosures

(1) For section 1444 of the Act, this regulation applies in relation to a managed investment product.

(2) A reference in subsection 711(5) of the old Corporations Act to a stock market of a securities exchange includes a financial market (whether in Australia or elsewhere).

(3) A reference in subsection 711(5) of the old Corporations Act to a stock market includes a financial market (whether in Australia or elsewhere).

(4) A reference in subsection 711(5) of the old Corporations Act to a securities exchange includes the operator of a financial market (whether in Australia or elsewhere).

10.2.173 Issuing or transferring the securities under a disclosure document

(1) For section 1444 of the Act, this regulation applies in relation to a managed investment product.

(2) A reference in subsection 723(3) of the old Corporations Act to a stock market of a securities exchange (whether in Australia or elsewhere) includes a financial market (whether in Australia or elsewhere).

10.2.174 Choices open to person making an offer if disclosure document condition not met or disclosure document defective

(1) For section 1444 of the Act, this regulation applies in relation to a managed investment product.

(2) A reference in paragraph 724(1)(b) of the old Corporations Act to a stock market of a securities exchange (whether in Australia or elsewhere) includes a financial market (whether in Australia or elsewhere).

10.2.175 Restrictions on advertising and publicity

(1) For section 1444 of the Act, this regulation applies in relation to a managed investment product.

(2) A reference in paragraph 734(7)(a) of the old Corporations Act to a securities exchange includes a market operator.

Division 32—Effect on product disclosure of transition to licensed markets and licensed CS facilities

10.2.176 Offers that do not need disclosure

(1) For section 1444 of the Act, this regulation applies in relation to a managed investment product.

(2) A reference in subsection 708(10) of the old Corporations Act to a licensed dealer includes a financial services licensee.

(3) A reference in subsection 708(11) of the old Corporations Act to:

(a) a person who is a licensed or exempt dealer; or

(b) a person who is a licensed or exempt investment adviser;

includes a financial services licensee.

10.2.177 Prospectus content—general disclosure test

(1) For section 1444 of the Act, this regulation applies in relation to a managed investment product.

(2) A reference in paragraph 710(3)(e) of the old Corporations Act to a stockbroker to an issue or sale includes, in relation to a stockbroker that participates in any way in the preparation of the prospectus for the issue or sale, a person named in the prospectus as a financial services licensee that is involved in the issue or sale.

10.2.178 Prospectus content—specific disclosures

(1) For section 1444 of the Act, this regulation applies in relation to a managed investment product.

(2) A reference in paragraph 711(4)(e) of the old Corporations Act to a stockbroker includes a financial services licensee named in the prospectus for the issue or sale as a financial services licensee that is involved in the issue or sale.

10.2.179 Futures broker to give certain information to prospective client

(1) For section 1444 of the Act, this regulation applies in relation to a derivative.

(2) A reference in subsection 1210(3) of the old Corporations Act to a futures broker includes a financial services licensee.

Division 33—Effect on Corporations Regulations 2001 of transition of financial service providers and transition to licensed markets and licensed CS facilities

10.2.180 Licence conditions—investment advice to retail investors

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in subregulation 7.3.02B(8) of the old Corporations Regulations to:

(a) the holder of a dealers licence; or

(b) the holder of an investment advisers licence;

includes a financial services licensee.

10.2.181 Exemption from licensing—certain dealings

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal mentioned in item 5 of the table in section 1430 of the Act.

(2) A reference in paragraph 7.3.10A(b) of the old Corporations Regulations to a life insurance broker within the meaning of the *Insurance (Agents and Brokers) Act 1984* includes the regulated principal.

10.2.182 Exemption from licensing—managed investment schemes

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal that is a body corporate.

(2) A reference in subregulation 7.3.11(3) of the old Corporations Regulations to Chapter 6D of the Act includes Chapter 7 of the amended Corporations Act.

10.2.183 Exempt dealer

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in regulation 7.4.01 of the old Corporations Regulations to a member of a securities exchange includes a participant of a licensed market.

10.2.184 Exempt securities and interests

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in regulation 7.4.02 of the old Corporations Regulations to Chapter 6D of the Act includes Chapter 7 of the amended Corporations Act.

10.2.185 Transactions in prescribed circumstances

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in regulation 7.4.03 of the old Corporations Regulations to a securities exchange in Australia includes a licensed market.

(3) A reference in regulation 7.4.03 of the old Corporations Regulations to persons who are members of a securities exchange in Australia includes persons who are participants of a licensed market.

10.2.186 Exempted transaction

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in regulation 7.4.04 of the old Corporations Regulations to Business Rules includes operating rules within the meaning of section 761A of the amended Corporations Act.

10.2.187 Charging brokerage on principal transactions

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in subregulation 7.4.04A(1) of the old Corporations Regulations to a member of a securities exchange includes a participant of a licensed market.

10.2.188 Exemption from subsection 844(2) of old Corporations Act

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in regulation 7.4.05 of the old Corporations Regulations to a member of a stock exchange includes a participant of a licensed market.

(3) A reference in regulation 7.4.05 of the old Corporations Regulations to the business rules of a stock exchange includes the operating rules of a licensed market.

10.2.189 Exemption: Part 8.3 of old Corporations Act—certain futures contracts

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in paragraph (a) of the definition of ***investment manager*** in subregulation 8.3.02(1) of the old Corporations Regulations to the holder of a dealers licence includes a financial services licensee.

(3) A reference in subparagraph 8.3.02(2)(c)(i) of the old Corporations Regulations to a member of a futures exchange includes a participant of a licensed market for derivatives.

(4) A reference in subparagraph 8.3.02(2)(c)(i) of the old Corporations Regulations to the business rules of a futures exchange includes the operating rules of a licensed market for derivatives.

(5) A reference in subparagraph 8.3.02(2)(c)(ii) of the old Corporations Regulations to a member of a futures exchange includes a participant of a licensed market for derivatives.

(6) A reference in subparagraph 8.3.02(2)(d)(i) of the old Corporations Regulations to a dealers licence includes a financial services licence that authorises the operation of a registered scheme.

10.2.190 Exemption of certain transactions from subsection 1206(1) of old Corporations Act

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in paragraph 8.4.01(b) of the old Corporations Regulations to a member of a clearing house of a futures exchange includes a participant of a licensed CS facility that provides its services for the clearing and settlement of transactions effected through a licensed market for derivatives.

(3) A reference in regulation 8.4.01 of the old Corporations Regulations to the business rules of a futures exchange includes the operating rules of a licensed market for derivatives.

10.2.191 Exemption of certain transactions from subsection 1207(1) of the old Corporations Act

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in regulation 8.4.03 of the old Corporations Regulations to a member of a clearing house of a futures exchange includes a participant of a licensed CS facility that provides its services for the clearing and settlement of transactions effected through a licensed market for derivatives.

(3) A reference in paragraph 8.4.03(d) of the old Corporations Regulations to the business rules of a futures exchange includes the operating rules of a licensed market for derivatives.

10.2.192 Which futures broker to comply with subsection 1207(1) of old Corporations Act in relation to certain transactions

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in regulation 8.4.03A of the old Corporations Regulations to a futures broker includes a financial services licensee.

10.2.193 Exemption of certain transactions from paragraphs 1207(1)(g) and (h) of old Corporations Act

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) A reference in paragraph 8.4.04(b) of the old Corporations Regulations to a member of a clearing house of a futures exchange includes a participant of a licensed CS facility that provides its services for the clearing and settlement of transactions effected through a licensed market for derivatives.

(3) A reference in paragraph 8.4.04(d) of the old Corporations Regulations to the business rules of a futures exchange includes the operating rules of a licensed market for derivatives.

Division 34—Effect on certain instruments of transition of financial service providers and transition to licensed markets and licensed CS facilities

10.2.194 References to certain matters

(1) For section 1444 of the Act, this regulation applies in relation to:

(a) a regulated principal; and

(b) the following instruments:

(i) an approval of a stock market under subsection 770A(2) of the old Corporations Act;

(ii) a declaration of an exempt stock market under subsection 771(1) of the old Corporations Act;

(iii) a declaration of an exempt futures market under subsection 1127(1) of the old Corporations Act.

(2) A reference in an instrument to a securities dealer’s licence includes a Australian financial service licence that authorises the holder to deal in securities.

(3) A reference in an instrument to the business rules of a securities exchange or a stock exchange includes the operating rules of a licensed market for securities.

(4) A reference in an instrument to a person who is not a retail investor within the meaning of subregulation 7.3.02B(8) of the old Corporations Regulations includes a professional investor within the meaning of section 9 of the Act.

(5) A reference in an instrument to:

(a) a prospectus; or

(b) a replacement prospectus;

includes a Product Disclosure Statement.

(6) A reference in an instrument to a supplementary prospectus includes a supplementary Product Disclosure Statement.

(7) A reference in an instrument to the Commission includes ASIC.

(8) A reference in an instrument to the ASC includes ASIC.

(9) A reference in an instrument to a futures brokers licence includes an Australian financial services licence that authorises the holder to deal in derivatives.

(10) A reference in an instrument to a futures licensee includes a person who holds an Australian financial services licence that authorises the holder to deal in derivatives.

(11) A reference in an instrument to Division 2 of Part 4.1 of the old Corporations Act includes Division 2 of Part 5B.2 of the Act.

(12) A reference in an instrument to section 345 of the old Corporations Act includes section 601CF of the Act.

(13) A reference in an instrument to a clearing house includes a licensed clearing and settlement facility.

(14) A reference in an instrument to an approved futures exchange includes a licensed market operated by:

(a) Sydney Futures Exchange Limited; or

(b) SFE Corporation Limited; or

(c) ASX Futures Exchange Pty Limited.

(15) A reference in an instrument to a recognised futures exchange includes a recognised futures exchange mentioned in Schedule 11 to the old Corporations Regulations.

(16) A reference in an instrument to a futures market of any exchange includes a financial market in relation to derivatives operated by a market licensee.

Division 35—Streamlined licensing

10.2.195 Suspension or cancellation of streamlined licence

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee to which the streamlined licensing procedure in section 1433 of the Act applied when the licensee’s Australian financial services licensee was granted.

(2) If the financial services licensee is an individual, paragraph 915C(1)(b) of the Act applies to the financial services licensee:

(a) as if ASIC had been satisfied in the terms of subsection 913B(2) of the Act (dealing with whether the financial services licensee is of good fame and character) when the Australian financial services licence was granted; and

(b) to the extent necessary to allow ASIC to consider whether there is no reason to believe that the financial services licensee is not of good fame or character.

(3) If the financial services licensee is not an individual, paragraph 915C(1)(b) of the Act applies to the financial services licensee:

(a) as if ASIC had been satisfied in the terms of subsection 913B(3) of the Act (dealing with whether the financial services licensee or its representatives are of good fame and character) when the Australian financial services licence was granted; and

(b) to the extent necessary to allow ASIC to consider whether there is no reason to believe that the financial services licensee or its representatives are not of good fame or character.

Division 36—Insurance multi‑agents

10.2.196 Application by holder of qualified licence

(1) For section 1444 of the Act, this regulation applies in relation to a person if:

(a) the person is an insurance multi‑agent within the meaning of section 1434 of the Act; and

(b) the person holds an Australian financial services licence granted in accordance with the procedures mentioned in that section; and

(c) the person applies, at the end of the transition period in relation to the person, under section 913A of the Act, for an Australian financial services licence; and

(d) section 1434 of the Act does not apply in relation to the application for an Australian financial services licence; and

(e) ASIC proposes to consider only the matters mentioned in paragraphs 912A(1)(e) and (f) of the Act rather than all of the matters mentioned in subsection 912A(1) of the Act.

(2) Paragraph 913B(1)(b) of the Act applies to the consideration of the application as if the reference to obligations that will apply under section 912A of the Act were a reference to the obligations that will apply under paragraphs 912A(1)(e) and (f) of the Act.

Division 37—Hawking of managed investment products

10.2.197 Hawking interest in managed investment scheme

(1) For section 1444 of the Act, this regulation applies in relation to interests in managed investment schemes.

(2) If Division 2 of Part 7.9 of the Act applies to an interest in a managed investment scheme:

(a) section 992AA of the Act applies to the interest; and

(b) section 736 of the old Corporations Act does not apply to the interest.

(3) If Division 2 of Part 7.9 of the Act does not apply to an interest in a managed investment scheme, sections 992A and 992AA of the Act do not apply to the interest.

10.2.198 Hawking financial product—other arrangements

(1) For section 1444 of the Act, this regulation applies in relation to a financial product.

(2) If Division 2 of Part 7.9 of the Act does not apply to the financial product, a reference in section 992A of the Act to a Product Disclosure Statement in relation to the financial product includes:

(a) in relation to a derivative—information mentioned in section 1210 of the old Corporations Act; and

(b) in relation to a superannuation product—information mentioned in section 153 or 159 of the SIS Act, as in force immediately before the FSR commencement; and

(c) in relation to an RSA product—information mentioned in section 56 of the RSA Act, as in force immediately before the FSR commencement; and

(d) in relation to a managed investment product—a disclosure document for the product.

(3) If Division 2 of Part 7.9 of the Act does not apply to the financial product, subsection 992A(3) of the Act applies in relation to a financial product that is not mentioned in subregulation (2) as if paragraphs 992A(3)(c), (d) and (e) were omitted.

Division 38—Security bonds issued before FSR commencement

10.2.199 Security bonds

(1) For section 1444 of the Act, this regulation applies in relation to a financial services licensee who became a regulated principal mentioned in item 1 or 2 of the table in section 1430 of the Act at the FSR commencement.

(2) Regulations 7.3.04, 7.3.06 and 7.3.07 of the old Corporations Regulations, and any associated provisions, continue to apply in relation to the regulated principal’s regulated activities.

(3) The regulations mentioned in subregulation (2) continue to apply after the end of the transition period for the regulated principal.

Division 39—Disclosure documents

10.2.200 Disclosure documents—cooling‑off period

(1) For section 1444 of the Act, this regulation applies in relation to a document if:

(a) the document is a prospectus or other disclosure document for a financial product; and

(b) the issuer of the financial product is a regulated principal to which Division 2 of Part 7.9 of the Act does not apply in relation to the financial product; and

(c) the particular document:

(i) was publicly available; or

(ii) had been distributed to users; or

(iii) had been lodged with ASIC; or

(iv) was otherwise in existence and in use, or available for use;

before the FSR commencement.

(2) The issuer of the financial product is not civilly or criminally liable in relation to information about the cooling off regime applying after the FSR commencement if:

(a) the confirmation of the transaction:

(i) provides a statement of the cooling‑off regime that applies in respect of the acquisition of that product; and

(ii) states that the information in the confirmation of the transaction supersedes the information in that document; or

(b) the responsible person amends the disclosure document to include information on any cooling‑off regime.

Division 41—Requirements if Product Disclosure Statement is not in existence

10.2.202 Documents equivalent to Product Disclosure Statement

(1) For section 1444 of the Act, a reference in paragraph 949A(2)(c) of the Act to a Product Disclosure Statement includes:

(a) in relation to a managed investment product to which Division 2 of Part 7.9 of the Act does not yet apply—a disclosure document for the product; and

(b) in relation to a derivative to which Division 2 of Part 7.9 of the Act does not yet apply—information mentioned in section 1210 of the old Corporations Act; and

(c) in relation to a superannuation product to which Division 2 of Part 7.9 of the Act does not yet apply—information mentioned in section 153 or 159 of the SIS Act, as in force immediately before the FSR commencement; and

(d) in relation to an RSA product to which Division 2 of Part 7.9 of the Act does not yet apply—information mentioned in section 56 of the RSA Act, as in force immediately before the FSR commencement.

(2) For section 1444 of the Act, subsection 949A(2) of the Act applies in relation to a financial product:

(a) to which Division 2 of Part 7.9 of the Act does not apply; and

(b) that is not mentioned in subregulation (1);

as if paragraph 949A(2)(c) were omitted.

Division 42—Dealing with money received for financial product before the product is issued

10.2.203 Payment of money into account

For section 1444 of the Act, a reference in paragraph 1017E(1)(b) of the Act to a Product Disclosure Statement for a financial product includes a disclosure document for the product.

Division 43—Arrangements related to deposits with stock exchanges

10.2.204 Withdrawals from trust account

(1) For section 1444 of the Act, this regulation applies to the extent that section 869 of the old Corporations Act continues to apply on and after the FSR commencement.

(2) Section 869 of the old Corporations Act continues to apply as if paragraph 869(1)(b) were omitted.

Division 44—Superannuation to which arrangements apply under the Family Law Act 1975

10.2.205 Application of amendments

(1) For section 1444 of the Act, this regulation applies in relation to a regulated principal.

(2) Subject to subregulation (3), on and after the FSR commencement, the regulated principal must deal with a matter to which the *Family Law Legislation Amendment (Superannuation) Act 2001* applies as if:

(a) all amendments of the SIS Act enacted before the FSR commencement were in force on the FSR commencement; and

(b) all amendments of the SIS Regulations enacted before the FSR commencement were in force on the FSR commencement; and

(c) all amendments of the RSA Act enacted before the FSR commencement were in force on the FSR commencement; and

(d) all amendments of the RSA Regulations enacted before the FSR commencement were in force on the FSR commencement; and

(e) all amendments of the *Family Law (Superannuation) Regulations 2001* enacted before the FSR commencement were in force on the FSR commencement.

(3) Subregulation (2) applies only to the extent that dealing with a matter in accordance with that subregulation is not inconsistent with compliance with:

(a) the following provisions, and any associated provisions:

(i) section 153, and all the provisions of Divisions 3 and 4 of Part 19, of the *Superannuation Industry (Supervision) Act 1993* as in force immediately before the FSR commencement;

(ii) the version of section 153A of that Act that was provided for in Modification Declaration no. 15 as in force immediately before the FSR commencement, being a declaration of modification made under section 332 of that Act; and

(b) section 51, and all the provisions of Divisions 4 and 5 of Part 5, of the *Retirement Savings Accounts Act 1997* as in force immediately before the FSR commencement, and any associated provisions.

Division 45—Arrangements relating to certain reporting periods

10.2.206 Fund information for retail clients for financial products that have an investment component: superannuation

(1) For section 1444 of the Act, this regulation applies in relation to a fund reporting period under Subdivision 2.4.1 of the SIS Regulations that had not ended before the FSR commencement.

(2) The fund reporting period for the financial product, worked out in accordance with Subdivision 2.4.1, is taken to be a fund reporting period for Subdivision 5.5 of Part 7.9 of these Regulations.

10.2.207 Periodic statements for retail clients for financial products that have an investment component

(1) For section 1444 of the Act, this regulation applies if:

(a) a person acquired a financial product, as described in subsection 1017D(1) of the Act; and

(b) the issuer of the financial product was a regulated principal in relation to the financial product.

(2) The reporting period for the financial product, worked out in accordance with the old Corporations Act, is taken to be a reporting period for the Act.

Division 46—Arrangements relating to passbook accounts

10.2.208 Periodic statements

(1) For section 1444 of the Act, this regulation applies in relation to a basic deposit product:

(a) for which the holder of the product is provided with, and keeps, a document commonly referred to as a ‘passbook’ into which entries of deposits to and withdrawals from the product are recorded by the product issuer; and

(b) that was issued before the FSR commencement.

(2) Section 1017D of the Act does not apply in relation to the basic deposit product.

10.2.209 Confirmation of transactions

(1) For section 1444 of the Act, this regulation applies in relation to a basic deposit product:

(a) for which the holder of the product is provided with, and keeps, a document commonly referred to as a ‘passbook’ into which entries of deposits to and withdrawals from the product are recorded by the product issuer; and

(b) that was issued before the FSR commencement.

(2) Section 1017F of the Act does not apply in relation to the basic deposit product.

Division 47—Agreements with unlicensed persons relating to the provision of financial services

10.2.210 Agreements

(1) For section 1444 of the Act, this regulation applies if:

(a) a person (***person 1***) enters into an agreement with another person (***person 2***) in the course of an activity conducted by person 2; and

(b) at that time, Part 7.6 of the Act does not apply to person 2 in relation to the activity; and

(c) the activity would constitute carrying on a financial services business if Part 7.6 of the Act applied to person 2 in relation to the activity; and

(d) the agreement is not completed when Part 7.6 of the Act first applies to person 2 in relation to the activity; and

(e) when Part 7.6 of the Act first applies to person 2 in relation to the activity, person 2:

(i) does not hold an Australian financial services licence covering the activity; and

(ii) is not exempt from the requirement to hold that licence.

(2) Division 11 of Part 7.6 of the Act applies in relation to the agreement to the extent that that Division is not inconsistent with Division 2 of Part 7.3 of the old Corporations Act.

Division 48—Arrangements for Lloyd’s

10.2.211 Lloyd’s

(1) For section 1444 of the Act, subsection 911A(1) of the Act does not apply in relation to a financial service:

(a) that is provided by:

(i) a Lloyd’s underwriting member; or

(ii) a listed Lloyd’s syndicate of underwriting members; and

(b) to which subregulation (2) applies.

(2) The financial service must be a service in relation to which the Lloyd’s underwriting member, or the syndicate, is regulated by APRA at any time within 2 years after the FSR commencement.

(3) In this regulation:

***Lloyd’s*** means the society incorporated by the Act of the United Kingdom known as the Lloyd’s Act 1871.

Division 49—Hawking of certain financial products

10.2.212 Hawking of managed investment products

(1) For section 1444 of the Act, a reference in subsection 992AA(2) of the Act to a financial services licensee includes a regulated principal.

(2) Subregulation (1) ceases to apply in relation to a regulated principal at the end of the transition period in relation to the regulated principal.

Division 50—Warrants or options to acquire issued securities

10.2.213 Warrants or options to acquire issued securities

For section 1444 of the Act, if a warrant or option to acquire issued securities by way of transfer is a financial product:

(a) to which the definition of ***securities*** in subsection 92(3) of the old Corporations Act applied; and

(b) to which Chapter 6D of that Act applied;

Chapter 6D is taken to apply during the transition period for those products.

Division 52—Winding up of fidelity funds if market ceases to operate

10.2.215 Winding up of fidelity funds if market ceases to operate

(1) For subsection 1416(1) of the Act, section 886B of the Act applies in relation to a fidelity fund kept by the operator of a financial market that, at a time in the transition period for the market, ceases to operate (otherwise than because of a merger).

(2) For paragraph 886B(c) of the Act, subsection (3) applies if, at a time during the transition period for a financial market on which derivatives are traded, a person (the ***first person***) ceases to operate the market (other than because of a merger), and another person (the ***second person***) that is a related body corporate operates a financial market:

(a) in relation to which, or a segment of which, there are required, after the end of the transition period, to be compensation arrangements approved in accordance with Division 3 of Part 7.5 of the Act; and

(b) on which derivatives are also traded.

(3) The assets of the fidelity fund held by the first person for the market it had operated may be:

(a) transferred to the fidelity fund held by the second person for the market, or segment of the market, that it operates; or

(b) held as, or as part of, the fidelity fund held for the market, or segment of the market, operated by the second person.

Part 10.5—Transitional provisions relating to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004

10.5.01 Adoption of auditing standards made by accounting profession before commencement (Act ss 1455(1) and (3))

(1) For subsections 1455(1) and (3) of the Act:

(a) a standard (as in force from time to time) mentioned in the table has effect, for the purposes of the Act, as if it had been made by the AUASB under section 336 of the Act on 1 July 2004; and

(b) a standard mentioned in Part 1 of the table has effect as if it specified that it applies to a financial reporting period ending on or after 1 July 2004; and

(c) a standard mentioned in Part 2 of the table has effect as if it specified that it applies to a financial reporting period beginning on or after 15 December 2004; and

(d) a standard mentioned in Part 3 of the table has effect as if it specified that it applies to a financial reporting period beginning on or after 15 June 2005.

| Item | AUS No. | Title |
| --- | --- | --- |
| Part 1 | | |
| 101 | 104 | Glossary of Terms |
| 102 | 202 | Objective and General Principles Governing an Audit of a Financial Report  Note: This standard was issued in July 2002. |
| 103 | 204 | Terms of Audit Engagements |
| 104 | 206 | Quality Control for Audit Work  Note: This standard was issued in July 2002. |
| 105 | 208 | Documentation |
| 106 | 210 | The Auditor’s Responsibility to Consider Fraud and Error in an Audit of a Financial Report  Note: This standard was issued in January 2002. |
| 107 | 212 | Other Information in Documents Containing Audited Financial Reports |
| 108 | 214 | Auditing in a CIS Environment |
| 109 | 218 | Consideration of Laws and Regulations in an Audit of a Financial Report |
| 110 | 302 | Planning |
| 111 | 304 | Knowledge of the Business |
| 112 | 306 | Materiality and Audit Adjustments |
| 113 | 402 | Risk Assessments and Internal Controls  Note: This standard was issued in July 2002. |
| 114 | 404 | Audit Implications Relating to Entities Using a Service Entity |
| 115 | 502 | Audit Evidence  Note: This standard was issued in October 1995. |
| 116 | 504 | External Confirmations |
| 117 | 506 | Existence and Valuation of Inventory |
| 118 | 508 | Inquiry Regarding Litigation and Claims |
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| 126 | 524 | The Auditor’s Use of the Work of the Actuary and the Actuary’s Use of the Work of the Auditor in Connection with the Preparation and Audit of a Financial Report |
| 127 | 526 | Auditing Fair Value Measurements & Disclosures |
| 128 | 602 | Using the Work of Another Auditor |
| 129 | 604 | Considering the Work of Internal Auditing |
| 130 | 606 | Using the Work of an Expert |
| 131 | 702 | The Audit Report on a General Purpose Financial Report |
| 132 | 704 | Comparatives |
| 133 | 706 | Subsequent Events |
| 134 | 708 | Going Concern |
| 135 | 710 | Communication with Management on Matters Arising from an Audit |
| 136 | 802 | The Audit Report on Financial Information Other than a General Purpose Financial Report |
| 137 | 902 | Review of Financial Reports |
| Part 2 | | |
| 201 | 202 | Objective and General Principles Governing an Audit of a Financial Report  Note: This standard was issued in February 2004. |
| 201A | 210 | The Auditor’s Responsibility to Consider Fraud and Error in an Audit of a Financial Report  Note: This standard was issued in June 2004. |
| 202 | 402 | Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatements  Note: This standard was issued in February 2004. |
| 203 | 406 | The Auditor’s Procedures In Response to Assessed Risks |
| 204 | 502 | Audit Evidence  Note: This standard was issued in February 2004. |
| Part 3 | | |
| 301 | 206 | Quality Control for Audits of Historical Financial Information  Note: This standard was issued in June 2004. |

(2) In this regulation:

***financial reporting period***, for a company, registered scheme or disclosing entity, means a financial year or a half‑year for which the company, registered scheme or disclosing entity must prepare a financial report.

Note: Under section 292 of the Act, a disclosing entity, public company, large proprietary company or registered scheme must prepare a financial report for each financial year. Under section 302 of the Act, a disclosing entity must prepare a financial report for each half‑year. Section 323D of the Act deals with financial years and half‑years.

(3) Each standard mentioned in subregulation (1) ceases to have effect in relation to a financial reporting period that ends after 29 June 2007.

Part 10.15—Transitional provisions relating to the Corporations Amendment (Financial Market Supervision) Act 2010

10.15.01 Application of Part 10.15

For subsection 1513(1) of the Act, this Part deals with matters of a transitional, application or saving nature relating to the amendments and repeals made by Schedule 1 to the *Corporations Amendment (Financial Market Supervision) Act 2010* (the ***amending Schedule***).

10.15.02 Amendments not to apply to certain operators of licensed markets

The amendments made by the amending Schedule do not apply to the following operators of licensed markets:

(a) BGC Partners (Australia) Pty Limited;

(b) Bloomberg Tradebook Australia Pty Ltd;

(c) Mercari Pty Ltd;

(d) Yieldbroker Pty Limited.

Note: The requirement in subsection 798H(1) of the Act for an operator of a licensed market to comply with the market integrity rules was introduced by one of the amendments made by the amending Schedule.

10.15.03 Transfer of documents

(1) This regulation applies if:

(a) an operator of a licensed market, a related body corporate of the operator, or an employee of the operator, gives information in confidence to ASIC; and

(b) the information relates to the operation of Part 7.2 of the Act; and

(c) the information was requested by, or given to, ASIC to help ASIC exercise its powers or perform its functions under Part 7.2A of the Act.

(2) The information does not cease to be the subject of legal professional privilege solely because the information has been given to ASIC.

(3) The operator or employee:

(a) has qualified privilege in respect of the giving of the information to ASIC; and

(b) is not liable to any person in relation to the giving of the information to ASIC.

(4) The giving of the information to ASIC is not to be taken to be:

(a) a contravention of a law, including a law relating to privacy or confidentiality; or

(b) a breach of contract or duty to a person.

10.15.04 Notifications, consents, waivers, etc

(1) This regulation applies if:

(a) an operator of a licensed market gave a written waiver, consent, recognition, accreditation, approval, determination, exemption or notification to a participant in the licensed market under the operating rules of the licensed market; and

(b) the power or obligation in the operating rules to give the waiver, consent, recognition, accreditation, approval, determination, exemption or notification is incorporated into the market integrity rules.

(2) The waiver, consent, recognition, accreditation, approval, determination, exemption or notification:

(a) is taken to have been given by ASIC under the market integrity rules; and

(b) will continue in its existing form, and continue to have the same effect, (as given under the operating rules) unless ASIC determines that it should be amended or revoked.

(3) ASIC may:

(a) determine that a waiver, consent, recognition, accreditation, approval, determination, exemption or notification is no longer appropriate; and

(b) determine, in writing, that the waiver, consent, recognition, accreditation, approval, determination, exemption or notification is amended or revoked as provided in the determination.

(4) If ASIC proposes to make a determination under subregulation (3), ASIC must give reasonable notice to the participant before making the determination.

10.15.05 Notification given by participant to operator of licensed market

(1) This regulation applies if:

(a) a participant in a licensed market gave the operator of the licensed market a written notification or certification under the operating rules of the licensed market; and

(b) the power or obligation in the operating rules to give the notification or certification is incorporated into the market integrity rules.

(2) The notification or certification:

(a) is taken to have been given to ASIC by the participant under the market integrity rules; and

(b) will continue in its existing form, and continue to have the same effect, (as given under the operating rules) unless ASIC otherwise determines.

(3) ASIC may:

(a) determine that a notification or certification is no longer appropriate; and

(b) determine, in writing, that the notification or certification is amended or revoked as provided in the determination.

(4) If ASIC proposes to make a determination under subregulation (3), ASIC must give reasonable notice to the participant before making the determination.

10.15.06 Registers

If:

(a) an operator of a licensed market kept a register under, or in relation to, the operating rules of the licensed market; and

(b) the relevant operating rules are incorporated into the market integrity rules;

the register is taken to be kept by ASIC under, or in relation to, the market integrity rules.

Part 10.18—Transitional provisions relating to Corporations Amendment (Further Future of Financial Advice Measures) Act 2012

Part 10.19—Transitional matters relating to MySuper measures

10.19.01 Changes to product disclosure statements and periodic statements

(1) The amendments made by items 7 to 68 and 70 to 86 of Schedule 1 to the Superannuation *Legislation Amendment (MySuper Measures) Regulation 2013* (the ***amending items***) apply to:

(a) Product Disclosure Statements given:

(i) for a superannuation product—on or after 31 December 2013; or

(ii) for a managed investment product—on or after 1 July 2014; and

(b) periodic statements given under section 1017D of the Act in relation to reporting periods ending:

(i) for a superannuation product—on or after 31 December 2013; or

(ii) for a managed investment product—on or after 1 July 2014.

(2) If:

(a) a Product Disclosure Statement is given during the transition period; and

(b) were the amendments made by the amending items to apply during the transition period, the Product Disclosure Statement would comply with Schedule 10 or Schedule 10D (as the case requires);

the Product Disclosure Statement is taken to comply with Schedule 10 or Schedule 10D (as the case requires).

(3) If:

(a) a periodic statement under section 1017D of the Act is given during the transition period; and

(b) were the amendments made by the amending items to apply during the transition period, the periodic statement would comply with Schedule 10;

the periodic statement is taken to comply with the Schedule.

(4) For the purposes of this regulation, the ***transition period*** is a period:

(a) for a superannuation product—beginning on 1 July 2013 and ending on 30 December 2013; or

(b) for a managed investment product—beginning on 1 July 2013 and ending on 30 June 2014.

Part 10.21—Application provisions relating to the Corporations Amendment (Central Clearing and Single‑Sided Reporting) Regulation 2015

10.21.01 First application of 7.5A.73—existing phase 3 reporting entities

Main rule

(1) Subject to subregulations (2) and (3), for the purposes of regulations 7.5A.71 and 7.5A.72, regulation 7.5A.73 first applies to an entity that was a phase 3 reporting entity on 30 September 2015, in relation to an OTC derivative transaction or an OTC derivative position, at all times during a period:

(a) starting on 1 October 2015; and

(b) ending at the end of the quarter day that next follows 2 successive disqualifying quarter days for the entity, counting disqualifying quarter days on or after 30 June 2015.

Entities with disqualifying quarter days on 31 March 2015 and 30 June 2015

(2) Subregulation (3) applies in relation to an entity that was a phase 3 reporting entity on 30 September 2015, if:

(a) the entity became a phase 3 reporting entity on or before 31 March 2015; and

(b) 31 March 2015 and 30 June 2015 were disqualifying quarter days for the entity.

(3) For the purposes of regulations 7.5A.71 and 7.5A.72, regulation 7.5A.73 first applies to the entity, in relation to an OTC derivative transaction or an OTC derivative position, at all times during a period:

(a) starting on the day after the quarter day that next follows 2 successive qualifying quarter days for the entity, counting qualifying quarter days on or after 30 September 2015; and

(b) ending at the end of the quarter day that next follows 2 successive disqualifying quarter days for the entity.

Interpretation

(4) A term used in this regulation has the same meaning as in regulation 7.5A.73.

Part 10.22—Application provisions related to the Corporations Amendment (Financial Services Information Lodgement Periods) Regulation 2015

10.22.01 Application of amendment of paragraph 7.6.04(1)(c)

Paragraph 7.6.04(1)(c), as amended by the *Corporations Amendment (Financial Services Information Lodgement Periods) Regulation 2015*, applies in relation to:

(a) an Australian financial services licence granted before, on or after the commencement of that regulation; and

(b) a change mentioned in paragraph 7.6.04(1)(c) that occurs on or after 19 August 2015.

10.22.02 Application of modification of subsections 916F(1) and (3)

(1) Subsection 916F(1) of the Act, as modified by the *Corporations Amendment (Financial Services Information Lodgement Periods) Regulation 2015*, applies in relation to an authorisation of a representative to provide a financial service as mentioned in section 916A or 916B of the Act if the authorisation occurs on or after 19 August 2015.

(2) Subsection 916F(3) of the Act, as modified by the *Corporations Amendment (Financial Services Information Lodgement Periods) Regulation 2015*, applies in relation to each of the following events, if the event occurs on or after 19 August 2015:

(a) a change in any details relating to the representative that are required to be included in a notice under subsection 916F(2) of the Act;

(b) the revocation of an authorisation to which subsection 916F(1) of the Act applied.

Part 10.23—Application provisions relating to the Corporations Amendment (Remuneration Disclosures) Regulation 2016

10.23.01 Application—remuneration disclosures

The amendments made by items 1 to 6 of Schedule 1 to the *Corporations Amendment (Remuneration Disclosures) Regulation 2016* apply in relation to financial years ending on or after the day that instrument commences.

Part 10.24—Application provisions relating to the Financial Services Legislation Amendment (Wholesale Margining) Regulation 2016

10.24.01 Application of regulations 7.8.01A and 7.8.06B

(1) Regulation 7.8.01A, as inserted by the *Financial Services Legislation Amendment (Wholesale Margining) Regulation 2016*, applies in relation to a client’s written agreement obtained on or after the commencement of this regulation, whether the money was paid to the licensee as mentioned in subsection 981A(1) of the Act before, on or after that commencement.

(2) Regulation 7.8.06B, as inserted by the *Financial Services Legislation Amendment (Wholesale Margining) Regulation 2016*, applies in relation to a client’s written agreement obtained on or after the commencement of this regulation, whether the property was given to the licensee as mentioned in subsection 984A(1) of the Act before, on or after that commencement.

Part 10.25—Transition to Part 3 of the Insolvency Practice Schedule (Corporations)

10.25.01 Transition to Part 3 of the Insolvency Practice Schedule (Corporations)

(1) For the purposes of subsection 1634(1) of the Act, Part 10.25 of Chapter 10 of the Act applies as if the references in Divisions 3 and 5 of that Part to the commencement day were a reference to 1 September 2017.

(2) For the purposes of subsection 1634(1) of the Act, Part 10.25 of Chapter 10 of the Act applies as if the definition of ***ongoing external administration*** in section 1551 of the Act were omitted and the following definition were substituted for the purposes of Divisions 3 and 5 of that Part:

***ongoing external administration*** of a company means an external administration of a company that started before 1 September 2017 and ends after that day.

(3) For the purposes of subsection 1634(2) of the Act, Part 10.25 of Chapter 10 of the Act applies as if Divisions 1, 2 and 3 of that Part were modified as set out in Schedule 13.

10.25.02 Application of certain amendments relating to the enactment of the Insolvency Practice Schedule (Corporations)

(1) This section is made for the purposes of subsection 1634(1) of the Act.

(2) The amendments of sections 546‑10 and 546‑20 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* made by Part 2 of Schedule 2 to the *Insolvency Law Reform Act 2016* apply in relation to deregistrations that occur on or after 1 September 2017.

(3) The amendments made by the following items of Part 2 of Schedule 2 to the *Insolvency Law Reform Act 2016* apply in relation to external administrations on and after 1 September 2017:

(a) item 65;

(b) item 66;

(c) item 79;

(d) item 80;

(e) item 82;

(f) item 84;

(g) items 91 to 140;

(h) items 143 to 172;

(i) items 177 to 208;

(j) item 213;

(k) item 245;

(l) item 246;

(m) item 251 (to the extent that it inserts paragraphs 1317C(n) and (o) of the Act);

(n) item 253;

(o) items 258 to 260;

(p) items 262 to 264.

(4) The amendments made by items 89 and 90 of Part 2 of Schedule 2 to the *Insolvency Law Reform Act 2016* apply in relation to Part 5.1 bodies on and after 1 September 2017.

Part 10.25—Application provisions relating to the Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017

10.25.01 Application of amendment of subregulation 7.9.04(1)

The amendment made by item 1 of Schedule 1 to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017* applies in relation to superannuation interests issued on or after 1 July 2017.

Part 10.26—Application provisions related to the Corporations Amendment (Client Money) Regulations 2017

10.26.01 Application of regulation 7.8.02A

(1) Subregulation 7.8.02A(1), as inserted by the *Corporations Amendment (Client Money) Regulations 2017*, applies in relation to payments made, on or after the commencement of this regulation, out of an account maintained for the purposes of section 981B of the Act, whether the relevant written direction was given before, on or after that commencement.

(2) Subregulation 7.8.02A(2), as inserted by the *Corporations Amendment (Client Money) Regulations 2017*, applies in relation to payments made, on or after the commencement of this regulation, out of an account maintained for the purposes of section 981B of the Act, whether the relevant entitlement was created before, on or after that commencement.

Part 10.27—Transitional provisions relating to the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Regulations 2018

10.27.01 Membership of the AFCA scheme

The amendments made by items 1 and 2 of Schedule 1 to the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Regulations 2018* apply on and after the day, under item 44 of Schedule 1 to the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018*, on and after which the amendments made by Part 3 of Schedule 1 to that Act apply.

10.27.02 Membership of existing external dispute resolution schemes

The amendments made by items 36 to 39 of Schedule 1 to the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Regulations 2018* apply on and after the day, under item 72 of Schedule 1 to the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018*, on and after which the amendments made by Part 5 of Schedule 1 to that Act apply.

10.27.03 Written reasons for internal review decisions

Regulations 7.9.48, 7.9.48A, 7.9.48C and 7.9.48D of these Regulations continue to have effect, despite their repeal by item 1 of Schedule 2 to the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Regulations 2018* until the later of:

(a) the commencement of the first legislative instrument made under subsection 47(2A) of the *Retirement Savings Accounts Act 1997* as amended by item 7 of Schedule 2 to the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018*; and

(b) the commencement of the first legislative instrument made under subsection 101(1B) of the *Superannuation Industry (Supervision) Act 1993* as amended by item 9 of Schedule 2 to the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018*.

10.27.04 Disclosing information about the AFCA scheme

Regulations 7.9.48, 7.9.48A and 7.9.48B of these Regulations continue to have effect, despite their repeal by item 1 of Schedule 2 to the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Regulations 2018* until the day that standards and requirements are first made or approved by ASIC under subparagraph 912A(2)(a)(i) of the *Corporations Act 2001* after those regulations are registered.

Part 10.28—Application provisions related to the Corporations Amendment (Client Money Reporting Rules Enforcement Powers) Regulations 2018

10.28.01 Application—client money reporting rules enforcement powers

Subdivision AA of Division 2 of Part 7.8, as inserted by Schedule 1 to the *Corporations Amendment (Client Money Reporting Rules Enforcement Powers) Regulations 2018*, applies in relation to alleged contraventions of subsection 981M(1) of the Act occurring on or after the commencement of that Schedule.

Part 10.29—Application and transitional provisions relating to the Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019

10.29.01 Definitions

In this Part:

***amending regulations*** means the *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019*.

10.29.02 Transitional provisions relating to regulation 7.9.44B

For the purposes of regulation 7.9.44B, as inserted by item 1 of Schedule 1 to the amending regulations, a period during which a member’s account is inactive in relation to a choice product or a MySuper product offered by a regulated superannuation fund is to be taken into account even if the period begins before the commencement of that Schedule.

10.29.03 Application of amendments relating to product disclosure statements

The amendments made by items 3 to 28 of Schedule 1 to the amending regulations apply in relation to product disclosure statements given on and after 1 July 2019*.*

10.29.04 Application of amendments relating to periodic statements

The amendments made by items 3 to 28 of Schedule 1 to the amending regulations apply in relation to periodic statements for reporting periods beginning on and after 1 July 2019.

Part 10.30—Application provisions relating to the Corporations Amendment (Proprietary Company Thresholds) Regulations 2019

10.30.01 Application of amendments—changes to proprietary company thresholds

Regulation 1.0.02B, as inserted by Schedule 1 to the *Corporations Amendment (Proprietary Company Thresholds) Regulations 2019*, applies in relation to the 2019‑20 financial year and later financial years.

Part 10.31—Application provisions relating to the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Regulations 2019

10.31.01 Application—offences

The amendments made by items 1 to 10, items 16 to 18 and items 30, 32, 33 and 37 of Schedule 1 to the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Regulations 2019* apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement of that Schedule.

Part 10.32—Application provisions relating to the Treasury Laws Amendment (AFCA Cooperation) Regulations 2019

10.32.01 Application—obligation to cooperate with AFCA

The amendments made by items 1 and 2 of Schedule 1 to the *Treasury Laws Amendment (AFCA Cooperation) Regulations 2019* apply on and after the commencement of that item in relation to complaints made under the AFCA scheme before, on or after that commencement.

Part 10.33—Application provisions relating to the Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019

10.33.01 Application of end of grandfathering arrangements

The amendment made by item 2 of Schedule 1 to the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019* applies to a benefit given on or after 1 January 2021, if the benefit is given under an arrangement entered into before, on or after the application day (within the meaning of subsection 1528(4) of the Act).

10.33.02 Application of record keeping requirements for rebate scheme

The amendment made by item 3 of Schedule 1 to the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019* applies to financial records relating to periods ending after 1 January 2021.

Part 10.34—Application provisions related to the Corporations Amendment (National Guarantee Fund Payments) Regulations 2019

10.34.01 Application—claims for compensation payable out of the NGF

The amendments made by Schedule 1 to the *Corporations Amendment (National Guarantee Fund Payments) Regulations 2019* apply in relation to a claim made by a claimant if the claimant’s entitlement to make the claim under Subdivision 4.3, 4.7, 4.8 or 4.9 arises on or after the commencement of that Schedule.

Part 10.35—Application provisions relating to the Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021

10.35.01 Application of amendments relating to portfolio holdings disclosure

The amendments made by Schedule 1 to the *Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021* apply in relation to reporting days that occur on or after the later of:

(a) 31 December 2021; and

(b) the commencement of that Schedule.

Part 10.37—Application provisions relating to the Treasury Laws Amendment (Financial Services Improved Consumer Protection) (Funeral Expenses Facilities) Regulations 2019

10.37.01 Application of amendment relating to funeral expenses policies

Despite the repeal of regulation 7.1.07D by item 2 of Schedule 1 to the *Treasury Laws Amendment (Financial Services Improved Consumer Protection) (Funeral Expenses Facilities) Regulations 2019*, that regulation, as in force immediately before 1 April 2020, continues to apply on and after that day in relation to a funeral expenses policy (as defined in subregulation 7.1.07D(2)) if:

(a) for a funeral expenses policy entered into with a person who is a financial services licensee immediately before 1 April 2020—the funeral expenses policy is entered into before 1 January 2021; or

(b) for any other case—the funeral expenses policy is entered into before 1 April 2020.

Note: Regulation 7.1.07D (as in force before its repeal) provided that a funeral expenses policy is not a financial product.

Part 10.38—Application provisions relating to the Corporations Amendment (Litigation Funding) Regulations 2020

10.38.01 Application of amendments relating to litigation funding

(1) The amendments made by the *Corporations Amendment (Litigation Funding) Regulations 2020* apply in relation to litigation funding schemes, insolvency litigation funding schemes and litigation funding arrangementsentered into on or after 22 August 2020.

(2) In this regulation:

***insolvency litigation funding scheme*** means an insolvency litigation funding scheme mentioned in regulation 5C.11.01 (as in force on 22 August 2020).

***litigation funding arrangement*** means a litigation funding arrangement mentioned in regulation 5C.11.01 (as in force on 22 August 2020).

***litigation funding scheme*** means a litigation funding scheme mentioned in subregulation 7.1.04N(3) (as in force on 22 August 2020).

Part 10.39—Application provisions for the Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021

10.39.01 Right of return and refund for hawked financial products

(1) Regulations 7.8.23 and 7.8.25, as in force immediately before the commencement of Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021*, continue in force after that commencement as if they had been made for the purposes of paragraph 992AA(2)(c) of the Act.

(2) Regulation 7.8.24, as in force immediately before the commencement of Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021*, continues in force after that commencement as if it had been made for the purposes of paragraph 992AA(3)(a) of the Act.

Part 10.40—Application provisions relating to the Financial Sector Reform (Hayne Royal Commission Response) (Regulation of Superannuation) Regulations 2020

10.40.01 Definitions

In this Part:

***amending regulations*** means the *Financial Sector Reform (Hayne Royal Commission Response) (Regulation of Superannuation) Regulations 2020*.

***commencement day*** means the day on which Part 2 of Schedule 1 of the amending regulations commences.

10.40.02 Transitional provision relating to non‑public offer funds

(1) This regulation applies if:

(a) on or before 30 April 2021, a person lodges an application for an Australian financial services licence authorising the person to do either or both of the following:

(i) deal in a financial product in the capacity of the trustee of a superannuation entity that is not a public offer entity;

(ii) provide a superannuation trustee service in the capacity of the trustee of a superannuation entity that is not a public offer entity; and

(b) the application complies with section 913A of the Act; and

(c) on the commencement day, the application has not been withdrawn by the applicant, or dealt with by ASIC.

Note: ASIC may deal with the application by granting, or refusing to grant, the licence (see section 913B of the Act), or by refusing to receive the application (see subsection 1274(8) of the Act).

(2) Paragraphs 7.6.01(1)(a) and (aa) continue to apply, despite their repeal by the amending regulations, in relation to the person during the period:

(a) starting on the commencement day; and

(b) ending when the application is withdrawn by the applicant, or dealt with by ASIC, whichever happens first.

Part 10.41—Application provisions relating to the Financial Sector Reform (Hayne Royal Commission Response—Breach Reporting and Remediation) Regulations 2021

10.41.01 Provisions relating to continued application of section 912D of the Act

Lodgment with ASIC

(1) Despite the repeal of paragraphs 1.0.05A(2)(b) and (c) by item 3 of the amending Schedule, those paragraphs, as in force immediately before the commencement of the amending Schedule, continue to apply in relation to reports or written notices to be given to ASIC under subsections 912D(1) and (2) of the Act (as those subsections continue to apply because of subsection 1671A(2) of the Act) as if that repeal had not happened.

Obligation to notify ASIC of certain matters

(2) Despite the amendment of regulation 7.6.02A by item 5 of the amending Schedule, that regulation continues to apply, for the purposes of subparagraph 912D(1)(a)(iii) of the Act (as that subparagraph continues to apply because of subsection 1671A(2) of the Act), as if that amendment had not happened.

Infringement notices

(3) Despite the amendment of paragraph 9.4AB.01(2)(c) by item 9 of the amending Schedule, that paragraph continues to apply, in relation to alleged offences against subsection 912D(1B) or (2) of the Act (as those subsections continue to apply because of subsection 1671A(2) of the Act), as if that amendment had not happened.

Definitions

(4) In this regulation:

***amending Schedule*** means Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response—Breach Reporting and Remediation) Regulations 2021*.

Part 10.42—Application provisions relating to the Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021

10.42.01 Application of claims handling and settling services reforms

The amendments made by Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021* apply in relation to claims or potential claims in relation to an insurance product made on or after the day on which that Schedule commences.

Part 10.43—Application provisions relating to simplified liquidation process under the Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020

10.43.01 Application of amendments relating to the simplified liquidation process

(1) The amendments made by Schedule 3 to the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020* apply in relation to the winding up of a company because of a triggering event that occurs on or after the commencement of that Schedule.

(2) In this regulation:

***triggering event*** has the same meaning as in section 489F of the Act (as in force on the commencement of Schedule 3 to the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020*).

Part 10.45—Application provisions relating to the Corporations Amendment (Statutory Minimum) Regulations 2021

10.45.01 Application of amendment of paragraph 5.4.01AAA(1)(b)

The amendment made by item 2 of Schedule 1 to the *Corporations Amendment (Statutory Minimum) Regulations 2021* applies in relation to statutory demands served on or after 1 July 2021.

Part 10.47—Application provisions relating to the Corporations Amendment (Litigation Funding) Regulations 2021

10.47.01 Application of amendments relating to licence conditions in relation to a litigation funding scheme mentioned in subregulation 7.1.04N(3)

The amendments made by items 2 and 3 of Part 1 of Schedule 1 to the *Corporations Amendment (Litigation Funding) Regulations 2021* apply in relation to:

(a) an Australian financial services licence granted before, on or after the commencement of that Part; and

(b) a litigation funding scheme mentioned in subregulation 7.1.04N(3) entered on or after that commencement; and

(c) a litigation funding scheme mentioned in subregulation 7.1.04N(3) entered before that commencement, but only in relation to so much of the duration of the scheme that occurs on or after that commencement.

Part 10.48—Application provisions relating to the Corporations Amendment (Litigation Funding) Regulations 2022

10.48.01 Application of amendments relating to litigation funding

The amendments made by the *Corporations Amendment (Litigation Funding) Regulations 2022* apply in relation to:

(a) a litigation funding scheme mentioned in regulation 5C.11.01(2A) entered on or after the commencement of those regulations; and

(b) a litigation funding scheme mentioned in regulation 5C.11.01(2A) entered before that commencement, but only in relation to so much of the duration of the scheme that occurs on or after that commencement.

Part 10.49—Application provisions relating to Schedule 1 to the Treasury Laws Amendment (Modernising Business Communications and Other Measures) Regulations 2022

10.49.01 Application of amendment to Form 509H (creditor’s statutory demand for payment of debt)

The amendment to Form 509H of Schedule 2 to this instrument made by Schedule 1 to the *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Regulations 2022* applies in relation to a statutory demand served on or after the commencement of Schedule 1 to that Act.

Part 10.50—Application provisions relating to the Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023

10.50.01 Application of amendments relating to financial reporting and auditing of registrable superannuation entities

(1) The amendments made by Schedule 1 to the *Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023* to Divisions 1, 5 and 8 of Part 7.9 apply in relation to a fund reporting period beginning on or after 1 July 2023.

(2) Despite the repeal of regulation 7.9.75BA by Schedule 1 to the *Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023*, an election by a holder given under that regulation before the commencement of that Schedule, has effect on and after the commencement of that Schedule as if it had been given for the purposes of regulation 7.9.32 (as amended by that Schedule).

Chapter 12—Financial sector reform

Part 12.1—Preliminary

12.1.01 Definitions for Chapter 12

In this Chapter:

***AFIC*** means the Australian Financial Institutions Commission.

***APRA transitional prudential standard*** has the meaning given by regulation 11 of the *Financial Sector Reform (Amendments and Transitional Provisions) Regulations 1999*.

***Financial Institutions Code of a State or Territory*** has the meaning given by clause 1 of Schedule 4 to the Act.

***Financial Sector Reform Act*** means the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.

***Friendly Societies Code of a State or Territory*** has the meaning given by clause 1 of Schedule 4 to the Act.

***member share*** has the meaning given by regulation 12.8.03.

***previous governing Code*** has the meaning given by clause 1 of Schedule 4 to the Act.

***replaced legislation*** has the meaning given by subitem 22(7) of Schedule 8 to the Financial Sector Reform Act.

***SSA*** (State Supervisory Authority) has the meaning given by clause 1 of Schedule 4 to the Act.

***transfer date*** means the date that is the transfer date for the purposes of the Financial Sector Reform Act.

***transferring financial institution of a State or Territory*** has the meaning given by clause 1 of Schedule 4 to the Act.

***transition period*** means the period of 18 months starting on the transfer date.

Note: See the definition of ***Corporations Regulations*** in section 40A of the *Acts Interpretation Act 1901*.

12.1.02 Application of this Chapter to previous governing Codes etc

A reference in this Chapter to:

(a) a previous governing Code; or

(b) a provision of a previous governing Code; or

(c) an instrument under a previous governing Code; or

(d) a provision of an instrument under a previous governing Code;

that is applied by or under this Chapter includes a reference to the Code, provision or instrument as varied or modified by or under this Chapter.

12.1.03 Interpretation of applied provisions

(1) Subregulation (2) applies to a provision of the following instruments:

(a) a previous governing Code that is applied by or under a provision of this Chapter;

(b) an instrument made under a Code mentioned in paragraph (a) that is applied by or under this Chapter;

(c) an ASIC transitional standard within the meaning of Part 12.7 or an instrument made under a provision of the standard.

(2) This subregulation applies if there is a reference in the provision to any of the following:

(a) a word or expression that is defined in the Act or these Regulations;

(b) a power exercised by AFIC or an SSA;

(c) a class of body;

(d) the rules of a body;

(e) the accounts, or group accounts, of a body;

(f) a previous governing Code or a provision of the Code;

(g) an ASIC transitional standard within the meaning of Part 12.7 or a provision of the standard;

(h) an APRA transitional prudential standard or a provision of the standard;

(i) an instrument made under a Code, an ASIC transitional standard, an APRA transitional prudential standard or a provision of the instrument.

(3) A word or expression that is defined in the Act or these regulations applies to each use of the word or expression unless the contrary intention appears.

(4) A reference to a power exercised by AFIC or an SSA is to be read as if it were a reference to an equivalent power exercised by ASIC under the Act, these regulations, another Commonwealth law or an ASIC transitional standard.

(5) A reference to a class of body is to be read as if it were the comparable class of company after the transition date.

(6) A reference to the rules of a body is to be read as if it were a reference to the constitution of the body.

(7) A reference to accounts, or group accounts, of a body is to be read as if it were a reference to a financial report, or consolidated financial statements, of the body.

(8) A reference to any matter mentioned in subregulation (2) is to be read in a way that:

(a) is consistent with, and promotes, the transition from the application of a previous governing Code to a transferring financial institution of a State or Territory to the application to the institution of the Act and these regulations; and

(b) is consistent with the duties, functions and powers of ASIC or an SSA; and

(c) does not alter the interpretation or operation of the instrument in which the reference appears.

Part 12.2—Transitional matters—general

Division 2—Other matters

12.2.08 Lodgment of certain documents with ASIC

For clause 39 of Schedule 4 to the Act, if the Friendly Societies Code of a State or Territory applied to a transferring financial institution of a State or Territory immediately before the transfer date, the transferring financial institution may lodge with ASIC a document that had been lodged with AFIC at any time before the transfer date under that Code.

12.2.10 Certain appointments of auditors continue

(1) For clause 39 of Schedule 4 to the Act, this regulation applies if a person or body held an appointment, immediately before the transfer date, under a previous governing Code or the *Friendly Societies Act 1894* of Western Australia as the auditor of a transferring financial institution.

(2) Section 324 of the Act applies to the person or body as if the person or body had been appointed under section 327 of the Act as the auditor of the transferring financial institution.

12.2.12 Converted shares

(1) For clause 39 of Schedule 4 to the Act, this regulation modifies the application of section 254K of the Act in relation to a share in a company that is converted in accordance with regulation 12.2.04 to a share of another kind.

(2) If the share is partly‑paid, the company may redeem the share on the same terms on which the share was redeemable before its conversion.

Part 12.4—Notice of meetings of certain bodies corporate

12.4.01 Application of Part

(1) This Part applies to a body corporate that is:

(a) a transferring financial institution of a State or Territory; or

(b) a company that is permitted to use the expression ***building society***, ***credit society*** or ***credit union*** under section 66 of the *Banking Act 1959*.

(2) This Part applies in relation to the following members of the body corporate who are entitled to vote at a meeting of members of the body:

(a) members who hold only member shares;

(b) if the body is a company limited by guarantee—the members of the company;

(c) if the body is a company limited by shares and guarantee—the members of the company who do not hold shares in the company.

(3) This Part does not apply in relation to a meeting:

(a) that is held for the purposes of Chapter 5 or 6 of the Act; or

(b) to which Part 5 of Schedule 4 to that Act applies.

12.4.02 Modification of certain provisions of Act

For clause 38 of Schedule 4 to the Act, this Part modifies the application of subsection 249H(1), section 249J, subsection 249P(6) and paragraph 249Z(b) of the Act in relation to the members of the body corporate.

12.4.03 Members etc may elect to be notified of meetings

(1) The body corporate may give notice to a member, or to an applicant for membership, of the body corporate that he or she may elect to receive notice under subsection 249J(1) of the Act of meetings of members of the body corporate.

(2) The notice must include a statement to the effect that:

(a) attendance at the AGM, and other meetings of members, of the body corporate enables the members:

(i) to participate in the governance of the body corporate; and

(ii) to ask questions about, and comment on, the management of the body corporate, its financial standing and performance; and

(iii) to ask the auditor of the body corporate questions about the conduct of the audit of the body corporate and the preparation and content of the auditor’s report; and

(iv) to vote on any proposal to amend the constitution of the body corporate or on any other matter in relation to the management of the body corporate; and

(b) notice of meetings informs members about matters in relation to which they may wish to attend a meeting; and

(c) a member of the body corporate who is entitled to attend, and cast a vote at, a meeting may appoint a proxy to attend and vote for the member at the meeting; and

(d) if the member does not elect to receive notice, the body corporate is not required to give notice of its meetings to the member; and

(e) despite a member of the body corporate electing not to receive notice of its meetings, or not making an election, the member may at any time request the body corporate to give the member personal notice of the meetings.

(3) The member or applicant is taken not to have made an election if the body corporate has not received the election within 21 days of the notice being given in accordance with subregulation (1).

(4) If the member elects not to receive notice of meetings, or does not make an election, subsection 249H(1), section 249J, subsection 249P(6) and paragraph 249Z(b) of the Act do not apply to the body corporate in relation to the member.

(5) If the applicant elects not to receive notice of meetings, or does not make an election, subsection 249H(1), section 249J, subsection 249P(6) and paragraph 249Z(b) of the Act do not apply to the body corporate in relation to the applicant if he or she becomes a member of the body corporate to whom this Part applies.

12.4.04 Notice of meetings to be published in press

(1) If the body corporate gives notice under subregulation 12.4.03(1), notice of a meeting of the body corporate must be given in accordance with this regulation.

(2) The notice must be published, at least 21 days before the day on which the meeting is to be held, in at least 1 edition of a daily newspaper circulating generally in each State or Territory in which the body corporate conducts its business.

(3) The notice must:

(a) set out the date and time when, and the place where, the meeting is to be held; and

(b) state the general nature of the business proposed for the meeting; and

(c) include a statement to the effect that a member of the body corporate who is entitled to vote at the meeting may request the body corporate to give the member personal notice of the meeting; and

(d) set out information about how a member may request the body corporate to give the member personal notice of the meeting.

12.4.05 Copies of notices to be displayed

If the body corporate gives notice under subregulation 12.4.03(1), notice of a meeting of the body corporate must be displayed conspicuously, for at least 21 days before the day on which the meeting is to be held, at:

(a) the registered office of the body corporate; and

(b) each other place where the body corporate conducts business that is open to the public.

12.4.06 Members may request notice of meetings at any time

(1) The member may request the body corporate to give notice of a meeting to the member under subsection 249J(1) of the Act.

(2) The request may be a standing request or only apply to a particular meeting.

(3) If the member makes a request under subregulation (1), subsection 249H(1), section 249J, subsection 249P(6) and paragraph 249Z(b) of the Act apply to the body corporate in relation to:

(a) the member; and

(b) a meeting to which the request relates.

(4) However, if the member requests the body corporate to give notice of a meeting within 21 days of the day on which the meeting is to be held, the body corporate must give notice of the meeting to the member as soon as practicable.

12.4.07 Records to be kept about notices

A body corporate must, not later than 28 days after a notice is given under subregulation 12.4.03(1) to a member of the body corporate, record in writing:

(a) the date on which the notice was given to the member; and

(b) whether the member elected to receive notice of meetings of members of the body corporate.

Example of recording: An entry made in a register kept under Chapter 2C of the Act.

Part 12.5—Determinations and declarations in relation to certain instruments

12.5.01 Definition for Part 12.5

In this Part:

***relevant transitional instrument or requirement*** means:

(a) an instrument (as in force immediately before the transfer date) that was made by AFIC, or an SSA, under a provision of the replaced legislation in relation to a matter for which ASIC is responsible for which no transitional, saving or application provision applies on that date in:

(i) the Act, the Financial Sector Reform Act or another Commonwealth Act; or

(ii) these regulations or any other regulations, or another instrument, made under a Commonwealth Act; or

(b) a requirement under the provisions mentioned in paragraph 272(1)(a) of the Financial Institutions Code of a State or Territory; or

(c) a requirement under the provisions mentioned in paragraph 334(1)(a) of the Friendly Societies Code of a State or Territory; or

(d) the ASIC transitional standards within the meaning of Part 12.7; or

(e) an instrument made under an instrument or provision mentioned in paragraph (a), (b), (c) or (d).

12.5.02 Application, variation, revocation and modification

(2) For clause 39 of Schedule 4 to the Act, ASIC may, by declaration:

(a) vary or revoke a relevant transitional instrument or requirement, or a determination under subregulation (1), that applies on the day on which the determination is made; or

(b) modify the application of a relevant transitional instrument or requirement that applies on the day on which the determination is made.

(3) However, ASIC must not vary or modify a relevant transitional instrument or requirement, or a determination, in relation to an obligation, contravention of which results in the commission of an offence, so as to make it more difficult to comply with the obligation.

(4) Also, ASIC must consult with APRA before:

(a) varying or revoking an ASIC transitional standard that is also an APRA transitional prudential standard; or

(b) modifying the application of an ASIC transitional standard that is also an APRA transitional prudential standard.

(5) A failure to comply with subregulation (4) does not affect the action taken by ASIC.

12.5.03 Effect of determinations and declarations

A relevant transitional instrument or requirement has effect subject to a determination or declaration that applies to the instrument or requirement.

12.5.04 Publication of determinations and declarations

(1) If a relevant transitional instrument or requirement to which a determination or declaration relates was, before the transfer date, subject under a previous governing Code to a publication requirement corresponding to publication in the *Gazette*, the determination or declaration must be published in the *Gazette*.

(2) If a relevant transitional instrument or requirement to which a determination or declaration applies was not, before the transfer date, subject under a previous governing Code to a publication requirement corresponding to publication in the *Gazette*, a copy of the determination or declaration must be:

(a) given to each transferring financial institution of a State or Territory to which the relevant transitional instrument or requirement applies; or

(b) otherwise made available to the institution.

12.5.05 When determinations and declarations take effect

A determination or declaration takes effect on the day stated in the determination or declaration.

12.5.06 Inspection and purchase of copies of instruments

(1) ASIC must take reasonable steps to ensure that copies of the current text of the following relevant transitional instruments or requirements are available for inspection and purchase:

(a) each provision of an instrument mentioned in paragraph (b) or (c) of the definition of ***relevant transitional instrument or requirement*** in regulation 12.5.01 that is the subject of a determination or declaration under subregulation 12.5.02(1) or (2);

(b) each ASIC transitional standard.

(2) A failure to comply with subregulation (1) does not affect the operation of a relevant transitional instrument or requirement.

Part 12.6—Financial reporting by certain bodies corporate

12.6.01 Application of Part

(1) This Part applies to a body corporate that is:

(a) a transferring financial institution of a State or Territory; or

(b) a company that is permitted to use the expression ***building society***, ***credit society*** or ***credit union*** under section 66 of the *Banking Act 1959*.

(2) This Part applies in relation to the following members of the body corporate:

(a) members who hold only member shares;

(b) if the body is a company limited by guarantee—the members of the company;

(c) if the body is a company limited by shares and guarantee—the members of the company who do not hold shares in the company.

12.06.01A Annual financial reporting

For section 343 of the Act, the operation of Chapter 2M of the Act, in relation to a company limited by guarantee that is mentioned in paragraphs 12.06.01(2)(b) and (c), is modified by omitting subsections 314(1AAA) and 316(5) and section 316A of the Act.

12.6.02 Modification of certain provisions of Act

For clause 38 of Schedule 4 to the Act, this Part modifies the application of section 314 of the Act in relation to the members of the body corporate.

12.6.03 Members etc may elect to receive reports

(1) The body corporate may give notice to a member, or to an applicant for membership, of the body corporate that he or she may elect to receive:

(a) the reports mentioned in paragraph 314(1)(a) of the Act; or

(b) if the body corporate prepares concise reports mentioned in paragraph 314(1)(b) of the Act, those reports.

(2) The notice must include a statement to the effect that:

(a) a report mentioned in subregulation (1) sets out information about:

(i) the financial position and performance of the body corporate; and

(ii) the efficiency with which the body corporate is being managed; and

(iii) the financial risks to which the body corporate is exposed; and

(b) if the member does not elect to receive a report, the body corporate is not required to send copies of the reports or concise reports mentioned in subregulation (1) to the member; and

(c) despite a member of the body corporate electing not to receive those reports or concise reports, or not making an election, the member may at any time elect to receive the relevant reports.

(3) The member or applicant is taken not to have elected to receive a report if the body corporate has not received the election within 21 days of notice being given in accordance with subregulation (1).

(4) If the member elects not to receive the reports or concise reports mentioned in subregulation (1), or does not make an election, section 314 of the Act does not apply to the body corporate in relation to the member.

(5) If the applicant elects not to receive the reports or concise reports mentioned in subregulation (1), or does not make an election, section 314 of the Act does not apply to the body corporate in relation to the applicant if he or she becomes a member of the body corporate to whom this Part applies.

12.6.04 Copies of reports to be available to members

(1) If the body corporate gives notice under subregulation 12.6.03(1), it must make copies of the relevant reports mentioned in that subregulation available for collection by its members at:

(a) the registered office of the body corporate; and

(b) every other place where the body corporate conducts business that is open to the public.

(2) Copies of the reports must be made available by the body corporate from the deadline mentioned in subsection 315(1) of the Act for reporting to members until 1 month after the day on which its next AGM after the end of the financial year is held.

12.6.05 Records to be kept about notices

A body corporate must, not later than 28 days after a notice is given under subregulation 12.6.03(1) to a member of the body corporate, record in writing:

(a) the date on which the notice was given to the member; and

(b) whether the member elected to receive the reports or concise report mentioned in that subregulation.

Example of recording: An entry made in a register kept under Chapter 2C of the Act.

Part 12.7—Other disclosure

Division 1—Preliminary

12.7.01 Definitions for Part 12.7

In this Part:

***ASIC transitional standard*** means:

(a) a provision of a previous governing Code that is specified in Schedule 12; or

(b) an instrument made under a provision mentioned in paragraph (a).

***relevant financial institution*** means the following bodies:

(a) a transferring financial institution of a State or Territory;

(b) a company that is permitted to use the expression, ***building society***, ***credit society*** or ***credit union*** under section 66 of the *Banking Act 1959*;

(c) a friendly society;

(d) an Australian ADI to which a declaration under regulation 12.7.02 applies.

12.7.02 Declarations by ASIC

(1) This regulation applies, in relation to an Australian ADI, on:

(a) the initiative of ASIC; or

(b) application made to ASIC in writing by the ADI or another person.

(2) ASIC may declare that the Australian ADI conducts financial business of the same kind as the financial business of a transferring financial institution of a State or Territory that was, immediately before the transfer date, registered as a Special Services Provider under the AFIC Code of a State or Territory.

(3) A declaration:

(a) must be in writing given to the Australian ADI; and

(b) takes effect when the declaration, or a copy of the declaration, is given to that ADI.

Division 2—Continued application of certain provisions

12.7.03 Continuation of certain provisions of previous governing Codes

(1) For clause 39 of Schedule 4 to the Act, this regulation applies provisions (as modified in this regulation) of a previous governing Code to a relevant financial institution if, immediately before the transfer date, the provisions applied to the institution.

(2) Subsection 402(1) of the Financial Institutions Code, and section 79 of the Friendly Societies Code, of a State or Territory apply, as a law of the Commonwealth, to the relevant financial institution as if:

(a) a reference to a financial body or a society were a reference to the relevant financial institution; and

(b) a reference to applicable standards were a reference to the ASIC transitional standards.

(3) However, subsections 255(6), (7) and (8) of the Financial Institutions Code of a State or Territory apply in relation to a special resolution of the relevant financial institution that amends a provision of the constitution of the institution that would, directly or indirectly, affect:

(a) the operation of an exempt stock market; or

(b) the timely disclosure of information to holders or potential holders of securities traded on an exempt stock market.

(4) Subsections 255(6), (7) and (8) of the Financial Institutions Code of a State or Territory apply for subregulation (3) as if:

(a) a reference to society were a reference to the relevant financial institution; and

(b) a reference to financial institutions legislation were a reference to the Act and the Corporations Regulations; and

(c) a reference to standards were a reference to the ASIC transitional standards.

12.7.04 Continuation of ASIC transitional standards

(1) For clause 39 of Schedule 4 to the Act and subject to this Division, the ASIC transitional standards:

(a) continue to apply in relation to a transferring financial institution of a State or Territory to the extent that the standards applied to the institution immediately before the transfer date; and

(b) apply in relation to a relevant financial institution of a kind mentioned in paragraph (b) or (c) of the definition of that expression in regulation 12.7.01 to the extent that the standards applied to an institution of that kind immediately before the transfer date; and

(c) apply in relation to an Australian ADI to which a declaration under regulation 12.7.02 applies to the extent that the standards applied to Australian ADIs immediately before the transfer date.

(2) However, Prudential Standard 6.8.3, as applied by subregulation (1), does not authorise ASIC to grant an exemption.

Note: Regulation 12.7.05 authorises ASIC to make a declaration having the effect of an exemption to which Prudential Standard 6.8.3 relates.

12.7.05 Exemption from, and modification of, certain provisions

(1) This regulation applies, in the circumstances to which Prudential Standard 6.8.3 referred immediately before the transfer date, on:

(a) the initiative of ASIC; or

(b) application made to ASIC in writing by a person to whom Division 3 of Part 7.3 of the Act, or regulation 7.3.13A or 7.3.13B, applies or another person.

(2) ASIC may, by *Gazette* notice, declare:

(a) that Division 3 of Part 7.3 of the Act, or regulation 7.3.13A or 7.3.13B, does not apply to a person to whom the declaration applies; and

(b) that a provision mentioned in paragraph (a) applies to a person to whom the declaration applies as if the provision were modified in accordance with the declaration.

(3) Division 3 of Part 7.3 of the Act, and regulations 7.3.13A and 7.3.13B, apply subject to a declaration applying in relation to that Division or regulation.

(4) A declaration:

(a) may be made subject to a condition stated in the exemption; and

(b) takes effect on the day on which it is published.

12.7.06 Certain provisions of the Friendly Societies Code cease to apply to FSR licensee

(1) For clause 39 of Schedule 4 to the Act the provisions of subclause 36(1) of Schedule 4 cease to apply to a body to which the Schedule applies on the earlier of:

(a) 2 years after the FSR commencement; and

(b) if the body gives notice under paragraph 1438(3)(b) of the Act that the body wants the new product disclosure provisions to apply in relation to specified products from a certain date—that date.

(2) Subregulation (1) takes effect from the date specified in the notice as the date from which the new product disclosure provisions will apply.

Part 12.8—Shares in certain bodies corporate

Division 1—Preliminary

12.8.02 Application of Part 12.8

This Part applies to a body corporate that is:

(a) a transferring financial institution of a State or Territory; or

(b) a company that is permitted to use the expression ***building society***, ***credit society*** or ***credit union*** under section 66 of the *Banking Act 1959*; or

(c) a friendly society; or

(d) a restricted access insurer within the meaning of the *Private Health Insurance Act 2007*.

12.8.03 Meaning of *member share*

(1) A share in the body corporate to which subregulation (2) or (3) applies is a ***member share***.

(2) This subregulation applies if the share:

(a) is not an ED security; and

(b) has a fixed value; and

(c) is held by a single person, or 2 or more persons jointly; and

(d) entitles the holder, or joint holders, to use services provided by the body corporate; and

(e) is not transferable or transmissible, or is only transferable or transmissible to a person or body specified in the rules or constitution of the body corporate in circumstances stated in the rules or constitution.

(3) This subregulation applies if:

(a) the share is taken to have been issued under paragraph 12(1)(b), (c) or (d) of the transfer provisions; or

(b) that Act applies to the share under clause 15 of Schedule 4 to that Act; or

(c) the share is declared under regulation 12.8.04 to be a member share; or

(d) the share is issued under regulation 12.8.11 or 12.8.12.

12.8.04 Declarations by ASIC

(1) This regulation applies, in relation to a share in the body corporate, on:

(a) the initiative of ASIC; or

(b) application made to ASIC in writing by the body corporate or another person.

(2) ASIC may declare in writing that shares are, or are not, member shares of the body corporate.

(3) The declaration takes effect when the declaration, or a copy of the declaration, is given to the body corporate.

Division 2—Member shares

12.8.05 Notice requirements

For clause 38 of Schedule 4 to the Act, Part 2H.6 of the Act does not apply in relation to a member share of the body corporate.

12.8.06 Registers of members

(1) For clause 38 of Schedule 4 to the Act, the Act is modified in accordance with this regulation.

(2) The register of members that is mentioned in subsection 169(1) of the Act may have a separate part for members of the body corporate who hold member shares.

(3) Section 173 of the Act is modified in relation to the body corporate by inserting after subsection 173(1):

(1AA) However, a body corporate mentioned in regulation 12.8.02 of the Corporations Regulations may, before allowing a person to inspect the part of the register for members of the body corporate who hold member shares, require the person to agree in writing with the body that the person will only:

(a) divulge information obtained by the person from inspecting the register to a person who is, or to persons who are, specified in the agreement; or

(b) use information obtained by the person from inspecting the register for a purpose that is, or purposes that are, specified in the agreement.

(1AB) Also, the body corporate mentioned in regulation 12.8.02 of the Corporations Regulations may refuse to allow a person to inspect the part of the register for members of the body who hold member shares if:

(a) the body is not satisfied that the person is a member of the body who intends to call a meeting of members, or of particular members, of the body; or

(b) the body is not satisfied that the person proposes to inspect the register for a purpose that is approved in writing by ASIC:

(i) on its own initiative; or

(ii) on the written application of the person or of another person; or

(c) the body is not satisfied that allowing the person to inspect that part of the register is in the interests of the members as a whole.

(4) Section 173 of the Act is modified in relation to the body corporate by inserting after subsection 173(3):

(3A) However, a body corporate mentioned in regulation 12.8.02 of the Corporations Regulations may, before giving a person a copy of the part of the register for members of the body corporate who hold member shares, require the person to agree in writing with the body that the person will only:

(a) give the original copy, or a copy of that original, to a person who is, or to persons who are, specified in the agreement; or

(b) use information obtained from that part of the register for a purpose that is, or purposes that are, specified in the agreement.

(3B) Also, the body corporate mentioned in regulation 12.8.02 of the Corporations Regulations may refuse to give a person a copy of the part of the register for members of the body who hold member shares if the body is not satisfied that:

(a) the person is a member of the body who intends to call a meeting of members, or of particular members, of the body; or

(b) the person proposes to use information obtained from that part of the register for a purpose that is approved in writing by ASIC:

(i) on its own initiative; or

(ii) on the written application of the person or of another person; or

(c) giving the person the copy is in the interests of the members as a whole.

Note: If a body corporate has failed to give a person a copy of the part of the register for members of the body who hold member shares, the body corporate must, in certain circumstances, arrange for the members to be contacted, or for material to be sent to the members, on the person’s behalf—see regulation 2C.3.01 of the Corporation Regulations.

(5) In subregulations (3) and (4), a reference to the part of the register for members of a body corporate who hold member shares includes a reference to:

(a) the register of members of the body corporate that is a company limited by guarantee; and

(b) the register of members of the body corporate limited by shares and guarantee who do not hold shares in the body.

12.8.06A Member shares—liability to pay calls

(1) For clause 38 of Schedule 4 to the Act, the operation of subsection 254M(1) of the Act is modified in accordance with this regulation.

(2) If a member share in the body corporate is partly‑paid, the shareholder is not liable to pay a call on the share, or on a winding up of the body corporate, without the consent of the shareholder, to the extent that the unpaid amount is increased as a result of the conversion of the share in accordance with regulation 12.2.04.

12.8.07 Disclosure in annual returns

For clause 38 of Schedule 4 to the Act, item 8 in the table set out in section 348 of the Act does not apply in relation to a member of the body corporate holding only a member share, or member shares, in the body.

12.8.08 Member shares—numbering and certificates

For clause 38 of Schedule 4 to the Act, sections 1070B and 1071H of the Act do not apply in relation to a member share of the body corporate.

12.8.09 Member shares—unclaimed property

(1) For clause 38 of Schedule 4 to the Act, section 1343 of the Act does not apply in relation to a member share of the body corporate.

(2) For clause 38 of Schedule 4 to the Act, the constitution of the body corporate may provide that if a member share is cancelled, and the value of the share is transferred, the value of the share is to be treated as unclaimed moneys held by the body corporate.

Division 3—Certain shares in transferring building societies and credit unions

12.8.10 Definitions for Division 3

In this Division:

***transferring building society*** means a transferring financial institution of a State or Territory mentioned in paragraph (a) of the definition of ***transferring financial institution of a State or Territory*** in clause 1 of Schedule 4 to the Act.

***transferring credit union*** means a transferring financial institution of a State or Territory mentioned in paragraph (b) of the definition of ***transferring financial institution of a State or Territory*** in clause 1 of Schedule 4 to the Act.

12.8.11 Transferring building societies may issue shares equivalent to membership shares

(1) A transferring building society that is a company limited by shares may issue a share in the company giving the holder of the share the same rights and obligations in relation to the share as the holder of a membership share in the building society that is taken to have been issued on the transfer date under clause 12 of the transfer provisions has in relation to that share.

(2) However, the transferring building society must not issue the share if its constitution has been modified under paragraph 24(1)(c) of the transfer provisions.

(3) The provisions of the Act that apply in relation to the issue of a share in a company limited by shares that is not issued under this regulation also apply to a share that is issued under this regulation for all matters that are not dealt with in subregulations (1) and (2).

(4) This regulation does not affect:

(a) the capacity of a transferring building society to issue shares in the company otherwise than under this regulation; or

(b) a share issued otherwise than under this regulation.

12.8.12 Transferring credit unions may issue shares equivalent to withdrawable shares

(1) A transferring credit union that is a company limited by shares may issue a share in the company that:

(a) is redeemable on the same terms as a withdrawable share in the credit union was withdrawable immediately before the transfer date; and

(b) otherwise gives the same rights to, and imposes the same obligations on, the holder of the share as the holder of a withdrawable share in the credit union had in relation to that share immediately before the transfer date.

(2) However, the transferring credit union must not issue the share if its constitution has been modified under paragraph 24(1)(c) of the transfer provisions.

(3) The provisions of the Act that apply in relation to the issue of a share in a company limited by shares that is not issued under this regulation also apply to a share that is issued under this regulation for all matters that are not dealt with in subregulations (1) and (2).

(4) This regulation does not affect:

(a) the capacity of a transferring credit union to issue shares in the company otherwise than under this regulation; or

(b) a share issued otherwise than under this regulation.

Part 12.9—Winding up and deregistration of certain transferring financial institutions

12.9.01 Application of Part 12.9

For clause 39 of Schedule 4 to the Act, this Part applies if, immediately before the transfer date, a transferring financial institution of a State or Territory was being wound up under a law other than the previous governing Code.

12.9.02 Winding up

(1) The Act in force in a State or Territory, before the commencement of the previous governing Code, that applied to the winding up of the transferring financial institution (***the relevant law***) continues to so apply, as a law of the Commonwealth, on and after the transfer date as if that Code, and the Act, had not been enacted.

(2) However, for this regulation, a reference in the relevant law to the Registrar is read as if it were a reference to ASIC.

(3) Information about the transferring financial institution given to ASIC in a notice mentioned in regulation 12.2.09, or under the relevant law, is taken to be information given to ASIC in relation to the performance of its functions or the exercise of its powers.

12.9.03 Deregistration

(1) Despite regulation 12.7.02, this regulation applies if the transferring financial institution had not been deregistered before the transfer date as a result of being wound up.

(2) Sections 601AB, 601AC, 601AD, 601AE, 601AF, 601AG and 601AH of the Act apply to the deregistration of the transferring financial institution.

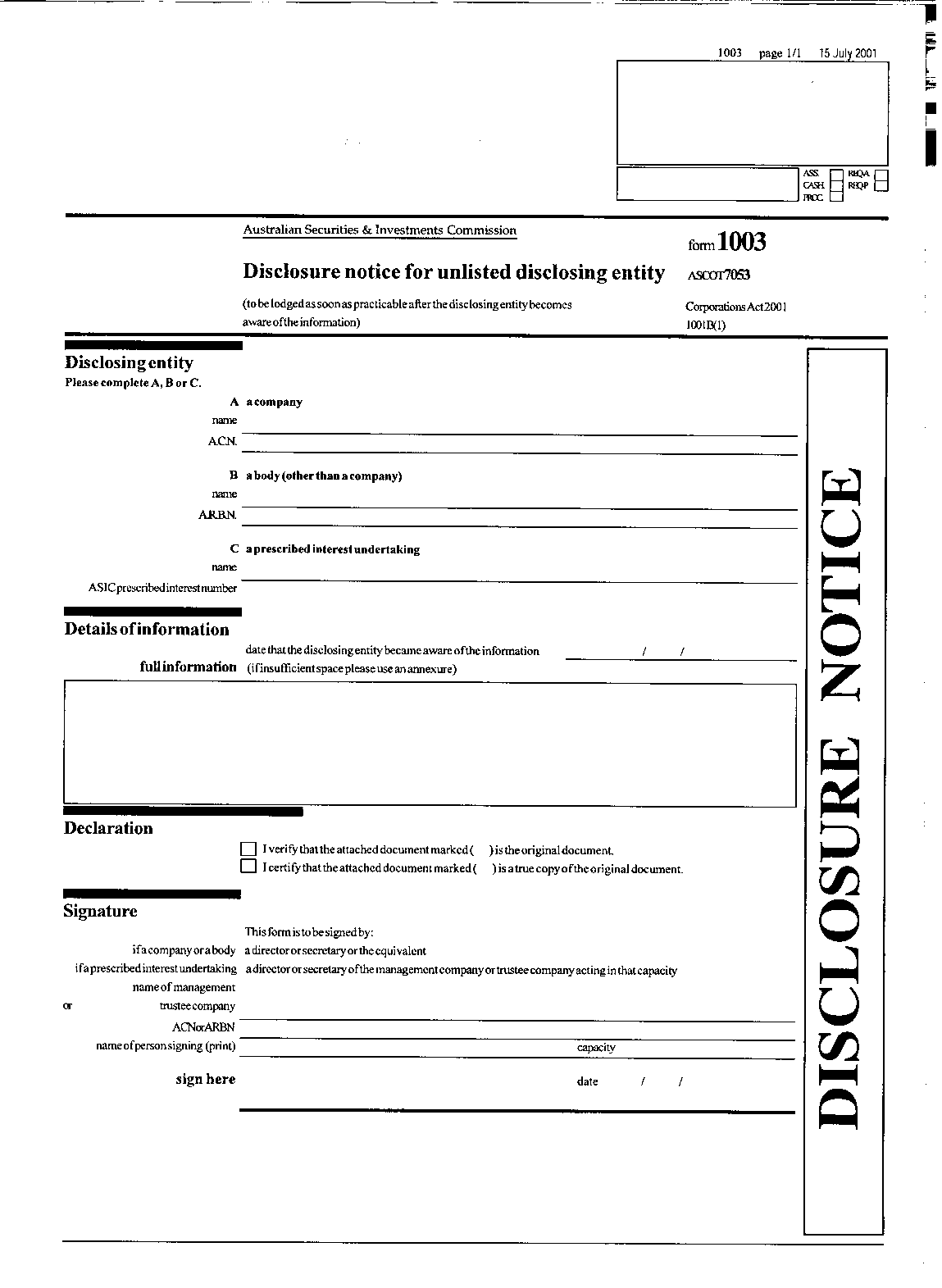
Schedule 1—List of forms in Schedule 2

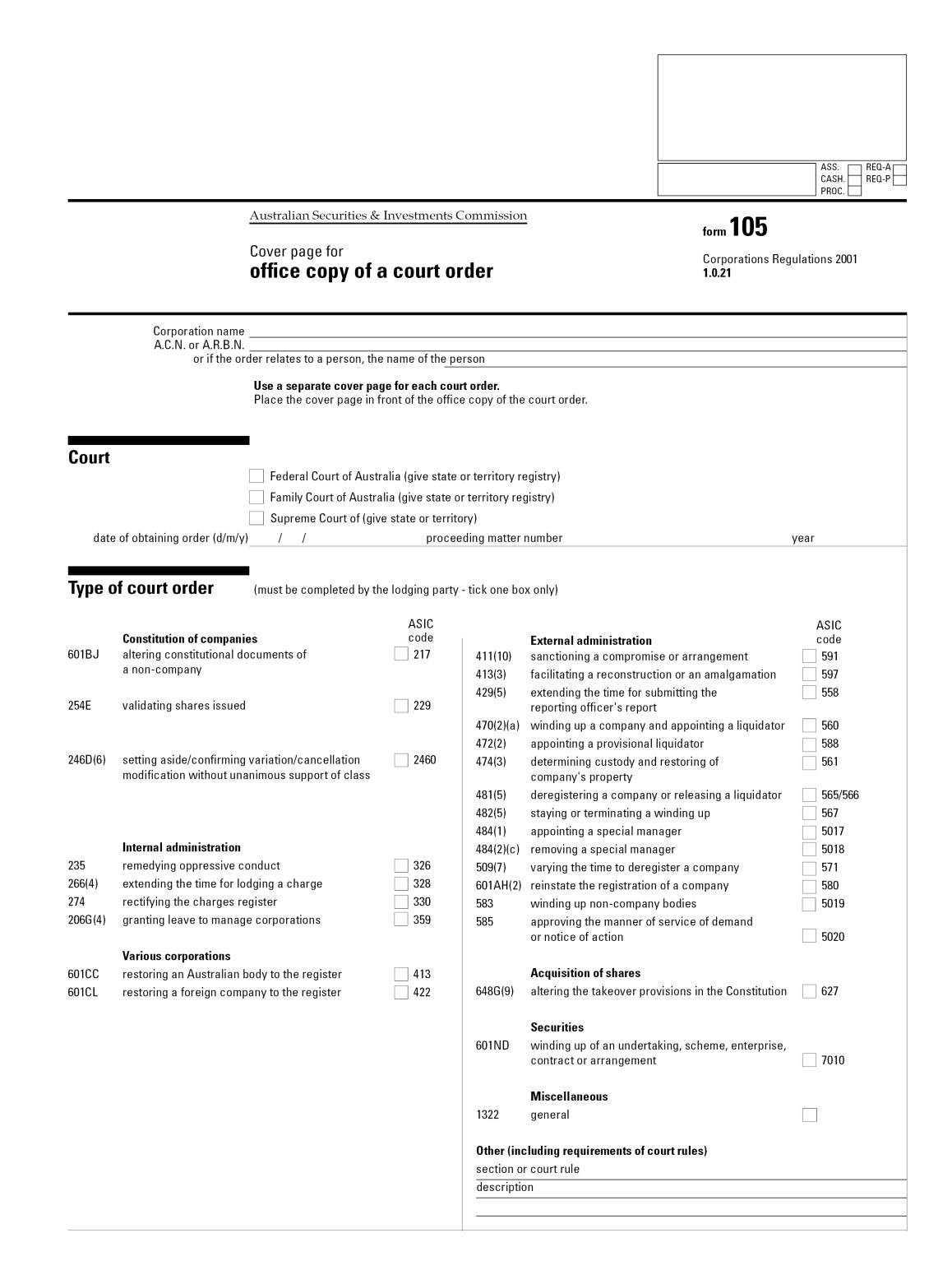
(regulation 1.0.03)

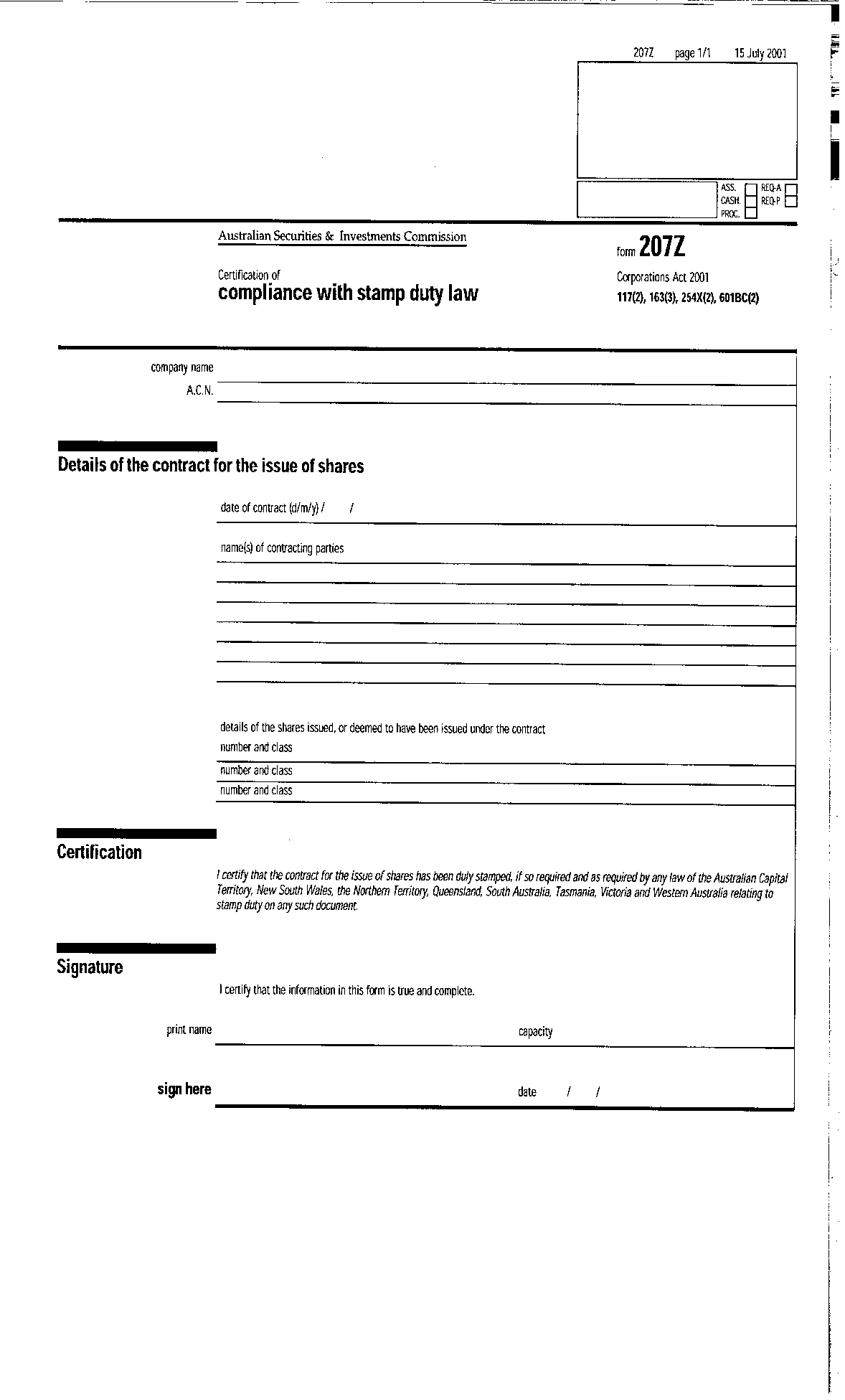
| Column 1 | Column 2 | Column 3 | Column 4 |
| --- | --- | --- | --- |
| Item | Provision of the Act or the Regulations | Description of form | No. of form |
| Chapter 1 Introductory | | | |
| 1 | Regulation 1.0.16 | Verification or certification of a document | 911 |
| 1A | Regulation 1.0.21 | Cover page for office copy of a court order | 105 |
| 2 | Subsection 117(2)  Subsection 163(3)  Subsection 254X(2)  Subsection 601BC(2) | Certification of compliance with stamp duty law | 207Z |
| 3 | Subparagraph 206F(1)(b)(i) | Notice to demonstrate why disqualification should not occur | 586 |
| 4 | Subsection 206F(3) | Notice of disqualification from managing corporations | 587 |
| 4A | Subparagraph 206GAA(1)(b)(i) | Notice to demonstrate why disqualification should not occur | 588 |
| 4B | Subsection 206GAA(6) | Notice of disqualification from managing corporations | 589 |
| Chapter 3 Internal administration | | | |
| 23A | Section 250P | Extension of time for holding AGM | 2501 |
| 26 | Paragraph 263(2)(b) | Notification of further issue of debentures in a series | 310 |
| 30 | Paragraph 324(2)(e) | Return of members of firm of auditors | 314 |
| 31 | Paragraph 319(5)(a)  Subsections 324(1) & (2)  Subsections 327(4) & (15)  Paragraph 329(11)(c)  Section 330 | Notice of resignation or removal of auditor | 315 |
| Chapter 4 Various corporations | | | |
| Chapter 5 External administration | | | |
| 43 | Subsection 414(2) | Notice to dissenting shareholder | 501 |
| 44 | Paragraph 414(9)(a) | Notice to remaining shareholder | 502 |
| 44A | Subsection 419A(3) | Notice of controller’s intention not to exercise property rights | 503 |
| 51A | Subsection 438C(3) | Notice to deliver books of company to the administrator | 509A |
| 51B | Subsection 443B(3) | Notice of administrator’s intention not to exercise property rights | 509B |
| 51E | Paragraph 450B(a) | Notice to creditors of execution of a deed of company arrangement | 509E |
| 51H | Paragraph 459E(2)(e) | Creditor’s statutory demand for payment of debt | 509H |
| 61 | Subsections 494(1) & (2) | Declaration of solvency | 520 |
| 68 | Paragraph 568(8)(a) | Application requiring liquidator to decide whether to disclaim property | 527 |
| 69 | Subsection 601AA(2) | De‑registration—voluntary | 6010 |
| 75 | Subregulation 5.6.39(3) | Notice to submit particulars of debt or claim | 533 |
| 76 | Subregulation 5.6.48(3) | Notice inviting formal proof of debt or claim | 534 |
| 77 | Subregulation 5.6.49(2) | Formal proof of debt or claim (General form) | 535 |
| 78 | Subregulation 5.6.49(2) | Formal proof of debt or claim on behalf of employees | 536 |
| 79 | Subregulation 5.6.54(1) | Notice of rejection of formal proof of debt or claim | 537 |
| 80 | Regulation 5.6.58 | Provisional list of contributories | 538 |
| 81 | Subregulation 5.6.59(1) | Notice to contributories of appointment to settle list of contributories | 539 |
| 83 | Subregulation 5.6.60(2) | Certificate of liquidator of final settlement of list of contributories | 541 |
| 84 | Subregulation 5.6.61(1) | Provisional supplementary list of contributories | 542 |
| 85 | Subregulation 5.6.61(1) | Certificate of liquidator of settlement of supplementary list of contributories | 543 |
| 86 | Subregulation 5.6.62(4) | Notice to contributory of final settlement of list or supplementary list of contributories and of inclusion in list | 544 |
| 88 | Subregulation 5.6.65(1) | Notice of intention to declare a dividend | 546 |
| 89 | Subregulation 5.6.65(1) | Notice to creditor or person claiming to be a creditor of intention to declare a dividend | 547 |
| 90 | Subregulation 5.6.65(1) | Notice to creditor or person claiming to be a creditor of intention to declare a final dividend | 548 |
| 91 | Subregulation 5.6.67(3) | Notice of declaration of dividend | 549 |
| 92 | Regulation 5.6.70 | Notice to liquidator to pay dividend to a person named | 550 |
| 93 | Subregulation 5.6.71(1) | Schedule of contributories or other persons to whom a distribution of surplus is to be paid | 551 |
| 94 | Subregulation 5.6.71(2) | Notice of distribution of surplus to contributories or other persons | 552 |
| 95 | Regulation 5.6.72 | Authority to liquidator to pay distribution of surplus to a person named | 553 |
| Chapter 6 Acquisition of shares | | | |
| 96 | Subsection 671B(4) | Notice of initial substantial holder | 603 |
| 97 | Subsection 671B(4) | Notice of change of interests of substantial holder | 604 |
| 98 | Subsection 671B(4) | Notice of ceasing to be a substantial holder | 605 |
| Chapter 7 Financial services and markets | | | |
| 99 | Subregulation 7.6.08D(3)  Subregulation 7.6.08E(3) | Data on intermediated business with APRA‑authorised general insurers, Lloyd’s underwriters and unauthorised foreign insurers | 701 |
| Chapter 9 Miscellaneous | | | |
| 150 | Subsection 1287(1) | Particulars of cessation or change relating to person registered as an auditor under subsection 1287(1) | 905 |
| 154A | Subsection 1302(4) | Notice of change of address | 909 |

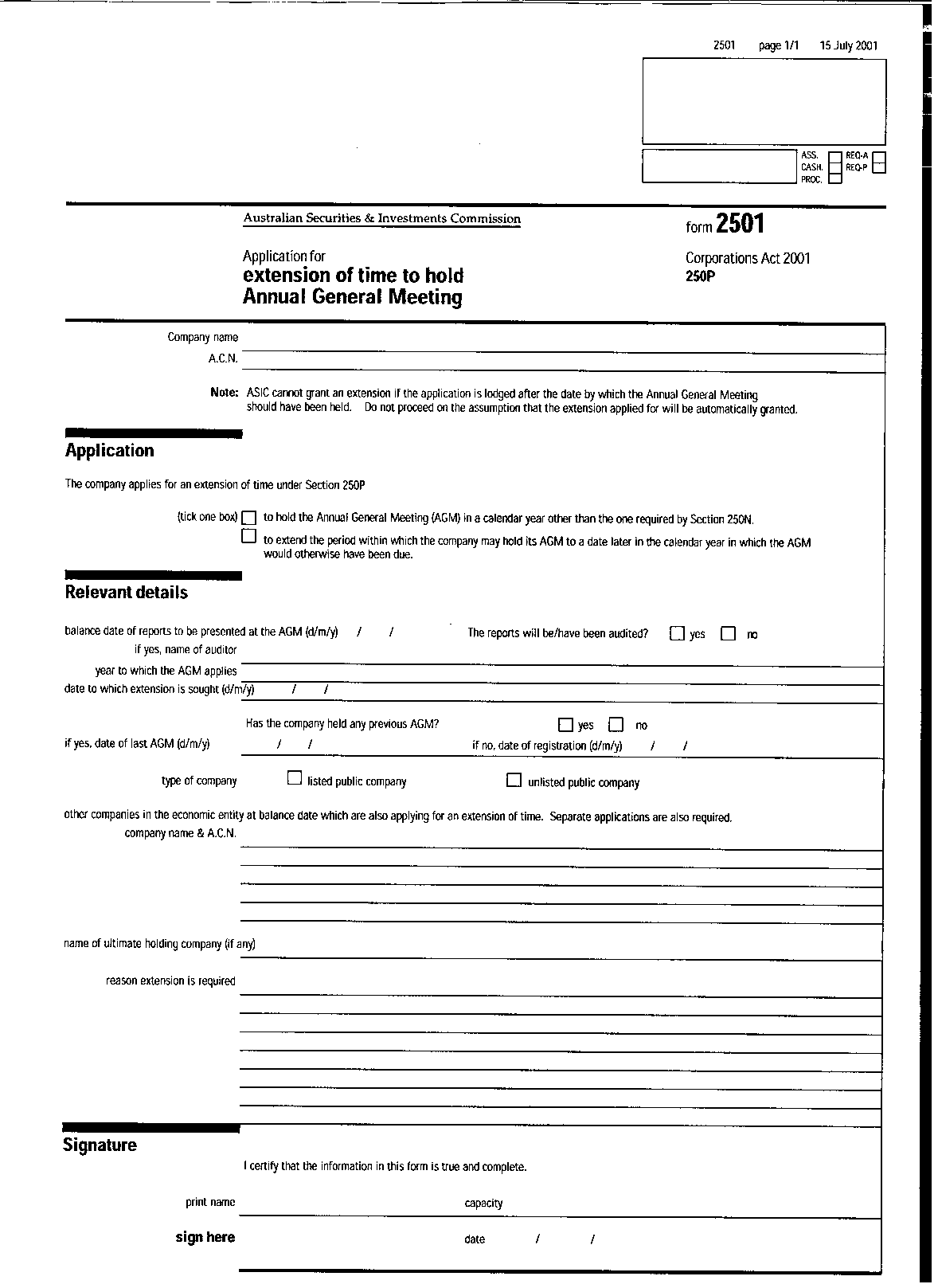
Schedule 2—Forms

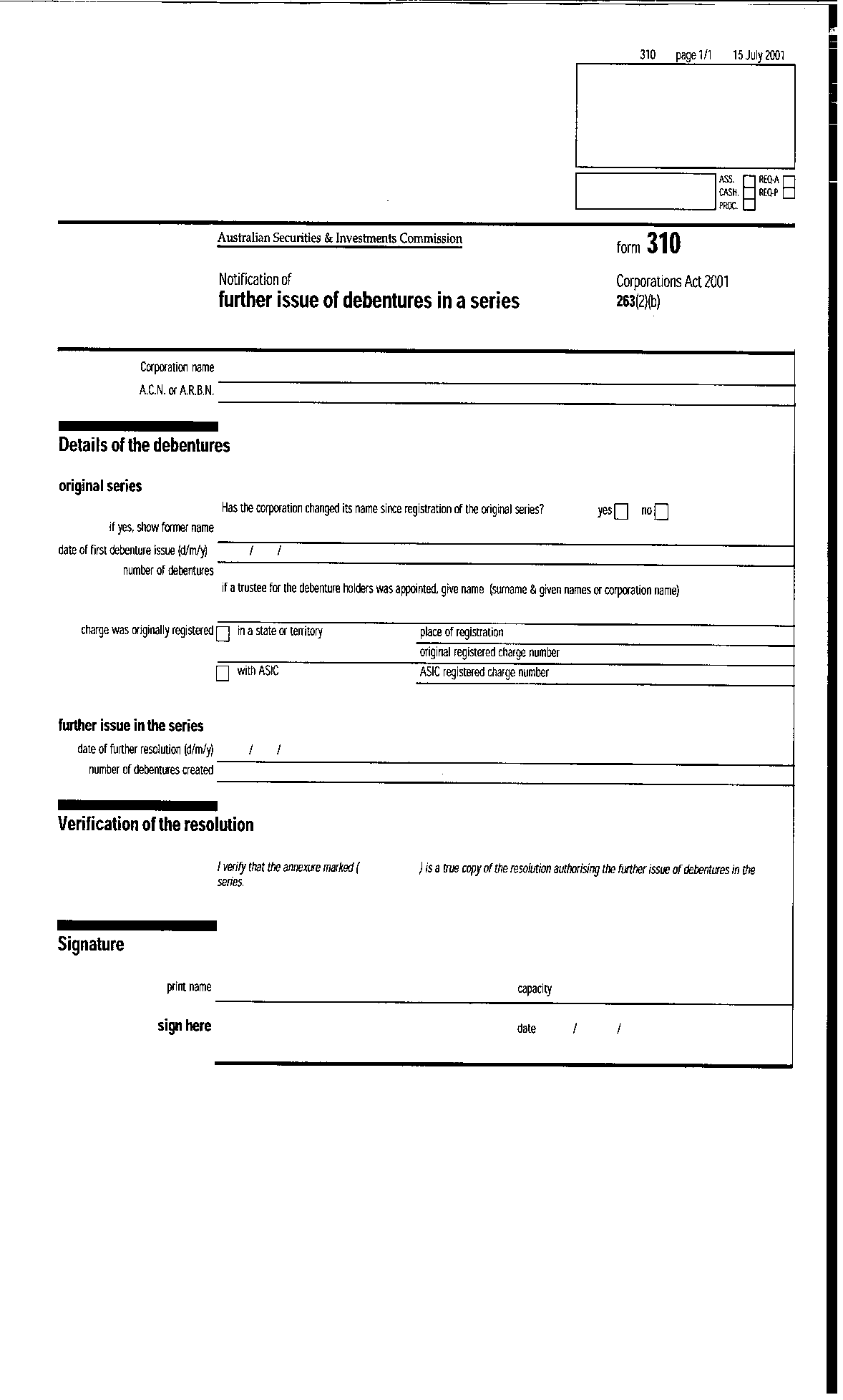
(regulations 1.0.02 and 1.0.03)











Form 314

(paragraph 324(2)(e))

*Corporations Act 2001*

RETURN OF MEMBERS OF FIRM OF AUDITORS

Name of firm:

Address of firm1:

The full names and addresses of all of the members of the firm are:

|  |  |  |
| --- | --- | --- |
| Surname | First or given names | Residential address |

Dated

Signature2

1. Give the address of each place of business of the firm. If there is more than one place of business, indicate the principal place of business.

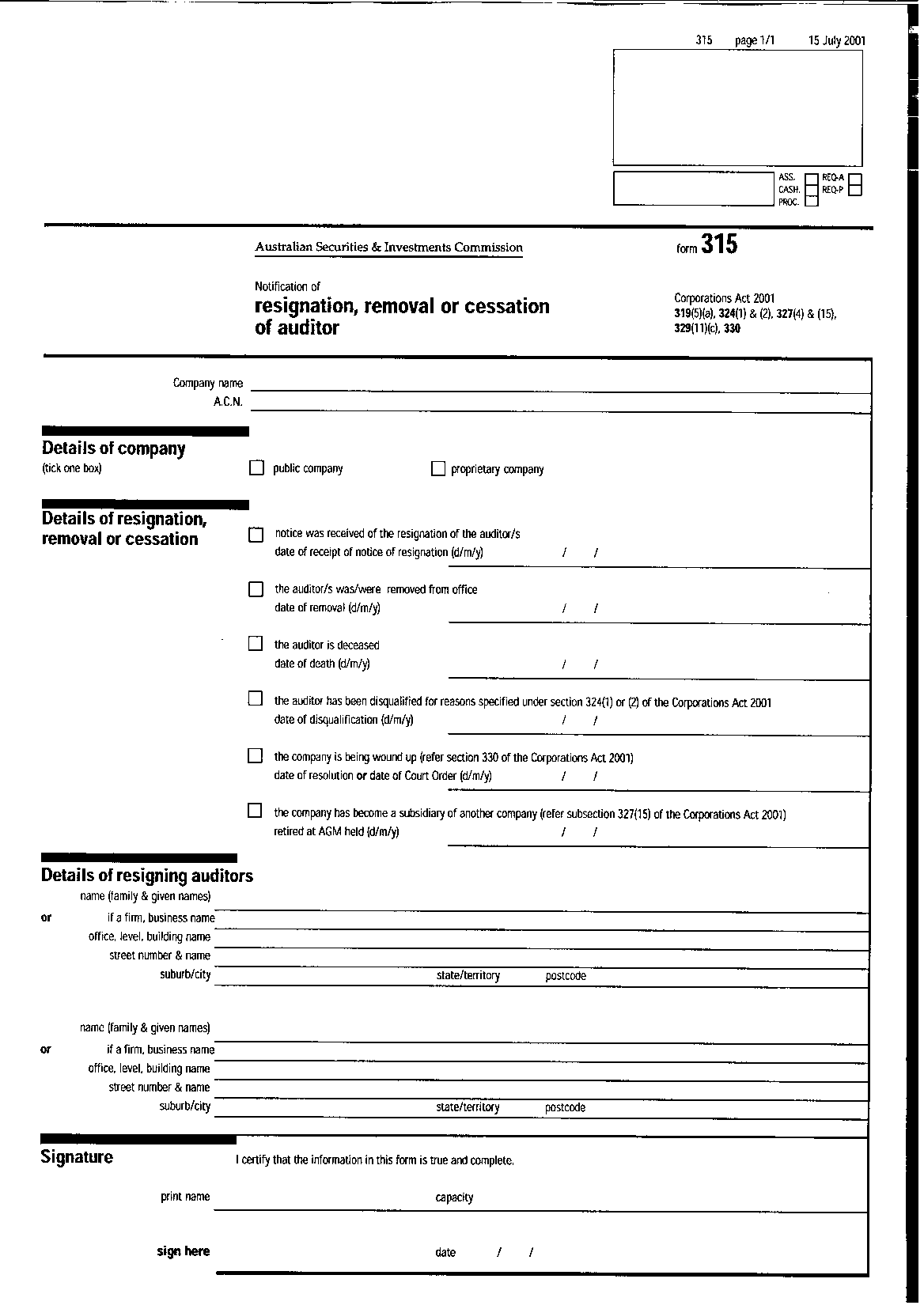
2. To be signed by one of the members of the firm.

DIRECTION

Requirements relating to annexures are set out in regulation 1.0.06.

NOTE

The completion of this form does not relieve members of the firm from any obligation under the law relating to business names.



Form 501

(subsection 414(2))

Australian Company Number:

*Corporations Act 2001*

NOTICE TO DISSENTING SHAREHOLDER

(*Note that in this form “dissenting shareholder” means a shareholder who has not assented to the scheme or contract mentioned in paragraph B, or who has failed or refused to transfer his or her shares to the transferee in accordance with that scheme or contract)*

1. To

of

A. *(insert name of person giving notice, in this form called “the transferee”)* The transferee on (*insert date)* made

an offer to the holders of \*shares in Limited/

\*shares included in class of shares

in Limited for the transfer of those shares to the transferee, not being an offer made under a scheme or contract arising out of the making of takeover offers or a takeover announcement under the law relating to the acquisition of shares; and

B. the scheme or contract involving the transfer of those shares to the transferee was on or before *(insert date)* approved by the holders of not less than nine‑tenths in nominal value of the shares \*in that company/\*included in that class of shares, other than shares already held at the date of the offer by, or by a nominee for, the transferee (or, if the transferee is a company, its subsidiary); and

C. you are a dissenting shareholder of shares \*in the company/ \*included in that class of shares.

2. The transferee gives you notice under subsection 414(2) that the transferee desires to acquire those shares held by you.

3. You are entitled under subsection 414(7) to require the transferee, by a demand in writing served on the transferee within one month after the date on which this notice is given, to furnish to you a statement in writing of the names and addresses of all other dissenting shareholders shown in the register of members.

\*4. You are entitled not later than the expiration of one month after the date on which this notice is given or 14 days after the date on which a statement is supplied to you under subsection 414(7), whichever is the later, to elect, by notice to the transferee, which of the alternative terms offered to the approving shareholders under the scheme or contract you prefer. The alternative terms are as follows:

5. Unless, on application made by you within one month after the date on which this notice is given or within 14 days after a statement is supplied to you under subsection 414(7), the Federal Court of Australia or the Supreme Court of (*State or Territory)* orders otherwise, the transferee will be entitled and bound subject to subsection 414(7) to acquire your shares:

(a) on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee; or

(b) if alternative terms were offered — on the terms for which you have elected; or

(c) if you have not so elected — on whichever of those terms the transferee determines unless the Court otherwise orders.

Dated

*(signature of transferee)*

\*Omit if not applicable

DIRECTION

Requirements relating to annexures are set out in regulation 1.0.06.

Form 502

(subsection 414(9)(a))

Australian Company Number:

*Corporations Act 2001*

NOTICE TO REMAINING SHAREHOLDER

1. To

of

A. (*insert name of person giving notice, in this form called “the transferee”)* The transferee in (*insert date)* made offers to the holders of shares \*in Limited/\*included in class of shares in Limited for the transfer of those shares to the transferee, not being offers made under a scheme or contract arising out of the making of takeover offers or a takeover announcement under the law relating to the acquisition of shares; and

B. under the scheme or contract the transferee became an (*insert date)* beneficially entitled to shares in that company which together with any other shares in that company to which the transferee, or the transferee and any corporation related to the transferee, is beneficially entitled, comprise or include nine‑tenths in nominal value of the shares   
\*in Limited/\*included in that class of shares

in Limited; and

C. you are the holder of remaining shares \*in that company/\*included in that class of shares in that company and have not assented to the scheme or contract or been given notice in respect of those shares by the transferee under subsection 414(2).

2. The transferee gives you notice under subsection 414(9) that under that scheme or contract the transferee on (*insert date)* become beneficially entitled to shares in Limited and those shares together with any other shares in that company to which the transferee, or the transferee and any corporation related to the transferee, is beneficially entitled, comprise or included nine‑tenths in nominal value of the shares (in that company/\*included in that class of shares in that company.

3. You are entitled under subsection 414(9) within 3 months after the date on which this notice is given by notice to the transferee to require the transferee to acquire your shares.

\*3. You are entitled under subsection 414(9) within 3 months after the date on which this notice is given to elect by notice to the transferee which of the alternative terms offered to the approving shareholders under the scheme or contract you will accept. The alternative terms are as follows:

4. If you require the transferee to acquire the shares held by you the transferee will be entitled and bound to acquire those shares:

(a) on the terms that under the scheme or contract were offered to the approving shareholders; or

(b) if alternative terms were offered—on the terms for which you have elected;

(c) if you do not so elect

(i) on whichever of the terms the transferee determines or

(ii) on such other terms as are agreed or as the Federal Court of Australia or the Supreme Court of` on the application of the transferee or of yourself orders.

Dated

*(signature of transferee)*

\*Omit if not applicable

DIRECTION

Requirements relating to annexures are set out in regulation 1.0.06.

Form 503

(subsection 419A(3))

*Corporations Act 2001*

NOTICE OF CONTROLLER’S INTENTION NOT TO EXERCISE PROPERTY RIGHTS

To: (*name*), of (*address*) , the \*owner/\*lessor of property (“the specified property”) being:

*(name and description of property including, if appropriate, relevant reference numbers and account numbers identifying contracts such as leasing arrangements in relation to that property)*

I (*name),*  of (*address)*, the controller of property of (*name of corporation)* (“the corporation”) give you notice that I do not propose to exercise rights in relation to the specified property as controller of the specified property, whether on behalf of the corporation or anyone else.

Dated

*(Controller’s signature)*

\*Delete if not applicable

NOTES:

1. Under subsection 419A(4) the controller is not liable for rent or other amounts by the corporation in relation to the specified property while this notice in force, but the notice does not affect a liability of the corporation.

2 Under subsection 419A(5), this notice ceases to have effect if the controller:

(a) revokes the notice, by writing to the owner/lessor; or

(b) exercises or purports to exercise a right in relation to the specified property the controller.

Form 509A

(subsection 438C(3))

A.C.N. or A.R.B.N.

*Corporations Act 2001*

NOTICE TO DELIVER BOOKS OF COMPANY TO THE ADMINISTRATOR

Limited (administrator appointed)

To: *(name)* of *(address)*

1. I (*name),* of (*address),* the administrator of the company, give you notice under subsection 438C(3) that I require you to deliver to me, at the above address, within (*insert number being not less than 3)* business days of the date of this notice, the books specified in the Schedule, being books of the company, that are in your possession.

2. Note that under subsection 438C(5), you must comply with this notice except so far as you are entitled as against the company and the administrator, to retain possession of the books.

SCHEDULE

*(insert specified books)*

Dated

*(administrator’s signature)*

Form 509B

(subsection 443B(3))

*Corporations Act 2001*

NOTICE OF ADMINISTRATOR’S INTENTION NOT TO EXERCISE PROPERTY RIGHTS

Limited (administrator appointed)

To: (*name),* of (*address),* the \*owner/\*lessor of property (“the specified property”) being:

(*name and description of property, including, if appropriate, relevant reference numbers and account numbers identifying contracts such as leasing arrangements in relation to that property)*

I (*name),* of (*address) ,* the administrator of (*name of company)* (“the company”) give you notice that I do not propose to exercise rights in relation to the specified property.

Dated

*(administrator’s signature)*

\*Delete if not applicable

NOTES

1. Under subsection 443B(4), the administrator is not liable for rent or other amounts payable by the company in relation to the specified property while this notice is in force, but the notice does not affect a liability of the company.

2. Under subsection 443B(5), this notice ceases to have effect if:

(a) the administrator revokes the notice, by writing to the owner/ lessor; or

(b) the company exercises or purports to exercise a right in relation to the specified property.

Form 509E

(paragraph 450B(a))

*Corporations Act 2001*

NOTICE TO CREDITORS OF EXECUTION OF A DEED OF COMPANY ARRANGEMENT

Limited (subject to deed of company arrangement)

\*To (*name)* of *(address)*

\*To creditors of the company

1. Notice is given under section 450B that the company executed a deed of arrangement on *(insert date)*.

2. A copy of the deed may be inspected at (*insert address).*

Dated

*(Signature of administrator of the  
deed of company arrangement)*

\*Delete if not applicable

Form 509H

(paragraph 459E(2)(e))

*Corporations Act 2001*

CREDITOR’S STATUTORY DEMAND FOR PAYMENT OF DEBT

To (*name and A.C.N. or A.R.B.N. of debtor company)* of *(address of the company’s registered office)*

1. The company owes (*name)* of (*address) (*“the creditor”)

\*the amount of $(*insert amount),* being the amount of the debt described in the Schedule.

\*the amount of $(*insert total amount),* being the total of the amounts of the debts described in the Schedule.

\*2. The amount is due and payable by the company.

\*2. Attached is the affidavit of (*insert name of deponent of the affidavit)*, dated (*insert date of affidavit),* verifying that the amount is due and payable by the company

3. The creditor requires the company, within the statutory period after service on the company of this demand:

(a) to pay to the creditor the \*amount of the debt/\*total of the amounts of the debts; or

(b) to secure or compound for the \*amount of the debt/\*total of the amounts of the debts, to the creditor’s reasonable satisfaction.

4. The creditor may rely on a failure to comply with this demand within the period for compliance set out in subsection 459F(2) as grounds for an application to a court having jurisdiction under the *Corporations Act 2001* for the winding up of the company.

5. Section 459G of the *Corporations Act 2001* provides that a company served with a demand may apply to a court having jurisdiction under the *Corporations Act 2001* for an order setting the demand aside. An application must be made within the statutory period after the demand is served and, within the same period:

(a) an affidavit supporting the application must be filed with the court; and

(b) a copy of the application and a copy of the affidavit must be served on the person who served the demand.

|  |
| --- |
| **A failure to respond to a statutory demand can have very serious consequences for a company. In particular, it may result in the company being placed in liquidation and control of the company passing to the liquidator of the company.** |

6. The address of the creditor for service of copies of any application and affidavit is (insert the address for service of the documents in the State or Territory in which the demand is served on the company, being, if solicitors are acting for the creditor, the address of the solicitors).

SCHEDULE

Description of the debt Amount of the debt

*(indicate if it is a judgment debt,  
giving the name of the court  
and the date of the order)*

|  |
| --- |
|  |
|  |
| \*Total Amount |

Dated:

signed:

Print name: capacity:

Corporation or partnership name (if applicable):

NOTES:

1. The form must be signed by the creditor or the creditor’s solicitor. It may be signed on behalf of a partnership by a partner, and on behalf of a corporation by a director or by the secretary or an executive officer of the corporation.

2. The amount of the debt or, if there is more than one debt, the total of the amounts of the debts, must exceed the statutory minimum. The statutory minimum is $2,000 or a greater amount prescribed by the regulations. From 1 July 2021, a greater amount of $4,000 is prescribed. However, for a 7‑month period in 2021, a greater amount of $20,000 is prescribed in relation to a company that is eligible for temporary restructuring relief (see the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020*).

3. Unless the debt, or each of the debts, is a judgment debt, the demand must be accompanied by an affidavit that:

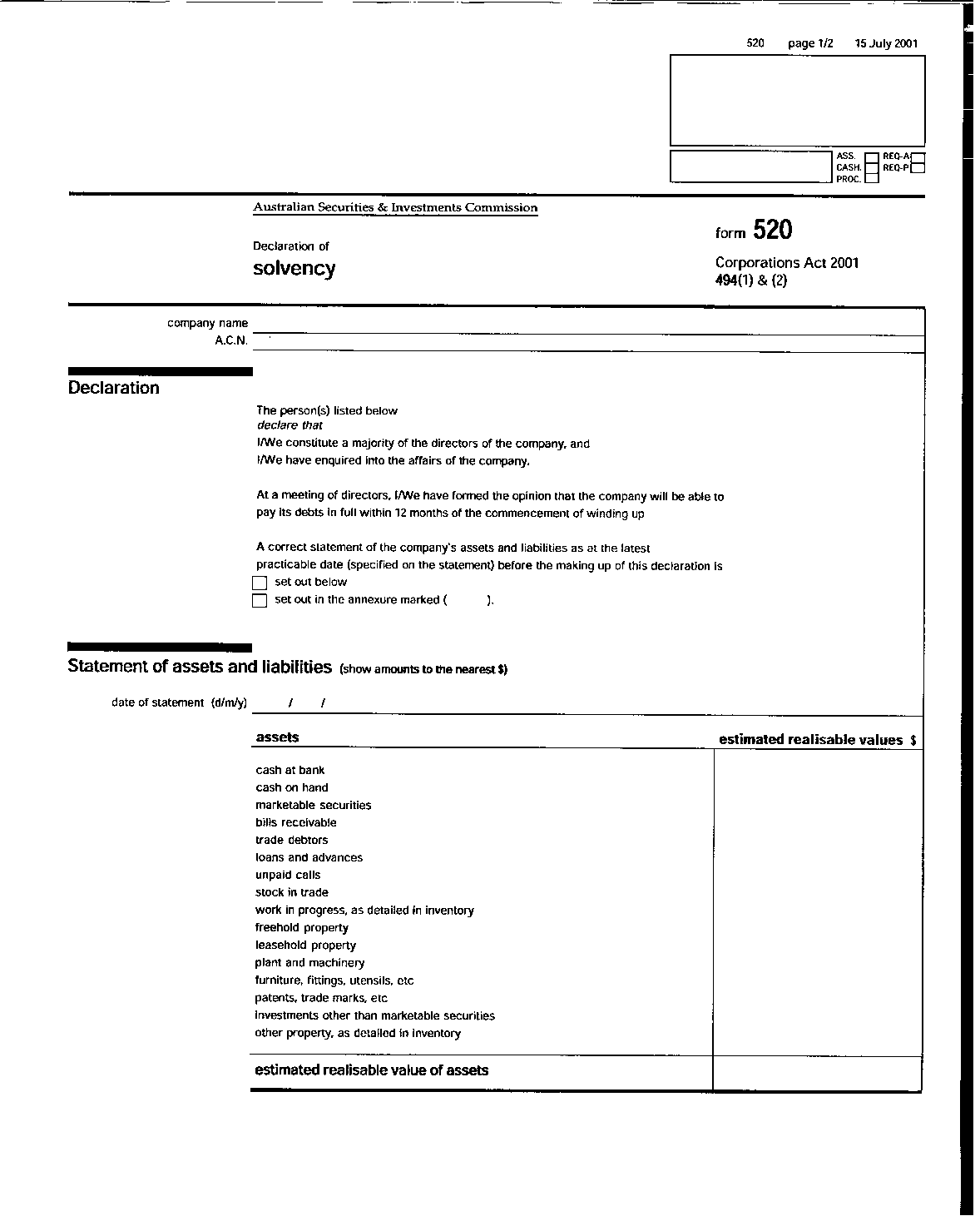
(a) verifies that the debt, or the total of the amounts of the debts, is due and payable by the company; and

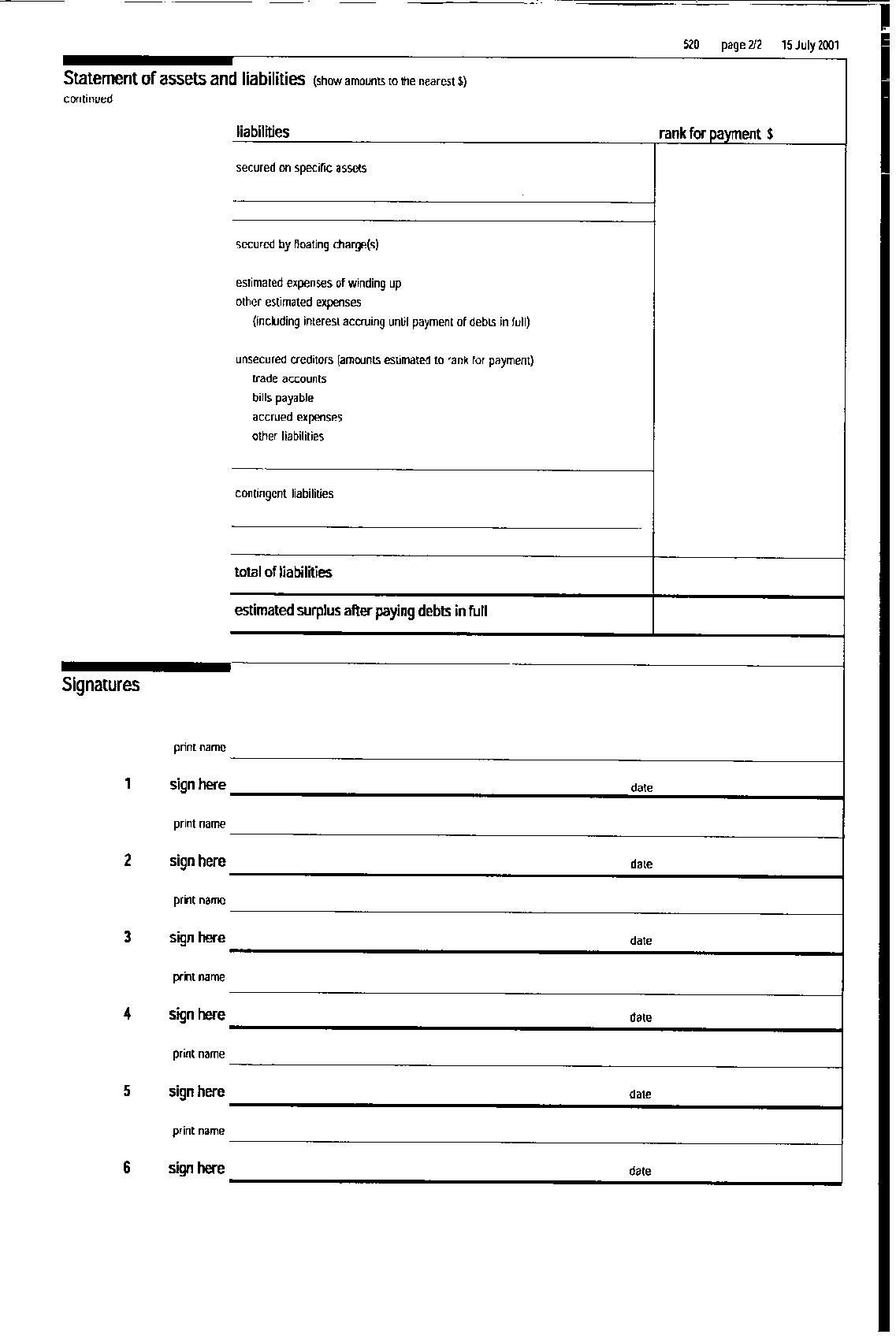
(b) complies with the rules of court.

4. A person may make a demand relating to a debt that is owed to the person as assignee.

5. The statutory period is 21 days or a longer period prescribed by the regulations. For a 7‑month period in 2021, a longer period of 6 months is prescribed in relation to a company that is eligible for temporary restructuring relief (see the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020*).

\*Omit if inapplicable





Form 527

(paragraph 568(8)(a))

Australian Company Number:

*Corporations Act 2001*

APPLICATION REQUIRING LIQUIDATOR TO DECIDE WHETHER TO DISCLAIM PROPERTY

Limited

To (*insert name*), the liquidator of the company.

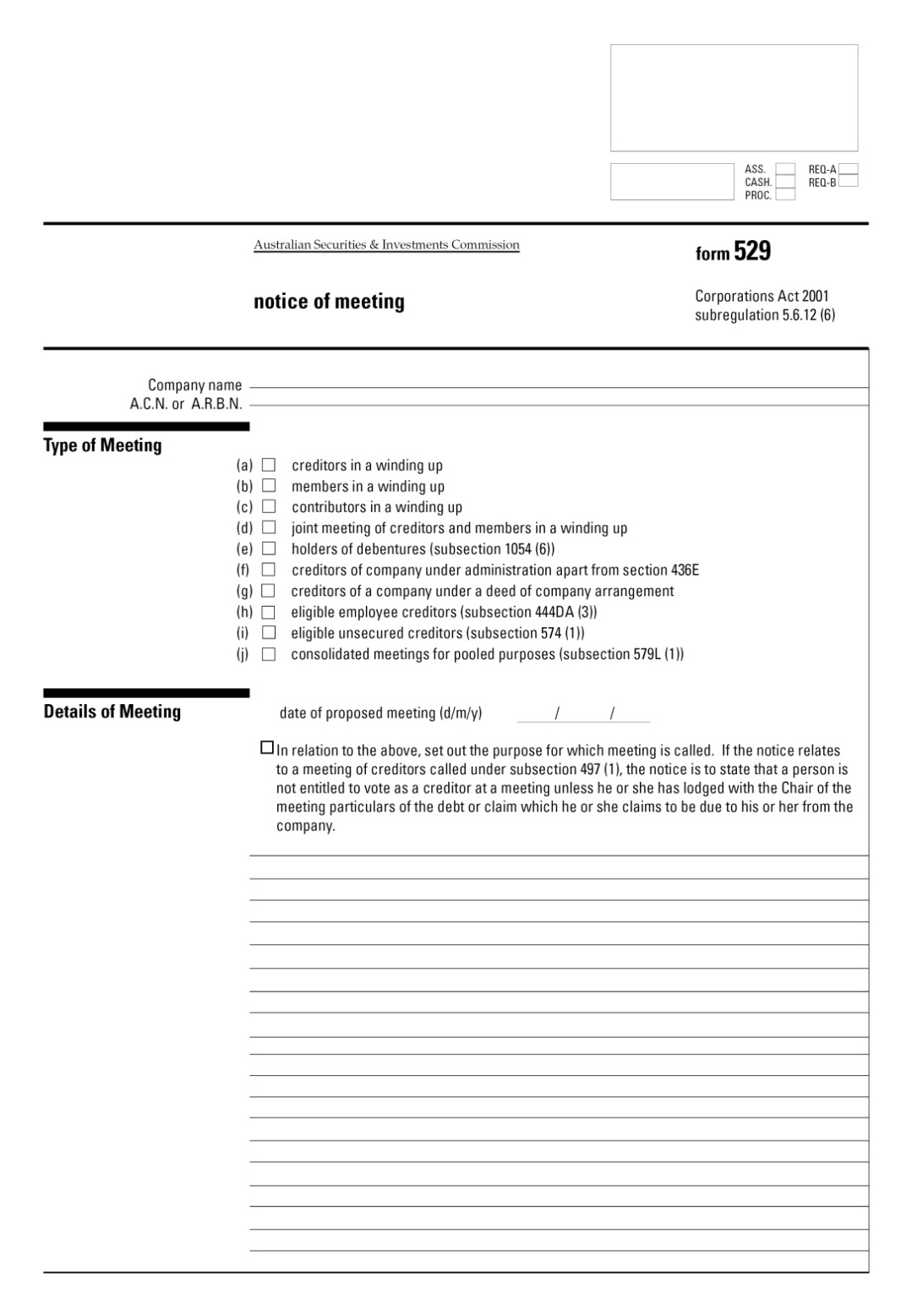
Under paragraph 568(8)(a), application is made to you by (*full name, address and occupation of applicant*) requiring you to decide whether you will disclaim the property described in the Schedule to this notice or not.

The applicant has the following interest in the property:

SCHEDULE

Dated

(*signature of applicant)*





Form 535

(subregulation 5.6.49(2)

A.C.N or A.R.B.N:

*Corporations Act 2001*

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the liquidator of Limited

1. This is to state that the company was on (date of court order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up), and still is, justly and truly indebted to (full name and address of the creditor and, if applicable, the creditor’s partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for

dollars and cents

Particulars of the debt are:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| Date | Consideration | Amount | Remarks |
|  | (*state how the debt arose*) |  | (*include details of voucher substantiating payment)* |
|  |  |  |  |
|  |  | $ c |  |
|  |  |  |  |
|  |  |  |  |

2. To my knowledge or belief the creditor has not, nor has any person by the creditor’s order, had or received any satisfaction or security for the sum or any part of it except for the following: (*insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form*).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **Date** | **Drawer** | **Acceptor** | **Amount** | **Due Date** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  | $ c |  |
|  |  |  |  |  |
|  |  |  |  |  |

\*3. I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

\*3. I am the creditor’s agent authorised in writing to make this statement in writing. I know the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Dated

Signature

Occupation

Address

\*Do not complete if this proof is made by the creditor personally

Form 536

(subregulation 5.6.49(2))

A.C.N. or A.R.B.N:

*Corporations Act 2001*

FORMAL PROOF OF DEBT OR CLAIM ON BEHALF OF EMPLOYEES

To the liquidator of Limited

I (*full name of person making the statement*) of (*full address*) being (*occupation*) state:

1. the company was, on (*date of court order in winding up, if winding up was by the Court, or date of resolution to wind up if a voluntary winding up*), and still is, indebted to the persons whose names, addresses and descriptions appear in Columns 2, 3 and 4 in the Schedule;

2. the debt is for wages, salaries, annual leave, retrenchment payments or long service leave, due to them for services rendered while employed by the company during the periods set out in Column 5 against the names of the persons;

3. the debt of the company due to each person is for the amount set out in Column 6 against the name of that person;

4. none of those persons has had or received any satisfaction or security in respect of that debt;

5. I am authorised as and the source of my information is as follows:

SCHEDULE

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Column 1** | **Column 2** | **Column 3** | **Column 4** | **Column 5** | **Column 6** |
| **No** | **Full name** | **Address of employee** | **Description** | **Period for which claim is made (*see note below*)** | **Amount of claim** |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
| Dated |  |  |  |  |  |
| Signature |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

*Note:* In case of a claim for annual leave or long service leave, insert a description of the claim.

Form 537

(subregulation 5.6.54(1))

A.C.N or A.R.B.N:

*Corporations Act 2001*

NOTICE OF REJECTION OF FORMAL PROOF OF DEBT OR CLAIM

Limited

To

of

1. Your claim against the company set out in the formal proof of debt or claim of (*name of person submitting original proof of debt or claim)* made on *(date*) has been \*wholly disallowed/\*disallowed to the extent of (*particulars of part of claim disallowed*)/\*allowed in the sum of $ /\*allowed to the extent of your claim for (*particulars of part of claim allowed*).

2. My grounds for disallowance of (*particulars of part of claim referred to*) are as follows:

3. If you are dissatisfied with my determination as set out above, you may appeal against it, no later than (*number of days, being not less than 14*) days after the service of this notice or, if the Court allows, within any further period, to the \*Federal Court of Australia/\*the Supreme court of (*State or Territory*). If you do not do so, your claim will be assessed in accordance with this determination.

Dated

Signature of liquidator

Address

\* Omit if inapplicable

Form 538

(regulation 5.6.58)

A.C.N or A.R.B.N:

*Corporations Act 2001*

PROVISIONAL LIST OF CONTRIBUTORIES

Limited

The following is a provisional list of persons to be placed on the list of contributories that I have made from the records of the company, together with the number of their shares or the extent of their interest, their address and other participants:

**PART 1**

**PERSONS WHO ARE CONTRIBUTORIES   
IN THEIR OWN RIGHT**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Serial**  **No.** | **Name** | **Address** | **Description of class of contributory** | **Number**  **of shares (or extent of interest)** | **Amount called up at date of start of winding up** | **Amount**  **paid up at date of start of winding up** | **Amount**  **not called up at date of start of winding up** |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |

**PART 2**

**CONTRIBUTORIES WHO ARE REPRESENTATIVES OF, OR LIABLE FOR THE DEBTS OF, OTHERS**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Serial**  **No.** | **Name** | **Address** | **Description**  **of class of contributory and in what character included** | **Number**  **of shares (or extent of interest)** | **Amount**  **called up at date of start of winding up** | **Amount**  **paid up at date of start of winding up** | **Amount**  **not called up at date of start of winding up** |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |

Dated

Signature of liquidator

Form 539

(subregulation 5.6.59(1))

A.C.N or A.R.B.N:

*Corporations Act 2001*

NOTICE TO CONTRIBUTORIES OF APPOINTMENT TO SETTLE LIST OF CONTRIBUTORIES

Limited

Take notice that I (*name*) of (*address*), the liquidator of the company, have appointed (*time*) \*a.m./\*p.m. on (*date*) at (*address of place appointed for settlement*), at which I must settle the list of the contributories of the company that I have made. You are at present included in that list.

Particulars of your inclusion are set out below. Unless, before or at the time appointed for the settlement, you give me sufficient reason for your exclusion, your name will be included in the settled list.

Dated

Signature of liquidator

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Serial No.** | **Name** | **Address** | **Description**  **of class of contributory and in what character included** | **Number of shares (or extent of interest)** | **Amount called up at date of start of winding up** | **Amount paid up at date of start of winding up** | **Amount not called up at date of start of winding up** |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |

\* Strike out whichever is inapplicable.

NOTES

1. Contributories do not have to attend the appointment referred to in this notice if they are satisfied that the particulars contained in the notice are correct.

2. A shareholder’s name cannot be omitted from the list of contributories because he or she is unable to pay calls; this question will be dealt with when application is made for payment of the calls.

3. A change of address may be notified by giving notice to the liquidator by post before the date fixed for the appointment.

Form 541

(subregulation 5.6.60(2))

A.C.N. or A.R.B.N.:

*Corporations Act 2001*

CERTIFICATE OF LIQUIDATOR OF FINAL SETTLEMENT OF LIST OF CONTRIBUTORIES

Limited

I (*name*), the liquidator of the company, certify that the result of the settlement of the list of contributories of the company is as follows:

1. The persons named in Column 2 of Schedule 1 have been included in the list of contributories as contributories of the company in respect of the number of shares or extent of interest set out opposite their names. I have listed in Part 1 of Schedule 1, contributories in their own right and, in Part 2 of Schedule 1, contributories who are representatives of, or liable for the debts of, others.

2. The persons named in Column 2 of Schedule 2 were included in the provisional list of contributories, but have been excluded from the settled list of contributories.

3. In Column 6 of Schedule 1 and in Column 6 of Schedule 2, I have set out opposite the name of each person the date when that person was included in or excluded from the list of contributories.

4. In Columns 7 and 8 of Schedule 1, I have set out opposite the name of each person the amount called up at the date of the commencement of the winding up and the amount paid up at that date in respect of the shares, or interest, of that person.

**SCHEDULE 1**

**PERSONS INCLUDED IN THE LIST OF CONTRIBUTORIES**

**PART 1: CONTRIBUTIONS IN THEIR OWN RIGHT**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | **9** |
| **Serial No.** | **Name** | **Address** | **Description of class of contributory and in what character included** | **Number of shares (or extent of interest)** | **Date when included in list** | **Amount called up at date of start of winding up** | **Amount paid up at date of start of winding up** | **Amount not called up at date of start of winding up** |
|  |  |  |  |  |  |  |  |  |

**PART 2: CONTRIBUTORIES WHO ARE REPRESENTATIVES OF, OR LIABLE FOR   
THE DEBTS OF, OTHERS**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | **9** |
| **No.** | **Name** | **Address** | **Description of class of contributory and in what character included** | **Number of shares (or extent of interest)** | **Date when included in list** | **Amount called up at date of start of winding up** | **Amount paid up at date of start of winding up** | **Amount not called up at date of start of winding up** |
|  |  |  |  |  |  |  |  |  |

**SCHEDULE 2**

**PERSONS EXCLUDED FROM THE LIST OF CONTRIBUTORIES**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **1** | **2** | **3** | **4** | **5** | **6** |
| **No.** | **Name** | **Address** | **Description of class of contributory and in what character proposed to be included** | **Number of shares (or extent of interest)** | **Date when included in list** |
|  |  |  |  |  |  |

Dated

Signature of liquidator

Form 542

(subregulation 5.6.61(1))

A.C.N or A.R.B.N.:

*Corporations Act 2001*

PROVISIONAL SUPPLEMENTARY LIST OF CONTRIBUTORIES

Limited

The following is a list of persons that I have found, since making out the annexed list of contributories dated , to be, or to have been, \*holders of shares in/\*members of the company, and who to the best of my knowledge and belief are contributories of the company:

*(insert list in the same form as the original list: see Form 538)*

Dated

Signature of liquidator

\*Omit if inapplicable

Form 543

(subregulation 5.6.61(1))

A.C.N. or A.R.B.N.:

*Corporations Act 2001*

CERTIFICATE OF LIQUIDATOR OF SETTLEMENT OF SUPPLEMENTARY LIST OF CONTRIBUTORIES

Limited

I (*name*), the liquidator of the company, certify that the result of the settlement of the provisional supplementary list of contributories of the company that I made out on (*date*) is as follows:

(*set out the Certificate and Schedules as in Form 541*)

Dated

Signature of liquidator

Form 544

(subregulation 5.6.62(4))

A.C.N. or A.R.B.N.:

*Corporations Act 2001*

NOTICE TO CONTRIBUTORY OF FINAL SETTLEMENT OF LIST OR SUPPLEMENTARY LIST OF CONTRIBUTORIES AND OF INCLUSION IN LIST

Limited

To:

of:

Take notice that I (*name*), the liquidator of the company, on (*date*) settled the list of contributories of the company. You are included in that list. The character, if applicable, in which, and the number of share, or extent of interest, for which, you are included, and the amounts called dup, paid up and unpaid in respect of those shares or that interest are stated in the Schedule.

You may apply to vary the list of contributories, or to remove your name from the list, by making an application to \*the Federal Court of Australia/\*the Supreme court of (*State or Territory*) within 21 days from the service on you of this notice or, if the Court allows, any further period.

You may inspect the list at my office at (*address*) from Monday to Friday inclusive between the hours of (*insert times making up not less than 3 hours during the normal working day*) and

**SCHEDULE**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **No.** | **Name** | **Address** | **Description of class of contributory and in what character included** | **Number of shares (or extent of interest)** | **Amount called up at date of start of winding up** | **Amount unpaid at date of start of winding up** | **Amount unpaid at date of start of winding up** | **Amount not called up at date of start winding up** |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |

Dated

Signature of liquidator

\* Omit if not applicable

Form 547

(subregulation 5.6.65(1))

*Corporations Act 2001*

NOTICE TO CREDITOR OR PERSON CLAIMING TO BE A CREDITOR OF INTENTION TO DECLARE A DIVIDEND

Limited

A dividend (*state the number of the dividend, e.g. “first”, “second”)* is to be declared on *(date*) for the company.

\*You are listed as a creditor in the report on the affairs of the company;

\*You are known to me to claim to be a creditor, but your debt or claim has not yet been admitted.

You are required formally to prove your debt or claim on or before (*date*). If you do not, you will be excluded from the benefit of the dividend.

Dated

Signature of liquidator

Address

\*Omit if inapplicable.

Form 548

(subregulation 5.6.65(1))

*Corporations Act 2001*

NOTICE TO CREDITOR OR PERSON CLAIMING TO BE A CREDITOR OF INTENTION TO DECLARE A DIVIDEND

Limited

A final dividend is to be declared on (*date*) for the company.

You are required formally to prove your debt or claim on or before (*date*).

If you do not, I will exclude your claim from participation, and I will proceed to make a final dividend without having regard to it.

Signature of liquidator

Address

Form 549

(subregulation 5.6.67(3))

*Corporations Act 2001*

NOTICE OF DECLARATION OF DIVIDEND

Limited

*(State the number of the dividend, e.g. “First”, “Second”)* dividend.

A dividend at the rate of in the dollar has been declared for the company and a cheque is attached for $ calculated at that rate on your debt as admitted to rank for dividend for $ .

Dated

Signature of liquidator

Address

Form 550

(regulation 5.6.70)

*Corporations Act 2001*

AUTHORITY TO LIQUIDATOR TO PAY DIVIDEND TO A PERSON NAMED

Limited

*To the liquidator*

\*I/\*We authorise and request you to pay to (*name*) of (*address*) all dividends as they are declared for the company, and that become due and payable to \*me/\*us in respect of \*my/ \*our claim for $ against the company.

\*I/\*We further request that cheques drawn for those dividends are made payable to the order of (*name*).

This authority remains in force until revoked by \*me/\*us in writing.

Date

Signature of creditor

Name of creditor

\*Omit if inapplicable

Form 551

(subregulation 5.6.71(1))

*Corporations Act 2001*

*(Note: Before completing this schedule please read carefully the “Direction for completing Form 551” at the end of this form)*

**SCHEDULE OF CONTRIBUTORIES OR OTHER PERSONS TO WHOM A DISTRIBUTION OF SURPLUS IS TO BE PAID**

Limited

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Serial No. in settled list** | **Name of contributory as in settled list** | **Address** | **Number of shares held as set out in settled list** | **Total amount called up** | **Total amount paid up** |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

**SCHEDULE OF CONTRIBUTORIES OR OTHER PERSONS, TO WHOM A DISTRIBUTION OF SURPLUS IS TO BE PAID**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Arrears of calls at date of return** | **Previous distributions of capital appropriated by liquidator for arrears of calls** | **Amount of distribution payable per share** | **Net distribution payable** | **Date and particulars of transfer of interest or other variation in list** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

Signature of liquidator

Date

**DIRECTION FOR COMPLETING FORM 551**

If the Articles:

(a) provide that the amount divisible among members or any class of members must be dividable in proportion to the amount paid up or that ought to have been paid up at the date of winding up; or

(b) contain any other provision that requires further information before a distribution can be made;

columns should be added showing the amount called up and the amount paid up at that date in respect of shares then held by those members or that class of members, or any other facts that may be required.

Form 552

(subregulation 5.6.71(2))

*Corporations Act 2001*

NOTICE OF DISTRIBUTION OF SURPLUS TO CONTRIBUTORIES OR OTHER PERSONS

Limited

A distribution of surplus at the rate of per share has been declared for the company and a cheque is attached for $ calculated at that rate per share on your (*number*) shares.

Dated

Signature of liquidator

Address

Form 553

(regulation 5.6.72)

*Corporations Act 2001*

AUTHORITY TO LIQUIDATOR TO PAY DISTRIBUTION OF SURPLUS TO A PERSON NAMED

Limited

To the Liquidator

\*I/\*We authorise and request you to pay to (*name*) of (*address*) any distribution of surplus payable to \*me/\*us for the company.

\*I/\*We further request that the cheque drawn for that distribution be made payable to the order of (*name*).

This authority remains in force until revoked by \*me/\*us in writing.

Dated

Signature

Name(s) of person(s) completing this authority

\*Omit if inapplicable.

Form 701

**Data on intermediated business with APRA‑authorised general insurers, Lloyd’s underwriters and unauthorised foreign insurers**

|  |  |
| --- | --- |
| **Australian business number** |  |
|  |  |
| **Australian financial services licence number** |  |
|  |  |
| **Australian financial services licensee name** |  |
|  |  |
| **Reporting period** |  |

**TABLE 1: Aggregate data on intermediated business with APRA‑authorised general insurers, Lloyd’s underwriters and unauthorised foreign insurers**

| **Total business placed with APRA‑authorised general insurers, Lloyds underwriters and unauthorised foreign insurers** | **Premium invoiced this reporting period** | | | |
| --- | --- | --- | --- | --- |
| **Effective this reporting period** | **Effective after the reporting period end** | **Effective before the reporting period start** | **Total invoiced this reporting period** |
| 1. Business placed directly by the general insurance intermediary with APRA‑authorised general insurers |  |  |  |  |
| 1. Business placed directly, or indirectly through a foreign intermediary, by the general insurance intermediary with Lloyd’s underwriters |  |  |  |  |
| 1. Business placed directly, or indirectly through a foreign intermediary, by the general insurance intermediary with unauthorised foreign insurers |  |  |  |  |
| 1. Business placed indirectly through another general insurance intermediary, by the general insurance intermediary with: 2. APRA‑authorised general insurers; or 3. Lloyds underwriters; or 4. unauthorised foreign insurers |  |  |  |  |
| **Total** |  |  |  |  |

***General insurer*** is defined in subsection 3(1) of the *Insurance Act 1973.*

***Lloyd’s underwriter*** is defined in subsection 3(1) of the *Insurance Act 1973.*

***Unauthorised foreign insurer*** is defined in regulation 4 of the *Insurance Regulations 2002.*

**table 2: Transaction level data on intermediated business placed directly, or indirectly through a foreign intermediary, with unauthorised foreign insurers**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| Policy transaction type | Client code | Policy code | Invoice date | Effective date | APRA class of business | Premium | Currency of premium | UFI name | UFI country code | Exemption type | HVI limb | HVI value (#) | Atypical risk class | Customised reason |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

*Note*It is an offence under section 137.1 of the *Criminal Code Act 1995* to provide false or misleading information to a Commonwealth entity. The Australian Prudential Regulation Authority is a Commonwealth entity.

**Lodgement requirements**

If information is to be lodged in Table 1 only, the licensee may lodge the information electronically or in writing.

If information is to be lodged in both Table 1 and Table 2, the licensee must lodge the information electronically. If the licensee is unable to lodge the information electronically, the licensee must arrange an alternative method of lodgement with APRA.

**Requirements for forms lodged electronically**

A licensee must lodge a form electronically via the licensees portal provided by APRA. A licensee must undertake the steps required by APRA to become authorised to use the portal.

A document accompanying a form may only be lodged electronically if APRA has approved, in writing, the electronic lodgement of documents of that kind. If APRA has not approved the electronic lodgement of a document, the document may be lodged in writing.

APRA may approve the electronic lodgement of:

(a) a particular kind of document; or

(b) documents in a particular class of documents.

A document is taken to be lodged with APRA electronically if it is lodged in accordance with APRA’s approval, including any requirements of the approval as to authentication.

**Requirements for forms lodged in writing**

If a form is lodged in writing, the form must be signed in accordance with the requirements of section 912CA of the *Corporations Act 2001*, as modified by regulation 7.6.08C of the *Corporations Regulations 2001*.

Licensees lodging by mail or in person must lodge with APRA:

(a) the signed, original form; and

(b) any information, statements, explanations or other matters required by the form; and

(c) any other material required by the form.

Licensees lodging by email must lodge with APRA:

(a) the signed form in PDF (portable document format); and

(b) any information, statements, explanations or other matters required by the form; and

(c) any other material required by the form.

Licensees lodging by email must retain signed original copies of the forms and attachments for a period of 7 years.

A form, or document, lodged with APRA in writing by, or on behalf of, an entity in an item of the following table, must be signed by the person specified in the item.

| Item | Entity | Person |
| --- | --- | --- |
| 1 | A body that is not a foreign company | A director or secretary |
| 2 | A body that is a foreign company | (a) a local agent; or  (b) if the local agent is a company — a director or secretary of the company |
| 3 | An individual | An individual |
| 4 | A partnership | (a) a partner; or  (b) if the partner is a company — a director or secretary of the company |
| 5 | A trust | (a) a trustee; or  (b) if the trustee is a body — a director or secretary of the body |

*Note*A body includes a body corporate or an unincorporated body, for example, a society or association — see the definition of ***body*** in section 9 of the Act.

The following table must be completed. In the table, the person’s name must be printed next to the person’s signature.

|  |  |
| --- | --- |
| Lodgement details (for the person who physically completes the form) | |
| Firm/organisation |  |
| Contact name/position description |  |
| ASIC registered agent number (if applicable) |  |
| Telephone number |  |
| Postal address or DX address |  |
| Signature block | |
| Name |  |
| Signature |  |
| Capacity |  |
| Entity name (if entity acting as local agent) |  |
| Date signed |  |

Form 586

(subparagraph 206F(1)(b)(i))

**Form 586**

**Corporations Act 2001**

**Subparagraph 206F(1)(b)(i)**

**Notice to demonstrate why disqualification should not occur**

**IN THE MATTER** of (1)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Notice to demonstrate why disqualification should not occur**

**under section 206F of the Corporations Act 2001.**

To: (2) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The records of the Australian Securities and Investments Commission (ASIC) show that you are or were an officer of \_\_\_\_\_\_ (3) corporations that have been wound up, being \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(4),

where a liquidator has reported under subsection 533(1) of the Corporations Act 2001 (the Act) that each of the corporations may be unable to pay its unsecured creditors more than 50 cents in the dollar.

In these circumstances you are required to demonstrate, in accordance with subparagraph 206F(1)(b)(i) of the Act, why you should not be disqualified from managing corporations.

Under subsection 206F(1) of the Act you may be disqualified from managing corporations for a period of up to 5 years.

In making a decision under subsection 206F(1) of the Act ASIC is required to give you an opportunity to be heard in relation to why you should not be disqualified from managing corporations.

**AREAS OF CONCERN**

ASIC has identified a number of concerns about your conduct which are described in Attachment "A".

The documents on which these concerns are based are listed in Attachment "B".

**OPPORTUNITY TO BE HEARD**

If you wish to demonstrate why you should not be disqualified from managing corporations you should notify ASIC within 14 days from the date of service of this notice that you require an opportunity of being heard.

You may exercise your right to be heard by:

1. making a written submission;
2. appearing before a person ASIC has appointed to hear the matter (the delegate) and making submissions orally and appearing before the delegate to present evidence.

You may exercise your right by doing any or all of these options.

Once you have notified ASIC of your wish to demonstrate why you should not be disqualified a delegate will write to you with further details of the hearing procedure. The delegate will also inform you of the delegate’s decision as to whether the hearing will take place at one or more physical venues and/or by means of virtual enquiry technology.

If you do not wish to demonstrate why you should not be disqualified, a decision will be made by a delegate on the information available.

If you wish to have access to the documents listed in Attachment "B" you should contact ASIC as soon as possible. Access to documents which are identified as "confidential" may be given subject to strict conditions of confidentiality.

Dated this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_20\_\_\_\_\_\_\_\_\_

**Signed** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(5) Delegate of the Australian Securities and Investments Commission

**Attachments**

**Attachment “A”**

**Areas of concern**

**Attachment “B”**

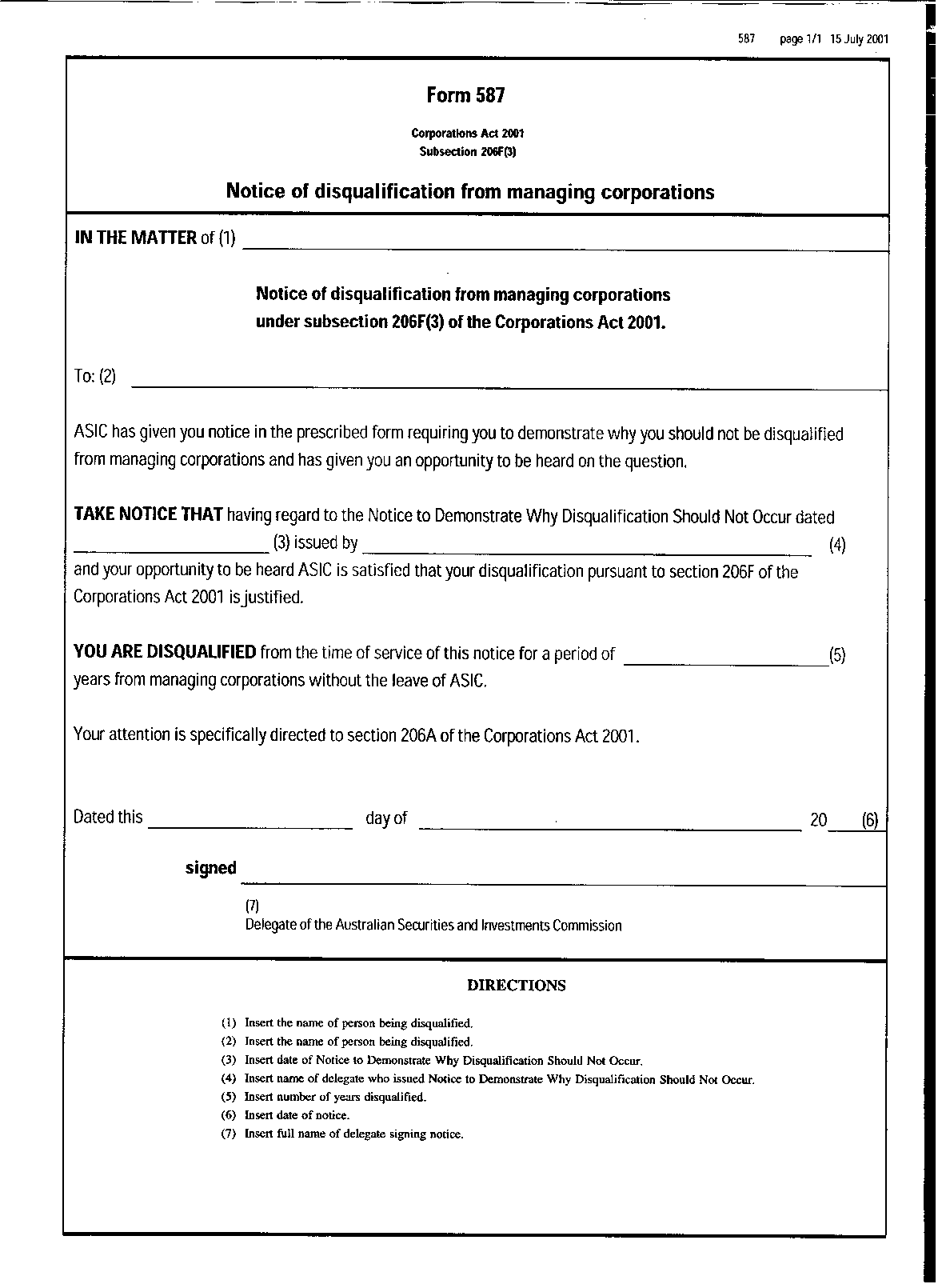
**List of documents upon which concerns are based**

**DIRECTIONS**

1. Insert name of person subject of the notice.
2. Insert name of person subject of the notice.
3. Insert number of corporations of which person was an officer.
4. Insert names and ACNs of corporations.
5. Insert full name of delegate signing the notice.

Form 587

(subsection 206F(3))



Form 588

(subparagraph 206GAA(1)(b)(i))

**Form 588**

**Corporations Act 2001**

**Subparagraph 206GAA(1)(b)(i)**

**Notice to demonstrate why disqualification should not occur**

**IN THE MATTER** of (1)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Notice to demonstrate why disqualification should not occur**

**under section 206GAA of the Corporations Act 2001.**

To: (2) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The records of the Australian Securities and Investments Commission (ASIC) show that you are or were an officer of \_\_\_\_\_\_ (3) corporations that have been wound up, being \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(4)

where money was advanced for the purposes of paying the entitlements of employees of the corporations under the Fair Entitlements Guarantee Act 2012 and:

* the Commonwealth has received a minimal return, or no return on the advance; and
* ASIC has reason to believe that the Commonwealth is unlikely to receive more than a minimal return on the advance; and
* ASIC has reason to believe that either the corporations contravened the Corporations Act 2001 or Corporations (Aboriginal and Torres Strait Islander) Act 2006 and that the person failed to take reasonable steps to prevent the contravention or the person contravened the Corporations Act 2001 or Corporations (Aboriginal and Torres Strait Islander) Act 2006.

In these circumstances you are required to demonstrate, in accordance with subparagraph 206GAA(1)(b)(i) of the Act, why you should not be disqualified from managing corporations.

Under subsection 206GAA(1) of the Act you may be disqualified from managing corporations for a period of up to 5 years.

In making a decision under subsection 206GAA(1) of the Act ASIC is required to give you an opportunity to be heard in relation to why you should not be disqualified from managing corporations.

**AREAS OF CONCERN**

ASIC has identified a number of concerns about your conduct which are described in Attachment "A".

The documents on which these concerns are based are listed in Attachment "B".

**OPPORTUNITY TO BE HEARD**

If you wish to demonstrate why you should not be disqualified from managing corporations you should notify ASIC within 14 days from the date of service of this notice that you require an opportunity of being heard.

You may exercise your right to be heard by:

1. making a written submission; or
2. appearing before a person ASIC has appointed to hear the matter (the delegate) and making submissions orally and appearing before the delegate to present evidence.

You may exercise your right by doing any or all of these options.

Once you have notified ASIC of your wish to demonstrate why you should not be disqualified a delegate will write to you with further details of the hearing procedure. The delegate will also inform you of the delegate’s decision as to whether the hearing will take place at one or more physical venues and/or by means of virtual enquiry technology.

If you do not wish to demonstrate why you should not be disqualified, a decision will be made by a delegate on the information available.

If you wish to have access to the documents listed in Attachment "B" you should contact ASIC as soon as possible. Access to documents which are identified as "confidential" may be given subject to strict conditions of confidentiality.

Dated this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Signed** …………………………………………………………

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(5) Delegate of the Australian Securities and Investments Commission

**Attachments**

**Attachment “A”**

Areas of concern

**Attachment “B”**

List of documents upon which concerns are based

**DIRECTIONS**

1. Insert name of person subject of the notice.
2. Insert name of person subject of the notice.
3. Insert number of corporations of which the person was an officer.
4. Insert names and ACNs of corporations.
5. Insert full name of delegate signing the notice.

Form 589

(subsection 206GAA(6))

**Form 589**

**Corporations Act 2001**

**Subsection 206GAA(6)**

**Notice of disqualification from managing corporations**

**IN THE MATTER** of (1)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Notice of disqualification from managing corporations**

**under subsection 206GAA(6) of the Corporations Act 2001.**

To: (2) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ASIC has given you notice in the prescribed form requiring you to demonstrate why you should not be disqualified from managing corporations and has given you an opportunity to be heard on the question.

**TAKE NOTICE THAT** having regard to the Notice to Demonstrate Why Disqualification Should Not Occur dated \_\_\_\_\_\_\_\_\_\_\_(3) issued by \_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_(4) and your opportunity to be heard ASIC is satisfied that your disqualification pursuant to section 206GAA of the Corporations Act 2001 is justified.

**YOU ARE DISQUALIFIED** from the time of service of this notice for a period of \_\_\_\_\_\_\_(5) years from managing corporations without the leave of ASIC.

Please note the extent of the legal prohibitions on your management of corporations under section 206A of the Corporations Act 2001.

Dated this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(6)

**Signed** …………………………………………………………

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(7) Delegate of the Australian Securities and Investments Commission

**DIRECTIONS**

(1) Insert the name of person being disqualified.

(2) Insert the name of person being disqualified.

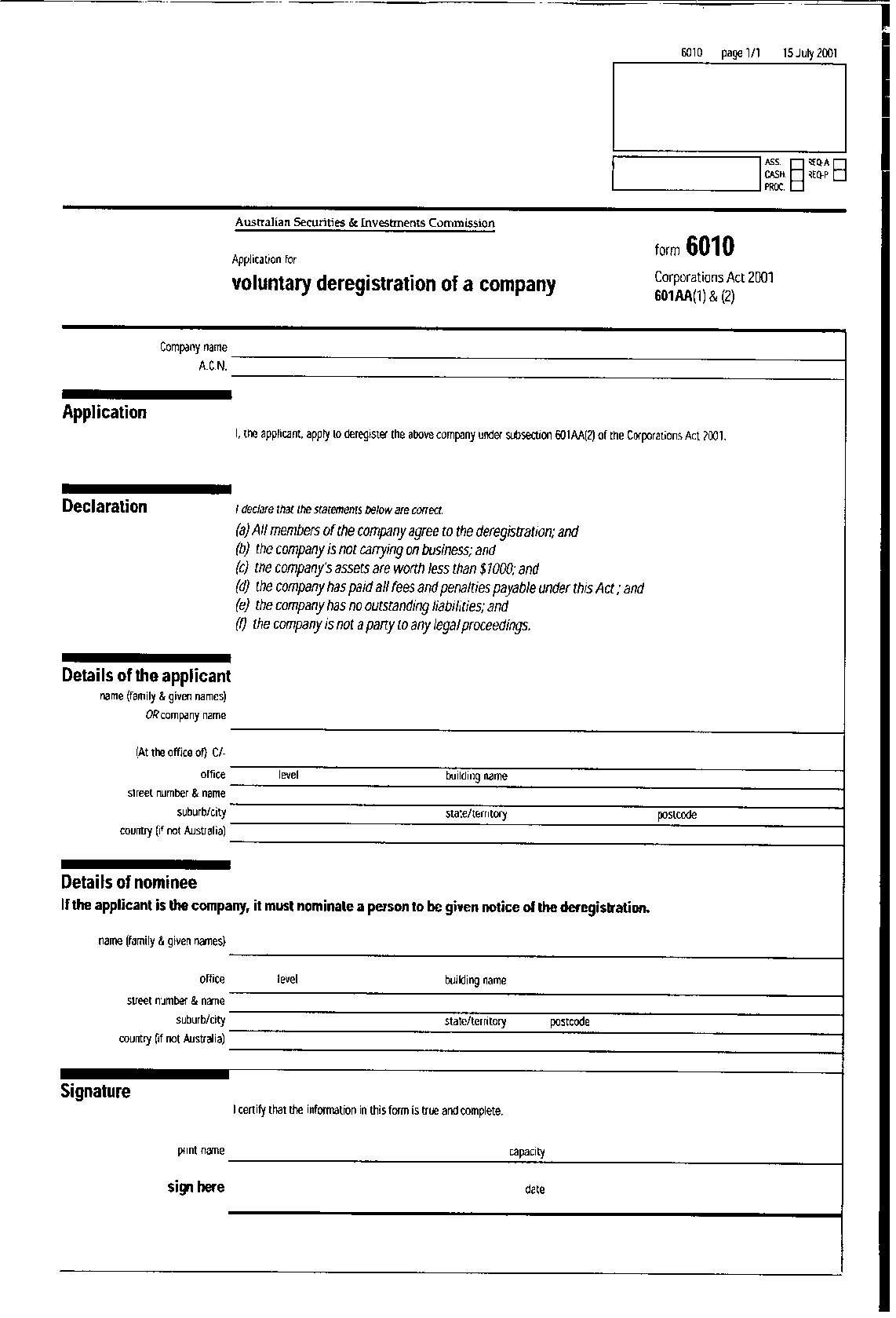
(3) Insert date of Notice to Demonstrate Why Disqualification Should Not Occur.

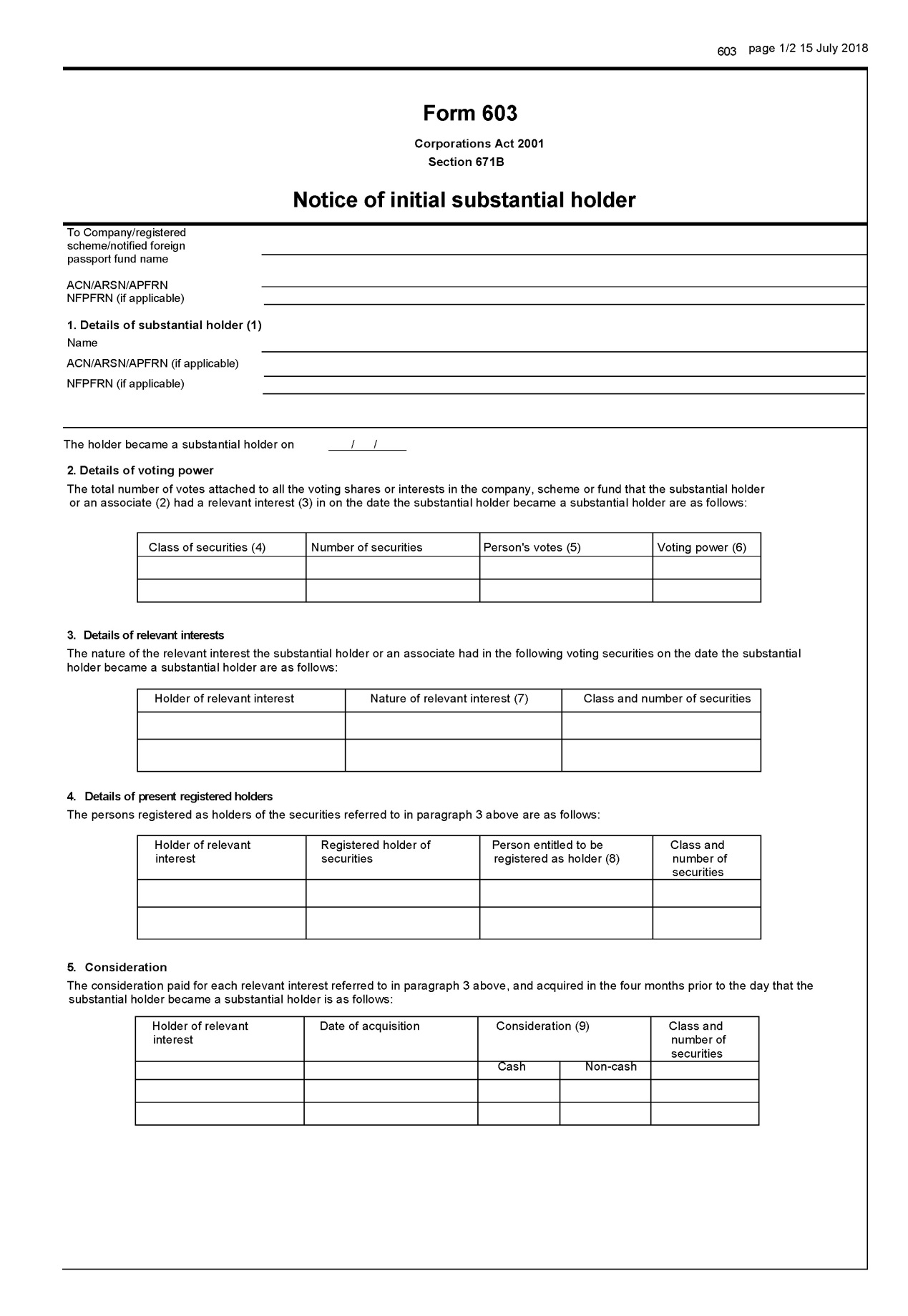
(4) Insert name of delegate who issued Notice to Demonstrate Why Disqualification Should Not Occur.

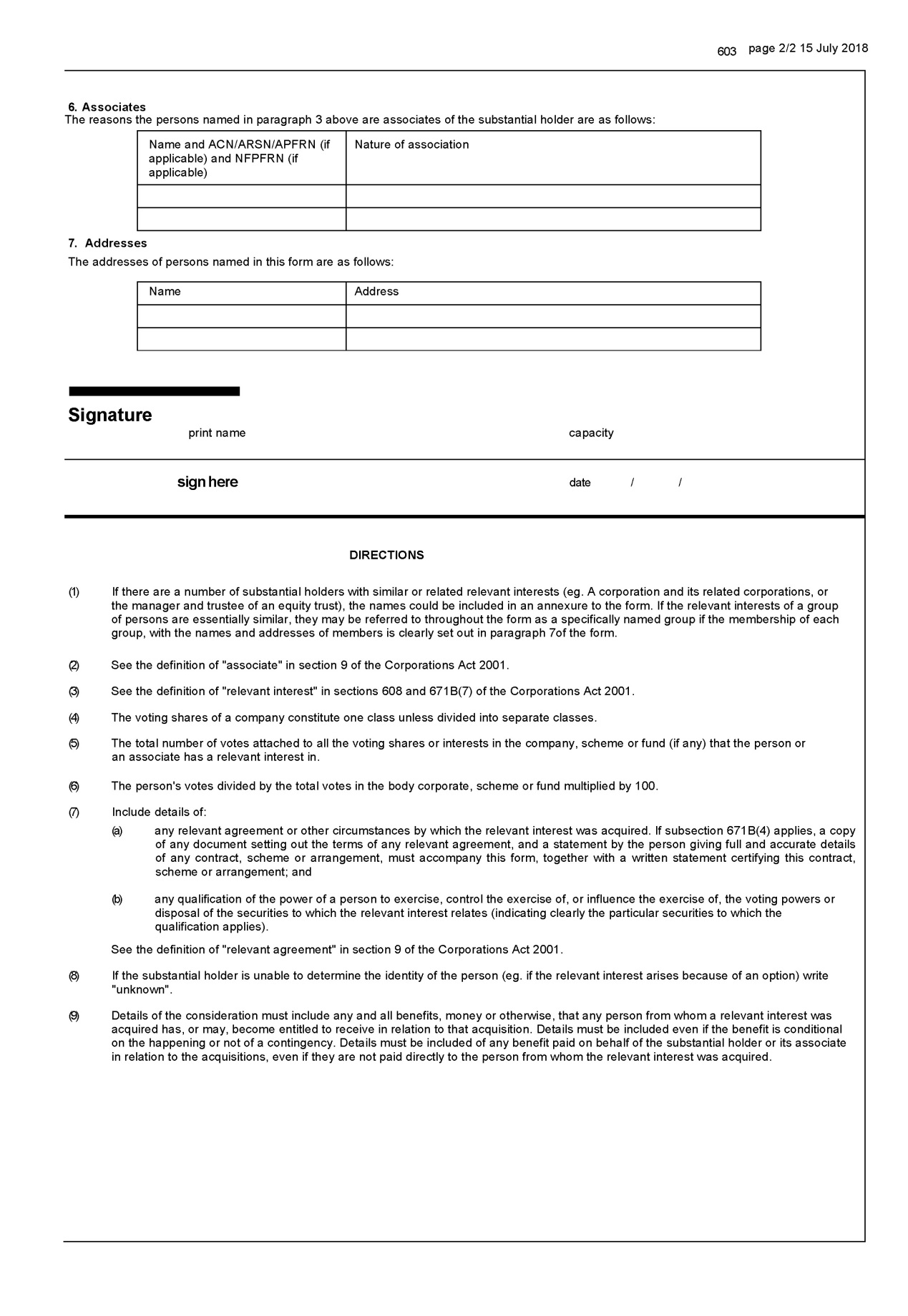
(5) Insert number of years disqualified.

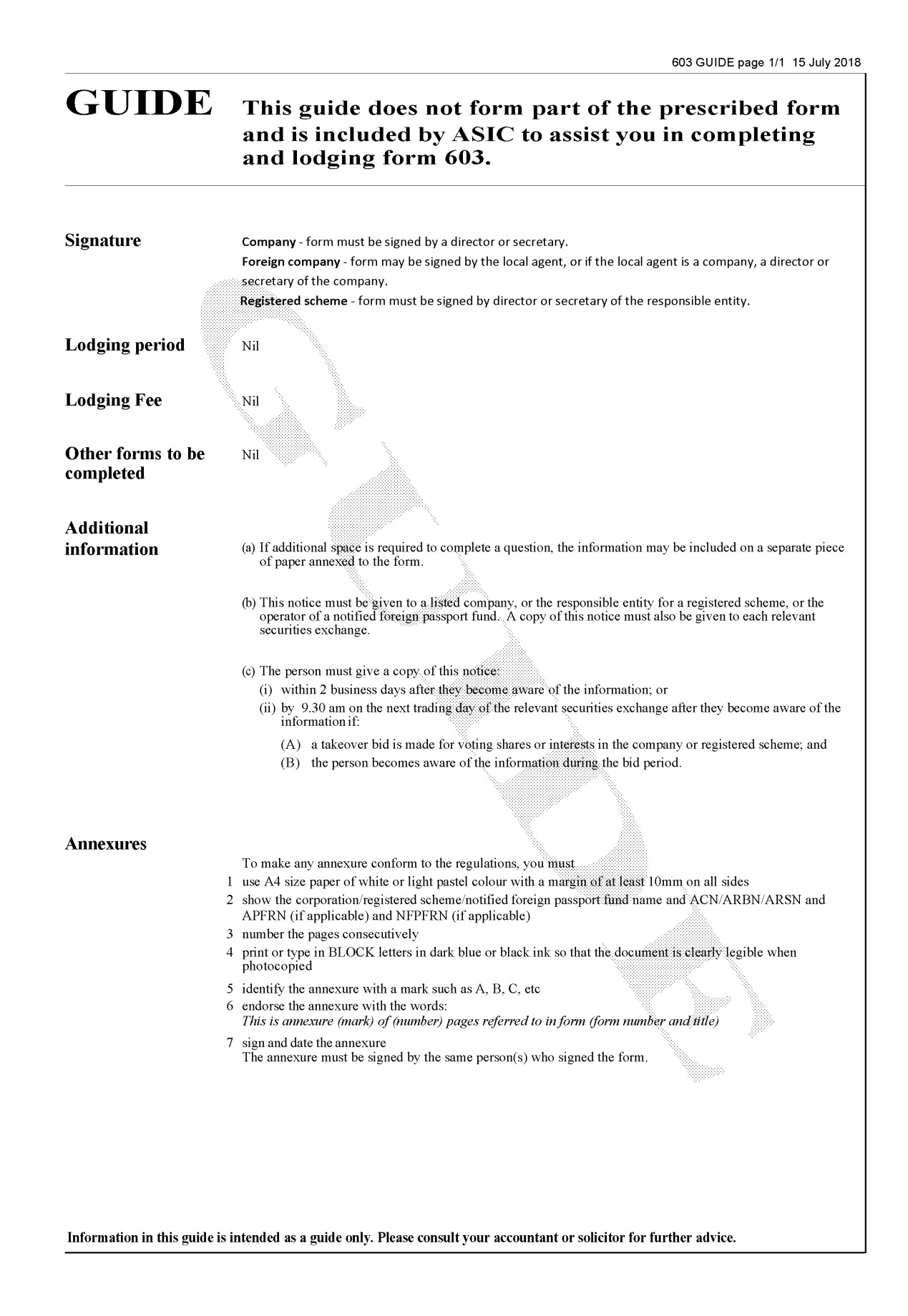
(6) Insert date of notice.

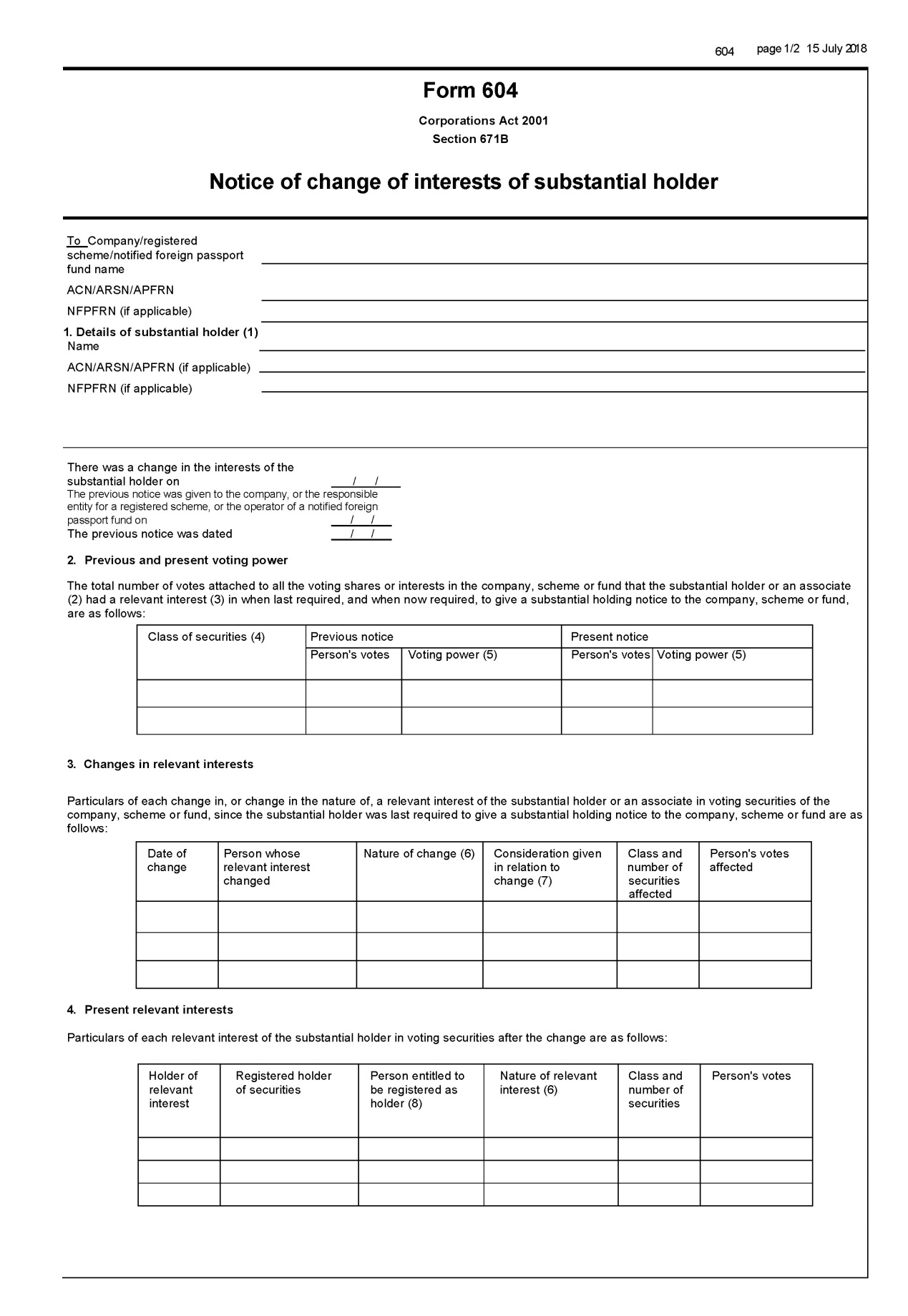
(7) Insert full name of delegate signing notice.

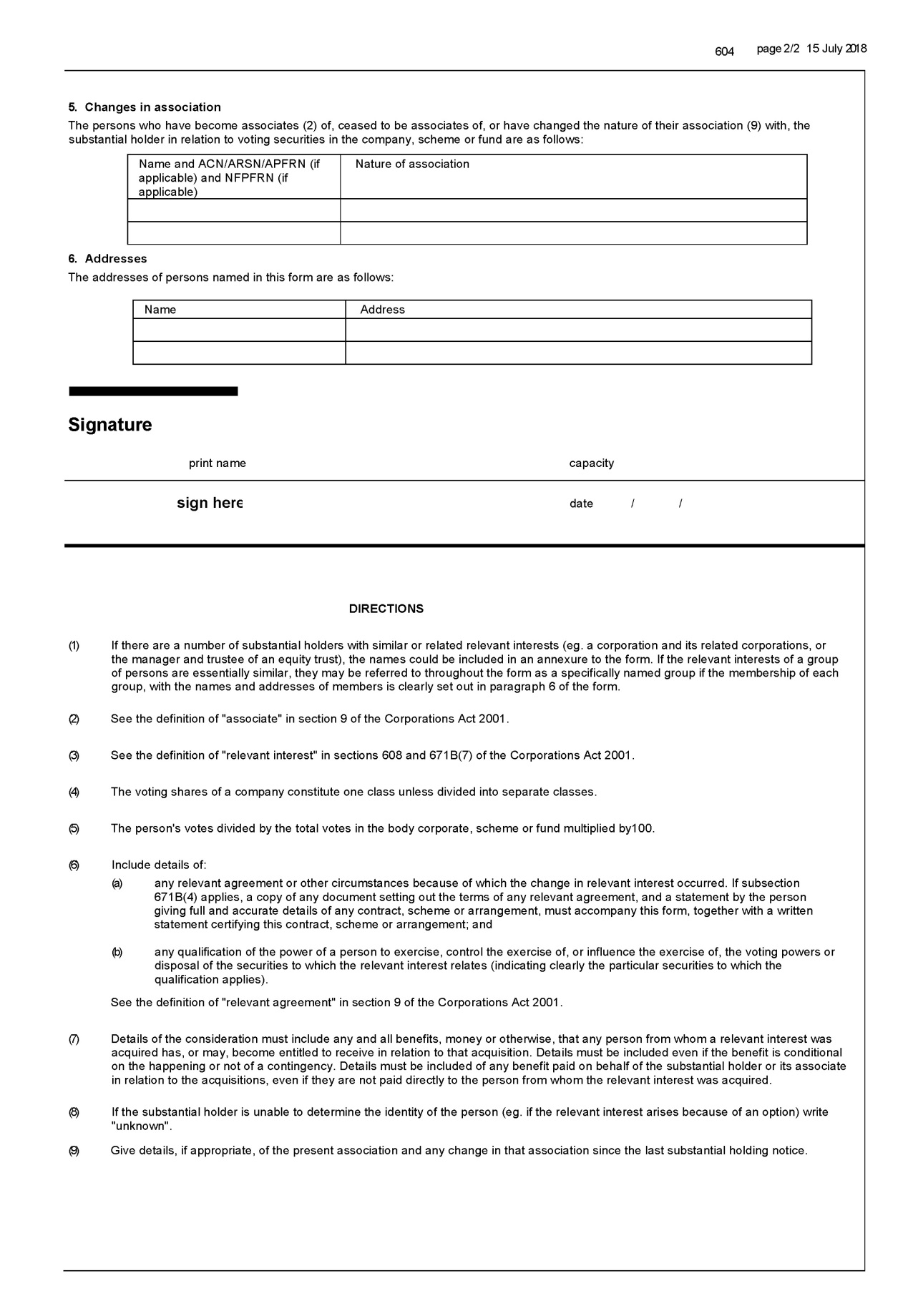


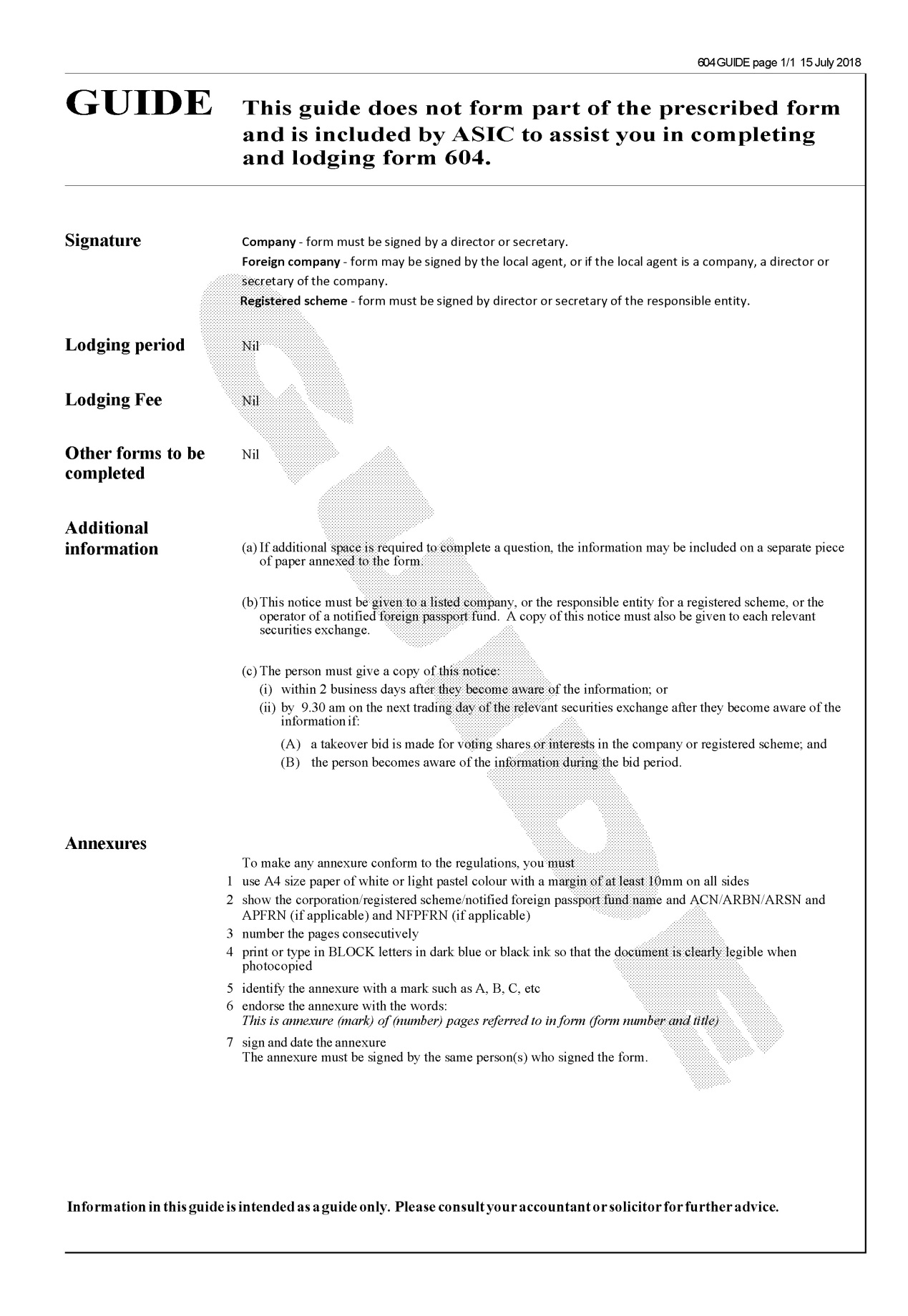


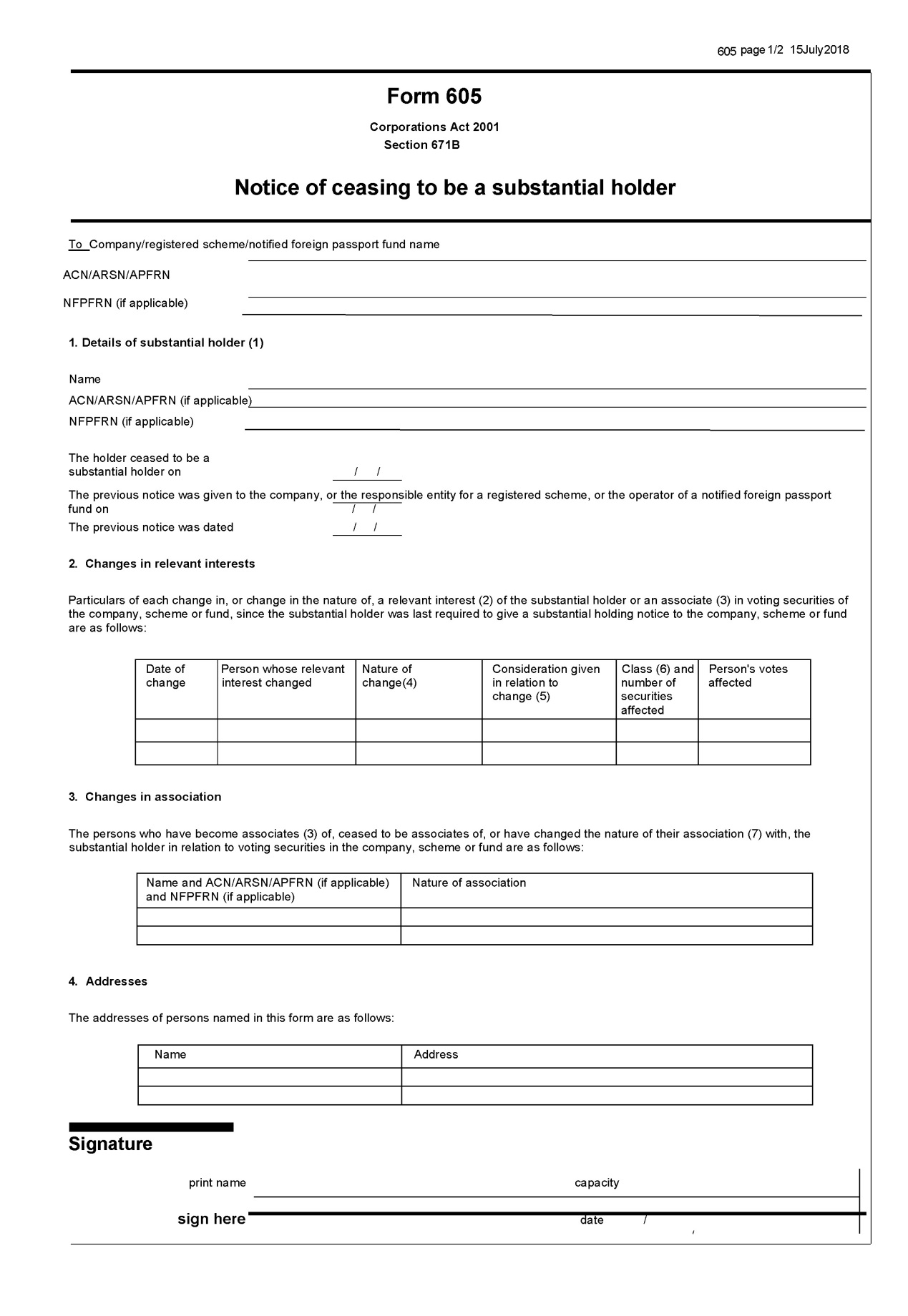


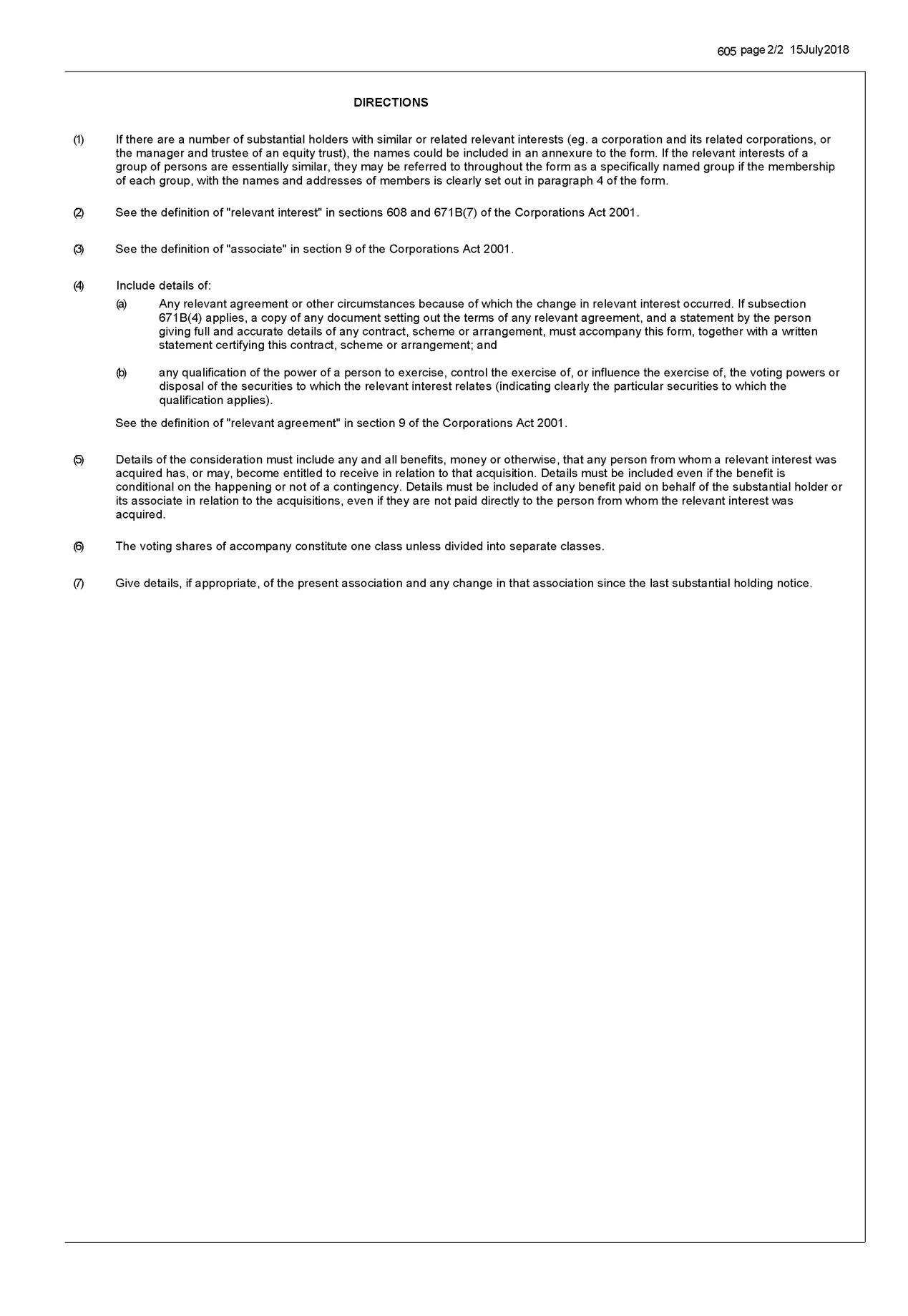


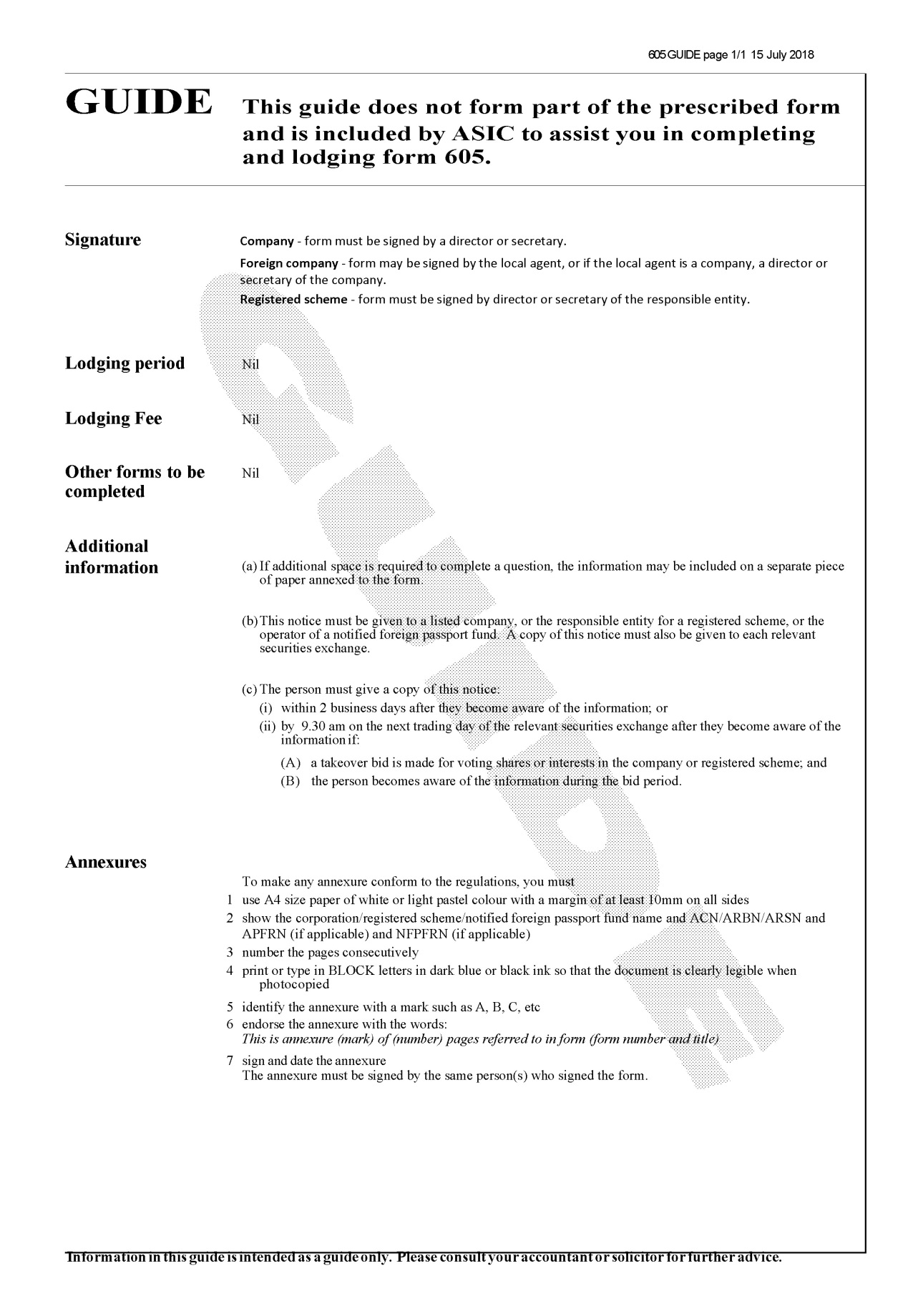












Form 719

(regulations 7.5.90 and 7.5.92)

*Corporations Regulations 2001*

STATEMENT ABOUT PAYMENTS OUT OF FINANCIAL INDUSTRY DEVELOPMENT ACCOUNT

1. The name of the market licensee to which this statement relates is *(insert name of market licensee)*.

2. This statement relates to the financial year ending on *(insert date)* (the ***relevant financial year***).

3. Specify in respect of each purpose approved by the Minister under subregulation 7.5.88 of the Regulations:

(a) the terms of the purpose as so approved are:

*(insert terms)*

(b) the date of that approval was *(date)*;

(c) the amount of payments made for that purpose during the relevant financial year was $*(amount)*;

(d) the total, as at the end of the relevant financial year, of all payments made for this purpose in the relevant financial year and previous financial years was $*(amount)*;

(e) further payments for this purpose \*are / \*are not envisaged.

4. The total of payments for all purposes in respect of the relevant financial year was $*(amount)*.

REPORT OF AUDITOR

\*I/We *(insert name of the auditor or auditors signing this report),* report that:

(a) \*I / \*We have audited the above statement; and

(b) it accurately represents the payments that it mentions.

Dated

*(signature of auditor)*

*(under the signature add the name under which the auditor practises or the name of the firm in which the auditor is employed)*

\* Omit if not applicable

DECLARATION

I *(insert name of officer of the market licensee and the office he or she occupies),* declare:

(a) that, to the best of my knowledge and belief, the information contained in the above statement is correct; and

(b) that the Board of *(insert name of the market licensee)* has accepted the information contained in the statement and resolved that the statement be lodged with ASIC.

Dated

*(signature of officer of the market licensee)*

*(under the signature add the name of the person signing)*

Form 719A

(subregulation 7.5.56(4))

*Corporations Regulations 2001*

COMPENSATION FOR LOSSES RESULTING FROM THE UNAUTHORISED TRANSFER OF RIGHTS, SHARES, DEBENTURES OR OTHER SECURITIES BY DEALER

This notice relates to the unauthorised transfer of securities by *(insert name of the dealer who is claimed to have transferred securities without authority of transferor)* (in this notice called ‘the dealer’) of *(insert residential address of the dealer)* \*formerly carrying on / \*carrying on business at *(insert address of the principal place of business of the dealer, including State or Territory)*.

A person wishing to make a claim under regulation 7.5.54 or 7.5.55 of the *Corporations Regulations 2001* in respect of loss suffered as a result of a transfer of securities executed between *(insert date of first day of applicable period)* and *(insert date of last day of applicable period, being a date before the date on which the notice is first to be published)* (inclusive) by the dealer without authority must lodge his or her claim with:

Securities Exchanges Guarantee Corporation

*(insert address, including State or Territory and postcode)*.

The claim must be made in writing before the end of *(specify last application day, at least 3 months after last day of publication of notice)*.

Under subregulation 7.5.56(3) of the *Corporations Regulations 2001*, a claim that is not made before the end of that day is barred unless the Board of the Securities Exchanges Guarantee Corporation otherwise determines.

The effect of regulation 7.5.54 of the *Corporations Regulations 2001* is to allow a person who:

(a) owned securities that were transferred by a dealer; and

(b) did not authorise the dealer to transfer those securities; and

(c) suffered loss as a result of the transfer;

to make a claim for compensation for the loss suffered in respect of the securities.

The effect of subregulation 7.5.55(1) of the *Corporations Regulations 2001* is to allow:

(a) a person to whom securities were transferred by the dealer without the authority of the owner of the securities; or

(b) a successor in title of that person;

to make a claim for compensation for the loss suffered in respect of the securities.

Under regulation 7.5.55 of the *Corporations Regulations 2001*, the following persons are not entitled to make a claim:

(a) a person who knew that the owner of the securities had not authorised the dealer to transfer them;

(b) a person who is connected with the dealer in a way described in regulation 7.5.04 of the *Corporations Regulations 2001*.

*(signature of an officer of the SEGC)*

(*under the signature add the words* ‘for the Securities Exchanges Guarantee Corporation’)

*(add the date of signature)*

\* Omit if not applicable

Form 719B

(subregulation 7.5.61(4))

*Corporations Regulations 2001*

NOTICE CALLING FOR CLAIMS AGAINST SECURITIES EXCHANGES GUARANTEE CORPORATION

This notice relates to claims for pecuniary loss suffered in respect of a contravention of the ASTC certificate cancellation provisions by *(insert name of dealer who is claimed to have contravened SCH certificate cancellation provisions)* (in this notice called ‘the dealer’) \*formerly carrying on business / \*carrying on business at *(insert business address of the dealer)*.

A person wishing to make a claim under subregulation 7.5.60(1) of the *Corporations Regulations 2001* for pecuniary loss suffered in respect of a contravention by the dealer of the SCH certificate cancellation provisions during the period beginning on and ending on *(insert dates)* is required to serve the claim on:

Securities Exchanges Guarantee Corporation

*(insert address including relevant State or Territory and postcode).*

The claim must be made in writing and served on or before the end of *(specify last application day — at least 3 months after last day of publication of notice)*.

(NOTES:

1. Under subregulation 7.5.61(3) of the *Corporations Regulations 2001*, a claim that is not served before the end of the day specified will be barred, unless the Board of the Securities Exchanges Guarantee Corporation (‘SEGC’) otherwise determines.

2. Regulation 7.5.60 of the *Corporations Regulations 2001* provides that a person who suffers pecuniary loss in respect of a contravention, by a dealer, of the ASTC certificate cancellation provisions may make a claim in respect of the loss. ASTC certificate cancellation provisions are provisions of the ASTC operating rules that deal with brokers cancelling certificates or other documents of title to Part 4 financial products or with matters incidental to that function.)

A person may not make a claim under regulation 7.5.60 of the *Corporations Regulations 2001* if:

(a) the loss is in respect of an unauthorised execution (within the meaning of regulation 7.5.53 of those Regulations) in respect of which the person has made, or is entitled to make a claim under Subdivision 4.7 of Part 7.5 of those Regulations; or

(b) the person was involved in the contravention of the ASTC certificate cancellation provisions.

*(signature of an officer of the SEGC)*

for the Securities Exchanges Guarantee Corporation

*(add the date of signature)*

\* Omit if not applicable

Form 720

(subregulation 7.5.70(1))

*Corporations Regulations 2001*

NOTICE CALLING FOR CLAIMS AGAINST THE SECURITIES EXCHANGES GUARANTEE CORPORATION

In relation to *(insert name of dealer who has become insolvent)* (in this notice called ‘the dealer’) of *(insert residential address of the dealer)*, \*formerly / carrying on business at *(insert address of the principal place of business of the dealer, including State or Territory)*, a dealer who has become insolvent.

Persons wishing to make a claim under subregulation 7.5.64(1) of the *Corporations Regulations 2001* in respect of property that was, in the course of, or in connection with, the dealer’s business of dealing in securities, entrusted to or received by the dealer (or another person as provided under that subregulation) are required to lodge their claim with:

The Securities Exchanges Guarantee Corporation

*(insert address, including State or Territory and postcode).*

The claim must be made in writing on or before *(insert date)*.

Subject to regulation 7.5.70 of the *Corporations Regulations 2001*, claims not made on or before that date are barred unless the Board of the Securities Exchanges Guarantee Corporation otherwise determines.

Subregulation 7.5.64(1) of the *Corporations Regulations 2001* provides to the effect that, where the requirements of that provision are otherwise met, a person may make a claim in respect of property that was, in the course of, or in connection with, the dealer’s business of dealing in securities, entrusted to or received by:

(a) unless paragraph (b) applies, the dealer or an employee of the dealer; or

(b) if the dealer was, at the time the property was so entrusted or received, a partner in a participant, the participant, or a partner in, or an employee of, the participant.

*(signature of an officer of the SEGC)*

*(under the signature add the words* ‘For the Securities Exchanges Guarantee Corporation’)

*(add the date of signature)*

\* Omit if not applicable

Form 721

(regulation 7.5.80)

*Corporations Regulations 2001*

NOTICE OF DISALLOWANCE OF CLAIM AGAINST THE SECURITIES EXCHANGES GUARANTEE CORPORATION

*(Set out the name and address of the claimant or the claimant’s solicitor and an appropriate form of salutation)*

In relation to *(insert name of the dealer to whom the claim relates)*, \*formerly carrying on / \*carrying on business at *(insert business address of the dealer)*.

The \*Board of the Securities Exchanges Guarantee Corporation / \*delegate of the Board of the Securities Exchanges Guarantee Corporation under section 890C of the *Corporations Act 2001* has considered your claim against the Corporation in respect of *(insert description of the circumstances giving rise to the claim and the loss allegedly suffered by the claimant)*.

After considering all the available evidence, the Corporation has decided that the claim under \*regulation *(insert relevant regulation number) / \*regulations (insert relevant regulation numbers)* should be \*disallowed / \*partly disallowed to the extent set out below.

If you are not satisfied with this decision, you may bring proceedings within 3 months after service of this notice (see section 888H of the Act).

Yours sincerely,

*(signature of an officer of the Corporation)*

(*under the signature add the words* ‘for the Securities Exchanges Guarantee Corporation’)

*(add the date of signature)*

*(If the claim has been partly disallowed, insert a heading*

‘PARTICULARS OF PARTIAL DISALLOWANCE’

*and specify the necessary particulars under it)*

\* Omit if not applicable

Form 905

Registration no:

*Corporations Act 2001*

**PARTICULARS OF CESSATION OR CHANGE RELATING TO A PERSON REGISTERED AS AN AUDITOR UNDER SUBSECTION 1287(1)**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Surname | First or given names |  |
|  |  |  |
|  |  |  |
| Residential address |  |  |
|  |  |  |

**\*1. CESSATION**

On (*insert date*) , I ceased to practise as an auditor. I request ASIC to exercise its discretion under subsection 1290(1) and cancel my registration as an auditor.

**\*2. CHANGE OF NAME**

On (*insert date*) , I changed my name

from:

to:

**\*3. CHANGE IN OTHER PARTICULARS**

\*On (*insert date*) , the full address of the principal place at which I practise was changed from:

to: (*insert full address*)

\*On (*insert date*) , the full address of a place at which I practise was changed from:

to: (*insert full address*)

\*On (*insert date*) , I commenced to practise at: (*insert full address*)

\*On (*insert date*) , I commenced to practise under a name and style other than my own at: (*insert full address*)

\*On (*insert date*) , I ceased to practise at: (*insert full address*)

\*On (*insert date*) , the \*name/\*address of a firm of which I am \*a member/\*an employee was changed from:

to:

\*On (*insert date*) , I became \*a member/\*an employee of: (*insert name and full address*)

\*On (*insert date*) , I ceased to be \*a member/\*an employee of: (*insert name and full address*)

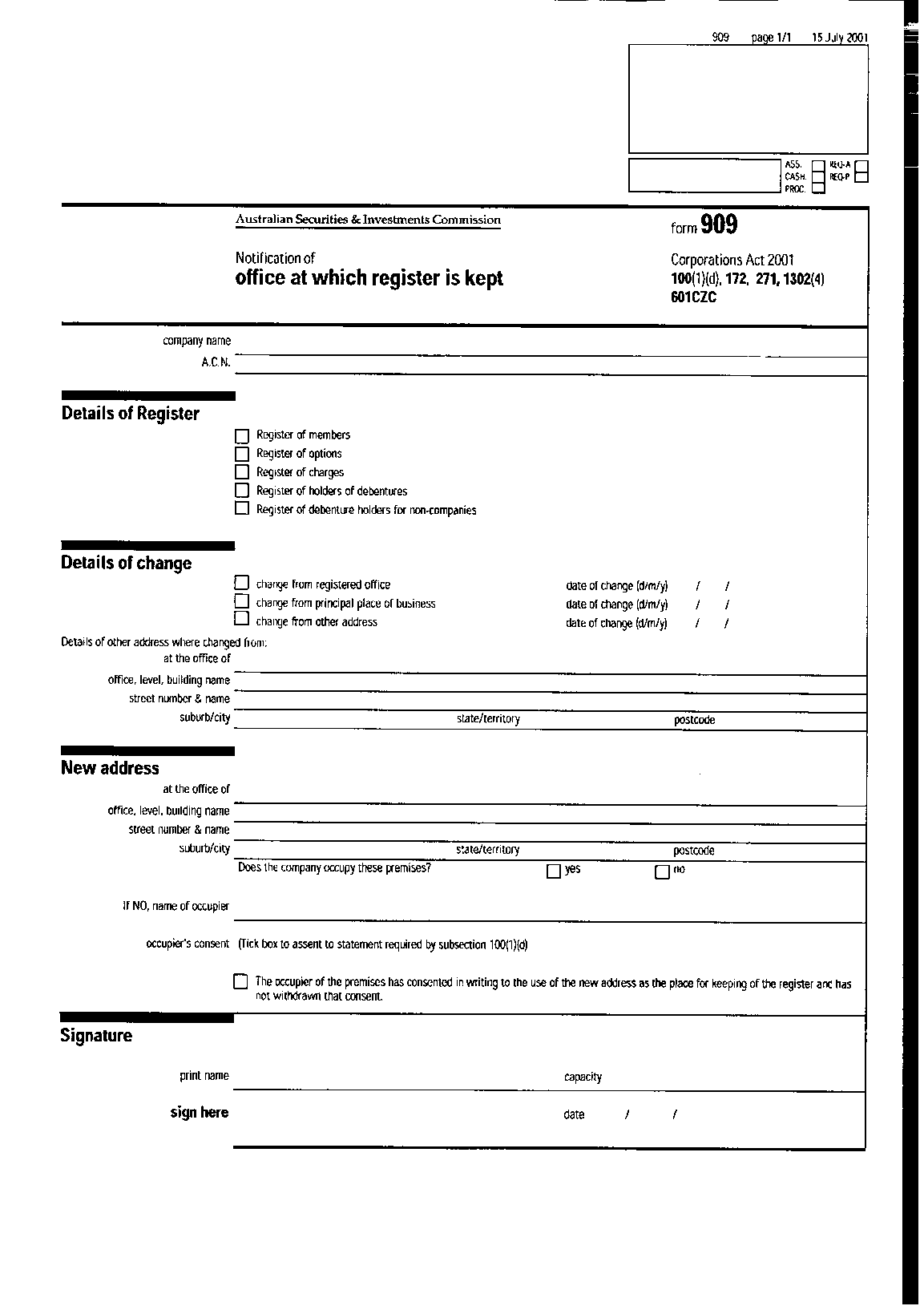
\*On (*insert date*) , a name or style other than my own under which I practise was changed from:

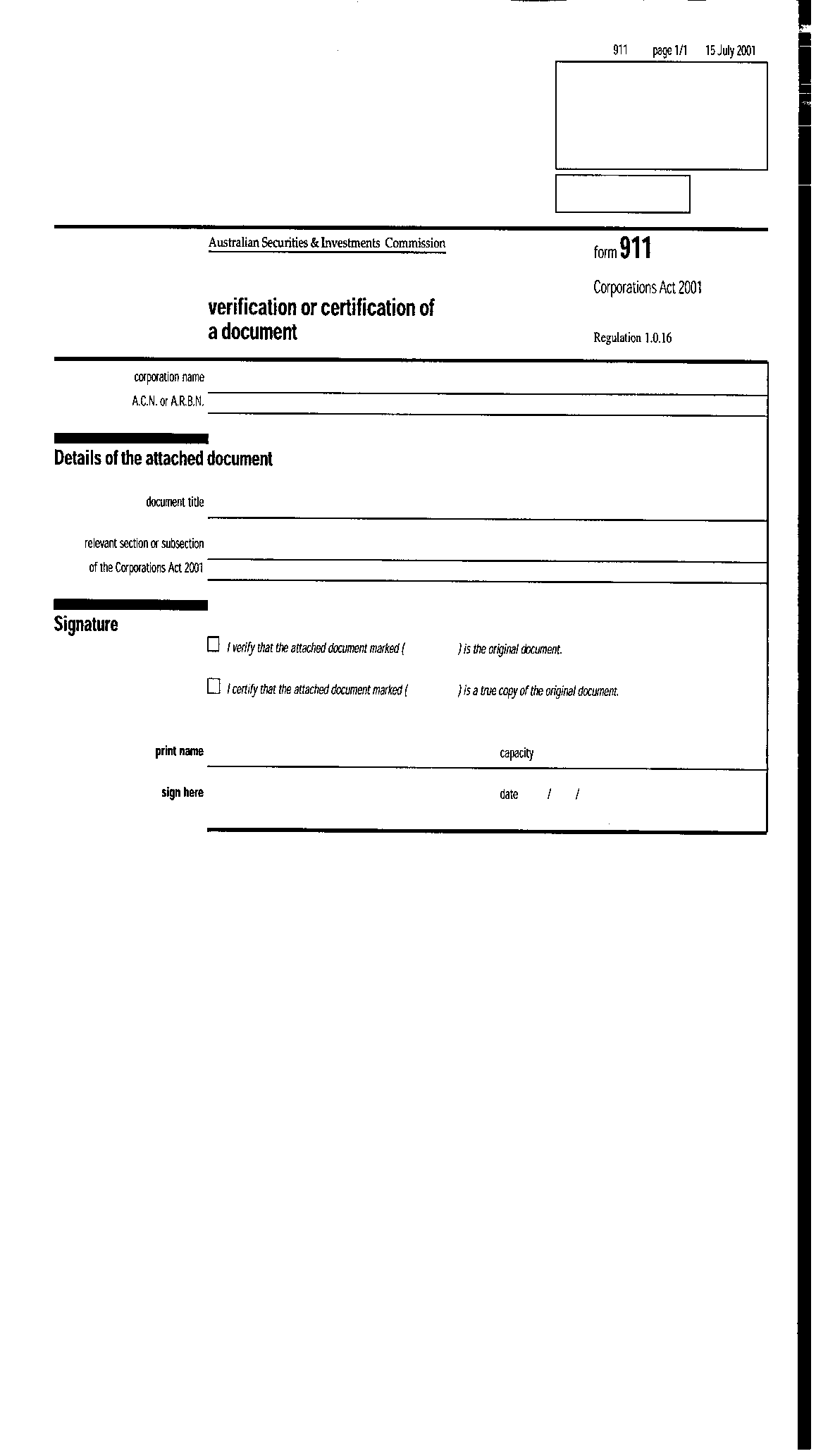
to:

Dated: (*insert date*)

*(signature of the registered company auditor)*

\* Omit if not applicable





Schedule 2A—Forms of transfer of Division 3 securities

(regulation 7.11.04)

Form 1

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| DIVISION 3 SECURITY TRANSFER FORM | | MARKING STAMP | | |
| PART 1 | | | | |
| Full name of company: | | | | |
| Description of Division 3 assets: | Class: | | If not fully paid, paid to: | Register: |
| Quantity: | [Words] | | [Figures] |  |
| Transfer identification number: | | | | |
| Full name(s) of transferor(s): | | | | |
| The transferor(s) hereby transfer(s) the above Division 3 assets to the transferee(s) named in Part 2 hereof or to the several transferees named in Part 2 of the Broker’s Transfer Form(s), Split Transfer Form(s) or Consolidated Transfer Form(s) relating to the assets.  This transfer is executed on the transferor’s behalf by the transferor’s broker, who certifies:  (a) as to the validity of documents; and  (b) that stamp duty, if payable, has been or will be paid.  [Transferor’s broker’s stamp]  Affixed at  on  (place and date of affixing stamp) | | | | |
| PART 2 | | | | |
| Full name(s) and address(es) of transferee(s): | | Transferee’s broker hereby certifies:  (a) that the Division 3 assets set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that such entries be made in the register as are necessary to give effect to this transfer;  [Transferee’s broker’s stamp]  Date of affixing stamp: | | |
| PART 3 | | | | |
| Transferee’s broker hereby certifies:  (a) that the Division 3 assets set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in the Consolidated Transfer Form relating to the Division 3 assets; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.  [Transferee’s broker’s stamp]  Date of affixing stamp: | | | | |

Form 2

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| BROKER’S TRANSFER FORM | | MARKING STAMP | | |
| PART 1 | | | | |
| Full name of company: | | | | |
| Description of Division 3 assets: | Class: | | If not fully paid, paid to: | Register: |
| Quantity: | [Words] | | [Figures] |  |
| Transfer identification number:  Full name(s) of transferor(s): | Transferor’s broker hereby certifies:  (a) that the Security Transfer Form relating to the Division 3 assets set out above has been or will be lodged at the company’s office; and  (b) that stamp duty, if payable, has been or will be paid.  [Transferor’s broker’s stamp]  Affixed at  on  (place and date of affixing stamp) | | | |
| PART 2 | | | | |
| Full name(s) and address(es) of transferee(s): | Transferee’s broker hereby certifies:  (a) that the Division 3 assets set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.  [Transferee’s broker’s stamp]  Date of affixing stamp: | | | |
| PART 3 | | | | |
| Transferee’s broker hereby certifies:  (a) that the Division 3 assets set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in the Consolidated Transfer Form relating to the assets; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.  [Transferee’s broker’s stamp]  Date of affixing stamp: | | | | |

Form 3

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| SPLIT TRANSFER FORM | | MARKING STAMP | | |
| PART 1 | | | | |
| Full name of company: | | | | |
| Description of Division 3 assets: | Class: | | If not fully paid, paid to: | Register: |
| Quantity: | [Words] | | [Figures] |  |
| Transfer identification number:  Full name(s) of transferor(s): | The [name of market licensee] hereby certifies that the Security Transfer Form or the Broker’s Transfer Form relating to the Division 3 assets set out above has been or will be lodged at the company’s office.  [Market licensee stamp]  Affixed at  on  (place and date of affixing stamp) | | | |
| PART 2 | | | | |
| Full name(s) and address(es) of transferee(s) | Transferee’s broker hereby certifies:  (a) that the Division 3 assets set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.  [Transferee’s broker’s stamp]  Date of affixing stamp: | | | |
| PART 3 | | | | |
| Transferee’s broker hereby certifies:  (a) that the Division 3 assets set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in the Consolidated Transfer Form relating to the Division 3 assets; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.  [Transferee’s broker’s stamp]  Date of affixing stamp: | | | | |

Form 4

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| CONSOLIDATED TRANSFER FORM | | MARKING STAMP | | |
| PART 1 | | | | |
| Full name of company: | | | | |
| Description of Division 3 assets: | Class: | | If not fully paid, paid to: | Register: |
| Quantity: | [Words] | | [Figures] |  |
| Transfer identification number: | | | | |
| Transfer Consolidation Number(s): | | | | |
| PART 2 | | | | |
| Full name(s) and address(es) of transferee(s): | Transferee’s broker hereby certifies:  (a) that the Division 3 assets set out in Part 1 of the Form(s) whose Transfer Consolidation Number(s) is (or are) set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that such entries be made in the register as are necessary to give effect to the transfer(s).  [Transferee’s broker’s stamp]  Date of affixing stamp: | | | |

Form 5

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| SECURITY RENUNCIATION AND TRANSFER FORM | | | MARKING STAMP | |
| PART 1 | | | | |
| Full name of company: | | | | |
| Description of Division 3 rights: | |  | | Register: |
| Quantity: | | [Words] | | [Figures] |
| Transfer identification number: | |  | | |
| Full name(s) of transferor(s): | |  | | |
| The transferor(s) hereby renounce(s) and transfer(s) the above Division 3 rights in favour of the transferee(s) named in Part 2 hereof or to the several transferees named in Part 2 of the Broker’s Renunciation and Transfer Form(s), Renunciation and Split Transfer Form(s) or Renunciation and Consolidated Transfer Form(s) relating to the above Division 3 rights.  This transfer and renunciation is executed on the transferor’s behalf by the transferor’s broker, who certifies:  (a) as to the validity of documents; and  (b) that stamp duty, if payable, has been or will be paid.  [Transferor’s broker’s stamp]  Affixed at  on  (place and date of affixing stamp) | | | | |
| PART 2 | | | | |
| Full name(s) and address(es) of transferee(s): | Transferee’s broker hereby certifies:  (a) that, the Division 3 rights set out in Part 1 above having been purchased in the ordinary course of business, the Division 3 assets to which the Division 3 rights relate are to be issued to the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the Division 3 assets be issued by the company to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.  [Transferee’s broker’s stamp]  Date of affixing stamp: | | | |
| PART 3 | | | | |
| Transferee’s broker hereby certifies:  (a) that, the Division 3 rights set out in Part 1 above having been purchased in the ordinary course of business, the Division 3 assets to which the rights relate are to be issued to the transferee(s) named in the Renunciation and Consolidated Transfer Form relating to the Division 3 rights; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the Division 3 assets be issued by the company to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.  [Transferee’s broker’s stamp]  Date of affixing stamp: | | | | |

Form 6

|  |  |  |  |
| --- | --- | --- | --- |
| BROKER’S RENUNCIATION AND TRANSFER FORM | | MARKING STAMP | |
| PART 1 | | | |
| Full name of company: | | | |
| Description of Division 3 rights: |  | | Register: |
| Quantity: | [Words] | | [Figures] |
| Transfer identification number: |  | | |
| Full name(s) and address(es) of transferor(s): | Transferor’s broker hereby certifies:  (a) that the Security Renunciation and Transfer Form relating to the Division 3 rights set out above has been or will be lodged at the company’s office; and  (b) that stamp duty, if payable, has been or will be paid.  [Transferor’s broker’s stamp]  Affixed at  on  (place and date of affixing stamp) | | |
| PART 2 | | | |
| Full name(s) and address(es) of transferee(s): | Transferee’s broker hereby certifies:  (a) that, the Division 3 rights set out in Part 1 above having been purchased in the ordinary course of business, the Division 3 assets to which the Division 3 rights relate are to be issued to the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the Division 3 assets be issued by the company to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.  [Transferee’s broker’s stamp]  Date of affixing stamp: | | |
| PART 3 | | | |
| Transferee’s broker hereby certifies:  (a) that, the Division 3 rights set out in Part 1 above having been purchased in the ordinary course of business, the Division 3 assets to which the Division 3 rights relate are to be issued to the transferee(s) named in the Renunciation and Consolidated Transfer Form relating to the rights; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the Division 3 assets be issued by the company to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.  [Transferee’s broker’s stamp]  Date of affixing stamp: | | | |

Form 7

|  |  |  |  |
| --- | --- | --- | --- |
| RENUNCIATION AND SPLIT TRANSFER FORM | | MARKING STAMP | |
| PART 1 | | | |
| Full name of company: | | | |
| Description of Division 3 rights: |  | | Register: |
| Quantity: | [Words] | | [Figures] |
| Transfer identification number: |  | | |
| Full name(s) of transferor(s): | The *[name of market licensee]* hereby certifies that the Security Renunciation and Transfer Form or the Broker’s Renunciation and Transfer Form relating to the Division 3 rights set out above has been or will be lodged at the company’s office.  [Market licensee stamp]  Affixed at  on  (place and date of affixing stamp) | | |
| PART 2 | | | |
| Full name(s) and address(es) of transferee(s): | Transferee’s broker hereby certifies:  (a) that, the Division 3 rights set out in Part 1 above having been purchased in the ordinary course of business, the Division 3 assets to which the Division 3 rights relate are to be issued to the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the Division 3 assets be issued by the company to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.  [Transferee’s broker’s stamp]  Date of affixing stamp: | | |
| PART 3 | | | |
| Transferee’s broker hereby certifies:  (a) that, the Division 3 rights set out in Part 1 above having been purchased in the ordinary course of business, the Division 3 assets to which the Division 3 rights relate are to be issued to the transferee(s) named in the Renunciation and Consolidated Transfer Form relating to the rights; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the Division 3 assets be issued by the company to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.  (Transferee’s broker’s stamp)  Date of affixing stamp: | | | |

Form 8

|  |  |  |  |
| --- | --- | --- | --- |
| RENUNCIATION AND CONSOLIDATION TRANSFER FORM | | MARKING STAMP | |
| PART 1 | | | |
| Full name of company: | | | |
| Description of Division 3 rights: |  | | Register: |
| Quantity: | [Words] | | [Figures] |
| Transfer identification number: |  | | |
| Transfer Consolidation Number: |  | | |
| PART 2 | | | |
| Full name(s) and address(es) of transferee(s): | Transferee’s broker hereby certifies:  (a) that, the Division 3 rights set out in Part 1 of the Form(s) whose Transfer Consolidation Number(s) is (or are) set out in Part 1 above having been purchased in the ordinary course of business, the Division 3 assets to which the Division 3 rights relate are to be issued to the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the Division 3 assets be issued by the company to the transferee(s) and such entries be made in the register as are necessary to give effect to the renunciation(s) and transfer(s).  [Transferee’s broker’s stamp]  Date of affixing stamp: | | |

Form 9

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| TRUSTEE TRANSFER FORM | | | MARKING STAMP | | |
| PART 1 | | | | | |
| Full name of company: | | | | | |
| Description of Division 3 assets: | Class: | | | If not fully paid, paid to: | Register: |
| Quantity: | | [Words] | | [Figures] | |
| Transfer identification number, where appropriate: | |  | | | |
| Full name(s) of transferor(s): | |  | | | |
| PART 2 | | | | | |
| Full name(s) and address(es) of transferee(s): | | Transferor hereby certifies that the Division 3 assets set out in Part 1 above are to be registered in the name(s) of the transferee(s) named in this Part, being the person(s) for or on whose behalf the transferor held them, either alone or together with another person or other persons, in the ordinary course of business immediately before the execution of this transfer, and hereby requests that such entries be made in the register as are necessary to give effect to this transfer. | | | |
| I *[or We]* hereby transfer the above Division 3 assets to the transferee(s) named in Part 2 hereof.  Execution by the transferor(s):  Date of execution: | | | | | |

Form 10

|  |  |  |  |
| --- | --- | --- | --- |
| TRUSTEE RENUNCIATION AND TRANSFER FORM | |  | |
| PART 1 | | | |
| Full name of company: | | | |
| Description of Division 3 rights: |  | | Register: |
| Quantity: | [Words] | | [Figures] |
| Transfer identification number, where appropriate: |  | | |
| Full name(s) of transferor(s): |  | | |
| PART 2 | | | |
| Full name(s) and address(es) of transferee(s): | Transferor hereby certifies that, the Division 3 rights set out in Part 1 above having been transferred to the person(s) for or on whose behalf the transferor held them, either alone or together with another person or other persons, in the ordinary course of business immediately before the transfer, the Division 3 assets to which the Division 3 rights relate are to be issued to the transferee(s) named in this Part, and hereby requests that the Division 3 assets be issued by the company to the transferee(s) and that such entries be made in the register as are necessary to give effect to this renunciation and transfer. | | |
| I *[or We]* hereby renounce and transfer the above Division 3 rights in favour of the transferee(s) named in Part 2 hereof.  Execution by the transferor(s):  Date of execution: | | | |

Schedule 3—Specified offices

(regulation 6.2.02)

| Column 1 | Column 2 | Column 3 | Column 4 |
| --- | --- | --- | --- |
| Item | Office | Law | Jurisdiction |
| 1 | Treasurer |  | Commonwealth |
| 2 | Trustee | Parts IV, X and XI of the *Bankruptcy Act 1966* | Commonwealth |
| 3 | Chairperson of the Australian Securities and Investments Commission | *Australian Securities and Investments Commission Act 2001* | Commonwealth |
| 4 | Deputy Chairperson of the Australian Securities and Investments Commission | *Australian Securities and Investments Commission Act 2001* | Commonwealth |
| 5 | Member of the Australian Securities and Investments Commission | *Australian Securities and Investments Commission Act 2001* | Commonwealth |
| 7 | Member of the Takeovers Panel | *Australian Securities and Investments Commission Act 2001* | Commonwealth |
| 8 | Treasurer |  | Western Australia |
| 9 | Commissioner for Corporate Affairs |  | Western Australia |
| 10 | Public Trustee | *Public Trustee Act 1941* | Western Australia |
| 11 | Master of the Supreme Court | *Supreme Court Act 1935* | Western Australia |
| 12 | Registrar of the Supreme Court | *Supreme Court Act 1935* | Western Australia |
| 13 | Treasurer |  | Victoria |
| 14 | Commissioner for Corporate Affairs |  | Victoria |
| 15 | Public Trustee | *Public Trustee Act 1958* | Victoria |
| 16 | Master of the Supreme Court | *Supreme Court Act 1958* | Victoria |
| 17 | Treasurer |  | New South Wales |
| 18 | Public Trustee | *Public Trustee Act 1913* | New South Wales |
| 19 | Master | Division 1 of Part VIII of the *Supreme Court Act 1970* | New South Wales |
| 20 | Supervisor of Loan Fund Companies | *Loan Fund Companies Act 1976* | New South Wales |
| 21 | Protective Commissioner | *Mental Health Act 1958* | New South Wales |
| 22 | Treasurer |  | Queensland |
| 23 | Commissioner for Corporate Affairs |  | Queensland |
| 24 | Public Trustee | *Public Trustee Act 1978* | Queensland |
| 25 | Registrar | Supreme Court Acts 1861‑1980 | Queensland |
| 26 | Treasurer |  | South Australia |
| 27 | Curator of Prisoners Property | *Criminal Law Consolidation Act 1935‑80* | South Australia |
| 28 | Public Trustee | *Administration and Probate Act 1919‑1980* | South Australia |
| 29 | Master or accountant | Supreme Court Act 1935‑1980 | South Australia |
| 30 | Administrator | Chapter XLIX of the *Criminal Code* | Tasmania |
| 31 | Treasurer |  | Tasmania |
| 32 | Commissioner for Corporate Affairs |  | Tasmania |
| 33 | Public Trustee | *Public Trustee Office Act 1930* | Tasmania |
| 34 | Registrar of the Supreme Court | *Supreme Court Act 1959* | Tasmania |
| 35 | Treasurer |  | Australian Capital Territory |
| 36 | Public Trustee | *Administration and Probate Ordinance 1929* and the *Public Trustee Act 1985* | Australian Capital Territory |
| 37 | Registrar of the Supreme Court | *Australian Capital Territory Supreme Court Act 1933* | Commonwealth |
| 38 | Master of the Supreme Court | *Australian Capital Territory Supreme Court Act 1933* | Commonwealth |
| 39 | Treasurer |  | Northern Territory |
| 40 | Public Trustee | *Public Trustee Act 1979* | Northern Territory |
| 41 | Master of the Supreme Court |  | Northern Territory |
| 42 | Commissioner for Corporate Affairs | *Companies (Administration) Act 1986* | Northern Territory |

Schedule 4—Prescribed amounts

(regulation 1.1.01)

| Column 1 | Column 2 | Column 3 |
| --- | --- | --- |
| Item | Matter | Amount ($) |
| 1 | Inspection of registers for the purposes of: |  |
|  | (a) subsection 173(2) or subsection 672DA(7): |  |
|  | (i) if a register is not kept on a computer—for each inspection | 5.00 |
|  | (ii) if a register is kept on a computer—for each inspection | a reasonable amount that does not exceed the marginal cost to the company of providing an inspection |
| 1AA | Supply of copies for subsection 173(3)  In addition, if information is provided about 5,000 or more members: | 250.00 |
|  | (a) for the 5,000th member and for each additional member up to and including the 19,999th member | 0.05 |
|  | (b) for the 20,000th member and for each additional member | 0.01 |
| 1A | Inspection of registers or records for: |  |
|  | (a) subsection 271(3) |  |
|  | (b) subsection 668A(3); |  |
|  | for each inspection | 5.00 |
| 2 | Supply under section 139 by a company to a member of the company of a copy of the company’s constitution | 10.00 |
| 3 | Supply of copies for subsection 672DA(8): |  |
|  | (a) if a register is not kept on a computer—for each page, or part of a page, not exceeding international sheet size A4 of the copy supplied or, at the option of the supplier, for each 100 words or part of 100 words | 0.50 |
|  | (b) if a register is kept on a computer—for each inspection | a reasonable amount that does not exceed the marginal cost to the company of providing a copy |
| 3A | Supply of copies for: |  |
|  | (a) subsection 246G(3) |  |
|  | (b) subsection 251B(4) |  |
|  | (ba) subsection 253N(4) |  |
|  | (c) subsection 271(4) |  |
|  | (d) subsection 812(3) |  |
|  | (e) paragraph 1178(3)(a); |  |
|  | for each page, or part of a page, not exceeding international sheet size A4 of the copy supplied or, at the option of the supplier, for each 100 words or part of 100 words | 0.50 |
| 4 | Payment for each name and address provided under subsection 641(5) | 0.10 |
| 5 | For compliance with a direction under section 672A | 5.00 |
| 6 | Replacement of lost or destroyed certificate for paragraph 1070D(4)(a) | 10.00 |
| 7 | Fee for supply by a responsible entity of a copy of the constitution of a registered scheme under subsection 601GC(4) | 10.00 |
| 7A | Costs of the operator in providing a copy of the consolidated constitution of a notified foreign passport fund under section 1213J | 10.00 |
| 7B | Costs of the operator in providing a copy of the register of members of a notified foreign passport fund under section 1213K  In addition, if information is provided about 5,000 or more members: | 250.00 |
|  | (a) for the 5,000th member and for each additional member up to and including the 19,999th member | 0.05 |
|  | (b) for the 20,000th member and for each additional member | 0.01 |
| 8 | Inspection of register for subsection 919E(3): |  |
|  | (a) if the register is not kept on a computer—for each inspection | 12.50 |
|  | (b) if the register is kept on a computer—for each inspection | a reasonable amount that does not exceed the marginal cost to the declared professional body of providing an inspection |
|  | (c) despite paragraphs (a) and (b), if the inspection is by a member of the declared professional body | No fee |
| 9 | Making copies of, or taking extracts from, a register for subsection 919E(3): |  |
|  | (a) if the register is not kept on a computer—for each page, or part of a page, not exceeding international sheet size A4 of the copy supplied or, at the option of the supplier, for each 100 words or part of 100 words | 1.25 |
|  | (b) if a register is kept on a computer—for each copy or extract | a reasonable amount that does not exceed the marginal cost to the declared professional body of providing a copy or extract |

Schedule 5C—Conduct of auditor—relevant relationships

(regulation 2M.6.05)

1 Money owed—debt

(1) Subclause (2) applies in relation to audit activity in relation to a financial year that ends on or after the commencement of this Schedule.

(2) The operation of Chapter 2M of the Act is modified by omitting subsection 324CH(5) of the Act (including the subheading) and substituting the following subheading and subsection:

Ordinary course of business exception

(5) For the purposes of item 15 of the table in subsection (1):

(a) disregard a debt owed by an individual to a body corporate or entity if:

(i) the body corporate or entity is:

(A) an Australian ADI; or

(B) a body corporate registered under the *Life Insurance Act 1995*; and

(ii) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and

(iii) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence; and

(b) disregard a debt owed by the person or firm to a body corporate or entity if:

(i) the debt is on normal terms and conditions, and arises from the acquisition of goods or services on normal trading terms from:

(A) the audited body; or

(B) an entity that the audited body controls; or

(C) a related body corporate; and

(ii) the goods or services will be used by the person or firm:

(A) for the personal use of the person or firm; or

(B) in the ordinary course of business of the person or firm.

2 Money owed—deposit account

(1) Subclause (2) applies in relation to audit activity in relation to a financial year that ends on or after the commencement of this Schedule.

(2) The operation of Chapter 2M of the Act is modified by omitting subsection 324CH(6) of the Act (including the subheading) and substituting the following subheading and subsection:

Loans by immediate family members and amounts on call

(6) For the purposes of item 16 of the table in subsection (1):

(a) disregard a debt owed to a person by a body corporate or entity if:

(i) the item applies to the person because the person is an immediate family member of:

(A) a professional member of the audit team conducting the audit of the audited body; or

(B) a non‑audit services provider; and

(ii) the debt is incurred in the ordinary course of business of the body corporate or entity; and

(b) disregard an amount owed to the person or firm by the audited body, a related body corporate or an entity that the audited body controls if:

(i) the body, body corporate or entity is an Australian ADI; and

(ii) the amount is in a basic deposit product provided by the body, body corporate or entity; and

(iii) the amount was deposited in the ordinary course of the business of the audited body, body corporate or entity, and on the terms and conditions that normally apply to basic deposit products provided by the body, body corporate or entity.

3 Public company auditor (annual appointments at AGMs to fill vacancies)

(1) Subclause (2) applies to:

(a) all companies; and

(b) all registered schemes; and

(c) all disclosing entities;

only in relation to audit activity that is conducted on or after the commencement of this Schedule.

(2) The operation of Chapter 2M of the Act is modified by omitting from subsections 327B(2A), (2B) and (2C) of the Act “21 days” and inserting “21 days, or such longer period as ASIC allows,”.

Schedule 6—Availability of names

(regulations 2B.6.01, 2B.6.02, 5B.3.01, 5B.3.02 and 8A.4.10)

Part 1—Rules for ascertaining whether names are identical

6101

In comparing one name with another for paragraph 147(1)(a) or (b) or 601DC(1)(a) or (b) or for subparagraph 1213B(5)(a)(i), (ii), (iii) or (iv) of the Act, the following matters are to be disregarded:

(a) the use of the definite or indefinite article as the first word in one or both of those names;

(b) the use of ‘Proprietary’, ‘Pty’, ‘Limited’, ‘Ltd’, ‘No Liability’ or ‘NL’ in one or both of the names;

(c) whether a word is in the plural or singular number in one or both names;

(d) the type, size and case of letters, the size of any numbers or other characters, and any accents, spaces between letters, numbers or characters, and punctuation marks, used in one or both names;

(e) the fact that one name contains a word or expression in column 2 of the following table and the other name contains an alternative for that word or expression in column 3:

| Column 1  Item | Column 2  Word or expression | Column 3  Alternative |
| --- | --- | --- |
| 1 | Australian | Aust |
| 2 | Company | Co *or* Coy |
| 3 | Co | Company *or* Coy |
| 4 | Coy | Company *or* Co |
| 5 | Number | No |
| 6 | and | & |
| 7 | Incorporated | Inc |
| 8 | Corporation | Corp |
| 9 | Australian Company Number | ACN |
| 10 | Corporate Collective Investment Vehicle | CCIV |

Part 2—Names unacceptable for registration

6203

For paragraphs 147(1)(c) and 601DC(1)(c) and for subparagraph 1213B(5)(a)(v) of the Act, a name is unacceptable for registration if the name:

(a) in the opinion of ASIC, is undesirable, or likely to be offensive to:

(i) members of the public; or

(ii) members of any section of the public; or

(b) subject to rule 6204:

(i) contains a word or phrase specified in an item in Part 3, or an abbreviation of that word or phrase; or

(ii) a word or phrase or an abbreviation having the same or a similar meaning; or

(c) subject to rule 6205, includes the word ‘Commonwealth’ or ‘Federal’; or

(d) in the context in which it is proposed to be used, suggests a connection with:

(i) the Crown; or

(ii) the Commonwealth Government; or

(iii) the Government of a State or Territory; or

(iv) a municipal or other local authority; or

(v) the Government of any other part of the Queen’s dominions, possessions or territories; or

(vi) a department, authority or instrumentality of the Commonwealth Government; or

(vii) a department, authority or instrumentality of the Government of a State or Territory; or

(viii) the government of a foreign country;

if that connection does not exist; or

(e) in the context in which it is proposed to be used, suggests a connection with:

(i) a member of the Royal Family; or

(ii) the receipt of Royal patronage; or

(iii) an ex‑servicemen’s organisation; or

(iv) Sir Donald Bradman; or

(v) Mary MacKillop;

if that connection does not exist; or

(f) in the context in which it is proposed to be used, suggests that the members of an organisation are totally or partially incapacitated if those members are not so affected.

6204

Paragraph 6203(b) does not apply to the following:

(a) item 6309, 6312 or 6318 of Part 3 if a word or phrase in any of those items must be included in the name of:

(i) a registrable Australian body; or

(ii) a registered Australian body;

because of the Act under which it is incorporated or registered;

(b) item 6314 of Part 3 if the word in that item must be included in the name of:

(i) a registrable Australian body; or

(ii) a registered Australian body; or

(iii) a registered foreign company; or

(iv) a foreign company;

because of the Act under which it is incorporated or registered;

(c) item 6316AA of Part 3 if the phrase in that item is included in the name of a foreign passport fund in relation to which a notice of intention has been lodged under section 1213 of the Act (which deals with notices of intention to offer interests in a foreign passport fund).

6205

Paragraph 6203(c) does not apply if ASIC is satisfied that the word is used in a geographical context.

Part 3—Restricted words and phrases

| Column 1 | Column 2 |
| --- | --- |
| Item | Word or phrase |
| 6301A | Aboriginal and Torres Strait Islander Corporation |
| 6301 | Aboriginal Corporation |
| 6302 | Aboriginal Council |
| 6304 | Chamber of Commerce |
| 6305 | Chamber of Manufactures |
| 6306 | Chartered |
| 6308 | Consumer |
| 6309 | Co‑operative |
| 6311 | Executor |
| 6312 | Friendly Society (other than in relation to the conduct of a financial business) |
| 6312A | GST |
| 6312B | G.S.T. |
| 6313 | Guarantee |
| 6314 | Incorporated |
| 6315 | Indigenous Corporation |
| 6316 | Made in Australia |
| 6316AA | passport fund |
| 6316A | police |
| 6316B | policing |
| 6317 | R.S.L. |
| 6317A | RSL |
| 6318 | Starr Bowkett |
| 6319 | Stock Exchange |
| 6319A | Torres Strait Islander and Aboriginal Corporation |
| 6320 | Torres Strait Islander Corporation |
| 6321 | Trust |
| 6322 | Trustee |

Part 4—Consent required to use restricted words and phrases

| Column 1 | Column 2 | Column 3 |
| --- | --- | --- |
| Item | Word or phrase | Minister |
| 6401 | Anzac | Minister for Veterans’ Affairs |
| 6403 | Geneva Cross, Red Crescent, Red Cross, Red Lion and Sun | Minister for Defence |
| 6405 | United Nations | Minister for Foreign Affairs |
| 6406 | University | Minister for Education, Training and Youth Affairs |

Part 5—Names relating to financial institutions for use of which consent is required

| Item | Letters, word or expression | Public authority, instrumentality or agency |
| --- | --- | --- |
| 6501 | ADI | APRA |
| 6502 | authorised deposit‑taking institution | APRA |
| 6503 | bank | APRA |
| 6504 | banker | APRA |
| 6505 | banking | APRA |
| 6506 | building society | APRA |
| 6507 | credit society | APRA |
| 6508 | credit union | APRA |
| 6509 | friendly society (in relation to the conduct of a financial business) | APRA |

Schedule 7—Exemptions from requirements to set out certain corporate particulars

(regulations 2B.6.03 and 5B.3.03)

7001 Definitions for Schedule 7

In this Schedule:

***IATA*** means the International Air Transport Association.

***IATA body*** means a company, registered Australian body or registered foreign company that is a member of IATA, or participates in the program conducted by IATA known as BSP Australia.

***relevant information*** means the information that is required under subsection 153(2), or paragraph 601DE(1)(b), (c) or (d), of the Act to be set out on a public document or negotiable instrument.

7002 Exemption for certain IATA documents

An IATA Body is exempt from the requirement to set out the relevant information on a document if:

(a) it is a document of one of the following kinds:

(i) passenger ticket and baggage check;

(ii) excess baggage ticket;

(iii) agency credit or debit memo;

(iv) credit card charge form;

(v) miscellaneous charges order;

(vi) stopover voucher;

(vii) air waybill; and

(b) either:

(i) it is in a form sponsored by IATA; or

(ii) it is required by IATA to be used by IATA bodies; or

(iii) it is a document printed outside Australia exclusively for use, outside Australia, by or on behalf of that particular IATA body.

7003 Exemption for bills of lading and sea waybills

The following companies, registered Australian bodies and registered foreign companies are exempt from the requirement to set out the relevant information on a bill of lading or sea waybill:

(a) Austrident Shipping Agency Pty Ltd;

(c) Bakke‑WA Pty Limited;

(d) Blue Star Line Limited;

(e) Blue Star PACE Limited;

(f) CSR Limited;

(g) Dalgety Australia Operations Limited;

(h) Five Star Shipping & Agency Company Pty Ltd;

(i) Jebsens International (Australia) Pty Ltd;

(j) ‘K’ Line (Australia) Pty Limited;

(k) Nedlloyd Australia Pty Ltd;

(l) OOCL (Australia) Pty Limited;

(m) Opal Maritime Agencies Pty Limited;

(n) Patrick Sleigh Shipping Agencies Pty Limited;

(o) Tasman Express Line Limited;

(p) Wilhelmsen Lines Australia Pty Ltd;

(q) Wills Shipping Pty Limited.

7004 Exemptions—quotation of ACNs and ARBNs

(1) A company is exempt from the requirement to set out the relevant information on a public document, or a negotiable instrument, of the company if:

(a) the company is registered on the Australian Business Register; and

(b) the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ACN; and

(c) ‘Australian Business Number’ or ‘ABN’ is displayed with the name of the company, or with 1 of the references to that name:

(i) in the case of a document or instrument in which the name appears on only 1 page—on that page; and

(ii) in the case of a document or instrument in which the name appears on 2 or more pages—on the first of those pages.

(2) A registered Australian body or registered foreign body is exempt from the requirement to set out information mentioned in paragraph 601DE(1)(b) and subsection 601DE(2) of the Act on a public document, or a negotiable instrument, of the registered body or foreign company if:

(a) the body or company is also registered on the Australian Business Register; and

(b) the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARBN; and

(c) ‘Australian Business Number’ or ‘ABN’ is displayed with the name of the body or company, or with 1 of the references to that name:

(i) in the case of a document or instrument in which the name appears on only 1 page—on that page; and

(ii) in the case of a document or instrument in which the name appears on 2 or more pages—on the first of those pages.

Schedule 7A—Content of annual transparency report

(subregulation 2M.4A.02(1))

Part 1—Interpretation for Schedule 7A

7A101 Interpretation

In this Schedule:

***management body***, for an authorised audit company, means the Board of Directors.

***relevant transparency reporting year***means the transparency reporting year to which an annual transparency report relates.

Note: See regulation 2M.4A.01 for an application provision that, read in combination with regulation 2M.4A.02, is relevant to Schedule 7A.

Part 2—Prescribed information for audit firm or authorised audit company

| Item | Information |
| --- | --- |
| 7A201 | A description of the transparency reporting auditor’s:  (a) legal structure; and  (b) ownership |
| 7A202 | If the transparency reporting auditor belongs to a network, a description of: |
|  | (a) the network; and  (b) the legal arrangements of the network; and  (c) the structural arrangements of the network |
| 7A203 | A description of the transparency reporting auditor’s governance structure |
| 7A204 | A description of the transparency reporting auditor’s internal quality control system |
| 7A205 | A statement by the transparency reporting auditor’s administrative body or management body on the effectiveness of the functioning of the transparency reporting auditor’s internal quality control system in the relevant transparency reporting year |
| 7A206 | The name of each body that is authorised to review the transparency reporting auditor (for example, ASIC or a professional accounting body) and the date of the most recent review of the transparency reporting auditor conducted by the body |
| 7A207 | The names of bodies of the kinds mentioned in subsection 332A(1) of the Act for which the transparency reporting auditor conducted an audit under Division 3 of Part 2M.3 of the Act in the relevant transparency reporting year |
| 7A208 | A statement about the transparency reporting auditor’s independence practices in the relevant transparency reporting year, including the date on which the transparency reporting auditor most recently conducted an internal review of its independence compliance |
| 7A209 | A statement about the policy that the transparency reporting auditor follows regarding the minimum amount and nature of continuing or other professional education that professional members of an audit team must undertake during the relevant transparency reporting year |
| 7A210 | Financial information for the transparency reporting auditor that relates to the relevant transparency reporting year, including:  (a) total revenue; and |
|  | (b) revenue relating to:  (i) audits of financial statements conducted by the transparency reporting auditor; and  (ii) other services provided by the transparency reporting auditor |
| 7A211 | Information concerning the basis for remuneration of:  (a) the audit firm’s partners; or  (b) the authorised audit company’s directors |

Part 3—Prescribed information for individual auditor

| Item | Information |
| --- | --- |
| 7A301 | If the transparency reporting auditor belongs to a network, a description of: |
|  | (a) the network; and  (b) the legal arrangements of the network; and  (c) the structural arrangements of the network |
| 7A302 | A description of the transparency reporting auditor’s internal quality control system |
| 7A303 | The name of each body that is authorised to review the transparency reporting auditor (for example, ASIC or a professional accounting body) and the date of the most recent review of the transparency reporting auditor conducted by the body |
| 7A304 | The names of bodies of the kinds mentioned in subsection 332A(1) of the Act for which the transparency reporting auditor conducted an audit under Division 3 of Part 2M.3 of the Act in the relevant transparency reporting year |
| 7A305 | A statement that sets out the transparency reporting auditor’s independence practices in the relevant transparency reporting year |
| 7A306 | Financial information for the transparency reporting auditor that relates to the relevant transparency reporting year, including:  (a) total revenue; and  (b) revenue relating to:  (i) audits of financial statements conducted by the transparency reporting auditor; and  (ii) other services provided by the transparency reporting auditor |

Schedule 8—Schemes of arrangement under Part 5.1 of the Act

(regulation 5.1.01)

Chapter 5—External administration

Part 1—Interpretation and application

**8101** In this Schedule:

***internal creditor*** means:

(a) a creditor who is a member of the company; or

(b) a relative or spouse of a member; or

(c) a relative of the spouse of a member.

***relevant marketable securities*** means:

(a) unless paragraph (b) applies—marketable securities; or

(b) if, because of section 1235C of the Act, the subject of the Scheme is a sub‑fund of a CCIV:

(i) shares or debentures; or

(ii) any rights or options in respect of shares.

Note: If, because of section 1235C of the Act, the subject of the Scheme is a sub‑fund of a CCIV, that section translates most of this Schedule’s references to the company so that they are references to the sub‑fund.

***Scheme*** means the proposed compromise or arrangement.

***scheme creditors*** means the creditors or class of creditors of a company, to whom the Scheme would apply.

***scheme members*** means the members or class of members of a company, to whom the Scheme would apply.

**8102** This Schedule applies to a Part 5.1 body that is not a company as if:

(a) references to a company were references to a Part 5.1 body that is not a company; and

(b) references to a director were references to an office bearer, committee member or other office holder of the body; and

(c) references to entitlements to voting shares were references to an ability to exercise a percentage of the total votes that could be exercised by members of the body.

Part 2—Prescribed information relating to proposed compromise or arrangement with creditors or class of creditors

**8201** The statement must set out:

(a) the expected dividend that would be available to scheme creditors if the company were to be wound up within 6 months after the date of the hearing of the application to the Court for an order under subsections 411(1) and (1A) of the Act; and

(b) if a composition of debts is proposed—the expected dividend that would be paid to scheme creditors if the Scheme were put into effect as proposed; and

(c) a list of the names of all known scheme creditors and the debts owed to those creditors; and

(d) if a scheme creditor is known to be a guaranteed creditor—the name of the creditor and the amount of the debt owed; and

(e) if a scheme creditor is known to be an internal creditor—the name of the creditor and the amount of the debt owed.

**8202** The statement must contain a statement that an order under subsections 411(1) and (1A) of the Act is not an endorsement of, or any other expression of opinion on, the Scheme.

**8203** The statement must contain or have annexed to it:

(a) a report on the affairs of the company in accordance with Form 507, showing the financial position of the company as at a day within one month of the date on which it is intended to apply to the Court for an order under subsections 411(1) and (1A) of the Act;

(b) a copy, certified by a director or by a secretary of the company to be a true copy, of all financial statements, required to be lodged with the ASIC by the company, together with a copy of every document required by law to be annexed to the financial statements;

(c) if the company the subject of the Scheme is a trustee, a statement:

(i) of the number of trusts administered by the trustee; and

(ii) whether the trustee carries on any business separate from that of the trust; and

(iii) how the scheme creditors may obtain a copy of the relevant trust deed, free of charge, prior to the date of the meeting; and

(d) if the person (if any) who would be appointed to manage the Scheme proposes to charge for his or her services and for the services of his or her staff in accordance with a particular scale of charges, that scale of charges.

Part 3—Prescribed information relating to proposed compromise or arrangement with members or a class of members

**8301** The statement must set out:

(a) unless the company the subject of the Scheme is in the course of being wound up or is under official management, in relation to each director of the company:

(i) whether the director recommends the acceptance of the Scheme or recommends against acceptance and, in either case, his or her reasons for so recommending; or

(ii) if the director is not available to consider the Scheme—that the director is not so available and the cause of his or her not being available; or

(iii) in any other case—that the director does not desire to make, or does not consider himself or herself justified in making, a recommendation and, if the director so requires, his or her reasons for not wishing to do so; or

(b) if the company is in the course of being wound up or is under official management—in relation to each liquidator or each official manager:

(i) whether he or she recommends acceptance of the Scheme or recommends against acceptance and, in either case, his or her reasons for so recommending; or

(ii) in any other case—that the liquidator or official manager does not wish to make a recommendation and his or her reasons for not wishing to do so.

**8302** The statement must set out:

(a) the number, description and amount of relevant marketable securities of the company the subject of the Scheme held by or on behalf of each director of the company or, if none are held by or on behalf of a director, a statement to that effect; and

(b) for each director of the company by whom or on whose behalf shares in that company are held, whether:

(i) the director intends to vote in favour of, or against, the Scheme; or

(ii) the director has not decided whether he or she will vote in favour of, or against, the Scheme; and

(c) if the other party to the proposed reconstruction or amalgamation is, or includes, a corporation, whether any marketable securities of the corporation are held by, or on behalf of, any director of the company the subject of the Scheme and, if so, the number, description and amount of those marketable securities; and

(d) particulars of any payment or other benefit that is proposed to:

(i) be made or given to any director, secretary or executive officer of the company the subject of the Scheme as compensation for loss of, or as consideration for or in connection with his or her retirement from, office in that company or in a related body corporate; or

(ii) be made or given to any director, secretary or executive officer of any related body corporate as compensation for the loss of, or as consideration for or in connection with his or her retirement from, office in that body corporate or in the company the subject of the Scheme; and

(e) if there is any other agreement or arrangement made between a director of the company the subject of the Scheme and another person in connection with or conditional on the outcome of the Scheme—particulars of the agreement or arrangement; and

(f) if the object of the Scheme is for a corporation to acquire control of another corporation that is a company, particulars of the nature and extent of any interest of a director of that company in any contract entered into by the corporation seeking control; and

(g) if the shares of the company the subject of the Scheme are not granted official quotation on a securities exchange, all the information that the company has as to the number of shares that have been sold in the 6 months immediately before the date on which the statement is lodged, the amount of those shares and the prices at which they were sold; and

(h) whether, within the knowledge of the directors of the company the subject of the Scheme, or, if the company is in liquidation or under official management, the knowledge of the liquidator or the official manager, the financial position of the company has materially changed since the date of the last balance sheet laid before the company in general meeting or sent to shareholders in accordance with section 314 or 317 of the Act and, if so, full particulars of any change; and

(i) any other information material to the making of a decision in relation to the Scheme, being information that is within the knowledge of any director, liquidator or official manager of a company the subject of the Scheme or of a related company and that has not previously been disclosed to the Scheme members.

**8303** If:

(a) the other party to the proposed reconstruction or amalgamation of the company the subject of the Scheme has a prescribed shareholding in the company; or

(b) a director of any corporation that is the other party to the proposed reconstruction or amalgamation is a director of a company the subject of the Scheme;

the statement must be accompanied by a copy of a report made by an expert who is not associated with the corporation that is the other party, stating whether or not, in his or her opinion, the proposed Scheme is in the best interest of the members of the company the subject of the Scheme and setting out his or her reasons for that opinion.

**8304** If the company the subject of the Scheme obtains 2 or more reports, each of which could be used for clause 3, the statement must be accompanied by a copy of each report.

**8305** If:

(a) the company the subject of the Scheme obtains a report for clause 3; and

(b) the report contains:

(i) a forecast of the profits or profitability of the company; or

(ii) a statement that the market value of an asset or assets of the company or of a related body corporate differs from an amount at which the value of the asset or assets is shown in the books of the company or the related body corporate;

that report must not accompany the statement except with the consent in writing of ASIC and in accordance with such conditions (if any) as are stated by ASIC.

**8306** For clause 3:

(a) a person has a prescribed shareholding in a company if he or she is entitled to not less than 30% of the voting shares in the company; and

(b) a person has a prescribed shareholding in a company in which the voting shares are divided into 2 or more classes of shares, if he or she is entitled to not less than 30% of the shares in one of those classes.

**8307** If the consideration to be offered to scheme members consists, in whole or in part, of marketable securities issued, or to be issued, by a corporation, the statement must set out the formula to be applied to find out the number of marketable securities to be issued to each scheme member, and the basis on which that formula was developed.

**8308** If marketable securities of the same class as those mentioned in clause 7 are granted official quotation on a securities exchange, the statement must state the fact, specify the securities exchange concerned, and set out:

(a) the latest recorded sale price before the date on which the statement is lodged for registration; and

(b) the highest and lowest recorded sale prices during the 3 months immediately before that date and the dates of the relevant sales; and

(c) if the Scheme has been the subject of a public announcement in newspapers or by any other means before the statement has been registered by ASIC—the latest recorded sale price immediately before the public announcement.

**8309** (1) If the marketable securities mentioned in clause 8 are granted official quotation on more than one securities exchange, it is sufficient compliance with paragraphs 8(a) and (c) if information on the marketable securities is given for the securities exchange at which there has been the greatest number of recorded dealings in the securities in the 3 months immediately before the date on which the statement is lodged for registration.

(2) If the securities have not been granted official quotation on a securities exchange, the statement must set out all the information that a director, liquidator or official manager of the company the subject of the Scheme or of a related body corporate has about the number of securities that have been sold in the 3 months immediately before the date on which the explanatory statement was prepared and the price of those securities or, if that information or any part of that information cannot be ascertained, a statement to that effect.

**8310** The statement must set out particulars of the intentions of the directors of the company the subject of the Scheme regarding:

(a) the continuation of the business of the company or, if the undertaking, or any part of the undertaking, of a company is to be transferred, how that undertaking or part is to be conducted in the future; and

(b) any major changes to be made to the business of the company, including any redeployment of the fixed assets of the company; and

(c) the future employment of the present employees of the company.

Part 4—Prescribed information relating to proposed compromise or arrangement with members or class of members for transfer to a trustee

**8401** The statement must set out:

(a) in detail, the basis on which units in the unit trust are to be issued to scheme members; and

(b) if the issue of units in the unit trust is based on the asset backing of shares held by scheme members—full valuation details of those assets.

**8402** A copy of the trust deed must be annexed, or set out in a schedule, to the statement.

**8403** If the effect of the proposed compromise or arrangement will be the merger of 2 companies without substantial common membership, the explanatory statement must, so far as practicable, state the matters, and be accompanied by the documents and reports, mentioned in Part 3.

Schedule 8A—Deed of company arrangement—prescribed provisions

(regulation 5.3A.06)

1 Administrator deemed agent of company

In exercising the powers conferred by this deed and carrying out the duties arising under this deed, the administrator is taken to act as agent for and on behalf of the company.

2 Powers of administrator

For the purpose only of administering this deed, the administrator has the following powers:

(a) to enter upon or take possession of the property of the company;

(b) to lease or let on hire property of the company;

(c) to grant options over property of the company on such conditions as the administrator thinks fit;

(d) to insure property of the company;

(e) to repair, renew or enlarge property of the company;

(f) to call in, collect or convert into money the property of the company;

(g) to administer the assets available for the payment of claims of creditors in accordance with the provisions of this deed;

(h) to purchase, hire, lease or otherwise acquire any property or interest in property from any person or corporation;

(i) to borrow or raise money, whether secured upon any or all of the assets of the company or unsecured, for any period on such terms as the administrator thinks fit and whether in substitution for any existing security or otherwise;

(j) to bring, prosecute and defend in the name and on behalf of the company or in the name of the administrator any actions, suits or proceedings;

(k) to refer to arbitration any question affecting the company;

(l) to make payments to any secured creditor of the company and any person who is the owner or lessor of property possessed used or occupied by the company;

(m) to convene and hold meetings of the members or creditors of the company for any purpose the administrator thinks fit;

(n) to make interim or other distributions of the proceeds of the realisation of the assets available for the payment of claims of creditors as provided in this deed;

(o) to appoint agents to do any business or to attend to any matter or affairs of the company that the administrator is unable to do, or that it is unreasonable to expect the administrator to do, in person;

(p) to engage or discharge employees on behalf of the company;

(q) to appoint a solicitor, accountant or other professionally qualified person to assist the administrator;

(r) to permit any person authorised by the administrator to operate any account in the name of the company;

(s) to sell, call in or convert into money any of the property of the company, to apply the money in accordance with this deed and otherwise effectively and properly to carry out his or her duties as administrator;

(t) to do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents, using the company’s common or official seal when necessary;

(u) subject to the *Bankruptcy Act 1966*, to prove in the bankruptcy of any contributory or debtor of the company or under any deed executed under that Act;

(v) subject to the Act, to prove in the winding up of any contributory or debtor of the company or under any scheme of arrangement entered into, or deed of company arrangement executed, under the Act;

(w) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the company;

(x) to take out letters of administration of the estate of a deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor, or the estate of a contributory or debtor, that cannot be conveniently done in the name of the company;

(y) to bring or defend an application for the winding up of the company;

(z) to carry on the business of the company on such terms and conditions and for such purposes and times and in such manner as the administrator thinks fit subject only to the limitations imposed by this deed;

(za) to sell any or all of the property of the company including the whole of the business or undertaking of the company at any time the administrator thinks fit, either by public auction or by private contract and either for a lump sum or for a sum payable by instalments or for a sum on account and to obtain a mortgage charge or encumbrance for the balance or otherwise;

(zb) to close down the whole or any part of any business of the company;

(zc) to enter into and complete any contract for the sale of shares in the company;

(zd) to compromise any debts or claims brought by or against the company on such terms as the administrator thinks fit and to take security for the discharge of any debt forming part of the property of the company;

(ze) to pay any class of creditors in full, subject to Subdivision D of Division 6 of Part 5.6 of the Act;

(zf) to do anything that is incidental to exercising a power set out in this clause;

(zg) to do anything else that is necessary or convenient for the purpose of administering this deed.

3 Termination of deed where arrangement fails

If the administrator or the committee of inspection determines that it is no longer practicable or desirable either to continue to carry on the business of the company or to implement this deed, the administrator:

(a) may cease to carry on the business of the company except so far as is necessary for the beneficial winding up of the company;

(b) must summon a meeting of creditors for the purpose of passing a resolution under section 445C(b) of the Act; and

(c) must forward to each creditor not less than 14 days prior to the meeting an up‑to‑date report as to the position of the company accompanied by such financial statements as the administrator thinks fit, together with a statement that he or she does not think it practicable or desirable to carry on the business of the company or to continue this deed and that this deed will be terminated if the company’s creditors resolve.

4 Priority

The administrator must apply the property of the company coming under his or her control under this deed in the order of priority specified in section 556, 560 or 561 of the Act.

5 Discharge of debts

The creditors must accept their entitlements under this deed in full satisfaction and complete discharge of all debts or claims which they have or claim to have against the company as at the day when the administration began and each of them will, if called upon to do so, execute and deliver to the company such forms of release of any such claim as the administrator requires.

6 Claims extinguished

If the administrator has paid to the creditors their full entitlements under this deed, all debts or claims, present or future, actual or contingent, due or which may become due by the company as a result of anything done or omitted by or on behalf of the company before the day when the administration began and each claim against the company as a result of anything done or omitted by or on behalf of the company before the day when the administration began is extinguished.

7 Bar to creditors’ claims

Subject to section 444D of the Act this deed may be pleaded by the company against any creditor in bar of any debt or claim that is admissible under this deed and a creditor (whether the creditor’s debt or claim is or is not admitted or established under this deed) must not, before the termination of this deed:

(a) take or concur in the taking of any step to wind up the company; or

(b) except for the purpose and to the extent provided in this deed, institute or prosecute any legal proceedings in relation to any debt incurred or alleged to have been incurred by the company before the day when the administration began; or

(c) take any further step (including any step by way of legal or equitable execution) in any proceedings pending against or in relation to the company at the day when the administration began; or

(d) exercise any right of set‑off or cross‑action to which the creditor would not have been entitled had the company been wound up at the day when the administration began; or

(e) commence or take any further step in any arbitration against the company or to which the company is a party.

8 Making claims

(1) Subdivisions A, B, C and E of Division 6 of Part 5.6 of the *Corporations Act 2001* apply to claims made under this deed as if the references to the liquidator were references to the administrator of this deed.

(2) For subclause (1), the remainder of that Act, and the *Corporations Regulations 2001*, are taken to apply, as far as practicable, as if:

(a) a reference that is relevant to the liquidator were a reference in a form that is applicable to the administrator; and

(b) a reference that is relevant to any other matter relating to liquidation were a reference in a form that is applicable to the administration of this deed; and

(c) a reference to a ***relevant date*** were a reference to the date of the administrator’s appointment .

10 Lodging of accounts

Section 434 of the Act applies to the administrator as if the reference to a controller were a reference to the administrator of this deed.

11 Committee of inspection

For the purpose of advising and assisting the administrator of this deed, there may be a committee of inspection (the ***committee***) to which the following rules apply:

(a) the committee must consist of at least 3 and not more than 5 members;

(b) the creditors must appoint the members in a general meeting;

(c) a creditor is not entitled to have more than one representative (including the creditor himself or herself, if a natural person) on the committee;

(d) minutes of all resolutions and proceedings of each meeting of the committee must be made and duly entered in books to be provided from time to time for that purpose by the administrator under this deed;

(e) if the minutes of a meeting purport to be signed by the chairperson of the meeting at which the resolutions were passed or proceedings taken or by the chairperson of the next meeting of the committee, the minutes are *prima facie* evidence of the matters contained in them;

(f) unless the contrary is proved, the meeting is taken to have been duly had and convened and all resolutions passed and proceedings taken at the meeting are taken to have been duly passed and taken;

(g) a corporation (being otherwise qualified for membership of the committee) is not entitled to be a member of the committee but may appoint a person to represent it on the committee;

(h) subsection 548(3) and sections 549, 550 and 551 of the Act apply, with such modifications as are necessary, to a committee of inspection established under this deed as if the references to the liquidator were references to the administrator of this deed and the references to contributories were deleted.

12 Termination of deed where arrangement achieves purpose

If the administrator has applied all of the proceeds of the realisation of the assets available for the payment of creditors or has paid to the creditors the sum of 100 cents in the dollar or any lesser sum determined by the creditors at a general meeting, the administrator must certify to that effect in writing and must within 28 days lodge with ASIC a notice of termination of this deed in the following form:

‘X PTY LIMITED

I, (*insert name and address*) as administrator of the deed of company arrangement executed on (*insert date*), CERTIFY that the deed has been wholly effectuated.’,

and the execution of the notice terminates this deed, but nothing in this clause relieves the administrator of his or her obligations under clause 10 of this deed.

Schedule 8AA—Trustee companies

(regulation 5D.1.01A)

| Item | Trustee companies |
| --- | --- |
| 1 | ANZ Trustees (Canberra) Limited |
| 2 | ANZ Trustees Limited |
| 3 | Australian Executor Trustees Limited |
| 4 | Australian Executor Trustees (Canberra) Limited |
| 5 | Australian Executor Trustees (NSW) Limited |
| 6 | Australian Executor Trustees (SA) Limited |
| 6A | Australian Unity Trustees Limited |
| 7 | Bagot’s Executor and Trustee Company Limited |
| 8 | Elders Trustees Limited |
| 9 | Equity Trustees Limited |
| 10 | Executor Trustee Australia Limited |
| 11 | Mutual Trust Pty Ltd |
| 12 | National Australia Trustees Limited |
| 14 | Perpetual Limited |
| 15 | Perpetual Trustee Company (Canberra) Limited |
| 16 | Perpetual Trustee Company Limited |
| 17 | Perpetual Trustees Consolidated Limited |
| 18 | Perpetual Trustees Queensland Limited |
| 19 | Perpetual Trustees S.A. Limited |
| 20 | Perpetual Trustees Victoria Limited |
| 21 | Perpetual Trustees W.A. Limited |
| 22 | Plan B Trustees Limited |
| 23 | Sandhurst Trustees Limited |
| 24 | Tasmanian Perpetual Trustees Limited |
| 25 | The Myer Family Company Ltd |
| 26 | The Trust Company Limited |
| 27 | The Trust Company (Australia) Limited |
| 27A | The Trust Company (PTCCL) Limited |
| 28 | The Trust Company (UTCCL) Limited |

Schedule 8AB—Prescribed State and Territory provisions for paragraph 601RAE(4)(a) of the Act

(subregulation 5D.1.04(1))

| Item | State or Territory law and provisions |
| --- | --- |
| 1 | **Trustee Companies Act 1984** (Vic), sections 40–42 |
| 2 | *Trustee Companies Act 1987* (WA), Part IV and section 34 |
| 3 | *Trustee Companies Act 1988* (SA), sections 15–15B and 19–21 |
| 4 | *Trustee Companies Act 1953* (Tas), subsections 18C(1), (3)–(13) |
| 5 | *Companies (Trustees and Personal Representatives) Act* (NT), section 25 |

Schedule 8AC—Prescribed State and Territory laws and provisions for paragraph 601RAE(4)(b) of the Act—estate administration

(subregulation 5D.1.04(2) and subregulation 7.6.02(6))

| Item | State or Territory law and provisions |
| --- | --- |
| 1 | *Children and Young Persons (Care and Protection) Act 1998* (NSW) |
| 2 | *Guardianship Act 1987* (NSW) |
| 3 | *NSW Trustee and Guardian Act 2009* (NSW) |
| 4 | **Victorian Civil and Administrative Tribunal Act 1998** (Vic), Part 9 of Schedule 1 |
| 5 | **Guardianship and Administration Act 1986** (Vic) |
| 6 | *Guardianship and Administration Act 2000* (Qld) |
| 7 | *Guardianship and Administration Act 1990* (WA) |
| 8 | *Guardianship and Administration Act 1993* (SA) |
| 9 | *Guardianship of Infants Act 1940* (SA) |
| 10 | *Guardianship and Administration Act 1995* (Tas) |
| 11 | *Guardianship and Custody of Infants Act 1934* (Tas) |
| 12 | *Guardianship and Management of Property Act 1991* (ACT) |
| 13 | *Testamentary Guardianship Act 1984* (ACT) |
| 14 | *Adult Guardianship Act* (NT) |
| 15 | *Guardianship of Infants Act* (NT) |

Schedule 8AD—Prescribed State and Territory laws and provisions for paragraph 601RAE(4)(b) of the Act

(subregulation 5D.1.04(3))

| Item | State or Territory law and provisions |
| --- | --- |
|  | NEW SOUTH WALES |
| 1A | *Legal Profession Act 2004* and any regulations made under that Act |
| 1 | *Probate and Administration Act 1898* and any regulations made under that Act |
| 2 | *NSW Trustee and Guardian Act 2009* and any regulations made under that Act |
| 3 | *Trustee Act 1925* and any regulations made under that Act |
| 4 | *Trustee Companies Act 1964* and any regulations made under that Act |
|  | VICTORIA |
| 5 | **Administration and Probate Act 1958** and any regulations made under that Act |
| 6 | **Guardianship and Administration Act 1986** and any regulations made under that Act |
| 7 | **Instruments Act 1958** and any regulations made under that Act |
| 7A | **Legal Profession Act 2004** and any regulations made under that Act |
| 8 | **Medical Treatment Act 1988** and any regulations made under that Act |
| 9 | **State Trustees (State Owned Company) Act 1994** and any regulations made under that Act |
| 10 | **Trustee Act 1958** and any regulations made under that Act |
|  | QUEENSLAND |
| 11 | *Guardianship and Administration Act 2000* and any regulations made under that Act |
| 12 | *Legal Profession Act 2007* and any regulations made under that Act |
| 13 | *Public Trustee Act 1978* and any regulations made under that Act |
| 14 | *Succession Act 1981* and any regulations made under that Act |
| 15 | *Trustee Companies Act 1968* and any regulations made under that Act |
| 16 | *Trusts Act 1973* and any regulations made under that Act |
| 17 | *Uniform Civil Procedure Rules 1999*, Chapter 15 and rule 94 |
|  | WESTERN AUSTRALIA |
| 18 | *Guardianship and Administration Act 1990* and any regulations made under that Act |
| 18A | *Legal Profession Act 2008* and any regulations made under that Act |
| 18B | *Public Trustee Act 1941* and any regulations made under that Act |
| 19 | *Trustees Act 1962* and any regulations made under that Act |
|  | SOUTH AUSTRALIA |
| 20 | *Administration and Probate Act 1919* and any regulations made under that Act |
| 21 | *Aged and Infirm Persons’ Property Act 1940* and any regulations made under that Act |
| 22 | *Guardianship and Administration Act 1993* and any regulations made under that Act |
| 23 | *Legal Practitioners Act 1981* and any regulations made under that Act |
| 24 | *Public Trustee Act 1995* and any regulations made under that Act |
| 25 | *Trustee Act 1936* and any regulations made under that Act |
| 25A | *Trustee Companies Act 1988* and any regulations made under that Act |
|  | TASMANIA |
| 26 | *Administration and Probate Act 1935* and any regulations made under that Act |
| 26A | *Legal Profession Act 2007* and any regulations made under that Act |
| 26B | *Public Trustee Act 1930* and any regulations made under that Act |
| 27 | *Supreme Court Civil Procedure Act 1932* and any regulations made under that Act |
| 28 | *Trustee Act 1898* and any regulations made under that Act |
|  | AUSTRALIAN CAPITAL TERRITORY |
| 29 | *Administration and Probate Act 1929* and any regulations made under that Act |
| 30 | *Court Procedures Act 2004* and any regulations made under that Act |
| 31 | *Guardianship and Management of Property Act 1991* and any regulations made under that Act |
| 32 | *Legal Profession Act 2006* and any regulations made under that Act |
| 33 | *Trustee Act 1925* and any regulations made under that Act |
| 34 | *Trustee Companies Act 1947* and any regulations made under that Act |
|  | NORTHERN TERRITORY |
| 35 | *Aged and Infirm Persons’ Property Act* and any regulations made under that Act |
| 36 | *Public Trustee Act* and any regulations made under that Act |

Schedule 8AE—Relevant State and Territory provisions

(regulation 5D.2.06)

| Item | State or Territory provisions |
| --- | --- |
| 1 | *Trustee Act 1925* (NSW), Part 2, Division 2 |
| 2 | **Trustee Act 1958** (Vic), Part I |
| 3 | *Trusts Act 1973* (Qld), Part 3 |
| 4 | *Trustees Act 1962* (WA), Part III |
| 5 | *Trustee Act 1936* (SA), Part 1 |
| 6 | *Trustee Act 1898* (Tas), Part II |
| 7 | *Trustee Act 1925* (ACT), Part 2, Subdivision 2.2.1 |
| 8 | Trustee Act (NT), Part I |

Schedule 8C—Modifications of Part 7.5 of the Act—compensation regimes

(regulation 7.5.01A)

1 Section 880B, definition of *fidelity fund*, subparagraph (b)(ii)

*omit*

markets;

*insert*

markets; or

2 Section 880B, definition of *fidelity fund*, after paragraph (b)

*insert*

(c) the operator of the market or related body corporate of the operator of the market;

3 Subsection 881A(2)

*substitute*

(1A) If:

(a) compensation arrangements under Division 4 apply to only some financial products acquired or disposed of through a licensed market; and

(b) paragraphs (1)(a) and (b) are satisfied for the other products acquired or disposed of through the licensed market;

there must be compensation arrangements in relation to the other products that are approved in accordance with Division 3.

(2) The compensation regime that applies to a financial market is:

(a) for a financial product to which Division 3 applies—the compensation regime constituted by Division 3; and

(b) for a financial product to which Division 4 applies—the compensation regime constituted by Division 4.

4 Paragraph 885C(1)(b)

*substitute*

(b) the money or other property, or the authority, was given to the participant in connection with effecting a transaction, or proposed transaction, that:

(i) was covered by provisions of the operating rules of the market relating to transactions effected through the market; and

(ii) related to a particular financial product that was not covered by the compensation regime constituted by Division 4; and

5 Section 885D, heading

*substitute*

885D Certain losses that are or are not Division 3 losses

6 After subsection 885D(2)

*Insert:*

(2A) Despite subsection (2), if, in relation to a loss suffered by a person:

(a) the requirements of subsection 885C(1) are satisfied in relation to a participant and a financial market, except that it is not reasonably apparent whether the compensation regime constituted by Division 3 or by Division 4 covered the transaction, or proposed transaction; and

(b) the relevant financial market has both Division 3 and Division 4 arrangements; and

(c) either:

(i) the person did not (expressly or impliedly) instruct the participant to use the money or other property to enter into a transaction that would be covered by the compensation regime constituted by Division 3 or by Division 4; or

(ii) if the participant had authority to enter into transactions on the person’s behalf without specific authority, there is no evidence that the participant decided to use the money or other property to enter into a transaction that would be covered by the compensation regime constituted by Division 3 or by Division 4; and

(d) the participant was permitted to trade in products that would be covered by the compensation regimes constituted by Division 3 and by Division 4; and

(e) it is not reasonably apparent from the usual business practice of the participant which of those transactions the participant proposed to undertake;

the loss is taken to be a ***Division 3 loss*** and not to be a loss that is connected with a financial market to which Division 4 applies.

(2B) Despite subsection (2), if:

(a) the requirements of subsection 885C(1) are satisfied in relation to a participant and a financial market; and

(b) the loss is also connected (see section 888A) with a financial market to which Division 4 applies; and

(c) the person did not (expressly or impliedly) instruct the participant to use a particular one of those markets; and

(d) it is not reasonably apparent from the usual business practice of the participant which of those markets the participant would use when acting for the person; and

(e) the loss is connected with a transaction effected through a financial market to which Division 3 applies; and

(f) a claim cannot be made, or has been disallowed, under Division 4 (see subsection 888A(1));

the loss is taken to be a ***Division 3 loss*** and not to be a loss that is connected with a financial market to which Division 4 applies.

7 Subsection 885J(1)

*omit*

adequate,

*insert*

adequate for the market, or segment of the market, for which the arrangements apply,

8 Section 887A

*substitute*

887A Markets to which this Division applies

(1) This Division applies to a financial market that is operated by:

(a) a body corporate that is a member of the SEGC; or

(b) a body corporate that is a subsidiary of such a member.

(2) However, this Division does not apply to a market mentioned in subsection (1):

(a) that the regulations state is not covered by this Division; or

(b) to the extent that it involves financial products covered by the compensation regime constituted by Division 3.

9 After subsection 889J(1)

*insert*

(1A) However, a levy is payable only by an operator or a participant (including a participant who is suspended), in a financial market to which this Division applies, who is permitted to trade on that market a financial product to which this Division applies.

10 After subsection 889K(2)

*insert*

(2A) However, a levy is payable only by a participant (including a participant who is suspended), in a financial market to which this Division applies, who is permitted to trade on that market a financial product to which this Division applies.

10A After subsection 892B(1), including the note

*insert*

(1A) Nothing in subsection (1) prevents the Minister approving, in accordance with section 884C, a change to Division 3 arrangements that includes the withdrawal of money from an account or accounts holding a fidelity fund.

11 Paragraph 892K(1)(a)

*after*

report

*insert*

for a set of compensation arrangements

Schedule 8D—Tables for reporting portfolio holding information

(regulations 7.9.07Z and 7.9.07ZA)

1 Table 1—Assets

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Portfolio Holdings Information for Investment Option [A]—Assets** | | | **Summary** | | | |
| **Cash** | | |  | | | |
| **Name of Institution** | **Currency** | | **Value (AUD)** | **Weighting (%)** | | |
| *Individual asset names not required to be disclosed.*  *Only disclose the name of the relevant institution for the asset.* | | | *Values and weighting for individual assets not disclosed. Only disclose total values and weighting for the asset aggregated by the institution.* | | | |
| **Total** | | |  | | | |
| **Fixed Income**  **Held directly or by associated entities or by pooled superannuation trusts**  **Internally managed** | | |  | | | |
| **Name of Issuer / Counterparty** | | | **Value (AUD)** | | **Weighting (%)** | |
| *Individual asset names not required to be disclosed.*  *Only disclose the name of the issuer / counterparty for the asset.* | | | *Values and weighting for individual assets not disclosed. Only disclose total values and weighting aggregated by the issuer or counterparty of the asset.* | | | |
| **Total** | | |  | | | |
| **Fixed Income**  **Investment in non‑associated entities;**  **Held directly or by associated entities or by pooled superannuation trusts**  **Externally managed** | | |  | | | |
| **Name of Fund Manager** | | | **Value (AUD)** | | **Weighting (%)** | |
| *Individual asset names not required to be disclosed.*  *Only disclose the name of the fund manager responsible for managing the asset.* | | | *Values and weightings for individual assets not disclosed. Only disclose total values and weighting aggregated by the fund manager responsible for managing the asset.* | | | |
| **Total** | | |  | | | |
| **Listed Equity** | | |  | | | |
| **Name/kind of investment item** | **Security Identifier** | **Units held** | **Value (AUD)** | | **Weighting (%)** | |
|  |  |  |  | | |  |
| **Total** | | |  | |  | |
| **Unlisted Equity**  **Held directly or by associated entities or by pooled superannuation trusts**  **Internally managed** | | |  |  | | |
| **Name/kind of investment item** | **% Ownership** | | **Value (AUD)** | | **Weighting (%)** | |
|  |  | | *Values and weighting for individual assets not disclosed. Only disclose total value and weighting.* | | | |
| **Total** | | |  |  | | |
| **Unlisted Equity**  **Investment in non‑associated entities;**  **Held directly or by associated entities or by pooled superannuation trusts**  **Externally managed** | | |  |  | | |
| **Name of Fund Manager** | | | **Value (AUD)** | | **Weighting (%)** | |
| *Individual asset names not required to be disclosed.*  *Only disclose the name of the fund manager responsible for managing the asset.* | | | *Values and weightings for individual assets not disclosed. Only disclose total values and weighting aggregated by the fund manager responsible for managing the assets.* | | | |
| **Total** | | |  |  | | |
| **Listed Property** | | |  |  | | |
| **Name/kind of investment item** | **Security Identifier** | **Units held** | **Value (AUD)** | | **Weighting (%)** | |
|  |  |  |  | | |  |
| **Total** |  |  |  | |  | |
| **Unlisted Property**  **Held directly or by associated entities or by pooled superannuation trusts**  **Internally managed** | | |  |  | | |
| **Name/kind of investment item** | **Address** | **% of property held** | **Value (AUD)** | | **Weighting (%)** | |
|  |  |  | *Values and weighting for individual assets not disclosed. Only disclose total value and weighting.* | | | |
| **Total** | | |  |  | | |
| **Unlisted Property**  **Investment in non‑associated entities;**  **Held directly or by associated entities or by pooled superannuation trusts**  **Externally managed** | | |  |  | | |
| **Name of Fund Manager** | | | **Value (AUD)** | | **Weighting (%)** | |
| *Individual asset names not required to be disclosed.*  *Only disclose the name of the fund manager responsible for managing the asset.* | | | *Values and weightings for individual assets not disclosed. Only disclose total values and weighting aggregated by the fund manager responsible for managing the assets.* | | | |
| **Total** | | |  |  | | |
| **Listed Infrastructure** | | |  |  | | |
| **Name/kind of investment item** | **Security Identifier** | **Units held** | **Value (AUD)** | | **Weighting (%)** | |
|  |  |  |  | |  | |
| **Total** |  |  |  | |  | |
| **Unlisted Infrastructure**  **Held directly or by associated entities or by pooled superannuation trusts**  **Internally managed** | | |  |  | | |
| **Name/kind of investment item** | **% Ownership** | | **Value (AUD)** | | **Weighting (%)** | |
|  |  | | *Value and weighting for individual assets not disclosed. Only disclose total value and weighting.* | | | |
| **Total** | | |  |  | | |
| **Unlisted Infrastructure**  **Investment in non‑associated entities;**  **Held directly or by associated entities or by pooled superannuation trusts**  **Externally managed** | | |  |  | | |
| **Name of Fund Manager** | | | **Value (AUD)** | | **Weighting (%)** | |
| *Individual asset names not required to be disclosed.*  *Only disclose the name of the fund manager responsible for managing the asset.* | | | *Values and weightings for individual assets not disclosed. Only disclose total values and weighting aggregated by the fund manager responsible for managing the assets.* | | | |
| **Total** | | |  |  | | |
| **Listed Alternatives** | | |  |  | | |
| **Name/kind of investment item** | **Security Identifier** | **Units held** | **Value (AUD)** | | **Weighting (%)** | |
|  |  |  |  | |  | |
| **Total** |  |  |  | |  | |
| **Unlisted Alternatives**  **Held directly or by associated entities or by pooled superannuation trusts**  **Internally managed** | | |  |  | | |
| **Name/kind of investment item** | | | **Value (AUD)** | | **Weighting (%)** | |
|  | | | *Value and weighting for individual assets not disclosed. Only disclose total value and weighting.* | | | |
| **Total** | | |  |  | | |
| **Unlisted Alternative**  **Investment in non‑associated entities;**  **Held directly or by associated entities or by pooled superannuation trusts**  **Externally managed** | | |  |  | | |
| **Name of Fund Manager** | | | **Value (AUD)** | | **Weighting (%)** | |
| *Individual asset names not required to be disclosed.*  *Only disclose the name of the fund manager responsible for managing the asset.* | | | *Values and weightings for individual assets not disclosed. Only disclose total values and weighting aggregated by the fund manager responsible for managing the assets.* | | | |
| **Total** | | |  |  | | |
| **Total Investment Items** | | |  |  | | |

2 Table 2—Derivatives by kind of derivative

| Portfolio Holdings Information for Investment Option [A]—Derivatives | | |
| --- | --- | --- |
| Kind of derivative | Value | Weighting |
| Swaps | *Values and weighting for individual derivatives not disclosed. Only disclose total values and weighting for this kind of derivative.* | |
| Forwards | *Values and weighting for individual derivatives not disclosed. Only disclose total values and weighting for this kind of derivative.* | |
| Futures | *Values and weighting for individual derivatives not disclosed. Only disclose total values and weighting for this kind of derivative.* | |
| Options | *Values and weighting for individual derivatives not disclosed. Only disclose total values and weighting for this kind of derivative.* | |
| **Total** |  |  |

3 Table 3—Derivatives by asset class

| Portfolio Holdings Information for Investment Option [A]—Derivatives by Asset Class | | |
| --- | --- | --- |
| Asset class | Actual asset allocation (% of total assets (including derivatives) in the investment option) | Effect of derivatives exposure (% of total assets (including derivatives) in the investment option) |
| Cash |  |  |
| Fixed Income |  |  |
| Equities |  |  |
| Property |  |  |
| Infrastructure |  |  |
| Alternatives |  |  |
| Total |  |  |

4 Table 4—Derivatives by currency

| Portfolio Holdings Information for Investment Option [A]—Derivatives by Currency | | |
| --- | --- | --- |
| **Currency exposure** | Actual currency exposure (% of assets and derivatives under management) | Effect of derivatives exposure (% of assets and derivatives under management) |
| AUD |  |  |
| USD |  |  |
| Currencies of other developed markets |  |  |
| Currencies of emerging markets |  |  |

Schedule 9—Companies authorised to effect transfers under Part 7.11 of the Act

(regulation 7.11.01, definition of ***beneficial owner***)

| Item | Companies |
| --- | --- |
| 1 | ANZ Nominees Limited |
| 2 | CHESS Depositary Nominees Pty Limited |
| 3 | Equity Nominees Limited |
| 4 | National Nominees Limited |
| 5 | Perpetual Nominees Limited |
| 6 | Sepon (Australia) Pty Limited |
| 7 | State Street Australia Ltd |
| 8 | The Trust Company (Nominees) Limited |
| 9 | The Trust Company (PTAL) Limited |

Schedule 10—Disclosure of fees and other costs

(regulations 7.9.16K, 7.9.16M and 7.9.16N)

Part 1—Interpretation

101 Definitions

In this Schedule:

***activity fee***, for a superannuation product, has the meaning given by subsection 29V(7) of the SIS Act.

***administration fee***, for a superannuation product, has the meaning given by subsection 29V(2) of the SIS Act.

***advice fee***:

(a) for a superannuation product—has the meaning given by subsection 29V(8) of the SIS Act; and

(b) for a collective investment product—means an amount that is:

(i) paid or payable to a financial adviser for financial product advice to a retail client or product holder about an investment; and

(ii) not included in a contribution fee, withdrawal fee, exit fee, establishment fee or management cost.

***balanced investment option*** means an investment option in which the ratio of investment in growth assets, such as shares or property, to investment in defensive assets, such as cash or bonds, is as close as practicable to 70:30.

***brokerage*** means an amount paid or payable to a broker for undertaking a transaction for the acquisition or disposal of a financial product.

***buy‑sell spread***:

(a) for a superannuation product—has the meaning given by subsection 29V(4) of the SIS Act; or

(b) for a collective investment product (other than a security in a retail CCIV)—means an amount, deducted from the value of a financial product of a product holder, that represents an apportionment, among product holders, of the actual or estimated transaction costs incurred by the managed investment scheme; or

(c) for a collective investment product that is a security in a retail CCIV that is referable to a sub‑fund of the CCIV—means an amount, deducted from the value of the security of a product holder, that represents an apportionment, among product holders for the sub‑fund, of the actual or estimated transaction costs incurred by the CCIV in respect of sub‑fund.

***collective investment product***means a managed investment product, a security in a retail CCIV or a foreign passport fund product.

***contribution fee*** means an amount paid or payable against the initial, and any subsequent, contributions made into a product by or for a retail client for the product.

Note: A contribution may be made by an employer on behalf of the product holder or retail client.

***distribution costs*** means the costs or amounts paid or payable for the marketing, offer or sale of a product.

Note: This includes any related adviser remuneration component other than an advice fee.

***establishment fee*** means an amount paid or payable for the establishment of a client’s interest in a product.

Note: This does not include contribution fees paid or payable against the initial contribution into the product.

***exit fee***:

(a) for a superannuation product—has the meaning given by subsection 99BA(2) of the SIS Act; and

(b) for a collective investment product (other than a security in a retail CCIV)—means an amount paid or payable on the disposal of all interests held in the product; and

(c) for a collective investment product that is a security in a retail CCIV—means an amount paid or payable on the disposal of the security.

***incidental fees*** means costs or amounts, other than costs or fees defined in this clause, that are:

(a) paid or payable in relation to the product; and

(b) not material to a retail client’s decision to acquire, hold or dispose of his or her interest in the product.

Example: Cheque dishonour fees.

***indirect cost*** of a MySuper product or an investment option offered by a superannuation entity means any amount that:

(a) a trustee of the entity knows, or reasonably ought to know, will directly or indirectly reduce the return on the investment of a member of the entity in the MySuper product or investment option; and

(b) is not charged to the member as a fee.

***insurance fee***, for a superannuation product, has the meaning given by subsection 29V(9) of the SIS Act.

***investment fee***, for a superannuation product, has the meaning given by subsection 29V(3) of the SIS Act.

***lifecycle MySuper product*** has the meaning given by regulation 7.9.07N.

***lifecycle stage*** has the meaning given by regulation 7.9.07N.

***performance***, of a collective investment product, a superannuation product, a MySuper product or an investment option, includes:

(a) income in relation to the assets of, or attributed to, the collective investment product, the superannuation product, the MySuper product or the investment option; and

(b) capital appreciation (realised or unrealised) to the value of the collective investment product, the superannuation product, the MySuper product or the investment option.

***performance fee*** means an amount paid or payable, calculated by reference to the performance of a collective investment product, a superannuation product, a MySuper product or an investment option.

***service fees*** means advice fees, special request fees and switching fees.

***special request fees*** includes fees paid or deducted from a product holder’s collective investment product for a request made to:

(a) for a product that is a managed investment product for a managed investment scheme—the managed investment scheme; or

(b) for a product that is a security in a retail CCIV that is referable to a sub‑fund of the CCIV—the CCIV in respect of the sub‑fund.

Example: This applies to a fee for a request for additional information from a managed investment scheme.

***switching fee***:

(a) for a superannuation product—has the meaning given by subsection 29V(5) of the SIS Act; or

(b) for a collective investment product—means an amount paid or payable when a product holder transfers all or part of the product holder’s interest in the collective investment product from one investment option to another.

***withdrawal fee***, for a collective investment product, means an amount, other than an exit fee, paid or payable in respect of:

(a) for a product (other than a security in a retail CCIV)—a withdrawal or the disposal of an interest in the product; or

(b) for a product that is a security in a retail CCIV—the disposal of the security.

102 Meaning of *management costs*

(1) ***Management costs***, for a collective investment product, means any of the following:

(a) for a product that is a managed investment product for a managed investment scheme—an amount payable for administering the managed investment scheme;

(aa) for a product that is a security in a retail CCIV that is referable to a sub‑fund of the CCIV—the amount payable for administering the sub‑fund;

(b) for a custodial arrangement—the cost involved, or amount paid or payable, for gaining access to, or participating in, the arrangement;

(c) distribution costs;

(d) for a product that is a managed investment product for a managed investment scheme or is a security in a retail CCIV that is referable to a sub‑fund of the CCIV—other expenses and reimbursements in relation to the managed investment scheme or the sub‑fund;

(e) for a product that is a managed investment product for a managed investment scheme or is a security in a retail CCIV that is referable to a sub‑fund of the CCIV—amounts paid or payable for investing in the assets of the managed investment scheme or in the assets of the sub‑fund;

(f) amounts deducted from a common fund by way of fees, costs, charges or expenses, including:

(i) amounts retrieved by an external fund manager or a product issuer; and

(ii) amounts deducted from returns before allocation to the fund;

(g) estimated performance fees;

(h) any other investment‑related expenses and reimbursements, including any associated with custodial arrangements.

(2) The following fees and costs are not management costs for a collective investment product:

(a) a contribution fee;

(b) transactional and operational costs;

(c) an additional service fee;

(d) an establishment fee;

(e) a switching fee;

(f) an exit fee;

(g) a withdrawal fee;

(h) costs (related to a specific asset or activity to produce income) that an investor would incur if he or she invested directly in the asset;

(i) incidental fees.

103 Meaning of *transactional and operational costs*

***Transactional and operational costs*** include the following:

(a) brokerage;

(b) buy‑sell spread;

(c) settlement costs (including custody costs);

(d) clearing costs;

(e) stamp duty on an investment transaction.

104 Meaning of *indirect cost ratio (ICR)*

(1) The ***indirect cost ratio*** (***ICR***), for a MySuper product or an investment option offered by a superannuation entity, is the ratio of the total of the indirect costs for the MySuper product or investment option, to the total average net assets of the superannuation entity attributed to the MySuper product or investment option.

Note: A fee deducted directly from a member’s account is not included in the indirect cost ratio.

(1A) The ***indirect cost ratio*** (***ICR***), for an investment option offered by a managed investment scheme, is the ratio of the management costs for the option that are not deducted directly from a product holder’s account, to the total average net assets of the managed investment scheme that relates to the investment option.

Note: A fee deducted directly from a product holder’s account is not included in the indirect cost ratio.

(1B) For an investment option that is a sub‑fund of a retail CCIV, the ***indirect cost ratio*** (***ICR***) for the option is the ratio of the management costs for allsecurities referable to the sub‑fund that are not deducted directly from a product holder’s account to the total average net assets of the sub‑fund.

Note: A fee deducted directly from a product holder’s account is not included in the indirect cost ratio.

(2) The ICR for a Product Disclosure Statement is to be determined for the financial year before the Product Disclosure Statement is issued.

(3) The ICR for a periodic statement is to be determined over the latest reporting period.

Part 2—Fees and Costs Template, example of annual fees and costs and Consumer Advisory Warning for Product Disclosure Statements

Division 1—The fees and costs template for superannuation products

201 Template for superannuation products

**Fees and other costs**

This document shows fees and other costs that you may be charged. These fees and other costs may be deducted from your money, from the returns on your investment or from the assets of the superannuation entity as a whole.

Other fees, such as activity fees, advice fees for personal advice and insurance fees, may also be charged, but these will depend on the nature of the activity, advice or insurance chosen by you. Entry fees and exit fees cannot be charged.

Taxes, insurance fees and other costs relating to insurance are set out in another part of this document.

You should read all the information about fees and other costs because it is important to understand their impact on your investment.

*[If relevant]* The fees and other costs for each MySuper product offered by the superannuation entity, and each investment option offered by the entity, are set out on page *[insert page number]*.

| *[Name of superannuation product]* | | |
| --- | --- | --- |
| *Type of fee* | Amount | How and when paid |
| *Investment fee¹* |  |  |
| *Administration fee¹* |  |  |
| *Buy‑sell spread* |  |  |
| *Switching fee* |  |  |
| *Advice fees*  relating to all members investing in a particular MySuper product or investment option |  |  |
| *Other fees and costs²* |  |  |
| *Indirect cost ratio¹* |  |  |

1. If your account balance for a product offered by the superannuation entity is less than $6,000 at the end of the entity’s income year, the total combined amount of administration fees, investment fees and indirect costs charged to you is capped at 3% of the account balance. Any amount charged in excess of that cap must be refunded.

2. *[If there are other fees and costs, such as activity fees, advice fees for personal advice or insurance fees, include a cross‑reference to the “Additional Explanation of Fees and Costs”.]*

Division 2—The fees and costs template for collective investment products

202 Template for a multiple fee structure—collective investment products

**Fees and other costs**

This document shows fees and other costs that you may be charged. These fees and costs may be deducted from your money, from the returns on your investment or from the assets of the *[managed investment scheme / retail CCIV]* as a whole.

Taxes and insurance costs are set out in another part of this document.

You have 2 different fee payment options:

(a) to pay contribution fees upfront, at the time when you make each investment into the *[managed investment scheme / retail CCIV]*; or

(b) to pay contribution fees later (for example, on the termination of your investment or by way of other increased fees).

Note: You may pay more in total fees if you choose to pay contribution fees later.

You should read all the information about fees and costs because it is important to understand their impact on your investment.

*[If relevant]* Fees and costs for particular investment options are set out on page *[insert page number]*.

| *[Name of collective investment product]* | | | |
| --- | --- | --- | --- |
| **Type of fee or cost** | **Amount** | | **How and when paid** |
|  | **Option to pay contribution fees upfront** | **Option to pay contribution fees later** |  |
| **Fees when your money moves in or out of the product** |  |  |  |
| *Establishment fee*  The fee to open your investment |  |  |  |
| *Contribution fee¹*  The fee on each amount contributed to your investment |  |  |  |
| *Withdrawal fee¹*  The fee on each amount you take out of your investment |  |  |  |
| *Exit fee¹*  The fee to close your investment |  |  |  |
| **Management costs** |  |  |  |
| *The fees and costs for managing your investment¹*  The amount you pay for specific investment options is shown at page *[insert page number]* |  |  |  |
| **Service fees²** |  |  |  |
| *Switching fee*  The fee for changing investment options |  |  |  |

1. This fee includes an amount payable to an adviser. (See Division 4, “Adviser remuneration” under the heading “Additional Explanation of Fees and Costs”.)

2. *[If there are other service fees, such as advice fees or special request fees, include a cross‑reference to the “Additional Explanation of Fees and Costs”.]*

202A Template for single fee structure—collective investment products

**Fees and other costs**

This document shows fees and other costs that you may be charged. These fees and costs may be deducted from your money, from the returns on your investment or from the assets of the *[managed investment scheme / retail CCIV]* as a whole.

Taxes and insurance costs are set out in another part of this document.

You should read all the information about fees and costs because it is important to understand their impact on your investment.

*[If relevant]* Fees and costs for particular investment options are set out on page *[insert page number]*.

| *[Name of collective investment product]* | | |
| --- | --- | --- |
| Type of fee or cost | Amount | How and when paid |
| Fees when your money moves in or out of the product |  |  |
| *Establishment fee*  The fee to open your investment |  |  |
| *Contribution fee¹*  The fee on each amount contributed to your investment |  |  |
| *Withdrawal fee¹*  The fee on each amount you take out of your investment |  |  |
| *Exit fee¹*  The fee to close your investment |  |  |
| Management costs |  |  |
| *The fees and costs for managing your investment¹*  The amount you pay for specific investment options is shown at page *[insert page number]* |  |  |
| Service fees² |  |  |
| *Switching fee*  The fee for changing investment options |  |  |

1. This fee includes an amount payable to an adviser. (See Division 4, “Adviser remuneration” under the heading “Additional Explanation of Fees and Costs”.)

2. *[If there are other service fees, such as advice fees or special request fees, include a cross‑reference to the “Additional Explanation of Fees and Costs”.]*

Division 3—How to fill in the template

203 The preamble

The material in the preamble to the template should only include matters that are relevant to the product.

Example: Insurance costs will generally not be relevant to a collective investment product.

204 Column 2—presentation of amounts

(1) This clause, clause 205 and clause 206 are subject to regulations 7.9.15A, 7.9.15B and 7.9.15C.

(2) If a particular fee or cost is not charged, ‘nil’, ‘zero’, ‘0’ or ‘not applicable’ (if it would not be misleading) must be written in column 2 opposite the type of fee or cost.

(3) If it is not possible to determine a single amount or percentage of a fee or cost, it may be written as a range of fees or costs.

(4) If the exact amount of a fee or cost paid or payable is not known, an amount that is a reasonable estimate of the amount attributable to the retail client must be shown.

(5) An amount set out in accordance with subclause (4) must be clearly designated as an estimate.

(6) If an amount or cost has a number of components, the amount of each component must be listed separately.

Example: Management costs: 1.8% of product holder’s balance + $70 per year.

(7) A cost or amount paid or payable must include (if applicable):

(a) for each collective investment product:

(i) GST, after being reduced by any reduced input tax credits; and

(ii) stamp duty; and

(b) for each collective investment product offered by an Australian passport fund or a notified foreign passport fund:

(i) any indirect taxes equivalent to GST that are payable in another jurisdiction, after being reduced by any applicable tax credits that are available in that jurisdiction; and

(ii) any duties equivalent to stamp duty that are payable in another jurisdiction.

205 Column 2—include information for each MySuper product or investment option

(1) The fee information must be set out:

(a) for superannuation products—for each MySuper product and each investment option offered by the relevant superannuation entity; and

(b) for collective investment products—for each investment option offered by the relevant managed investment scheme or retail CCIV.

(2) It may be:

(a) set out in the table; or

(b) cross‑referenced in the table to another section of the Product Disclosure Statement that contains the relevant fee information.

206 Presentation of multiple fee payment options

If a superannuation entity, managed investment scheme or retail CCIV has more than 2 options for the payment of fees:

(a) the number of fee payment options must be set out in the preamble; and

(b) details of all fee payment options must be set out in the template.

207 Column 3—how and when fees and costs are payable

Column 3 of the template must set out:

(a) how the fee is or will be recovered, for example by deduction from:

(i) the member’s investment balance; or

(ii) the assets of the superannuation entity or managed investment scheme;

(iii) contributions; or

(iv) withdrawals; and

(b) the recurrence of the recovery of the fee; and

(c) the timing of the recovery of the fee.

208 Other material to be included in the template

(1) The template must clearly indicate which fees and costs are negotiable (for example, by stating in column 3 ‘The amount of this fee can be negotiated.’).

(2) An indication that a fee or cost is negotiable must be cross‑referenced to an explanation outside the template in the ‘Additional Explanation of Fees and Costs’ part of the fees section.

Division 4—Additional explanation of fees and costs

209 Matters to be included as additional explanation of fees and costs

The following information, if relevant to the particular superannuation product or collective investment product, must be included under the heading ‘Additional Explanation of Fees and Costs’:

(a) the explanation of the fees mentioned in footnote 2 for superannuation products and footnote 2 for collective investment products;

(b) information on performance fees including:

(i) a statement about how performance fees affect administration fees and investment fees for a superannuation product, or management costs for a collective investment product; and

(ii) the method for calculating the fees; and

(iii) the amount of the fees, or an estimate of the amount if the amount is not known;

(c) for tax—a cross reference to the “Tax” part of the Product Disclosure Statement;

(ca) for insurance fees and other costs relating to insurance (if relevant)—a cross reference to the “Insurance” part of the Product Disclosure Statement;

(d) if the product is subject to tax—whether the benefit of any tax deduction is passed on to the investor in the form of a reduced fee or cost;

(e) an explanation of adviser remuneration that forms part of any fee or cost in the table, including (if known to the product issuer):

(i) the method of calculation; and

(ii) the amounts of commission or the range of amounts; and

(iii) whether the amounts are negotiable or rebatable; and

(iv) the way in which amounts may be negotiated or rebated;

(f) an explanation of advice fees;

(g) for a negotiated fee or cost—contact details of the person or body with whom the fee or cost can be negotiated and the manner of negotiation;

(h) worked examples (if appropriate);

(i) additional details of incidental fees (if appropriate);

(j) details of transactional and operational costs such as brokerage and buy‑sell spread, including:

(i) a description of the cost; and

(ii) the amount, or an estimate if the amount is not known; and

(iii) how and when the costs are recovered; and

(iv) a statement that the cost is an additional cost to the investor; and

(v) whether any part of the buy‑sell spread is paid to the product issuer or an external manager;

(k) the following information about fee changes:

(i) if applicable, a statement about the issuer’s right to change the amount of fees without the investor’s consent;

(ii) any indexation arrangements that apply;

(iii) the period of advance notice required for fee changes;

(iv) any change in fee structure that is dependent on a person’s employment;

(l) if the issuer has instituted a flexible charging structure, for each applicable fee, if known:

(i) any maximum, and when it would apply; and

(ii) any waiver, and when it would not apply;

(m) for a superannuation product—details regarding the protection of small accounts (member protection rules) unless already included in the Product Disclosure Statement.

Division 4A—Defined fees for superannuation products

209A Defined fees for superannuation products

The following definitions must be included for a superannuation product under the heading “Defined fees”:

Activity fees

A fee is an ***activity fee*** if:

(a) the fee relates to costs incurred by the trustee *[OR the trustees]* of the superannuation entity that are directly related to an activity of the trustee *[OR the trustees]*:

(i) that is engaged in at the request, or with the consent, of a member; or

(ii) that relates to a member and is required by law; and

(b) those costs are not otherwise charged as an administration fee, an investment fee, a buy‑sell spread, a switching fee, an advice fee or an insurance fee.

Administration fees

An ***administration fee*** is a fee that relates to the administration or operation of the superannuation entity and includes costs incurred by the trustee *[OR the trustees]* of the entity that:

(a) relate to the administration or operation of the entity; and

(b) are not otherwise charged as an investment fee, a buy‑sell spread, a switching fee, an activity fee, an advice fee or an insurance fee.

Advice fees

A fee is an ***advice fee*** if:

(a) the fee relates directly to costs incurred by the trustee *[OR the trustees]* of the superannuation entity because of the provision of financial product advice to a member by:

(i) a trustee of the entity; or

(ii) another person acting as an employee of, or under an arrangement with, the trustee *[OR the trustees]* of the entity; and

(b) those costs are not otherwise charged as an administration fee, an investment fee, a switching fee, an activity fee or an insurance fee.

Buy‑sell spreads

A ***buy‑sell spread*** is a fee to recover transaction costs incurred by the trustee *[OR the trustees]* of the superannuation entity in relation to the sale and purchase of assets of the entity.

Exit fees

An ***exit fee*** is a fee, other than a buy‑sell spread, that relates to the disposal of all or part of a member’s interests in a superannuation entity.

Indirect cost ratio

The ***indirect cost ratio*** (***ICR***), for a MySuper product or an investment option offered by a superannuation entity, is the ratio of the total of the indirect costs for the MySuper product or investment option, to the total average net assets of the superannuation entity attributed to the MySuper product or investment option.

Note: A dollar‑based fee deducted directly from a member’s account is not included in the indirect cost ratio.

Investment fees

An ***investment fee*** is a fee that relates to the investment of the assets of a superannuation entity and includes:

(a) fees in payment for the exercise of care and expertise in the investment of those assets (including performance fees); and

(b) costs incurred by the trustee *[OR the trustees]* of the entity that:

(i) relate to the investment of assets of the entity; and

(ii) are not otherwise charged as an administration fee, a buy‑sell spread, a switching fee, an activity fee, an advice fee or an insurance fee.

Switching fees

A ***switching fee*** is a fee to recover the costs of switching all or part of a member’s interest in the superannuation entity from one class of beneficial interest in the entity to another.

Division 5—Example of annual fees and costs

210 Example of annual fees and costs

The example of annual fees and costs:

(a) must contain fees and costs in accordance with the table in clause 211 or 212; and

(b) must be set out using the headings and the form in clause 211 or 212; and

(c) must be included in the ‘Fees’ section of a Product Disclosure Statement, following the fees and costs template.

211 Superannuation products—Example of annual fees and costs for a MySuper product

This table gives an example of how the fees and costs for the generic MySuper product for this superannuation product can affect your superannuation investment over a 1 year period. You should use this table to compare this superannuation product with other superannuation products.

|  |  |  |
| --- | --- | --- |
| **EXAMPLE—‑**MySuper product | | **BALANCE OF $50 000** |
| Investment fees | 1.6% | For every $50 000 you have in the MySuper product you will be charged $800 each year |
| **PLUS** Administration fees | $52  ($1 per week) | **And**, you will be charged $52 in administration fees regardless of your balance |
| **PLUS** Indirect costs for the MySuper product | 1.2% | **And**, indirect costs of $600 each year will be deducted from your investment |
| **EQUALS** Cost of product |  | If your balance was $50 000, then for that year you will be charged fees of **$1 452** for the MySuper product. |

Note: **\*** Additional fees may apply.

212 Collective investment products—Example of annual fees and costs for a balanced investment option

**Example of annual fees and costs for a balanced investment option**

This table gives an example of how the fees and costs in the balanced investment option for this product can affect your investment over a 1 year period. You should use this table to compare this product with other products offered by *[managed investment schemes / retail CCIVs]*.

|  |  |  |
| --- | --- | --- |
| **EXAMPLE**—the Balanced Investment Option | | **BALANCE OF $50 000 WITH A CONTRIBUTION OF $5 000 DURING YEAR** |
| Contribution Fees | 0‑4% | For every additional $5 000 you put in, you will be charged between $0 and $200. |
| **PLUS** Management Costs | 1.3% | **And**, for every $50 000 you have in the balanced investment option you will be charged $650 each year. |
| **EQUALS** Cost of balanced investment option |  | If you had an investment of $50 000 at the beginning of the year and you put in an additional $5 000 during that year, you would be charged fees of from:  **$650 to $850\***  **What it costs you will depend on the investment option you choose and the fees you negotiate.** |

**\*** Additional fees may apply:

**Establishment fee**—$50

**And**, if you leave the *[managed investment scheme / retail CCIV]* early, you may also be charged **exit fees** of between 0 and 5% of your total account balance (between $0 and $2 500 for every $50 000 you withdraw)

213 Defined benefit funds

An example of fees and costs is not required in a Product Disclosure Statement for a defined benefit fund.

Note: ***Defined benefit fund*** is defined in subregulation 1.03(1) of the SIS Regulations.

Division 6—How to fill in the example of annual fees and costs

214 Fees and costs must be ongoing amounts

The fees and costs stated in the example must be typical ongoing fees that apply to the MySuper product or investment option.

Note: The example should not be based on “honeymoon rates”. It must be consistent with the statement for an existing member or product holder having the stated balance and level of contributions each year.

214A Example of annual fees and costs for a MySuper product—lifecycle MySuper product

If the example of fees and costs for a MySuper product uses a lifecycle MySuper product, the investment fee quoted in the example must be the highest investment fee for a lifecycle stage of the lifecycle MySuper product.

215 Minimum entry balance rule

If the minimum balance required to enter a superannuation entity, a managed investment scheme or a retail CCIV is greater than $50 000, the example of annual fees and costs must be based on an amount that is the lowest multiple of $50 000 that exceeds the minimum entry balance.

Example: If a superannuation entity, a managed investment scheme or a retail CCIV has a minimum entry balance of $65 000, the relevant amount for the example of annual fees and costs is $100 000.

216 Exit fees

If an exit fee may be charged in relation to a collective investment product, the fee must be described in footnote to the table, based on:

(a) a balance of $50 000; or

(b) if clause 215 applies—an amount that is a multiple of $50 000.

217 Contribution fees

(1) The amounts of contribution fees to be inserted in the example of annual fees and costs for a collective investment product, are applied against a $5 000 investment.

(2) If a Product Disclosure Statement relates to a product:

(a) that is paid for by a single lump sum amount; and

(b) for which no additional contributions can be made;

the example of annual fees and costs should be modified by removing references to contributions or contribution fees.

(3) The example must be based on a balance:

(a) of $50 000; or

(b) worked out in accordance with clause 215.

Note: If there is a fee paid for the initial contribution, it should be described as the establishment fee.

218 Administration fees and investment fees for a superannuation product

Administration fees

(1) The example of administration fees for a MySuper product or an investment option offered by a superannuation entity is applied to an amount of $50 000 or an amount that is a multiple of $50 000 if clause 215 applies.

Note: In calculating the amount, do not include contributions that may be made during the year.

(2) If there is a range in the amount of administration fees that may be charged for a MySuper product or an investment option offered by a superannuation entity, the example must use the highest administration fees in the range.

Investment fees

(3) The example of investment fees for a MySuper product or an investment option offered by a superannuation entity is applied to an amount of $50 000 or an amount that is a multiple of $50 000 if clause 215 applies.

Note: In calculating the amount, do not include contributions that may be made during the year.

(4) If there is a range in the amount of investment fees that may be charged for a MySuper product or an investment option offered by a superannuation entity, the example must use the highest investment fees in the range.

Indirect costs for a MySuper product or investment option

(5) The example of indirect costs for a MySuper product or an investment option offered by a superannuation entity must be worked out by applying the indirect cost ratio for the MySuper product or the investment option to an amount of $50,000 or an amount that is a multiple of $50,000 if clause 215 applies.

218A Management costs for a collective investment product

(1) The example of management costs for an investment option offered by a managed investment scheme or a retail CCIV is applied to an amount of $50 000 or an amount that is a multiple of $50 000 if clause 215 applies.

Note: In calculating the amount, do not include contributions that may be made during the year.

(2) If there is a range in the amount of management costs that may be charged for an investment option offered by a managed investment scheme or a retail CCIV, the example must use the highest management costs in the range.

(3) Management costs that are not deducted directly from a product holder’s account must be calculated using the indirect cost ratio for the relevant investment option offered by the managed investment scheme or the retail CCIV.

(4) Any percentage based management costs that are deducted directly from a product holder’s account should be added to the percentage amount calculated under subclause (3).

(5) Any dollar based management costs that are deducted directly from a product holder’s account must be shown separately in the management costs cell.

Example 1: Management costs: 2 % deducted directly from your account + 1.6% deducted indirectly.

Example 2: Management costs: $52 per year ($1 per week) deducted directly from your account + 1.6% deducted indirectly.

Example 3: Management costs: $52 per year ($1 per week) + 1% deducted directly from your account + 1.6% deducted indirectly.

219 Withdrawal fees and exit fees

(1) The example of a withdrawal fee or an exit fee for a collective investment product is applied against an amount of $50 000 or an amount that is a multiple of $50 000 if clause 215 applies.

(2) In calculating the amount, do not include contributions that may be made during the year.

220 If there is no generic MySuper product or balanced investment option

Superannuation entities

(1) If a superannuation entity does not offer a generic MySuper product, the example should be based on:

(a) where the superannuation entity offers a balanced investment option—the balanced investment option under which most assets of the superannuation entity are invested; and

(b) where the superannuation entity does not offer a balanced investment option—the investment option under which most assets of the superannuation entity are invested.

Managed investment schemes

(2) If a managed investment scheme does not offer a balanced investment option, the example should be based on:

(a) where the scheme offers a default investment option—that option; and

(b) where the scheme does not offer a default investment option—the investment option under which most assets of the scheme are invested.

CCIVs

(3) If a retail CCIV does not offer a balanced investment option, the example should be based on:

(a) where the CCIV offers a default investment option—that option; and

(b) where the CCIV does not offer a default investment option—the investment option under which the CCIV has the most funds invested.

Division 7—Consumer Advisory Warning

221 Consumer advisory warning

|  |
| --- |
| **DID YOU KNOW?**  **Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.**  **For example, total annual fees and costs of 2% of your account balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example, reduce it from $100 000 to $80 000).**  **You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.**  **Your employer may be able to negotiate to pay lower administration fees. Ask the fund or your financial adviser.**  **TO FIND OUT MORE**  If you would like to find out more, or see the impact of the fees based on your own circumstances, the **Australian Securities and Investments Commission (ASIC)** website (www.moneysmart.gov.au) has a *[superannuation or managed investment fee]* calculator to help you check out different fee options. |

222 Where to place the Consumer Advisory Warning

The Consumer Advisory Warning must be located at the beginning of the fees section of the Product Disclosure Statement.

Part 3—Fees and costs in periodic statements

Division 1—Other Management Costs

301 Indirect costs related to investment and administration of accounts

(1) The following text and the appropriate amount, in dollars, must be inserted after the part of the periodic statement that itemises transactions during the period.

**Indirect costs of your investment**

This approximate amount has been deducted from your investment and includes amounts that have reduced the return on your investment but are not charged directly to you as a fee.

(2) The amount inserted must include:

(a) for a MySuper product or an investment option offered by a superannuation entity—the indirect costs for the MySuper product or investment option; and

(b) for an investment option offered by a managed investment scheme or a retail CCIV—all management costs not deducted directly from a product holder’s account during the reporting period.

(3) The amount must be shown as a single total amount in dollars.

(4) The amount for a collective investment product must be calculated by multiplying the indirect cost ratio for the relevant investment option by the product holder’s average account balance for the option over the reporting period.

Division 2—Total fees

302 Total of fees in the periodic statement

(1) The following text and the appropriate amount, in dollars, must be displayed:

(a) at the end of the part of the periodic statement that itemises transactions during the period; or

(b) in a summary part of the periodic statement.

**TOTAL FEES YOU PAID**

This approximate amount includes all the fees and costs which affected your investment during the period.

(2) The total fees you paid are the total of all fees and costs disclosed in the periodic statement.

Division 3—Additional Explanation of Fees and Costs

303 Matters to be included as additional explanation of fees and costs

Superannuation products

(1) The following information must be included in the periodic statement for a superannuation product under the heading “Additional Explanation of Fees and Costs”, if it has not been included in another part of the periodic statement:

(a) details of any activity fees, advice fees and insurance fees that were incurred by the member during the period;

(b) for a superannuation product that is subject to tax—whether the benefit of any tax deduction has been passed on to the investor in the form of a reduced fee or cost;

(c) a statement that if the account balance for a MySuper product or a choice product offered by the superannuation entity is less than $6,000 at the end of the entity’s income year:

(i) the total combined amount of administration fees, investment fees and indirect costs charged in relation to the MySuper product or a choice product is capped at 3% of the account balance; and

(ii) any amount charged in excess of that cap must be refunded.

Collective investment products

(2) The following information must be included in the periodic statement under the heading “Additional Explanation of Fees and Costs”, if it has not been included in another part of the periodic statement:

(a) details of incidental fees, such as cheque dishonour fees, that were incurred by the product holder during the period;

(b) details of any service fees that may have been incurred by the product holder;

(c) for a collective investment product that is subject to tax—whether the benefit of any tax deduction has been passed on to the investor in the form of a reduced fee or cost.

Schedule 10A—Modifications of Part 7.9 of the Act

(regulations 7.9.02, 7.9.04, 7.9.05, 7.9.06, 7.9.09C, 7.9.11C, 7.9.11N, 7.9.11V, 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)

Part 1—Modifications relating to sub‑plans

1.1 Paragraph 1012D(10)(b)

*substitute*

(b) a superannuation product is the same as another superannuation product only if the other superannuation product is:

(i) an interest in the same sub‑plan; or

(ii) if there is no sub‑plan—an interest in the same fund.

Part 2—Modifications relating to Product Disclosure Statements for RSAs

2.1 After subsection 1012D(9B)

*insert*

Recommendation, issue or sale situation—takeover or merger

(9C) In a recommendation situation, issue situation or sale situation, the issuer does not have to give a Product Disclosure Statement if a person:

(a) becomes the holder of an RSA with an RSA institution; and

(b) does so as a direct result of:

(i) the takeover of the RSA provider with which the person previously held an RSA by:

(A) the RSA institution; or

(B) a corporation that is a related corporation of the RSA institution; or

(ii) a merger involving the RSA provider with which the person previously held an RSA and which results in the creation of the RSA institution; or

(iii) the transfer of any, or all of, the assets and liabilities of the RSA provider with which the person previously held an RSA to the RSA institution:

(A) under a provision of the *Banking Act 1959*, the *Life Insurance Act 1995* or of any other law of the Commonwealth, a State or a Territory; or

(B) under a voluntary transfer of engagements; or

(C) on the request of the Australian Prudential Regulation Authority.

Part 3—Modifications relating to insurance options under contract associated with superannuation interest

3.1 After subsection 1012D(9B)

*insert*

Insurance options

(9C) A product issuer does not have to give a Product Disclosure Statement to a person if:

(a) a product holder seeks to change the coverage of insurance options under a contract associated with a superannuation interest; and

(b) information in relation to the change of insurance options has not already been given in a periodic statement or in accordance with other periodic reporting requirements under Division 3.

(9D) If subsection (9C) applies:

(a) the product issuer must ensure that the product holder has sufficient information to enable the product holder to make an informed decision; and

(b) that subsection does not prevent the product issuer from complying with paragraph (a) by giving the product holder a Product Disclosure Statement.

Part 5A—Modifications for standard margin lending facilities

5A.2 Subsection 1013C(1)

*substitute*

(1) A Product Disclosure Statement for a standard margin lending facility to which Subdivision 4.2A of Division 4 of Part 7.9 of the *Corporations Regulations 2001* applies must:

(a) include the statements and information required by regulations made for this paragraph; and

(b) be in the form required by regulations made for this paragraph.

(1A) If a law other than this Act or regulations under this Act requires the responsible person for the Product Disclosure Statement:

(a) to give, disclose or provide a matter; or

(b) to include a matter in the Statement;

the Statement may make provision for the matter by applying, adopting or incorporating the matter as in force at a particular time or as in force from time to time.

(1B) In addition to subsection (1A), a Product Disclosure Statement may make provision for a matter contained in writing by applying, adopting or incorporating the matter as in force at a particular time or as in force from time to time.

(1C) If a Product Disclosure Statement applies, adopts or incorporates a matter contained in writing:

(a) the applied, adopted or incorporated matter forms part of the Statement; and

(b) the responsible person for the Statement is not required to give the document which provides for the matter to a person (as part of giving the Statement or later) if that person has not asked for the document; and

(c) the responsible person for the Statement must give the document which provides for the matter to a person if that person asks for the document.

(1D) The regulations may prescribe requirements for applying, adopting, or incorporating a matter contained in writing in a Product Disclosure Statement.

(1E) A Product Disclosure Statement may refer to information, other than information to which subsection (1A) or (1B) applies, that is set out in another document; and

(1F) If the Product Disclosure Statement refers to other information as permitted by subsection (1E), that information does not form part of the Statement.

Note: Although the information mentioned in subsection (1F) would not form part of the Product Disclosure Statement, it would be subject to requirements imposed by the Act or these Regulations such as the prohibition on making misleading or deceptive statements.

5A.3 Section 1013D

*omit*

5A.4 Section 1013E

*omit*

5A.5 Section 1013L

*substitute*

1013L When Product Disclosure document may consist of 2 or more documents

A Product Disclosure Statement may consist of 2 or more documents, only if:

(a) one of the documents is a document that complies with the requirements for a Product Disclosure Statement under this Act and the Regulations; and

(b) the other document or documents contain a matter in writing that is applied, adopted or incorporated by the document mentioned in paragraph (a).

5A.6 Subdivision D, Division 2

*omit*

5A.7 Subsection 1015D(3)

*omit*

Part 5B—Modifications for superannuation products to which Subdivision 4.2B of Division 4 of Part 7.9 applies

5B.2 Subsection 1013C(1)

*substitute*

(1) A Product Disclosure Statement for a superannuation product to which Subdivision 4.2B of Division 4 of Part 7.9 of the *Corporations Regulations 2001* applies must:

(a) include the statements and information required by regulations made for this paragraph; and

(b) be in the form required by regulations made for this paragraph.

(1A) If a law other than this Act or regulations under this Act requires the responsible person for the Product Disclosure Statement:

(a) to give, disclose or provide a matter; or

(b) to include a matter in the Statement;

the Statement may make provision for the matter by applying, adopting or incorporating the matter as in force at a particular time or as in force from time to time.

(1B) In addition to subsection (1A), a Product Disclosure Statement may make provision for a matter contained in writing by applying, adopting or incorporating the matter as in force at a particular time or as in force from time to time.

(1C) If a Product Disclosure Statement applies, adopts or incorporates a matter contained in writing:

(a) the applied, adopted or incorporated matter forms part of the Statement; and

(b) the responsible person for the Statement is not required to give the document which provides for the matter to a person (as part of giving the Statement or later) if that person has not asked for the document; and

(c) the responsible person for the Statement must give the document which provides for the matter to a person if that person asks for the document.

(1D) The regulations may prescribe requirements for applying, adopting, or incorporating a matter contained in writing in a Product Disclosure Statement.

(1E) A Product Disclosure Statement may refer to information, other than information to which subsection (1A) or (1B) applies, that is set out in another document; and

(1F) If the Product Disclosure Statement refers to other information as permitted by subsection (1E), that information does not form part of the Statement.

Note: Although the information mentioned in subsection (1F) would not form part of the Product Disclosure Statement, it would be subject to requirements imposed by the Act or these Regulations such as the prohibition on making misleading or deceptive statements.

5B.3 Section 1013D

*omit*

5B.4 Section 1013E

*omit*

5B.5 Section 1013L

*substitute*

1013L When Product Disclosure Statement may consist of 2 or more documents

A Product Disclosure Statement may consist of 2 or more documents only if:

(a) one of the documents is a document that complies with the requirements for a Product Disclosure Statement under this Act and the Regulations; and

(b) the other document or documents contain a matter in writing that is applied, adopted or incorporated by the document mentioned in subparagraph (a).

5B.6 Subsection 1015D(3)

*omit*

Part 5C—Modifications for simple managed investment scheme

5C.2 Subsection 1013C(1)

*substitute*

(1) A Product Disclosure Statement for a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 of the *Corporations Regulations 2001* applies must:

(a) include the statements and information required by regulations made for this paragraph; and

(b) be in the form required by regulations made for this paragraph; and

(c) relate only to 1 simple managed investment scheme.

(1A) If a law other than this Act or regulations under this Act requires the responsible person for the Product Disclosure Statement:

(a) to give, disclose or provide a matter; or

(b) to include a matter in the Statement;

the Statement may make provision for the matter by applying, adopting or incorporating the matter as in force at a particular time or as in force from time to time.

(1B) In addition to subsection (1A), a Product Disclosure Statement may make provision for a matter contained in writing by applying, adopting or incorporating the matter as in force at a particular time or as in force from time to time.

(1C) If a Product Disclosure Statement applies, adopts or incorporates a matter contained in writing:

(a) the applied, adopted or incorporated matter forms part of the Statement; and

(b) the responsible person for the Statement is not required to give the document which provides for the matter to a person (as part of giving the Statement or later) if that person has not asked for the document; and

(c) the responsible person for the Statement must give the document which provides for the matter to a person if that person asks for the document.

(1D) The regulations may prescribe requirements for applying, adopting, or incorporating a matter contained in writing in a Product Disclosure Statement.

(1E) A Product Disclosure Statement may refer to information, other than information to which subsection (1A) or (1B) applies, that is set out in another document; and

(1F) If the Product Disclosure Statement refers to other information as permitted by subsection (1E), that information does not form part of the Statement.

Note: Although the information mentioned in subsection (1F) would not form part of the Product Disclosure Statement, it would be subject to requirements imposed by the Act or these Regulations such as the prohibition on making misleading or deceptive statements.

5C.2 Section 1013D

*omit*

5C.3 Section 1013E

*omit*

5C.4 Section 1013L

*substitute*

1013L When Product Disclosure Statement may consist of 2 or more documents

A Product Disclosure Statement may consist of 2 or more documents only if:

(a) one of the documents is a document that complies with the requirements for a Product Disclosure Statement under this Act and the Regulations; and

(b) the other document or documents contain a matter in writing that is applied, adopted or incorporated by the document mentioned in subparagraph (a).

5C.5 Subsection 1015D(3)

*omit*

Part 5D—Modifications for simple sub‑fund product

5D.2 Subsection 1013C(1)

*substitute*

(1) A Product Disclosure Statement for a simple sub‑fund product, to which Subdivision 4.2D of Division 4 of Part 7.9 of the Regulations applies, for a retail CCIV must:

(a) include the statements and information required by regulations made for the purposes of this paragraph; and

(b) be in the form required by regulations made for the purposes of this paragraph; and

(c) relate only to one sub‑fund of the CCIV.

(1A) If a law other than this Act or regulations under this Act requires the responsible person for the Product Disclosure Statement:

(a) to give, disclose or provide a matter; or

(b) to include a matter in the Statement;

the Statement may make provision for the matter by applying, adopting or incorporating the matter as in force at a particular time or as in force from time to time.

(1B) In addition to subsection (1A), a Product Disclosure Statement may make provision for a matter contained in writing by applying, adopting or incorporating the matter as in force at a particular time or as in force from time to time.

(1C) If a Product Disclosure Statement applies, adopts or incorporates a matter contained in writing:

(a) the applied, adopted or incorporated matter forms part of the Statement; and

(b) the responsible person for the Statement is not required to give the document that provides for the matter to a person (as part of giving the Statement or later) if that person has not asked for the document; and

(c) the responsible person for the Statement must give the document that provides for the matter to a person if that person asks for the document.

(1D) The regulations may prescribe requirements for applying, adopting or incorporating a matter contained in writing in a Product Disclosure Statement.

(1E) A Product Disclosure Statement may refer to information, other than information to which subsection (1A) or (1B) applies, that is set out in another document.

(1F) If the Product Disclosure Statement refers to other information as permitted by subsection (1E), that information does not form part of the Statement.

Note: Although the information mentioned in subsection (1F) would not form part of the Product Disclosure Statement, it would be subject to requirements imposed by the Act or the Regulations such as the prohibition on making misleading or deceptive statements.

5D.3 Section 1013D

*omit*

5D.4 Section 1013E

*omit*

5D.5 Section 1013L

*substitute*

1013L When Product Disclosure Statement may consist of 2 or more documents

A Product Disclosure Statement may consist of 2 or more documents only if:

(a) one of the documents is a document that complies with the requirements for a Product Disclosure Statement under this Act and the Regulations; and

(b) the other document or documents contain a matter in writing that is applied, adopted or incorporated by the document mentioned in subparagraph (a).

5D.6 Subsection 1015D(3)

*omit*

Part 6—Modifications relating to application forms and Product Disclosure Statements for standard employer‑sponsor arrangements and successor funds

6.1 After subsection 1016A(2)

*insert*

(2A) Subsection (2) does not apply in relation to a member who:

(a) held an interest in a superannuation fund as a standard employer‑sponsored member; and

(b) is issued with an interest in relation to another sub‑plan of the superannuation fund as a result of a transfer related to the cessation of the member’s employment with the employer‑sponsor.

6.2 After subsection 1016A(3)

*insert*

(3A) Subsection (3) does not apply in relation to a superannuation product if:

(a) the issuer is a public offer entity that is a successor fund; and

(b) an employer became a standard employer‑sponsor of a fund in the following way:

(i) the employer was a standard employer‑sponsor of a fund (***fund 1***);

(ii) the benefits of members in fund 1 were transferred to a successor fund;

(iii) the employer was a standard employer‑sponsor of fund 1 immediately before those benefits were so transferred;

(iv) the employer was a standard employer‑sponsor of the successor fund immediately after those benefits were so transferred.

6.3 After subsection 1012D(9)

*insert*

Recommendation, issue or sale situation—successor fund

(9A) In a recommendation situation, issue situation or sale situation, a regulated person does not have to give the client a Product Disclosure Statement if:

(a) the financial product is an RSA; and

(b) subsection 1012I(2) applies.

Part 6A—Modifications relating to MySuper measures

6A.1 After subsection 1017BA(4)

Insert:

(4AA) Despite paragraph 1539(a) of the Act, this section applies, to the extent that it relates to MySuper products, on and after 31 December 2013.

Part 7—Modifications relating to life pensioners, members subject to compulsory protection of small amounts and members with small amounts that are expected to grow quickly

7.1 After subsection 1017D(7)

*insert*

(8) The trustee of a fund need not give a periodic statement or other information to a member:

(a) in relation to any period during which the member is a life pensioner of the fund; or

(b) if the member is a pensioner of the fund, and has requested that that information not be provided.

(9) Subsection (8) does not apply to information mentioned in subregulation 7.9.21A(1) of the *Corporations Regulations 2001*.

(10) If, at the end of a reporting period, a member of a regulated superannuation fund is a protected member, the trustee need give the member only the following information in the periodic statement for that reporting period:

(a) the contact details of the fund;

(b) either:

(i) the amount of the member’s withdrawal benefit at the end of the reporting period; or

(ii) the total of the amounts that have been received by the fund in respect of the member;

(c) in so far as applicable, the information mentioned in subregulation 7.9.21(1) of the *Corporations Regulations 2001*.

(11) If, in relation to a member of a fund, the trustee of the fund takes advantage of subsections (12) to (15), the trustee must not, in relation to that member, take advantage of subsection (10).

(12) If, at the end of a reporting period, the trustee of a fund has a reasonable expectation that a particular protected member will have a withdrawal benefit of at least $1 500 within 12 months after the end of that reporting period, the trustee need not show, in the periodic statement, the effect of the member‑protection standards.

(13) For subsection (12), a trustee is not taken to have a reasonable expectation that a member will have a withdrawal benefit of at least $1 500 within the period of 12 months referred to in that subsection if termination of the member’s employment with a current employer (not being an employer who or that is an associate, within the meaning of paragraph 70(a) of the SIS Act, of the member) would be likely to result in the member’s withdrawal benefit being below $1 500 at the end of that period.

(14) If, at the end of the 12‑month period, the member’s withdrawal benefit has not reached $1 500, the trustee must show, in the periodic statement provided to the member for each reporting period ending on or after the end of the 12‑month period, the effect of the member‑protection standards.

(15) The trustee of a fund must not take advantage of subsection (12) in respect of a person more than once unless, after an occasion on which the trustee does so but before the next occasion, the member leaves and rejoins the fund.

(16) In this section:

***mandated employer‑financed benefits*** has the same meaning as in subregulation 5.01(1) of the *Superannuation Industry (Supervision) Regulations 1994*.

***member protection standards*** has the same meaning as in the *Superannuation Industry (Supervision) Regulations 1994*.

***protected member*** has the same meaning as in the *Superannuation Industry (Supervision) Regulations 1994*.

(17) For the definition of ***protected member*** in subsection (16), a benefit in a fund is taken to contain or to have contained mandated employer‑financed benefits unless:

(a) if the benefits arose in relation to contributions made before 1 July 1995—the trustee of the fund reasonably believes otherwise; or

(b) if the benefits arose in relation to contributions made on or after 1 July 1995—the trustee of the fund knows otherwise.

Part 8—Modifications relating to periodic statements for RSA providers

8.1 After subsection 1017D(7)

*insert*

(8) If:

(a) a person ceases to be an RSA holder before RSA information in respect of a particular reporting period (the ***relevant period***) is given; and

(b) either:

(i) the RSA provider gives, or intends to give, information to the person in respect of a reporting period that is the same as, or includes the whole of, the relevant period; or

(ii) if the person ceases to be an RSA holder by reason of death—the RSA provider complies in relation to the person with the relevant requirements of this Act and the regulations;

the RSA provider need not give RSA information, in respect of the relevant period, to or in relation to the person.

(9) If, at the end of a reporting period, an RSA holder is a protected RSA holder, the RSA provider need give the RSA holder only the following information for the reporting period:

(a) the contact details of the RSA provider;

(b) either:

(i) the amount of the RSA holder’s withdrawal benefit at the end of the reporting period; or

(ii) the total of the amounts that have been received by the RSA provider in respect of the RSA holder;

(c) the effective rate of net interest applied to the RSA for each year of the previous 5 years ending at the end of the reporting period;

(d) the compound average of the annual effective rate of net interest applied to the RSA for each year of the previous 5 years ending at the end of the reporting period;

(e) details (in summary form) of arrangements that the RSA provider has to deal with inquiries or complaints;

(f) a statement that other information is available on request;

(g) a suggestion that the RSA holder may wish to consider:

(i) other superannuation arrangements that may provide a greater return over the long term; and

(ii) seeking advice on alternative investment strategies that may be more suitable;

(h) if the RSA provider reduced the RSA holder’s benefits in connection with payment of a superannuation contributions surcharge or an advance instalment of surcharge:

(i) the amount deducted; and

(ii) if there is a difference between the amount deducted and the amount assessed under subsection 15(1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15(2) of that Act—a statement explaining the difference.

(10) A nil amount need not be disclosed.

(11) If, in relation to an RSA holder, the RSA provider takes advantage of subsections (13) to (16), the RSA provider must not, in relation to the RSA holder, take advantage of subsection (9).

(12) If, at the end of a reporting period, an RSA has not been in existence for 5 years, the references in paragraphs (9)(c) and (d) to 5 years are taken to be references to the whole period of existence of the RSA.

(13) If, at the end of a reporting period, an RSA provider has a reasonable expectation that an RSA holder will have a withdrawal benefit of at least $1 500 within 12 months after the end of the reporting period, the RSA provider need not show, in RSA information provided to the RSA holder, the effect of the RSA holder‑protection standards.

(14) For subsection (12), an RSA provider is not taken to have a reasonable expectation that the RSA holder will have a withdrawal benefit of $1 500 within the period of 12 months mentioned in that subsection if termination of the RSA holder’s employment with a current employer would be likely to result in the RSA holder’s withdrawal benefit being below $1 500 at the end of that period.

(15) If, at the end of the 12‑month period, the RSA holder’s withdrawal benefit has not reached $1 500, the RSA provider must show, in RSA information provided to the RSA holder for each reporting period ending on or after the end of the 12‑month period, the effect of the RSA holder‑protection standards.

(16) An RSA provider must not take advantage of subsection (13) in respect of a person more than once unless, after an occasion on which the RSA provider does so but before the next occasion, the person ceases to be the holder of the RSA and subsequently becomes the holder of an RSA provided by the same RSA provider.

(17) In this section:

***mandated employer‑financed benefits*** has the same meaning as in the *Retirement Savings Accounts Regulations 1997*.

***protected member*** has the same meaning as in the *Retirement Savings Accounts Regulations 1997*.

***RSA holder‑protection standards*** has the same meaning as in the *Retirement Savings Accounts Regulations 1997*.

Part 9—Modifications relating to periodic statements for superannuation entities and RSA providers

9.1 After subsection 1017C(7)

*insert*

(7A) If:

(a) a concerned person requests information under subsection (2) or (3) in relation to a facility, under the concerned person’s existing holding of a superannuation product, to modify:

(i) an investment strategy; or

(ii) a contribution level; or

(iii) insurance coverage; and

(b) the information has not already been given in a periodic statement or in accordance with other periodic reporting requirements under Division 3;

it is sufficient compliance with a requirement imposed by this section if the responsible person provides an up to date Product Disclosure Statement that includes information on the ability and effect of making the modification.

Part 10—Modifications relating to ongoing disclosure of material changes and significant events in relation to superannuation products and RSAs

10.1 After subsection 1017B(5)

*insert*

Provision of advice before event

(5A) For a superannuation product or an RSA, if a product holder would reasonably be expected to be informed of:

(a) a decision of the issuer; or

(b) the winding‑up or termination of the superannuation entity;

before it occurs, the issuer must give the product holder information about the event as soon as practicable after it becomes reasonable for the issuer to expect that the event will happen (except that the information does not need to be given more than 3 months before the expected date of the event).

Changes to governing rules or terms and conditions

(5B) For subsections 1017B(5), (6) and (7) a reference to an event includes the following:

(a) a change to the governing rules of a superannuation entity (other than a change that gives effect to a payment split) of a kind that has an adverse effect on:

(i) the amount of the relevant financial product; or

(ii) the benefits to which the holder of the relevant financial product may become entitled; or

(iii) the circumstances in which the benefits to which the holder of the relevant financial product may become entitled would become payable;

(b) a change to the terms and conditions of an RSA (other than a change that gives effect to a payment split) of a kind that has an adverse effect on:

(i) the amount of the RSA; or

(ii) the benefits to which the RSA holder may become entitled; or

(iii) the circumstances in which the benefits to which the RSA holder may become entitled would become payable;

(c) any other change in relation to an RSA, caused by any other act carried out or consented to by the issuer, of a kind that has an adverse effect on:

(i) the amount of the RSA; or

(ii) the benefits to which the RSA holder may become entitled; or

(iii) the circumstances in which the benefits to which the RSA holder may become entitled would become payable.

Notice of non‑compliance

(5C) If the issuer of a superannuation product receives a notice of non‑compliance, the issuer must give to each product holder:

(a) a statement of the circumstances (including details of the non‑compliance) that gave rise to the issue of the notice; and

(b) a statement of the effect on the fund of the issue of the notice (including details of the effect on the entity’s taxation position); and

(c) details of action that the issuer has taken, or proposes to take, to have the entity become a complying fund or a pooled superannuation trust for the purposes of Division 2 of Part 5 of the Act.

(5D) For subsection (5C), a ***notice of non‑compliance*** means a notice issued under section 40 of the SIS Act to the trustee of a fund stating that the fund is not a complying fund or a pooled superannuation trust.

Fund and RSA transfers

(5E) For subsections (5), (6) and (7), a reference to an event includes:

(a) in relation to a superannuation product:

(i) the transfer of a member to a different category of membership or to a different fund; and

(ii) the transfer of the benefits of a member to an RSA or exempt public sector superannuation scheme (otherwise than under a payment split); and

(b) in relation to an RSA—the transfer of an amount of an RSA (otherwise than under a payment split) to:

(i) another RSA offered by an RSA issuer; or

(ii) a superannuation entity; or

(iii) an exempt public sector superannuation scheme.

10.2 After subsection 1017B(9)

*insert*

(10) This section does not apply to a change or event in relation to a superannuation product or an RSA that relates to a payment split in respect of the product.

(11) This section does not apply to a change or event in relation to a superannuation product or an RSA if the change or event happens because of a transfer in accordance with paragraph 6.29(1)(ba) of the *Superannuation Industry (Supervision) Regulations 1994* in respect of the product.

Part 11—Modifications relating to charges for information requested

11.1 After subsection 1017C(8)

*insert*

(8A) The obligation of a responsible person under this section to give information on request by a person arises only if the person pays the amount specified by the responsible person as the charge for giving the information.

(8B) The amount of the charge must not exceed the reasonable cost to the responsible person of giving the information (including all reasonably related costs—for example, costs of searching for, obtaining and collating the information).

(8C) A member who acts as a representative for or on behalf of a policy committee is not liable to any charge for information given to the member in that capacity.

(8D) In the case of information to be supplied to a concerned person under Subdivision 5.9 of Part 7.9 of the *Corporations Regulations 2001*, a charge may be made only if:

(a) the person to whom the information is to be given has requested the information; and

(b) the person had been given the same information during the period of 12 months immediately preceding the date on which the request is made.

Part 12—Modifications relating to information when member leaves a fund

12.1 After subsection 1017D(3)

*insert*

(3A) For a superannuation product or an RSA, the periodic statement in relation to the reporting period mentioned in paragraph 1017D(2)(d) must be given as soon as the issuer becomes aware that that person or another person (the ***former product holder***) has ceased to hold the product, and, in particular, the issuer must make reasonable efforts to give the information within 1 month after becoming aware that the former product holder has ceased to hold the product.

(3B) The issuer of a superannuation product or an RSA must make all reasonable efforts:

(a) to give the information about the amount of insured death or disability benefits to which the former product holder may have been entitled; and

(b) to give the information about a continuation option (if any) applying to those benefits (as mentioned in either paragraph 7.9.54(b) or 7.9.65(b) of the *Corporations Regulations 2001*) in a reasonable time before the option lapses.

(3C) Subject to subsection (3D), if a person ceases to hold a superannuation product or an RSA:

(a) after the end of the completed reporting period (the ***completed period***); and

(b) before the periodic report is issued for that period;

the information required by this section to be given to or in relation to the person may be given in respect of the period consisting of the completed period and the period mentioned in paragraph 1017D(2)(d) instead of the period in respect of the person’s periodic statement for the period mentioned in paragraph 1017D(2)(d).

(3D) Subsection (3C) does not apply if the period mentioned in paragraph 1017D(2)(d) is greater than:

(a) for a particular superannuation product—6 months; or

(b) for a particular RSA—3 months.

Part 13—Modifications relating to exceptions to exit reporting period provisions

13.1 After subsection 1017D(7)

*insert*

(8) An RSA provider need not give information under this section to the holder of an RSA who is transferring the amount of the RSA to another RSA, a superannuation entity or an exempt public sector superannuation scheme if:

(a) the RSA holder has received sufficient information under Subdivision 5.8 of Part 7.9 of the *Corporations Regulations 2001* to enable the RSA holder to understand the effect of the transfer; and

(b) the RSA provider reasonably believes that the RSA holder does not need the information because the RSA holder has received or will receive from the RSA institution, or the trustee of the superannuation entity or exempt public sector superannuation scheme to which the amount is being transferred, information relevant to the RSA holder in respect of the exit reporting period, to the same general effect as that required under Subdivisions 5.2 and 5.3 of Part 7.9 of the *Corporations Regulations 2001*.

(9) A superannuation product provider need not give information under this section to the holder of a superannuation product who is transferring to another superannuation entity or to an exempt public sector superannuation scheme, or whose benefits are being transferred into an RSA if:

(a) the product holder has received sufficient information under Subdivision 5.8 of Part 7.9 of the *Corporations Regulations 2001* to enable the product holder to understand the effect of the transfer; and

(b) the superannuation product provider reasonably believes that the product holder does not need the information because the product holder has received or will receive, from the RSA institution, or from the trustee of the superannuation entity or exempt public sector superannuation scheme to which the amount is being transferred, information relevant to the product holder in respect of the exit reporting period, to the same general effect as that required under Subdivision 5.2 of Part 7.9 of the *Corporations Regulations 2001*.

Part 14—Modifications relating to obligation to give information about financial products

14.1 After subsection 1017B(7)

*insert*

(7A) Subject to subsections (7B) and (7C), this section does not apply if:

(a) the responsible person has an address for a concerned person, and:

(i) is satisfied on reasonable grounds that that address is incorrect; and

(ii) has taken reasonable steps to locate the concerned person but has been unable to do so; or

(b) the responsible person has no address for the concerned person, and:

(i) has been unable to obtain an address for the concerned person; and

(ii) has taken reasonable steps to locate the concerned person, but has been unable to do so.

(7B) If the responsible person has refrained, in reliance on subsection (7A), from giving information to a concerned person, the responsible person must give information to the concerned person if the responsible person later becomes aware of the concerned person’s address or location.

(7C) Subsection (7B) applies only in respect of information that the responsible person becomes liable to give to the concerned person after becoming aware of the concerned person’s address or location.

14.2 After subsection 1017C(8)

*insert*

(8A) Subject to subsections (8B) and (8C), this section does not apply if:

(a) the responsible person has an address for a concerned person, and:

(i) is satisfied on reasonable grounds that that address is incorrect; and

(ii) has taken reasonable steps to locate the concerned person but has been unable to do so; or

(b) the responsible person has no address for the concerned person, and:

(i) has been unable to obtain an address for the concerned person; and

(ii) has taken reasonable steps to locate the concerned person, but has been unable to do so.

(8B) If the responsible person has refrained, in reliance on subsection (8A), from giving information to a concerned person, the responsible person must give information to the concerned person if the responsible person later becomes aware of the concerned person’s address or location.

(8C) Subsection (8B) applies only in respect of information that the responsible person becomes liable to give to the concerned person after becoming aware of the concerned person’s address or location.

14.3 After subsection 1017D(7)

*insert*

(8) Subject to subsections (9) and (10), this section does not apply if:

(a) the issuer has an address for a holder, and:

(i) is satisfied on reasonable grounds that that address is incorrect; and

(ii) has taken reasonable steps to locate the holder but has been unable to do so; or

(b) the issuer has no address for the holder, and:

(i) has been unable to obtain an address for the holder; and

(ii) has taken reasonable steps to locate the holder, but has been unable to do so.

(9) If the issuer has refrained, in reliance on subsection (8), from giving information to a holder, the issuer must give information to the holder if the issuer later becomes aware of the holder’s address or location.

(10) Subsection (9) applies only in respect of information that the issuer becomes liable to give to the holder after becoming aware of the holder’s address or location.

14.4 After subsection 1017DA(3)

*insert*

(3A) Subject to subsections (3B) and (3C), this section does not apply if:

(a) the trustee has an address for a holder or former holder, and:

(i) is satisfied on reasonable grounds that that address is incorrect; and

(ii) has taken reasonable steps to locate the holder or former holder but has been unable to do so; or

(b) the trustee has no address for the holder or former holder, and:

(i) has been unable to obtain an address for the holder or former holder; and

(ii) has taken reasonable steps to locate the holder or former holder, but has been unable to do so.

(3B) If the trustee has refrained, in reliance on subsection (3A), from giving information to a holder or former holder, the trustee must give information to the holder or former holder if the trustee later becomes aware of the holder’s or former holder’s address or location.

(3C) Subsection (3B) applies only in respect of information that the trustee becomes liable to give to the holder or former holder after becoming aware of the holder’s or former holder’s address or location.

Part 15—Modifications for confirmation of transactions

15.1 After subsection 1017F(5A)

*insert*

(5B) Despite subsection (5), if:

(a) the cost of a transaction (including taxes and charges) is not known at the time at which confirmation of the transaction would be required to be given; and

(b) all of the other information required under subsection (7) in relation to confirmation of the transaction is known at that time;

the confirmation of the transaction is to be provided in accordance with subsection (5C).

(5C) Confirmation is to be provided as follows:

(a) all of the information required, except for the cost of the transaction, is to be provided as soon as practicable in accordance with subsection (5);

(b) the cost of the transaction may be provided in whichever of the following can be done first:

(i) a secondary confirmation notice provided as soon as practicable after the cost is known;

(ii) a standing facility mentioned in paragraph 1017F(5)(b);

(iii) the first periodic report under section 1017D after the cost is known.

Part 16—Modifications relating to reporting periods

16.1 Paragraph 1017D(2)(a)

*substitute*

(a) each reporting period lasts for:

(i) a period, not exceeding 1 year, fixed by the issuer; or

(ii) a longer period fixed by ASIC on the application of the issuer to which the period relates;

Part 17—Modifications relating to application forms for specified superannuation products

17.1 After subsection 1012B(4)

*insert*

(4A) A regulated person:

(a) need not give a client a Product Disclosure Statement for a financial product at or before the time when it would otherwise be required to be given; and

(b) must give the client the Product Disclosure Statement as soon as is reasonably practical and in any event within 3 months after the product is issued to the client; and

(c) need not give the client the Product Disclosure Statement at all if the client ceases to be a member of the superannuation fund concerned before the regulated person is required to give the Product Disclosure Statement under paragraph (b).

(4B) Subsections (3), (4) and (4A) apply only in respect of:

(a) in the case of an eligible rollover fund:

(i) persons who become members of the fund by being issued with a superannuation interest under section 243 of the SIS Act; and

(ii) persons who become members of the fund in circumstances mentioned in section 89 of the RSA Act; and

(b) in the case of a public offer superannuation fund that is not a successor fund in relation to the financial product issued to the client:

(i) standard employer‑sponsored members of the fund; and

(ii) persons who become members of the fund in circumstances mentioned in regulation 7.9.06B of the *Corporations Regulations 2001*.

17.2 After subsection 1012I(2B)

*insert*

(2C) If a trustee of an exempt public sector superannuation scheme:

(a) applies, in circumstances mentioned in regulation 7.9.06B of the *Corporations Regulations 2001*, on behalf of a person for the issue of an interest in a relevant superannuation entity; and

(b) has not previously applied in those circumstances for the issue of an interest in that entity on behalf of any person;

the person (the ***issuer***) who is to issue the interest to the person must, at or before the time when the interest is issued to the person, give the trustee a Product Disclosure Statement in accordance with this Division for the interest.

Part 18—Modification of Part 7.9 of the Act—New Zealand offer documents replace Product Disclosure Statements where an offer relates to interests in a New Zealand managed investment scheme

18.1 After subsection 1012D(9D)

*insert*

Recommendation, issue or sale situation—New Zealand mutual recognition scheme for securities

(9E) In a recommendation situation, issue situation or sale situation, the regulated person does not have to give the client a Product Disclosure Statement for a financial product if:

(a) the regulated person reasonably believes that there is a recognised offer under Chapter 8 in relation to offer of the financial product; and

(b) the financial product is an interest in a managed investment scheme governed by the laws of New Zealand; and

(c) the regulated person has provided the client the documents and information required to accompany that offer by the Financial Markets Conduct Act 2013 of New Zealand and the Financial Markets Conduct Regulations 2014 of New Zealand; and

(d) the regulated person has provided the client any warning statement or details prescribed under section 1200E in relation to the offer.

(9F) For paragraph (9E)(c), section 1015C applies to the providing of documents and information, as if the documents and information were a Statement.

(9G) For paragraph (9E)(d), section 1015C applies to the providing of warning statement or details prescribed under section 1200E, as if the warning statement or details were a Statement.

Part 19—Modifications for carbon units, Australian carbon credit units and eligible international emissions units

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

*substitute*

Recommendation, issue or sale situation for carbon unit—statements on Clean Energy Regulator’s website

(1) Subject to subsections (2) and (3), in a recommendation situation, issue situation or sale situation for a carbon unit, the regulated person:

(a) does not have to give the client a Product Disclosure Statement; and

(b) must inform the client that the client should consider each statement about the carbon unit that is mentioned in section 202 of the *Clean Energy Act 2011*.

Recommendation, issue or sale situation for carbon unit—client has considered statements on Clean Energy Regulator’s website

(2) In a recommendation situation, issue situation or sale situation for a carbon unit, the regulated person does not have to inform the client as described in paragraph (1)(b) if the regulated person believes, on reasonable grounds, that the client has already considered each statement about the carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*.

Recommendation, issue or sale situation for carbon unit—specified persons

(3) In a recommendation situation, issue situation or sale situation for a carbon unit, the regulated person does not have to inform the client as described in paragraph (1)(b) if the person is:

(a) the Clean Energy Regulator; or

(b) the Clean Development Mechanism Executive Board; or

(c) the government of a country other than Australia; or

(d) an authority acting on behalf of the government of a country other than Australia.

Recommendation, issue or sale situation for Australian carbon credit unit—statements on Clean Energy Regulator’s website

(3A) Subject to subsections (3B) and (3C), in a recommendation situation, issue situation or sale situation for an Australian carbon credit unit, the regulated person:

(a) does not have to give the client a Product Disclosure Statement; and

(b) must inform the client that the client should consider each statement about the Australian carbon credit unit that is mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Recommendation, issue or sale situation for Australian carbon credit unit—client has considered statements on Clean Energy Regulator’s website

(3B) In a recommendation situation, issue situation or sale situation for an Australian carbon credit unit, the regulated person does not have to inform the client as described in paragraph (3A)(b) if the regulated person believes, on reasonable grounds, that the client has already considered each statement about the Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Recommendation, issue or sale situation for Australian carbon credit unit—specified persons

(3C) In a recommendation situation, issue situation or sale situation for an Australian carbon credit unit, the regulated person does not have to inform the client as described in paragraph (3A)(b) if the person is:

(a) the Clean Energy Regulator; or

(b) the Clean Development Mechanism Executive Board; or

(c) the government of a country other than Australia; or

(d) an authority acting on behalf of the government of a country other than Australia.

Recommendation, issue or sale situation for eligible international emissions unit—statements on Clean Energy Regulator’s website

(3D) Subject to subsections (3E) and (3F), in a recommendation situation, issue situation or sale situation for an eligible international emissions unit, the regulated person:

(a) does not have to give the client a Product Disclosure Statement; and

(b) must inform the client that the client should consider each statement about the eligible international emissions unit that is mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*.

Recommendation, issue or sale situation for eligible international emissions unit—client has considered statements on Clean Energy Regulator’s website

(3E) In a recommendation situation, issue situation or sale situation for an eligible international emissions unit, the regulated person does not have to inform the client as described in paragraph (3D)(b) if the regulated person believes, on reasonable grounds, that the client has already considered each statement about the eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*.

Recommendation, issue or sale situation for eligible international emissions unit—specified persons

(3F) In a recommendation situation, issue situation or sale situation for an eligible international emissions unit, the regulated person does not have to inform the client as described in paragraph (3D)(b) if the person is:

(a) the Clean Energy Regulator; or

(b) the Clean Development Mechanism Executive Board; or

(c) the government of a country other than Australia; or

(d) an authority acting on behalf of the government of a country other than Australia.

19.2 Subsection 1012D(5)

*omit*

give the client a Product Disclosure Statement

*insert*

inform the client as described in paragraph (1)(b), (3A)(b) or (3D)(b)

19.3 Subsection 1012D(6)

*omit*

give the client a Product Disclosure Statement

*insert*

inform the client as described in paragraph (1)(b), (3A)(b) or (3D)(b)

19.4 Subsections 1012D(7) to (10), including the subheading

*omit*

19.5 Subsection 1012IA(1), definition of *regulated acquisition*

*substitute*

***regulated acquisition*** means an acquisition of a financial product pursuant to an instruction by the client under a custodial arrangement, being an acquisition:

(a) by way of issue by the issuer (the ***regulated person***); or

(b) pursuant to a sale by a person (the ***regulated person***) in circumstances:

(i) described in subsection 1012C(5) or (8); or

(ii) to which subsection 1012B(3), 1012C(3) or 1012C(6) would apply if those subsections were applicable in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit.

19.6 Subsection 1012IA(2), subheading

*substitute*

Obligation on provider to inform client about statements on Clean Energy Regulator’s website

19.7 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 inform the client that the client should consider each statement about the carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, or each statement about the Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, or each statement about the eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*, if the statement would

19.8 Subsection 1012IA(3), subheading

*substitute*

Determining whether client should be informed about statements on Clean Energy Regulator’s website for an equivalent direct acquisition

19.9 Subsection 1012IA(3)

*omit*

give the client a Product Disclosure Statement for the financial product

*insert*

inform the client that the client should consider each statement about the carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, or each statement about the Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, or each statement about the eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*

19.10 Paragraph 1017E(1)(b)

*substitute*

(b) a seller (the ***product provider***) of a carbon unit in relation to which the seller has informed the client that the client should consider each statement about the carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*; or

(ba) a seller (the ***product provider***) of an Australian carbon credit unit in relation to which the seller has informed the client that the client should consider each statement about the Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or

(bb) a seller (the ***product provider***) of an eligible international emissions unit in relation to which the seller has informed the client that the client should consider each statement about the eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*;

19.11 Subsection 1017G(1)

*substitute*

(1) This section does not apply to:

(a) the Regulator; or

(b) the CDM Executive Board; or

(c) the government of a country other than Australia; or

(d) an authority acting on behalf of the government of a country other than Australia.

(1A) If:

(a) carbon units are, or have been, available for acquisition (whether by issue or sale) by a person or persons as retail clients; and

(b) the issue or sale of the carbon units is not covered by an Australian financial services licence;

the issuer and any regulated person who is required, under subsection 1012D(1), to inform a client that the client should consider each statement about the carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, must both have a dispute resolution system complying with subsection (2).

Note 1: If the issue of the carbon units is covered by an Australian financial services licence, the requirement to have a dispute resolution system relating to the issue of the units is imposed by paragraph 912A(1)(g).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(1B) If:

(a) Australian carbon credit units are, or have been, available for acquisition (whether by issue or sale) by a person or persons as retail clients; and

(b) the issue or sale of the Australian carbon credit units is not covered by an Australian financial services licence;

the issuer and any regulated person who is required, under subsection 1012D(3A), to inform a client that the client should consider each statement about the Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, must both have a dispute resolution system complying with subsection (2).

Note 1: If the issue of the Australian carbon credit units is covered by an Australian financial services licence, the requirement to have a dispute resolution system relating to the issue of the units is imposed by paragraph 912A(1)(g).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(1C) If:

(a) eligible international emissions units are, or have been, available for acquisition (whether by issue or sale) by a person or persons as retail clients; and

(b) the issue or sale of the eligible international emissions units is not covered by an Australian financial services licence;

the issuer and any regulated person who is required, under subsection 1012D(3D), to inform a client that the client should consider each statement about the eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*, must both have a dispute resolution system complying with subsection (2).

Note 1: If the issue of the eligible international emissions units is covered by an Australian financial services licence, the requirement to have a dispute resolution system relating to the issue of the units is imposed by paragraph 912A(1)(g).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

19.12 Section 1018A, heading

*substitute*

1018A Advertising or other promotional material for financial product must refer to statements on Clean Energy Regulator’s website

19.13 Subsection 1018A(1), subheading

*substitute*

Advertisements and promotional material must identify issuer (or issuer and seller) and refer to statements on Clean Energy Regulator’s website

19.14 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 carbon unit, an Australian carbon credit unit or an eligible international emissions unit that is available for acquisition by persons as retail clients (whether or not it is also available for acquisition by persons as wholesale clients),

19.15 Subparagraph 1018A(1)(c)(ii)

*omit*

to which section 1012C applies or will apply

*insert*

to which paragraphs 1012C(3)(b) and (4)(c), and subsection 1012C(6), would apply if section 1012C were applicable in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit

19.16 Paragraphs 1018A(1)(d) and (e)

*substitute*

(d) informs the person that the person should consider:

(i) each statement about the carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011* in deciding whether to acquire, or to continue to hold, the carbon unit; or

(ii) each statement about the Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* in deciding whether to acquire, or to continue to hold, the Australian carbon credit unit; or

(iii) each statement about the eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011* in deciding whether to acquire, or to continue to hold, the eligible international emissions unit.

19.17 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 a carbon unit, an Australian carbon credit unit or an eligible international emissions unit and is not available for acquisition by persons as retail clients, but is reasonably likely to become so available (whether or not it is, or will also become, available for acquisition by persons as wholesale clients),

19.18 Subparagraph 1018A(2)(c)(ii)

*omit*

to which section 1012C will apply

*insert*

to which paragraphs 1012C(3)(b) and (4)(c), and subsection 1012C(6), would apply if section 1012C were applicable in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit

19.19 Paragraphs 1018A(2)(d) to (f)

*substitute*

(d) informs the person that:

(i) a statement about the carbon unit is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*; or

(ii) a statement about the Australian carbon credit unit is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or

(iii) a statement about the eligible international emissions unit is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*; and

(e) informs the person that the person should consider each statement about the carbon unit, Australian carbon credit unit or eligible international emissions unit that is published on that website in deciding whether to acquire, or to continue to hold, the carbon unit, Australian carbon credit unit or eligible international emissions unit.

19.20 Subsection 1018A(3)

*omit*

distribute a Product Disclosure Statement

*insert*

inform a person that the person should consider each statement about the carbon unit, Australian carbon credit unit or eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011*

19.21 Subparagraph 1018A(4)(c)(i)

*substitute*

(i) does not contain information that materially affects affairs of the issuer, other than information about the carbon unit, Australian carbon credit unit or eligible international emissions unit that is published:

(A) on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011*; or

(B) in a disclosure document that has been lodged with ASIC; or

(C) in an annual report or in a notice or report referred to in paragraph (a) or (b); and

19.22 Subparagraphs 1018A(4)(d)(i) and (ii)

*substitute*

(i) information about the carbon unit, Australian carbon credit unit or eligible international emissions unit that is published:

(A) on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011*; or

(B) in a disclosure document that has been lodged with ASIC; or

19.23 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 informed that the party should consider each statement about the carbon unit, Australian carbon credit unit or eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011*—taken to have notice of any contract, document or matter not specifically referred to in those statements.

19.24 Paragraph 1020E(7)(b)

*omit*

the document, advertisement or statement

*insert*

the statement or advertisement

19.25 Section 1021C, heading

*substitute*

1021C Offence of failing to refer to statements on Clean Energy Regulator’s website

19.26 Subparagraph 1021C(1)(a)(i)

*substitute*

(i) is required by a provision of this Part to inform a person that the person should consider each statement about a carbon unit, an Australian carbon credit unit or an eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011* (the ***required statement***); or

19.27 Subparagraph 1021C(1)(b)(i)

*substitute*

(i) if subparagraph (a)(i) applies—inform the person that the person should consider each required statement; or

19.28 Subparagraph 1021C(3)(a)(i)

*substitute*

(i) is required by a provision of this Part to inform a person that the person should consider each statement about a carbon unit, an Australian carbon credit unit or an eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011* (the ***required statement***); or

19.29 Subparagraph 1021C(3)(b)(i)

*substitute*

(i) if subparagraph (a)(i) applies—inform the person that the person should consider each required statement; or

19.30 Paragraph 1021C(4)(b)

*substitute*

(b) the representative’s failure to inform the person that the person should consider each required statement occurred because the representative was acting in reliance on that information or those instructions; and

19.31 Section 1021G

*omit*

to give or communicate disclosure documents or statements as and when required by this Part.

*insert*

to inform a person that the person should consider each statement about a carbon unit, an Australian carbon credit unit or an eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011* as and when required by this Part.

19.32 After paragraph 1022B(1)(ac)

*insert*

(ad) a person:

(i) is required to inform another person (the ***client***) that the client should consider each statement about a carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*; and

(ii) does not inform the client by the time the person is required to do so; or

(ae) a person:

(i) is required to inform another person (the ***client***) that the client should consider each statement about an Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; and

(ii) does not inform the client by the time the person is required to do so; or

(af) a person:

(i) is required to inform another person (the ***client***) that the client should consider each statement about an eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*; and

(ii) does not inform the client by the time the person is required to do so; or

Schedule 10AA—Modifications of the Act in relation to their application in respect of a recognised offer or a proposed offer of securities that may become a recognised offer

(regulation 8.4.02)

Part 1—Modification of Part 6D.2 of the Act—disclosure to investors not required for recognised offer under Chapter 8

1.1 After subsection 707(3)

*insert*

(3A) Subsection (3) does not apply to an offer of a body’s securities for sale if the body issued the securities as part of a recognised offer under Chapter 8.

(3B) Subsection (3) does not apply to an offer of a body’s securities for sale if:

(a) the securities were issued by reason of the exercise of options or the conversion of convertible or converting securities; and

(b) the options or other convertible or converting securities were issued as part of a recognised offer under Chapter 8; and

(c) the exercise of the option, or the conversion of the security, did not involve any further offer.

1.2 After subsection 707(5)

*insert*

(5A) Subsection (5) does not apply to an offer of a body’s securities for sale if the controller sold the securities as part of a recognised offer under Chapter 8.

Part 2—Modification of Part 7.9 of the Act—disclosure to investors not required for recognised offer under Chapter 8

2.1 After subsection 1012C(6)

*insert*

(6A) Subsection (6) does not apply to an offer of a financial product for sale if the issuer issued the financial product as part of a recognised offer under Chapter 8.

(6B) Subsection (6) does not apply to an offer of a financial product for sale if:

(a) the financial product was issued by reason of the exercise of an option or the conversion of another convertible or converting security; and

(b) the option or convertible or converting security was issued as part of a recognised offer under Chapter 8; and

(c) the exercise of the option, or the conversion of the security, did not involve a further offer.

2.2 After subsection 1012C(8)

*insert*

(8A) Subsection (8) does not apply to the offer of a financial product for sale if the controller sold the financial product as part of a recognised offer under Chapter 8.

2.3 After subsection 1012IA(3)

*insert*

(3A) In determining whether this section requires a provider to give a client a Product Disclosure Statement, Chapter 8 is to be disregarded.

(3B) A provider is not required to give a client a Product Disclosure Statement for a financial product if:

(a) the provider reasonably believes there is a recognised offer under Chapter 8 in relation to the financial product; and

(b) the financial product is an interest in a managed investment scheme governed by the laws of New Zealand; and

(c) the provider has provided the client the documents and information required to accompany that offer by the Financial Markets Conduct Act 2013 of New Zealand and the Financial Markets Conduct Regulations 2014 of New Zealand; and

(d) the provider has provided the client any warning statement or details prescribed under section 1200E in relation to the offer.

(3C) For paragraph (3B)(c), section 1015C applies to the providing of documents and information, as if the documents and information were a Statement.

(3D) For paragraph (3B)(d), section 1015C applies to the providing of warning statement or details prescribed under section 1200E, as if the warning statement or details were a Statement.

Note: Subsection 1012D(9E) of the Act is a modification of the Act that relates to Chapter 8 of the Act. The modification applies by force of:

(a) regulation 8.4.01 of the *Corporations Regulations 2001*; and

(b) item 18.1 of Part 18 of Schedule 10A to those Regulations.

Schedule 10BA—Modifications of the Act relating to Short‑Form Product Disclosure Statements

(regulation 7.9.61AA)

Part 1—Modifications of Part 7.7 of the Act

1.1 Paragraph 949A(2)(c)

*after*

Part 7.9)

*insert*

or a Short‑Form PDS (see Division 3A of Part 7.9)

Part 3—Modifications of Part 7.9 of the Act

3.1 After Division 3 of Part 7.9

*insert*

Division 3A—Short‑Form Product Disclosure Statements

1017H Short‑Form PDS

Short‑Form PDS may be given instead of a Product Disclosure Statement in most cases

(1) If a regulated person is required or obliged by this Act to give a Product Disclosure Statement for a financial product (but see subsection (4)) to another person, the regulated person may instead provide a Short‑Form PDS for the product.

Product Disclosure Statement must be given in certain circumstances

(2) However, if the regulated person is requested by the other person to provide the Product Disclosure Statement the regulated person must provide the Product Disclosure Statement.

Responsible person

(3) The ***responsible person*** for a Short‑Form PDS for a financial product is the person who is the responsible person for the Product Disclosure Statement for the product.

Short‑Form PDS not to be given for certain products

(4) Subsection (1) does not apply in relation to the following:

(a) a general insurance product;

(b) a managed investment product in relation to an Australian passport fund;

(ba) a security in a retail CCIV that is referable to a sub‑fund of the CCIV that is an Australian passport fund;

(c) a foreign passport fund product.

(5) To avoid doubt, nothing in Division 5AB of Part 7.9 of the regulations or in Part 3 of Schedule 10BA to the regulations permits a regulated person to give a Short‑Form PDS or a Supplementary Short‑Form PDS in relation to a financial product mentioned in subsection (4).

1017I Contents of a Short‑Form PDS

Contents

(1) The Short‑Form PDS for a financial product must contain the following:

(a) a summary of the statements and information referred to in paragraphs 1013D(1)(a), (b), (c), (d), (e), (g) and (i) that were included in a Product Disclosure Statement for the product;

(b) a statement:

(i) notifying the retail client in relation to the product that the client may ask for the Product Disclosure Statement for the product; and

(ii) setting out the means by which the client may ask for the Product Disclosure Statement.

Extra contents for certain products

(2) If the Short‑Form PDS is for a superannuation product, managed investment product or a security in a retail CCIV the Short‑Form PDS must also set out in full the information in:

(a) any regulations made for the purposes of paragraph 1013D(4)(c) relating to the details of fees and costs; and

(b) any regulations made for the purposes of paragraph 1015C(5)(b) that relate to the presentation, structure and format of information required by paragraphs 1013D(1)(d) and (e).

Other information may be included in Short‑Form PDS

(3) The Short‑Form PDS may also:

(a) include other information; and

(b) refer to other information that is set out in the Product Disclosure Statement or Financial Services Guide for the product.

Reference to identify incorporated information

(4) If under paragraph (3)(b) information is referred to in the Short‑Form PDS, the reference must identify the document or the part of the document that contains the information.

Incorporated document forms part of Short‑Form PDS

(5) The document or part referred to in subsection (4) is taken to be included in the Short‑Form PDS.

Rule as to statements in a Short‑Form PDS

(6) If a Product Disclosure Statement for a financial product may include a statement made by a person (see section 1013K), the statement may also be included in the Short‑Form PDS for the product.

1017J Title of Short‑Form Product Disclosure Statement

(1) The title “Short‑Form Product Disclosure Statement” must be used on the cover of, or at or near the front of, a Short‑Form PDS.

(2) In any other part of a Short‑Form PDS, “Short‑Form Product Disclosure Statement” may be abbreviated to “Short‑Form PDS”.

1017K References in sections to Product Disclosure Statement to include references to Short‑Form PDS

The following provisions apply to a Short‑Form PDS and so apply as if a reference to a Product Disclosure Statement in the provisions included a reference to a Short‑Form PDS:

(a) sections 942DA, 947E, 1012F, 1012G, 1012H, 1012J, 1013A, 1013G, 1013H, 1013I, 1013L 1013M, 1016A, 1016B, 1016C, 1016D, 1016E and 1017A and subsections 1013C(3) and 1013C(4) to (7);

(b) any regulations made under those sections or subsections;

(c) any regulations that modify those sections or subsections.

Division 3B—Supplementary Short‑Form Product Disclosure Statements

1017L What a Supplementary Short‑Form Product Disclosure Statement is

A ***Supplementary Short‑Form PDS*** is a document by which a person who has prepared a Short‑Form PDS can:

(a) correct a misleading or deceptive statement in the Short‑Form PDS; or

(b) correct an omission from the Short‑Form PDS of information it is required to contain; or

(c) update, or add to, the information contained in the Short‑Form PDS; or

(d) change a statement of a kind referred to in paragraph 1016E(1)(a) or (b) (as applied by section 1017K).

1017M Title of Supplementary Short‑Form Product Disclosure Statement

(1) The title “Supplementary Short‑Form Product Disclosure Statement” must be used on the cover of, or at or near the front of, a Supplementary Short‑Form PDS.

(2) In any other part of a Supplementary Short‑Form PDS, “Supplementary Short‑Form Product Disclosure Statement” may be abbreviated to “Supplementary Short‑Form PDS”.

1017N Form of Supplementary Short‑Form Product Disclosure Statement

At the beginning of a Supplementary Short‑Form PDS there must be:

(a) a statement that it is a Supplementary Short‑Form PDS; and

(b) an identification of the Short‑Form PDS that it supplements; and

(c) a statement that it is to be read together with that Short‑Form PDS and any other specified Supplementary Short‑Form PDS.

1017O Effect of giving person a Supplementary Short‑Form Product Disclosure Statement

If:

(a) a person is given a Short‑Form PDS; and

(b) at the same time, or later, they are given a Supplementary Short‑Form PDS that supplements the Short‑Form PDS;

the Short‑Form PDS is taken, from when the Supplementary Short‑Form PDS is given to the person, to include the information and statements contained in the Supplementary Short‑Form PDS.

1017P Situation in which only a Supplementary Short‑Form Product Disclosure Statement need be given

If:

(a) apart from this section, a person would be required to give another person (the ***client***) a Product Disclosure Statement (the ***new PDS***) relating to a financial product; and

(b) the client has, because of some previous conduct, already received a Short‑Form PDS (the ***earlier Short‑Form PDS***) relating to the financial product; and

(c) the earlier Short‑Form PDS contains summaries of some, but not all, of the information that the new PDS is required to contain (see paragraph 1017I(1)(a));

the person may, instead of giving the client the new PDS, give the client a Supplementary Short‑Form PDS that contains summaries of the additional information.

1017Q Application of other provisions in relation to Supplementary Short‑Form Product Disclosure Statements

The following provisions apply in relation to a Supplementary Short‑Form PDS in the same way as those provisions apply to a Product Disclosure Statement:

(a) sections 1013A, 1013G, 1013H, 1013K and subsections 1013C(3) and 1013C(4) to (7);

(b) any regulations made under those sections or subsections;

(c) any regulations that modify those sections or subsections.

3.2 Section 1015A

*substitute*

1015A Subdivision applies to certain Disclosure Statements

(1) Subject to subsection (2):

(a) this Subdivision applies to:

(i) a Product Disclosure Statement; or

(ii) a Short‑Form PDS; or

(iii) a Supplementary PDS; or

(iv) a Supplementary Short‑Form PDS; and

(b) each of those kinds of documents is referred to in this Subdivision as a ***Statement***.

(2) However:

(a) section 1015B does not apply to a Short‑Form PDS or a Supplementary Short‑Form PDS; and

(b) in that section, ***Statement*** does not include a Short‑Form PDS or a Supplementary Short‑Form PDS.

3.3 Subsection 1015B(1) (after the note)

*insert*

Note 2: Subsection 1015A(2) provides that ***Statement*** in this section does not include a Short‑Form PDS or a Supplementary Short‑Form PDS.

3.4 Paragraph 1018A(1)(e)

*after*

Statement

*insert*

or Short‑Form PDS, if available,

3.5 Paragraph 1018A(2)(f)

*after*

Statement

*insert*

or Short‑Form PDS, if available,

3.6 Subsection 1018A(3)

*after*

Statement

*insert*

or Short‑Form PDS

3.7 Subparagraph 1018A(4)(d)(i)

*after*

Statement

*insert*

or Short‑Form PDS

3.8 Paragraph 1020D(b)

*omit*

or Supplementary Product Disclosure Statement

*insert*

, Supplementary Product Disclosure Statement, Short‑Form PDS or Supplementary Short‑Form PDS

3.9 After paragraph 1021B(1)(b) (definition of *defective*)

*insert*

(ba) if it is a Short‑Form PDS—there is an omission from the Short‑Form PDS of material required by section 1017I; or

3.10 After paragraph 1021B(1)(c) (definition of *defective*)

*insert*

(ca) if it is a Supplementary Short‑Form PDS that is given for the purposes of section 1017P—there is an omission from the Short‑Form PDS of material required by that section; or

3.11 Subsection 1021B(1), definition of *disclosure document or statement*, after paragraph (b)

*insert*

(ba) a Short‑Form PDS; or

(bb) a Supplementary Short‑Form PDS; or

3.12 After subsection 1021C(5)

*insert*

(6) If a person does not give a Product Disclosure Statement for a financial product because the person has given a Short‑Form PDS for the product, the person is taken not to contravene this section.

3.13 Paragraph 1021H(1)(a)

*omit*

or a Supplementary Product Disclosure Statement

*insert*

, a Supplementary Product Disclosure Statement, a Short‑Form PDS or a Supplementary Short‑Form PDS

3.14 Subparagraph 1021H(1)(b)(i)

*after*

Product Disclosure Statement

*insert*

or Short‑Form PDS

3.15 Subparagraph 1021H(1)(b)(ii)

*omit*

; and

*insert*

; or

3.16 After subparagraph 1021H(1)(b)(ii)

*insert*

(iii) if it is a Supplementary Short‑Form PDS—section 1013G, 1017M or 1017N; and

3.17 After subparagraph 1021J(1)(c)(ii)

*insert*

(iia) if it is a Short‑Form PDS—a direction not to distribute the Short‑Form PDS unless it is accompanied by a Supplementary Short‑Form PDS that corrects the deficiency;

3.18 After subparagraph 1021J(1)(c)(iii)

*insert*

(iiia) if it is a Short‑Form PDS or a Supplementary Short‑Form PDS—a direction not to distribute the Short‑Form PDS or Supplementary Short‑Form PDS without first altering it in a way that is specified in the direction, being a way that corrects the deficiency and that complies with section 1015E.

3.19 Paragraph 1021K(1)(a)

*omit*

or a Supplementary Product Disclosure Statement

*insert*

, a Supplementary Product Disclosure Statement, a Short‑Form PDS or a Supplementary Short‑Form PDS (the ***disclosure statement***)

3.20 Paragraph 1021K(1)(b)

*omit*

Product Disclosure Statement or Supplementary Product Disclosure Statement

*insert*

disclosure statement

3.21 Subparagraphs 1021K(1)(d)(i), (ii) and (iii)

*omit*

Product Disclosure Statement or Supplementary Product Disclosure Statement

*insert*

disclosure statement

3.22 Paragraph 1021L(1)(a)

*omit*

or a Supplementary Product Disclosure Statement

*insert*

, a Supplementary Product Disclosure Statement, a Short‑Form PDS or a Supplementary Short‑Form PDS

3.23 Paragraph 1021L(2)(a)

*omit*

or a Supplementary Product Disclosure Statement

*insert*

, a Supplementary Product Disclosure Statement, a Short‑Form PDS or a Supplementary Short‑Form PDS (the ***disclosure statement***)

3.24 Subparagraph 1021L(2)(b)(iv)

*omit*

Product Disclosure Statement or Supplementary Product Disclosure Statement

*insert*

disclosure statement

3.25 Subparagraphs 1021M(1)(a)(i), (ii), (iii) and (iv)

*omit*

or a Supplementary Product Disclosure Statement

*insert*

, a Supplementary Product Disclosure Statement, a Short‑Form PDS or a Supplementary Short‑Form PDS

3.26 Subparagraphs 1021M(3)(a)(i), (ii), (iii) and (iv)

*omit*

or a Supplementary Product Disclosure Statement

*insert*

, a Supplementary Product Disclosure Statement, a Short‑Form PDS or a Supplementary Short‑Form PDS

3.27 After paragraph 1022A(1)(b) (definition of *defective*)

*insert*

(ba) if it is a Short‑Form PDS—there is an omission from the Short‑Form PDS of material required by section 1017I; or

3.28 After paragraph 1022A(1)(c) (definition of *defective*)

*insert*

(ca) if it is a Supplementary Short‑Form PDS that is given for the purposes of section 1017P—there is an omission from the Short‑Form PDS of material required by that section; or

3.29 Subsection 1022A(1), definition of *disclosure document or statement*, after paragraph (b)

*insert*

(ba) a Short‑Form PDS; or

(bb) a Supplementary Short‑Form PDS; or

3.30 Subparagraph 1022B(1)(a)(i)

*omit*

or a Supplementary Product Disclosure Statement

*insert*

, a Supplementary Product Disclosure Statement, a Short‑Form PDS or a Supplementary Short‑Form PDS

3.31 Subparagraph 1022B(1)(c)(ii)

*omit*

or a Supplementary Product Disclosure Statement

*insert*

, a Supplementary Product Disclosure Statement, a Short‑Form PDS or a Supplementary Short‑Form PDS

3.32 Subparagraph 1022B(1)(d)(i)

*omit*

or a Supplementary Product Disclosure Statement

*insert*

, a Supplementary Product Disclosure Statement, a Short‑Form PDS or a Supplementary Short‑Form PDS

Schedule 10C—Form and content of Product Disclosure Statement—standard margin lending facility

(regulation 7.9.11D)

1 Length and font size for Product Disclosure Statement for standard margin lending facility

(1) The length of a Product Disclosure Statement for a standard margin lending facility (not including any title page, table of contents or matter in writing that is applied, adopted or incorporated by the Statement) must not exceed:

(a) if it is printed on A4 pages—4 pages; or

(b) if it is printed on A5 pages—8 pages; or

(c) if it is printed on DL pages—12 pages; or

(d) otherwise—if it is formatted to be printed on A4 pages, 4 A4 pages.

(2) The minimum font size for text in the Statement is:

(a) for the name, address, ABN (if applicable), ACN (if applicable) and AFSL (if applicable) of the person giving the Statement—8 points; and

(b) for all other text—9 points.

Note 1: The Product Disclosure Statement must be worded and presented in a clear, concise and effective manner—see subsection 1013C(3) of the Act.

Note 2: A person required to a give a Product Disclosure Statement to a vision‑impaired person must comply with its obligations under the *Disability Discrimination Act 1992*.

2 Minimum content of Product Disclosure Statement for standard margin lending facility

(1) The Product Disclosure Statement must include the following sections, which must be numbered and titled as follows:

1. About [name of provider of the standard margin lending facility] and [name of standard margin lending facility]

2. Benefits of [name of standard margin lending facility]

3. How [name of standard margin lending facility] works

4. What is a margin call?

5. The risk of losing money

6. The costs

7. How to apply.

(2) The Product Disclosure Statement must include:

(a) a table of contents that sets out the titles mentioned in subclause (1); and

(b) the telephone number of the provider of the standard margin lending facility to enable a borrower for the standard margin lending facility to request a copy of the following under regulation 7.9.11G:

(i) a copy of the Statement; and

(ii) a copy of a matter in writing that is applied, adopted or incorporated by the Statement.

(3) The Product Disclosure Statement must:

(a) advise a person reading the Statement that:

(i) it is a summary of significant information and contains a number of references to important information (each of which forms part of the Statement); and

(ii) the person should consider that information before making a decision about the product; and

(iii) the information provided in the Statement is general information only and does not take account of the person’s personal financial situation or needs; and

(iv) the person should obtain financial advice tailored to the person’s personal circumstances; and

(b) display the advice:

(i) at or near the beginning of the document; and

(ii) in a prominent position and style.

(4) The Product Disclosure Statement:

(a) may include additional sections after sections 1 to 7; and

(b) may include other information;

to an extent that does not have the effect of contravening subclause 1(1).

(5) The Product Disclosure Statement does not need to indicate that a particular requirement is not applicable to the standard margin lending facility.

Note: The Act, as modified in accordance with Subdivision 4.2A of Division 4 of Part 7.9, requires information to be included in the Product Disclosure Statement only to the extent to which the requirement is applicable to the standard margin lending facility.

3 Contents of section 1 (About [name of provider of the standard margin lending facility] and [name of standard margin lending facility])

Section 1 of the Product Disclosure Statement must include:

(a) a short description of the standard margin lending facility provider and its business; and

(b) a short summary of what a standard margin lending facility is; and

(c) a statement setting out the possible consequences of borrowing money to invest, including the effect of magnifying both gains and losses; and

(d) a statement that the borrower for a standard margin lending facility should regularly monitor the borrower’s portfolio so that:

(i) the borrower can be aware of changes (if any) to the terms of the standard margin lending facility; and

(ii) the borrower can take timely action to prevent potential losses in relation to the borrower’s portfolio; and

(e) a statement that the borrower for a standard margin lending facility may need, at short notice, to pay an additional amount into the standard margin lending facility or sell some of the investments for which the standard margin lending facility is made; and

(f) a statement that the provider of a standard margin lending facility has the right in certain circumstances to sell all, or part, of the borrower’s portfolio and may not be required under the terms of the standard margin lending facility to provide notice to the borrower of its intention to sell; and

(g) a statement that if the value of the portfolio for a standard margin lending facility does not cover the cost of repayments for the standard margin lending facility:

(i) the borrower for the standard margin lending facility may need to access other funds to repay the standard margin lending facility; or

(ii) the provider of the standard margin lending facility may sell assets provided as security for the standard margin lending facility, for example, the borrower’s residential property; and

(h) a statement that the law requires the provider of a standard margin lending facility to:

(i) assess whether the standard margin lending facility is unsuitable for the potential borrower for the standard margin lending facility; and

(ii) if the potential borrower for the standard margin lending facility requests a copy of the assessment—to provide a copy of the assessment to the potential borrower for the standard margin lending facility.

Note: The provider of a standard margin lending facility is not required to give the borrower or potential borrower for the standard margin lending facility a copy of the assessment if the standard margin lending facility is not issued.

4 Contents of section 2 (Benefits of [name of standard margin lending facility])

(1) Section 2 of the Product Disclosure Statement for a standard margin lending facility must include a description of the key benefits available to the borrower or potential borrower for the standard margin lending facility.

(2) Section 2 of the Statement may include a description about other benefits available to a borrower or potential borrower for the standard margin lending facility other than the benefits mentioned in subclause (1).

(3) Section 2 of the Statement may provide for the description mentioned in subclause (2) by applying, adopting or incorporating a matter in writing.

5 Contents of section 3 (How [name of standard margin lending facility] works)

(1) Section 3 of the Product Disclosure Statement for a standard margin lending facility must include:

(a) an explanation of how a standard margin lending facility works including information about the following:

(i) the maximum loan amount for the standard margin lending facility;

(ii) the loan‑to‑value ratios for the standard margin lending facility; and

(b) at least 1 example that illustrates the matters mentioned in subparagraphs (a)(i) and (ii); and

(c) a description of the financial products that the borrower or potential borrower for the standard margin lending facility can purchase with the standard margin lending facility (including the Approved Securities List for the provider or potential provider of the standard margin lending facility); and

(d) an explanation of who owns the investments purchased with the standard margin lending facility; and

(e) a statement that:

(i) details of the rights and obligations of the borrower for a standard margin lending facility are set out in the terms of the agreement for the standard margin lending facility; and

(ii) recommends that a potential borrower for a standard margin lending facility read the loan agreement; and

(iii) explains how a potential borrower can obtain a copy of the loan agreement; and

(f) an explanation of any other features of the standard margin lending facility that:

(i) are not covered by the matters mentioned in paragraphs (a), (c) and (d); and

(ii) are sufficiently important to be material to a reasonable person’s decision to take out the standard margin lending facility; and

(g) a reference to:

(i) the calculator provided on a website operated by or on behalf of the Commonwealth and an explanation of the assistance the calculator can provide; or

(ii) if the provider or potential provider of the standard margin lending facility provides a calculator to borrowers or potential borrowers for the standard margin lending facility—that calculator and an explanation of the assistance the calculator can provide.

(2) Section 3 of the Statement may provide for the following matters by applying, adopting or incorporating the matter in writing:

(a) the Approved Securities List;

(b) the explanation mentioned in paragraph (1)(f).

6 Contents of section 4 (What is a margin call?)

Section 4 of the Product Disclosure Statement for a standard margin lending facility must include:

(a) if the terms of the standard margin lending facility include a margin call:

(i) an explanation of what a margin call is; and

(ii) an explanation of when there will be a margin call in response to changes in the market; and

(iii) an explanation of when there will be a margin call at the discretion of the provider of the standard margin lending facility; and

(iv) at least 1 example of how a margin call works, including:

(A) the impact of breaching the loan‑to‑value ratio (***LVR***) for the standard margin lending facility; and

(B) how to adjust the LVR back to the required level for the standard margin lending facility; and

(C) how the buffer (if any) for the standard margin lending facility operates; and

(v) a description of how a margin call can be dealt with by the borrower for the standard margin lending facility; and

(vi) a statement that if there is a margin call, the provider of the standard margin lending facility will notify the borrower for the standard margin lending facility, or the borrower’s financial advisor, that the margin call has occurred; and

(vii) a statement that the borrower for the standard margin lending facility must be contactable at all times in case of a margin call; and

(b) if the terms of the standard margin lending facility do not include a margin call, a statement to that effect.

7 Contents of section 5 (The risk of losing money)

(1) Section 5 of the Product Disclosure Statement for a standard margin lending facility must include a description of the risks associated with a standard margin lending facility to a borrower for the standard margin lending facility, including a description of any of the following risks, if relevant:

(a) the risk that the value of the borrower’s investment may fall and the possible consequences to the borrower if this occurs, in particular the risk of a margin call occurring;

(b) the risk that the provider of the standard margin lending facility may change the loan‑to‑value ratio of an investment at any time and the consequences to the borrower of the change, in particular, the risk of a margin call occurring;

(c) the risk that the provider of the standard margin lending facility may remove an investment from the Approved Securities List and the consequences for the borrower if this occurs, in particular, the risk of a margin call occurring;

(d) the risk that the interest rate for the standard margin lending facility may rise and the consequences for the borrower if this occurs, in particular, the possibility that interest payments owed by the borrower may exceed the returns available from the borrower’s portfolio;

(e) the risk of the loss of property of the borrower if the property has been mortgaged as security for, or in connection with, the standard margin lending facility;

(f) the risk of a default event under the loan agreement occurring and the potential consequences for the borrower if a default event does occur;

(g) the risk that the taxation laws may change and that this may have a negative effect on the tax position for the borrower for the standard margin lending facility;

(h) any other significant risks that a reasonable person would consider to be relevantly associated with the standard margin lending facility.

(2) Section 5 of the Statement must include a hyperlink to the page on a website operated by or on behalf of the Commonwealth that provides information about standard margin lending facilities.

(3) Section 5 of the Statement may include information about risks associated with standard margin lending facilities other than the risks mentioned in subclause (1).

(4) Section 5 of the Statement may provide for the information mentioned in subclause (3) by applying, adopting or incorporating a matter in writing.

8 Contents of section 6 (The costs)

(1) Section 6 of the Product Disclosure Statement for a standard margin lending facility must include the following:

(a) a description of the interest rate for the standard margin lending facility, including how the interest rate is calculated;

(b) a statement about whether a default interest rate will be charged for the standard margin lending facility;

(c) details of any fee or cost to be charged by the provider of the standard margin lending facility, unless the fee is a minor fee;

(d) a statement about whether a fee or cost to be charged by the provider for the loan can be unilaterally changed by the provider under the loan agreement;

(e) a list of matters for which the provider of the standard margin lending facility will charge a minor fee for the standard margin lending facility;

(f) a statement about whether a commission or fee is payable to a financial advisor or other third party for the standard margin lending facility and, if a commission or fee is payable:

(i) the circumstances in which the commission or fee will be payable; and

(ii) how the borrower for the standard margin lending facility can obtain more detailed information about the commission or fee.

(2) Section 6 of the Statement must include:

(a) a statement of the interest rate for the standard margin lending facility; and

(b) details of any minor fee the provider of the standard margin lending facility will charge for the standard margin lending facility.

(3) Section 6 of the Statement may provide for the statement mentioned in paragraph (2)(a) or the details mentioned in paragraph (2)(b) by applying, adopting or incorporating a matter in writing

9 Contents of section 7 (How to apply)

(1) Section 7 of the Product Disclosure Statement for a standard margin lending facility must include:

(a) information about how to apply for the standard margin lending facility; and

(b) a short summary about the dispute resolution system the provider of the standard margin lending facility has for dealing with disputes or complaints about the loan, including:

(i) how a borrower for the loan may make a complaint about the loan; and

(ii) contact details for making a complaint about the loan.

(2) The standard margin lending facility provider:

(a) may provide more detailed information about cooling‑off periods, complaints and dispute resolution; and

(b) may provide that information by applying, adopting or incorporating a matter in writing.

Schedule 10D—Form and content of Product Disclosure Statement—superannuation product to which Subdivision 4.2B of Division 4 of Part 7.9 applies

(regulation 7.9.11O)

1 Length and font size for Product Disclosure Statement for superannuation product

(1) The length of a Product Disclosure Statement for a superannuation product to which Subdivision 4.2B of Division 4 of Part 7.9 applies (not including any matter in writing that is applied, adopted or incorporated by the Statement) must not exceed:

(a) if it is printed on A4 pages—8 pages; or

(b) if it is printed on A5 pages—16 pages; or

(c) if it is printed on DL pages—24 pages; or

(d) otherwise—if it is formatted to be printed on A4 pages, 8 A4 pages.

(2) The minimum font size for text in the Statement is:

(a) for the name, address, ABN (if applicable), ACN (if applicable) and AFSL (if applicable) of the person giving the Statement—8 points; and

(b) for all other text—9 points.

Note 1: The Product Disclosure Statement must be worded and presented in a clear, concise and effective manner—see subsection 1013C(3) of the Act.

Note 2: A person required to a give a Product Disclosure Statement to a vision‑impaired person must comply with its obligations under the *Disability Discrimination Act 1992*.

2 Minimum content of Product Disclosure Statement for superannuation product

(1) Subject to subclause 10(1), the Product Disclosure Statement must include sections which must be numbered and titled as follows:

1. About [name of superannuation product]

2. How super works

3. Benefits of investing with [name of superannuation product]

4. Risks of super

5. How we invest your money

6. Fees and costs

7. How super is taxed

8. Insurance in your super

9. How to open an account.

(2) However, if the superannuation product does not offer insurance cover:

(a) section 9 may be presented as section 8; and

(b) if section 9 is presented as section 8—a reference in clause 11 to section 9 is taken to be a reference to section 8.

(3) The Product Disclosure Statement must include:

(a) a table of contents that sets out the titles mentioned in subclause (1); and

(b) the telephone number of the superannuation trustee to enable a person who acquires the superannuation product to request a copy of the following under regulation 7.9.11R:

(i) a copy of the Statement; and

(ii) a copy of a matter in writing that is applied, adopted or incorporated by the Statement.

(4) The Product Disclosure Statement must:

(a) advise a person reading the Statement that:

(i) it is a summary of significant information and contains a number of references to important information (each of which forms part of the Statement); and

(ii) the person should consider that information before making a decision about the product; and

(iii) the information provided in the Statement is general information only and does not take account of the person’s personal financial situation or needs; and

(iv) the person should obtain financial advice tailored to the person’s personal circumstances; and

(b) display the advice:

(i) at or near the beginning of the document; and

(ii) in a prominent position and style.

(5) The Product Disclosure Statement:

(a) may include additional sections after sections 1 to 9; and

(b) may include other information;

to an extent that does not have the effect of contravening subclause 1(1).

(6) The Product Disclosure Statement does not need to indicate that a particular requirement is not applicable to the superannuation product.

Note: The Act, as modified in accordance with Subdivision 4.2B of Division 4 of Part 7.9, requires information to be included in the Product Disclosure Statement only to the extent to which the requirement is applicable to the superannuation product.

3 Contents of section 1 (About *[name of superannuation product]*)

(1) Section 1 of the Product Disclosure Statement must:

(a) describe, in the form of a summary, the superannuation entity and the MySuper products and other investment options offered by the entity; and

(b) include a statement of where, on the entity’s website, the member can find:

(i) the product dashboard for each MySuper product and choice product in the entity; and

(ii) each trustee and executive remuneration disclosure for the entity, and any other document that must be disclosed for the entity under the *SIS Regulations*; and

(c) a statement describing the entity’s process for transitioning each member whose interest includes an accrued default amount from an existing default option to a MySuper product by 1 July 2017.

(2) Paragraph (1)(c) applies until the earlier of:

(a) 1 July 2017; and

(b) the day on which the entity has attributed each accrued default amount in the entity to a MySuper product.

Note: Putting the information mentioned in paragraph (1)(b) onto the superannuation fund’s website does not amount to adding the information to the Product Disclosure Statement.

4 Contents of section 2 (How super works)

(1) Section 2 of the Product Disclosure Statement must include statements to the effect that:

(a) superannuation is a means of saving for retirement which is, in part, compulsory; and

(b) there are different types of contributions available to a person (for example, employer contributions, voluntary contributions, government co‑contributions); and

(c) there are limitations on contributions to, and withdrawals from, superannuation; and

(d) tax savings are provided by the Government; and

(e) most people have the right to choose into which superannuation entity the employer should direct their superannuation guarantee contributions.

(2) The superannuation trustee may provide more detailed information on the matters set out in subclause (1) by:

(a) applying, adopting or incorporating a matter in writing; or

(b) providing a reference to a website, operated by or on behalf of the Commonwealth, that contains the information.

5 Contents of section 3 (Benefits of investing with [name of superannuation product])

(1) Section 3 of the Product Disclosure Statement must describe the superannuation product covered by the Statement, including a summary of its significant features and the benefits it provides.

(2) The superannuation trustee may provide additional information about significant benefits of superannuation or other significant features of the superannuation product by applying, adopting or incorporating a matter in writing.

6 Contents of section 4 (Risks of super)

(1) Section 4 of the Product Disclosure Statement must include statements to the following effect:

(a) all investments carry risk;

(b) different strategies may carry different levels of risk, depending on the assets that make up the strategy;

(c) assets with the highest long‑term returns may also carry the highest level of short‑term risk.

(2) Section 4 must describe, in the form of a summary, the significant risks of the particular superannuation product.

(3) Section 4 must describe the significant risks of superannuation (to the extent only that the description required by subitem (2) has not already described the risk) by including statements to the following effect:

(a) the value of investments will vary;

(b) the level of returns will vary, and future returns may differ from past returns;

(c) returns are not guaranteed, and persons may lose some of their money;

(d) superannuation laws may change in the future;

(e) the amount of a person’s future superannuation savings (including contributions and returns) may not be enough to provide adequately for the person’s retirement;

(f) the level of risk for each person will vary depending on a range of factors, including:

(i) age; and

(ii) investment time frames; and

(iii) where other parts of the person’s wealth are invested; and

(iv) the person’s risk tolerance.

(4) The superannuation trustee may provide additional information about significant risks of superannuation by applying, adopting or incorporating a matter in writing.

7 Contents of section 5 (How we invest your money)

(1) Section 5 of the Product Disclosure Statement must describe, in the form of a summary:

(a) the MySuper products and investment options being offered; and

(b) what happens if the person does not make a choice of where to invest.

(2) Section 5 must state, in the form of a warning, that the person must consider:

(a) the likely investment return; and

(b) the risk; and

(c) the person’s investment timeframe;

when choosing a MySuper product or an investment option in which to invest.

(3) For at least one MySuper product or investment option, section 5 must:

(a) state the name of the MySuper product or investment option and give a short description of it, including the type of investors for whom it is intended to be suitable; and

(b) list the asset classes in which the MySuper product or investment option invests, and set out, in the form of a range or otherwise, the strategic asset allocation of the asset classes; and

(c) describe the investment return objective of the MySuper product or investment option; and

(d) state the minimum suggested time frame for holding the MySuper product or investment option; and

(e) describe, in the form of a summary, the risk level of the MySuper product or investment option.

(4) If the superannuation product includes a generic MySuper product, section 5 must give the information mentioned in subclause (3) for the generic MySuper product, whether or not section 5 gives that information for another MySuper product or investment option.

(5) If the superannuation product does not include a generic MySuper product, and has a balanced investment option (within the meaning given by clause 101 of Schedule 10), section 5 must give the information mentioned in subclause (3) for the balanced investment option under which most assets of the superannuation entity are invested, whether or not section 5 gives that information for any MySuper product or other investment option.

(6) If the superannuation product does not include a generic MySuper product or a balanced investment option (within the meaning given by clause 101 of Schedule 10), section 5 must give the information mentioned in subclause (3) for the investment option under which most assets of the superannuation entity are invested, whether or not section 5 gives that information for any MySuper product or other investment option.

(8) Section 5:

(a) must make provision for each MySuper product and investment option which is not presented in section 5 in accordance with subclause (3), (4), (5) or (6); and

(b) may make provision for the MySuper product or investment option by applying, adopting or incorporating matter in a document that:

(i) includes the information mentioned in subclause (3); and

(ii) presents it in the way mentioned in the subclause.

(9) The superannuation trustee:

(a) must provide information about how a person may switch the person’s investments; and

(b) whether the superannuation product’s MySuper products and investment options may be changed and, if so, how; and

(c) must describe, in the form of a summary, the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of investments relating to the superannuation product; and

(d) may provide the information in paragraphs (a) to (c), and any additional information about MySuper products or investment options, by applying, adopting or incorporating a matter in writing.

8 Contents of section 6 (Fees and costs)

(1) For each MySuper product or investment option within a superannuation product that is presented in section 5 in detail in accordance with subclause 7(3), section 6 of the Product Disclosure Statement must state:

(a) the cost of acquiring the MySuper product or investment option; and

(b) the fees and costs that are charged in relation to the MySuper product or investment option.

Note: The statement will be made using the template set out in subclause (3).

(2) Before setting out any other substantive material, section 6 must:

(a) set out the Consumer Advisory Warning in clause 221 of Schedule 10; and

(b) give a concise example in the form set out in the Consumer Advisory Warning in clause 221 of Schedule 10.

(3) Section 6 must set out the fees and costs for each MySuper product or other investment option that is presented in section 5 in detail in accordance with subclause 7(3), using the following templates:

| *[Name of superannuation product]* | | |
| --- | --- | --- |
| Type of fee | Amount | How and when paid |
| *Investment fee¹* |  |  |
| *Administration fee¹* |  |  |
| *Buy‑sell spread* |  |  |
| *Switching fee* |  |  |
| *Advice fees*  relating to all members investing in a particular MySuper product or investment option |  |  |
| *Other fees and costs²* |  |  |
| *Indirect cost ratio¹* |  |  |

1. If your account balance for a product offered by the superannuation entity is less than $6,000 at the end of the entity’s income year, the total combined amount of administration fees, investment fees and indirect costs charged to you is capped at 3% of the account balance. Any amount charged in excess of that cap must be refunded.

2. *[If there are other fees and costs, such as activity fees, advice fees for personal advice or insurance fees, include a cross‑reference to the “Additional Explanation of Fees and Costs”.]*

(4) The template is to be completed in accordance with Division 3 of Schedule 10 (including definitions applicable to that Division), except that:

(a) clauses 203, 205, 206 and 207 and subclause 208(2) do not apply; and

(b) the reference in clause 204 to clause 205 and clause 206 does not apply; and

(c) the example in subclause 208(1) is to be treated as stating:

“(for example, by using an asterisk with a footnote stating ‘The amount of this fee can be negotiated’)”.

(5) Section 6 must set out the information about fee changes set out in paragraph 209(k) of Schedule 10.

(6) Section 6 must:

(a) state that the information in the template can be used to compare costs between different superannuation products; and

(b) state concisely, and in general terms, that fees and costs can be paid directly from the person’s account or deducted from investment returns.

(6A) Section 6 must:

(a) apply, adopt or incorporate the definitions in relation to fees mentioned in section 29V or subsection 99BA(2) of the SIS Act; and

(b) include the address of a link to the definitions maintained on a website.

(7) Section 6 must give a worked example for each MySuper product or investment option described in section 5.

(7A) The example given must be in accordance with Divisions 5 and 6 of Schedule 10 (including the definitions applicable to those Divisions).

(8) Section 6:

(a) must refer to the calculator provided by ASIC on its FIDO website or a similar website operated by or on behalf of ASIC; and

(b) may also refer to the calculator (if any) provided by the superannuation trustee on its website; and

(c) must state that each calculator referred to can be used to calculate the effect of fees and costs on account balances.

(9) If additional fees may be payable to a financial advisor, section 6 must:

(a) state, in the form of a warning, that additional fees may be paid to a financial advisor if a financial advisor is consulted; and

(b) refer to the Statement of Advice in which details of the fees are set out; and

(c) if applicable:

(i) state that fees may be paid to the employer entity’s financial adviser; and

(ii) explain how the fees are determined.

(10) The superannuation trustee:

(a) must provide the fees and costs of each of the MySuper products and investment options in accordance with Schedule 10, and may do so by applying, adopting or incorporating a matter in writing; and

(b) may provide more detailed information about fees and costs by applying, adopting or incorporating a matter in writing.

9 Contents of section 7 (How super is taxed)

(1) Section 7 of the Product Disclosure Statement must describe, in the form of a summary, the significant tax information relating to superannuation products, including:

(a) how tax amounts due are paid; and

(b) the main taxes that are payable in relation to contributions (if contributions are permitted), fund earnings and withdrawals.

(2) Section 7 must:

(a) state, in the form of a warning, that the person should provide the person’s tax file number as part of acquiring the superannuation product; and

(b) explain, in the form of a summary, the consequences if the person does not provide the person’s tax file number; and

(c) if contributions are permitted—set out a warning that there will be taxation consequences if the contribution caps applicable to superannuation are exceeded.

(3) The superannuation trustee may provide additional information about taxation matters relating to superannuation products by applying, adopting or incorporating a matter in writing.

10 Contents of section 8 (Insurance in your super)

(1) If the superannuation product does not offer insurance cover, the Product Disclosure Statement is not required to include any of the information in this clause.

(2) If the superannuation product offers insurance cover, section 8 must:

(a) describe, in the form of a summary, the main types of insurance cover that a person can acquire; and

(b) describe, in the form of a summary, how to apply for insurance cover; and

(c) include a statement to the effect that there are costs associated with insurance cover; and

(d) describe, in the form of a summary, who is responsible for paying the insurance costs and how they are calculated.

(3) If the superannuation product offers insurance cover by default, section 8 must:

(a) describe, in the form of a summary, the level and type of cover; and

(b) state:

(i) the actual cost of the cover in dollars, or the range of costs that would be payable depending on a person’s circumstances; and

(ii) who is responsible for paying the costs; and

(c) state whether a person can:

(i) decline to acquire the cover; or

(ii) cancel the cover; and

(d) state how a person can decline to acquire the cover or cancel the cover; and

(e) state whether a person can change the person’s insurance cover; and

(f) state how a person can change the person’s insurance cover; and

(g) state, in the form of a warning, that, unless a person declines to acquire the default insurance cover or cancels it, the cost of the cover will be deducted from the person’s account or from the person’s contributions (as applicable); and

(h) include information about eligibility for, and the cancellation of, the insurance cover; and

(i) include information about any conditions and exclusions that are applicable to the insurance cover.

(4) If the superannuation product does not offer insurance cover by default but offers insurance cover as an option, section 8 must include the following information:

(a) the level and type of insurance cover available;

(b) the actual cost of the cover in dollars, or the range of costs that would be payable depending on a person’s circumstances;

(c) eligibility for, and the cancellation of, the insurance cover;

(d) any conditions and exclusions that are applicable to the insurance cover;

(e) any other significant matter in relation to insurance cover.

Examples for paragraph (e):

1 Information about how a person can apply for the insurance cover.

2 Information about how a person can subsequently change or cancel the insurance cover.

(5) The superannuation trustee:

(a) may provide the information in paragraphs (3)(h) and (i) and subclause (4); and

(b) may provide additional information about insurance cover;

by applying, adopting or incorporating a matter in writing.

(6) If information about:

(a) eligibility for, or the cancellation of, the insurance cover; or

(b) any conditions and exclusions that are applicable to the insurance cover;

is provided for in accordance with subclause (5), section 8 must include a warning to the effect that the matter may affect a person’s entitlement to insurance cover and that the information should be read before deciding whether the insurance is appropriate.

(7) If information about:

(a) the level and type of optional insurance cover available; or

(b) the actual cost of the optional insurance cover in dollars, or the range of costs that would be payable depending on a person’s circumstances; or

(c) any other significant matter in relation to insurance cover;

is provided for in accordance with subclause (5), section 8 must include a warning to the effect that the information should be read before deciding whether the insurance is appropriate.

11 Contents of section 9 (How to open an account)

(1) Section 9 of the Product Disclosure Statement must, if applicable:

(a) describe, in the form of a summary, how to open an account with the superannuation provider; and

(b) explain the cooling‑off period that applies to the superannuation product; and

(c) explain how to make a complaint (by means that include the provision of relevant contact details).

Note: The effect of subclause 10(1) is that the Product Disclosure Statement is not required to include section 8 (as set out in clause 10) if the superannuation product does not offer insurance cover. In that case, subclause 2(2) allows the Statement to present the information in this clause as “section 8” or “section 9”.

(2) The superannuation trustee:

(a) may provide more detailed information about cooling‑off periods, complaints and dispute resolution; and

(b) may provide that information by applying, adopting or incorporating a matter in writing.

Schedule 10E—Form and content of Product Disclosure Statement—simple managed investment scheme

(regulation 7.9.11W)

1 Length and font size for Product Disclosure Statement for simple managed investment scheme

(1) The length of a Product Disclosure Statement for a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 applies (not including any matter in writing that is applied, adopted or incorporated by the Statement) must not exceed:

(a) if it is printed on A4 pages—8 pages; or

(b) if it is printed on A5 pages—16 pages; or

(c) if it is printed on DL pages—24 pages; or

(d) otherwise—if it is formatted to be printed on A4 pages, 8 A4 pages.

(2) The minimum font size for text in the Statement is:

(a) for the name, address, ABN (if applicable), ACN (if applicable), ARSN and AFSL (if applicable) of the person giving the Statement—8 points; and

(b) for all other text—9 points.

Note 1: The Product Disclosure Statement must be worded and presented in a clear, concise and effective manner—see subsection 1013C(3) of the Act.

Note 2: A person required to a give a Product Disclosure Statement to a vision‑impaired person must comply with its obligations under the *Disability Discrimination Act 1992*.

2 Minimum content of Product Disclosure Statement for simple managed investment scheme

(1) The Product Disclosure Statement must include sections which must be numbered and titled as follows:

1. About [name of responsible entity]

2. How [name of simple managed investment scheme] works

3. Benefits of investing in [name of simple managed investment scheme]

4. Risks of managed investment schemes

5. How we invest your money

6. Fees and costs

7. How managed investment schemes are taxed

8. How to apply.

(2) The Statement must include:

(a) a table of contents that sets out the titles mentioned in subclause (1); and

(b) the telephone number of the responsible entity for the simple managed investment scheme to enable a person who invests in the simple managed investment scheme to request a copy of the following under regulation 7.9.11Z:

(i) a copy of the Statement; and

(ii) a copy of a matter in writing that is applied, adopted or incorporated by the Statement.

(3) The Statement must:

(a) advise a person reading the Statement that:

(i) it is a summary of significant information and contains a number of references to important information (each of which forms part of the Statement); and

(ii) persons should consider that information before making a decision about the simple managed investment scheme; and

(iii) the information provided in the Statement is general information only and does not take account of the person’s personal financial situation or needs; and

(iv) the person should obtain financial advice tailored to the person’s personal circumstances; and

(b) display the advice:

(i) at or near the beginning of the document; and

(ii) in a prominent position and style.

(4) The Statement:

(a) may include additional sections after sections 1 to 8; and

(b) may include other information;

to an extent that does not have the effect of contravening subclause 1(1).

(5) The Product Disclosure Statement does not need to indicate that a particular requirement is not applicable to the simple managed investment scheme.

Note: The Act, as modified in accordance with Subdivision 4.2C of Division 4 of Part 7.9, requires information to be included in the Product Disclosure Statement only to the extent to which the requirement is applicable to the simple managed investment scheme.

3 Contents of section 1 (About [name of responsible entity])

(1) Section 1 of the Product Disclosure Statement must describe, in the form of a summary:

(a) the responsible entity and its role in operating the simple managed investment scheme; and

(b) the investment manager, if the investment manager is different from the responsible entity.

(2) If there is more than 1 investment manager, the Statement may describe a particular manager by applying, adopting or incorporating a matter in writing.

4 Contents of section 2 (How [name of simple managed investment scheme] works)

(1) Section 2 of the Product Disclosure Statement must describe, in the form of a summary:

(a) how the simple managed investment works; and

(b) the interests that members acquire.

(2) Section 2 must:

(a) if applicable—describe, in the form of a summary, the minimum investment amounts; and

(b) provide information about the structure of the simple managed investment scheme; and

(c) state, in general terms, that the price of interests will vary as the market value of assets in the simple managed investment scheme rises or falls; and

(d) describe, in the form of a summary, how members can increase or decrease their investment by acquiring interests or disposing of interests; and

(e) state, in general terms, that in some circumstances, such as when there is a freeze on withdrawals, members may not be able to withdraw their funds within the usual period upon request; and

(f) describe the frequency of distributions and explain how distributions are calculated.

(3) The responsible entity:

(a) may provide more detailed information on the acquisition and disposal of interests; and

(b) may provide the information by applying, adopting or incorporating a matter in writing.

5 Contents of section 3 (Benefits of investing in [name of simple managed investment scheme])

(1) Section 3 of the Product Disclosure Statement must, before setting out any other information, describe, in the form of a summary:

(a) the significant features of the simple managed investment scheme; and

(b) the significant benefits of the simple managed investment scheme.

(2) The responsible entity may provide additional information about:

(a) any feature or benefit of the simple managed investment scheme; or

(b) other features and benefits of the simple managed investment scheme; or

(c) other features and benefits of simple managed investment schemes;

by applying, adopting or incorporating a matter in writing.

6 Contents of section 4 (Risks of managed investment schemes)

(1) Section 4 of the Product Disclosure Statement must include statements to the following effect:

(a) all investments carry risk;

(b) different strategies may carry different levels of risk, depending on the assets that make up the strategy;

(c) assets with the highest long‑term returns may also carry the highest level of short‑term risk.

(2) Section 4 must describe, in the form of a summary, the significant risks of the particular simple managed investment scheme.

(3) Section 4 must describe the significant risks of managed investment schemes (to the extent only that the description required by subitem (2) has not already described the risk) by including statements to the following effect:

(a) the value of investments will vary;

(b) the level of returns will vary, and future returns may differ from past returns;

(c) returns are not guaranteed, and members may lose some of their money;

(d) laws affecting registered schemes may change in the future;

(e) the level of risk for each person will vary depending on a range of factors, including:

(i) age; and

(ii) investment time frames; and

(iii) where other parts of the member’s wealth are invested; and

(iv) the member’s risk tolerance.

(4) The responsible entity may provide additional information about significant risks of managed investment schemes by applying, adopting or incorporating a matter in writing.

7 Contents of section 5 (How we invest your money)

(1) Section 5 of the Product Disclosure Statement must describe, in the form of a summary, the investment options offered by the simple managed investment scheme.

(2) Section 5 must state, in the form of a warning, that the person should consider:

(a) the likely investment return; and

(b) the risk; and

(c) the person’s investment timeframe;

when choosing an option in which to invest.

New simple managed investment scheme

(3) If the simple managed investment scheme has never previously been offered to investors, and does not offer any investment option mentioned in subclauses (4) and (5) about which section 5 can give information, section 5 must give the following information for the investment option that the responsible entity reasonably believes has the least volatile underlying assets (whether or not section 5 gives that information for any other investment option):

(a) the name of the option and a short description of it, including the type of investors for whom it is intended to be suitable;

(b) a list of the asset classes in which the option invests, setting out the strategic asset allocation of the asset classes in the form of a range or otherwise;

(c) a description of the investment return objective of the option;

(d) the minimum suggested time frame for holding the investment;

(e) a description, in the form of a summary, of the risk level of the option.

Balanced investment option

(4) If the simple managed investment scheme has a balanced investment option (within the meaning given by item 101 of Schedule 10), section 5 must give the following information for the balanced investment option (whether or not section 5 gives that information for any other investment option):

(a) the name of the option and a short description of it, including the type of investors for whom it is intended to be suitable;

(b) a list of the asset classes in which the option invests, setting out the strategic asset allocation of the asset classes in the form of a range or otherwise;

(c) a description of the investment return objective of the option;

(d) the minimum suggested time frame for holding the investment;

(e) a description, in the form of a summary, of the risk level of the option.

No balanced investment option

(5) If the simple managed investment scheme does not have a balanced investment option (within the meaning given by item 101 of Schedule 10), section 5 must give the following information for the investment option under which the entity has the most funds invested (whether or not section 5 gives that information for any other investment option):

(a) the name of the option and a short description of it, including the type of investors for whom it is intended to be suitable;

(b) a list of the asset classes in which the option invests, setting out the strategic asset allocation of the asset classes in the form of a range or otherwise;

(c) a description of the investment return objective of the option;

(d) the minimum suggested time frame for holding the investment;

(e) a description, in the form of a summary, of the risk level of the option.

(6) Section 5:

(a) must make provision for each investment option which is not presented in section 5 in accordance with subclause (3), (4) or (5); and

(b) may make provision for the option by applying, adopting or incorporating matter in a document that:

(i) includes the information mentioned in subclause (3), (4) or (5); and

(ii) presents it in the way mentioned in the subclause.

(7) The responsible entity:

(a) must provide information about how a member may switch the member’s investments; and

(b) must provide information about:

(i) whether the simple managed investment scheme’s investment options may be changed; and

(ii) if so, how the options may be changed; and

(c) must describe, in the form of a summary, the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of investments relating to the simple managed investment scheme; and

(d) may provide the information in paragraphs (a) to (c), and any additional information about investment options, by applying, adopting or incorporating a matter in writing.

8 Contents of section 6 (Fees and costs)

(1) For each investment option of the simple managed investment scheme that is presented in section 5 in detail in accordance with subclause 7(3), section 6 of the Product Disclosure Statement must state:

(a) the cost of acquiring the option; and

(b) the fees and costs that are charged in relation to the option.

Note: The statement will be made using the template set out in subclause (3).

(2) Before setting out any other substantive material, section 6 must:

(a) set out the Consumer Advisory Warning in clause 221 of Schedule 10; and

(b) give a concise example in the form set out in the Consumer Advisory Warning in clause 221 of Schedule 10.

(3) Section 6 must set out the fees and costs for each investment option that is presented in section 5 in detail in accordance with subclause 7(3), using the following template:

| TYPE OF FEE OR COST | AMOUNT |
| --- | --- |
| Fees when your money moves in or out of the fund |  |
| *Establishment fee* |  |
| *Contribution fee* |  |
| *Withdrawal fee* |  |
| *Termination fee* |  |
| Management costs |  |
| The fees and costs for managing your investment |  | |

*[If there are other service fees, such as advisor service fees or special request fees, include a cross reference to the document that contains the information mentioned in paragraph (10)(a).]*.

(4) The template is to be completed in accordance with Division 3 of Schedule 10 (including definitions applicable to that Division), except that:

(a) clauses 203, 205, 206 and 207 and subclause 208(2) do not apply; and

(b) the reference in clause 204 to clause 205 and clause 206 does not apply; and

(c) the example in subclause 208(1) is to be treated as stating:

“(for example, by using an asterisk with a footnote stating ‘The amount of this fee can be negotiated’)”.

(5) Section 6 must set out the information about fee changes set out in paragraph 209(k) of Schedule 10.

(6) Section 6 must:

(a) state that the information in the template can be used to compare costs between different simple managed investment schemes; and

(b) state concisely, and in general terms, that fees and costs can be paid directly from the person’s account or deducted from investment returns.

(7) Section 6 must give a worked example as follows:

(a) if the simple managed investment scheme does not have a balanced investment option (within the meaning given by item 101 of Schedule 10), section 6 must give a worked example for the default investment option;

(b) if the simple managed investment scheme does not have a default option, and does not have a balanced investment option, section 6 must give a worked example for the investment option under which the entity has the most funds invested;

in accordance with Divisions 5 and 6 of Schedule 10 (including definitions applicable to those Divisions), except that clauses 211 and 220 do not apply.

(8) Section 6:

(a) must refer to the calculator provided by ASIC on its FIDO website or a similar website operated by or on behalf of ASIC; and

(b) may also refer to the calculator (if any) provided by the responsible entity on its website; and

(c) must state that each calculator referred to can be used to calculate the effect of fees and costs on account balances.

(9) If additional fees may be payable to a financial advisor, section 6 must:

(a) state, in the form of a warning, that additional fees may be paid to a financial advisor if a financial advisor is consulted; and

(b) refer to the Statement of Advice in which details of the fees are set out.

(10) The responsible entity:

(a) must provide the fees and costs of each of the investment options in accordance with Schedule 10, and may do so by applying, adopting or incorporating a matter in writing; and

(b) may provide more detailed information about fees and costs by applying, adopting or incorporating a matter in writing.

9 Contents of section 7 (How managed investment schemes are taxed)

(1) Section 7 of the Product Disclosure Statement must state, in the form of a warning, that:

(a) investing in a registered scheme is likely to have tax consequences; and

(b) persons are strongly advised to seek professional tax advice.

(2) Section 7 must also include statements to the following effect:

(a) registered schemes do not pay tax on behalf of members;

(b) members are assessed for tax on any income and capital gains generated by the registered scheme.

(3) The responsible entity may provide additional information about:

(a) taxation matters relating to the registered scheme; or

(b) taxation matters relating to registered schemes;

by applying, adopting or incorporating a matter in writing.

10 Contents of section 8 (How to apply)

(1) Section 8 of the Product Disclosure Statement must:

(a) describe, in the form of a summary, how to invest in the simple managed investment scheme; and

(b) explain the cooling‑off period that applies to the simple managed investment scheme; and

(c) explain how to make a complaint (by means that include the provision of relevant contact details).

(2) The responsible entity:

(a) may provide more detailed information about cooling‑off periods, complaints and dispute resolution; and

(b) may provide that information by applying, adopting or incorporating a matter in writing.

Schedule 10F—Form and content of Product Disclosure Statement—simple sub‑fund products

(regulation 7.9.11ZE)

1 Length and font size for Product Disclosure Statement for simple sub‑fund product

(1) The length of a Product Disclosure Statement for a simple sub‑fund product:

(a) to which Subdivision 4.2D of Division 4 of Part 7.9 applies; and

(b) that is referable to a sub‑fund of a CCIV;

must not exceed:

(c) if it is printed on A4 pages—8 pages; or

(d) if it is printed on A5 pages—16 pages; or

(e) if it is printed on DL pages—24 pages; or

(f) otherwise—if it is formatted to be printed on A4 pages, 8 A4 pages.

This requirement does not apply to any matter in writing that is applied, adopted or incorporated by the Statement.

(2) The minimum font size for text in the Statement is:

(a) for the name, address, ABN (if applicable), ACN (if applicable) and AFSL (if applicable) of the corporate director of the CCIV—8 points; and

(b) for the name, address, ABN (if applicable) and ACN (if applicable) of the CCIV—8 points; and

(c) for the name, ABN (if applicable) and ARFN (if applicable) of the sub‑fund of the CCIV—8 points; and

(d) for all other text—9 points.

Note 1: The Product Disclosure Statement must be worded and presented in a clear, concise and effective manner—see subsection 1013C(3) of the Act.

Note 2: A person required to a give a Product Disclosure Statement to a vision‑impaired person must comply with its obligations under the *Disability Discrimination Act 1992*.

2 Minimum content of Product Disclosure Statement for simple sub‑fund product

(1) The Product Disclosure Statement for the simple sub‑fund product must include sections that are numbered and titled as follows:

1. About [name of corporate director]

2. How [name of CCIV and sub‑fund] work

3. Benefits of investing in [name of simple sub‑fund product]

4. Risks of simple sub‑fund products

5. How we invest your money

6. Fees and costs

7. How sub‑funds of CCIVs are taxed

8. How to apply.

(2) The Statement must include:

(a) a table of contents that sets out the titles mentioned in subclause (1); and

(b) the telephone number of the corporate director of the CCIV to enable a person who invests in the simple sub‑fund product to request a copy of the following under regulation 7.9.11ZH:

(i) a copy of the Statement;

(ii) a copy of a matter in writing that is applied, adopted or incorporated by the Statement.

(3) The Statement must:

(a) advise a person reading the Statement that:

(i) it is a summary of significant information and contains a number of references to important information (each of which forms part of the Statement); and

(ii) persons should consider that information before making a decision about the simple sub‑fund product; and

(iii) the information provided in the Statement is general information only and does not take account of the person’s personal financial situation or needs; and

(iv) the person should obtain financial advice tailored to the person’s personal circumstances; and

(b) display the advice:

(i) at or near the beginning of the document; and

(ii) in a prominent position and style.

(4) The Statement:

(a) may include additional sections after sections 1 to 8; and

(b) may include other information;

to an extent that does not have the effect of contravening subclause 1(1).

(5) The Product Disclosure Statement does not need to indicate that a particular requirement is not applicable to the simple sub‑fund product.

Note: The Act, as modified in accordance with Subdivision 4.2D of Division 4 of Part 7.9, requires information to be included in the Product Disclosure Statement only to the extent to which the requirement is applicable to the simple sub‑fund product.

3 Contents of section 1 (About [name of corporate director])

(1) Section 1 of the Product Disclosure Statement for the simple sub‑fund product must describe, in the form of a summary:

(a) the corporate director of the CCIV and the corporate director’s role in operating the CCIV in relation to the sub‑fund; and

(b) the investment manager for the sub‑fund, if the investment manager for the sub‑fund is different from the corporate director of the CCIV.

(2) If there is more than one investment manager for the sub‑fund, the Statement may describe a particular manager by applying, adopting or incorporating a matter in writing.

4 Contents of section 2 (How [name of CCIV and sub‑fund] work)

(1) Section 2 of the Product Disclosure Statement for the simple sub‑fund product must describe, in the form of a summary:

(a) how the CCIV and the sub‑fund of the CCIV work; and

(b) the rights and interests that members of the sub‑fund of the CCIV acquire.

(2) Section 2 must:

(a) if applicable—describe, in the form of a summary, the minimum investment amounts; and

(b) provide information about the structure of the CCIV and the sub‑fund of the CCIV; and

(c) state, in general terms, that the value of securities will vary as the market value of the assets of the sub‑fund of the CCIV rise or fall; and

(d) describe, in the form of a summary, how members of the sub‑fund can increase or decrease their investment by acquiring securities or disposing of securities; and

(e) state, in general terms, that in some circumstances, such as when there is a freeze on redemptions, members of the sub‑fund may not be able to redeem shares or dispose of securities within the usual period upon request; and

(f) describe the frequency of distributions and explain how distributions are calculated.

(3) The CCIV:

(a) may provide more detailed information on the acquisition and disposal of securities; and

(b) may provide the information by applying, adopting or incorporating a matter in writing.

5 Contents of section 3 (Benefits of investing in [name of simple sub‑fund product])

(1) Section 3 of the Product Disclosure Statement for the simple sub‑fund product must, before setting out any other information, describe, in the form of a summary:

(a) the significant features of the simple sub‑fund product; and

(b) the significant benefits of the simple sub‑fund product.

(2) The CCIV may provide additional information about:

(a) any feature or benefit of the simple sub‑fund product; or

(b) other features and benefits of the simple sub‑fund product; or

(c) other features and benefits of simple sub‑fund products;

by applying, adopting or incorporating a matter in writing.

6 Contents of section 4 (Risks of simple sub‑fund products)

(1) Section 4 of the Product Disclosure Statement for the simple sub‑fund product must include statements to the following effect:

(a) all investments carry risk;

(b) different strategies may carry different levels of risk, depending on the assets that make up the strategy;

(c) assets with the highest long‑term returns may also carry the highest level of short‑term risk.

(2) Section 4 must describe, in the form of a summary, the significant risks of the particular simple sub‑fund product.

(3) Section 4 must describe the significant risks of simple sub‑fund products (to the extent only that the description required by subclause (2) has not already described the risk) by including statements to the following effect:

(a) the value of investments will vary;

(b) the level of returns will vary, and future returns may differ from past returns;

(c) returns are not guaranteed, and members may lose some of their money;

(d) laws affecting CCIVs may change in the future;

(e) the level of risk for each person will vary depending on a range of factors, including:

(i) age; and

(ii) investment time frames; and

(iii) where other parts of the person’s wealth are invested; and

(iv) the person’s risk tolerance.

(4) The CCIV may provide additional information about significant risks of simple sub‑fund products by applying, adopting or incorporating a matter in writing.

7 Contents of section 5 (How we invest your money)

(1) Section 5 of the Product Disclosure Statement for the simple sub‑fund product must describe, in the form of a summary, the investment options offered by the CCIV.

(2) Section 5 must state, in the form of a warning, that the person should consider:

(a) the likely investment return; and

(b) the risk; and

(c) the person’s investment time frame;

when choosing an option in which to invest.

New simple sub‑fund product

(3) If the simple sub‑fund product has never previously been offered to investors, and the CCIV does not offer any investment option mentioned in subclauses (4) and (5), section 5 must give the following information for the investment option for the CCIV that the corporate director reasonably believes has the least volatile underlying assets (whether or not section 5 gives that information for any other investment option):

(a) the name of the option and a short description of it, including the type of investors for whom it is intended to be suitable;

(b) a list of the asset classes in which the option invests, setting out the strategic asset allocation of the asset classes in the form of a range or otherwise;

(c) a description of the investment return objective of the option;

(d) the minimum suggested time frame for holding the investment;

(e) a description, in the form of a summary, of the risk level of the option.

Balanced investment option

(4) If the CCIV has a balanced investment option (within the meaning given by clause 101 of Schedule 10), section 5 must give the following information for the balanced investment option (whether or not section 5 gives that information for any other investment option):

(a) the name of the option and a short description of it, including the type of investors for whom it is intended to be suitable;

(b) a list of the asset classes in which the option invests, setting out the strategic asset allocation of the asset classes in the form of a range or otherwise;

(c) a description of the investment return objective of the option;

(d) the minimum suggested time frame for holding the investment;

(e) a description, in the form of a summary, of the risk level of the option.

No balanced investment option

(5) If the CCIV does not have a balanced investment option (within the meaning given by clause 101 of Schedule 10), section 5 must give the following information for the investment option under which the CCIV has the most funds invested(whether or not section 5 gives that information for any other investment option):

(a) the name of the option and a short description of it, including the type of investors for whom it is intended to be suitable;

(b) a list of the asset classes in which the option invests, setting out the strategic asset allocation of the asset classes in the form of a range or otherwise;

(c) a description of the investment return objective of the option;

(d) the minimum suggested time frame for holding the investment;

(e) a description, in the form of a summary, of the risk level of the option.

Additional information

(6) Section 5:

(a) must make provision for each investment option that is not presented in section 5 in accordance with subclause (3), (4) or (5); and

(b) may make provision for the option by applying, adopting or incorporating a matter in a document that:

(i) includes the information mentioned in subclause (3), (4) or (5); and

(ii) presents it in the way mentioned in the subclause.

(7) The CCIV:

(a) must provide information about how a member of the sub‑fund of the CCIV may switch the member’s investments; and

(b) must provide information about:

(i) whether the CCIV’s investment options may be changed; and

(ii) if so, how the options may be changed; and

(c) must describe, in the form of a summary, the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of investments relating to the CCIV; and

(d) may provide the information in paragraphs (a) to (c), and any additional information about investment options, by applying, adopting or incorporating a matter in writing.

8 Contents of section 6 (Fees and costs)

(1) For each investment option of the CCIV that is presented in section 5 in detail in accordance with subclause 7(3), section 6 of the Product Disclosure Statement must state:

(a) the cost of acquiring the option; and

(b) the fees and costs that are charged in relation to the option.

Note: The statement will be made using the template set out in subclause (3).

(2) Before setting out any other substantive material, section 6 must:

(a) set out the Consumer Advisory Warning in clause 221 of Schedule 10; and

(b) give a concise example in the form set out in the Consumer Advisory Warning in clause 221 of Schedule 10.

(3) Section 6 must set out the fees and costs for each investment option that is presented in section 5 in detail in accordance with subclause 7(3), using the following template:

| TYPE OF FEE OR COST | AMOUNT |
| --- | --- |
| Fees when your money moves in or out of investment options of the CCIV |  |
| *Establishment fee* |  |
| *Contribution fee* |  |
| *Withdrawal fee* |  |
| *Termination fee* |  |
| Management costs |  |
| The fees and costs for managing your investment |  | |

*[If there are other service fees, such as advisor service fees or special request fees, include a cross‑reference to the document that contains the information mentioned in paragraph (10)(a).]*.

(4) The template is to be completed in accordance with Division 3 of Part 2 of Schedule 10 (including definitions applicable to that Division), except that:

(a) clauses 203, 205, 206 and 207 and subclause 208(2) do not apply; and

(b) the reference in clause 204 to clauses 205 and 206 does not apply; and

(c) the example in subclause 208(1) is to be treated as stating:

“(for example, by using an asterisk with a footnote stating ‘The amount of this fee can be negotiated.’)”.

(5) Section 6 must set out the information about fee changes set out in paragraph 209(k) of Schedule 10.

(6) Section 6 must:

(a) state that the information in the template can be used to compare costs between different simple sub‑fund products; and

(b) state concisely, and in general terms, that fees and costs can be paid directly from the person’s account or deducted from investment returns.

(7) Section 6 must give a worked example as follows:

(a) if the CCIV does not have a balanced investment option (within the meaning given by clause 101 of Schedule 10), section 6 must give a worked example for the default investment option;

(b) if the CCIV does not have a default option, and does not have a balanced investment option, section 6 must give a worked example for the investment option under which the CCIV has the most funds invested;

in accordance with Divisions 5 and 6 of Part 2 of Schedule 10 (including definitions applicable to those Divisions), except that clauses 211 and 220 do not apply.

(8) Section 6:

(a) must refer to the calculator (if any) provided by ASIC on a website operated by or on behalf of ASIC; and

(b) may also refer to the calculator (if any) provided by the CCIV on its website; and

(c) must state that each calculator referred to can be used to calculate the effect of fees and costs on account balances.

(9) If additional fees may be payable to a financial advisor, section 6 must:

(a) state, in the form of a warning, that additional fees may be paid to a financial advisor if a financial advisor is consulted; and

(b) refer to the Statement of Advice in which details of the fees are set out.

(10) The CCIV:

(a) must provide the fees and costs of each of the investment options in accordance with Schedule 10, and may do so by applying, adopting or incorporating a matter in writing; and

(b) may provide more detailed information about fees and costs by applying, adopting or incorporating a matter in writing.

9 Contents of section 7 (How sub‑funds of CCIVs are taxed)

(1) Section 7 of the Product Disclosure Statement for the simple sub‑fund product must state, in the form of a warning, that:

(a) investing in a simple sub‑fund product is likely to have tax consequences; and

(b) persons are strongly advised to seek professional tax advice.

(2) Section 7 must also include statements to the following effect:

(a) CCIVs and sub‑funds do not pay tax on behalf of members;

(b) members of the sub‑fund are assessed for tax on any income and capital gains generated by the sub‑fund.

(3) The CCIV may provide additional information about:

(a) taxation matters relating to the sub‑fund of the CCIV; or

(b) taxation matters relating to sub‑funds of CCIVs;

by applying, adopting or incorporating a matter in writing.

Note: For taxation matters relating to sub‑funds of CCIVs, see Subdivision 195‑C of the *Income Tax Assessment Act 1997*.

10 Contents of section 8 (How to apply)

(1) Section 8 of the Product Disclosure Statement for the simple sub‑fund product must:

(a) describe, in the form of a summary, how to invest in the simple sub‑fund product; and

(b) explain the cooling‑off period that applies to the simple sub‑fund product; and

(c) explain how to make a complaint (by means that include the provision of relevant contact details).

(2) The CCIV:

(a) may provide more detailed information about cooling‑off periods, complaints and dispute resolution; and

(b) may provide that information by applying, adopting or incorporating a matter in writing.

Schedule 11—Persons who are not covered by section 1433 of the Act

(regulation 10.2.36)

| Item | Person | Period |
| --- | --- | --- |
| 1 | A person who is or has been an insolvent under administration | 5 years after the start of the administration |
| 2 | A body corporate that has been a Chapter 5 body corporate | 5 years after the start of the administration |
| 3 | A person who has been convicted of fraud | 10 years after the conviction |
| 4 | A person to whom the following circumstances apply:  (a) the person is the subject of legal proceedings for criminal fraud;  (b) the proceedings could, because of the content or nature of the relevant originating process, result in a judgment being made that would cause a person to be someone to whom item 3 applies;  (c) the court has not delivered a judgment in relation to the issue of the fraud |  |
| 5 | A person to whom the following circumstances apply:  (a) the person has been found liable by a court for a contravention of a law relating to financial services activities;  (b) the proceedings were brought by a regulator;  (c) the proceedings related to conduct that occurred in the course of the person’s engaging in financial services activities, and was related to that person’s activities | 10 years after the conduct first occurred |
| 6 | A person to whom the following circumstances apply:  (a) the person is the subject of legal proceedings for a contravention of a law relating to financial services activities;  (b) the proceedings were brought by a regulator; |  |
|  | (c) the proceedings relate to conduct that occurred in the course of the person’s engaging in financial services activities, and was related to that person’s activities;  (d) the court has not delivered a judgment in relation to the contravention |  |
| 7 | A person who has had:  (a) an authorisation; or  (b) a registration; or  (c) a licence; or  (d) the ability to engage in financial services activities;  cancelled, suspended or revoked by, or as a direct result of the actions of, a regulator | 5 years after the cancellation, suspension or revocation |
| 8 | A person who is a responsible officer of a person mentioned in item 1 |  |
| 8A | A person who is a subsidiary of a body corporate mentioned in item 2 |  |
| 8B | A person (***person 1***) who is related body corporate of a body corporate that is mentioned in item 2 (***person 2***), if person 2 has previously held a licence, registration or authorisation granted by a regulator mentioned in paragraphs (a) to (d) of the definition of ***regulator*** in regulation 10.2.35 |  |
| 9 | A person an associate of whom is a person mentioned in any of items 3 to 7 |  |
| 10 | A person who is deemed to be a registered insurance broker under subsection 24(2) of the *Insurance (Agents and Brokers) Act 1984*  This item applies to the person only to the extent that the person operates insurance broking activities that are described in that Act |  |

Schedule 12—ASIC transitional standards

(regulation 12.7.01)

1. The following provisions of Book 3 of the Prudential Notes and Prudential Standards issued by AFIC under Part 4 of the AFIC Code of a State or Territory, as in force immediately before the transfer date:

(a) the modification of the accounting standard known as Accounting Standard AASB 1032 (published in the *Gazette* on 12 December 1996) by Prudential Standard 3.3.1, except the definition of ***deposits*** added to the accounting standard by the Prudential Standard;

(b) Prudential Standard 3.5.4;

(c) Prudential Standard 3.5.5;

(d) Prudential Standard 3.7.1;

(e) Prudential Standard 3.7.4;

(f) Prudential Standard 3.7.5.

2. The following provisions of Book 4 of the Prudential Notes and Prudential Standards issued by AFIC under Part 4 of the AFIC Code of a State or Territory, as in force immediately before the transfer date:

(a) the modification of the accounting standard known Accounting Standard AASB 1032 (published in the *Gazette* on 12 December 1996) by Prudential Standard 4.3.1, except the definition of ***deposits*** added to the accounting standard by the Prudential Standard;

(b) Prudential Standard 4.7.1;

(c) Prudential Standard 4.7.4;

(d) Prudential Standard 4.7.5.

3. The following provisions of Book 5 of the Prudential Notes and Prudential Standards issued by AFIC under Part 4 of the AFIC Code of a State or Territory, as in force immediately before the transfer date:

(a) Prudential Standard 5.5.1;

(b) Prudential Standard 5.5.3;

(c) Prudential Standard 5.5.4.

4. The following provisions of Book 6 of the Prudential Notes and Prudential Standards issued by AFIC under Part 4 of the AFIC Code of a State or Territory, as in force immediately before the transfer date:

(a) Prudential Standard 6.7.2;

(b) Prudential Standard 6.7.4;

(c) Prudential Standard 6.7.5;

(d) Prudential Standard 6.8.3.

Schedule 13—Transition to Part 3 of the Insolvency Practice Schedule (Corporations)

Note: See subregulation 10.25.01(3).

Corporations Act 2001

1 Section 1550 (paragraph relating to Part 3)

Omit “that starts on or after the commencement of Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016*”, substitute “that starts on or after 1 September 2017”.

2 After section 1554

Insert:

1554A Saving of Register of Official Liquidators

(1) This section applies to the Register of Official Liquidators kept in accordance with subsection 1286(2) of the old Act.

(2) Despite the repeal of sections 1283 and 1286 by Schedule 2 to the *Insolvency Law Reform Act 2016*, the Register of Official Liquidators continues in existence, and may be dealt with, as if those repeals had not happened.

3 Section 1578 (paragraph relating to new external administrations)

Omit “the commencement of the *Insolvency Law Reform Act 2016* (called new external administrations)”, substitute “1 September 2017”.

4 Section 1579

Repeal the section, substitute:

1579 Application of Part 3 of the Insolvency Practice Schedule (Corporations)—general rules

(1) Part 3 of the Insolvency Practice Schedule (Corporations) applies in relation to an external administration of a company that starts on or after 1 September 2017.

(2) Part 3 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company in accordance with this Division.

5 Sections 1581 and 1582

Repeal the sections, substitute:

1581 Old Act continues to apply in relation to remuneration for administrators already appointed or appointed during transition period

(1) Despite the repeal of sections 449E and 473 and the repeal and substitution of subsections 499(3) to (7) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, the old Act continues to apply in relation to the remuneration of an external administrator of a company who is appointed:

(a) before the start time; or

(b) during the transition period.

(2) Despite subsection (1), if, under Subdivision F of this Division, Division 75 of the Insolvency Practice Schedule (Corporations) rather than the old Act would apply to a meeting that deals with the remuneration of an external administrator of a company who is appointed before the start time or during the transition period, Division 75 of the Insolvency Practice Schedule (Corporations) applies to that meeting.

(3) In this section:

***start time*** means the commencement of Schedule 1 to the *Insolvency Law Reform Act 2016*.

***transition period*** means the period:

(a) starting immediately after the start time; and

(b) ending at the end of 31 August 2017.

1582 Duties of administrators relating to remuneration and other benefits

(1) Section 60‑20 of the Insolvency Practice Schedule (Corporations) applies on and after 1 September 2017 in relation to an external administrator of an ongoing external administration of a company regardless of when the administrator was appointed.

(2) However, that section does not apply in relation to arrangements made before 1 September 2017.

6 Subsection 1582(1)

After “applies”, insert “on and after 1 September 2017”.

7 Section 1584

Omit all the words after “applies”, substitute “on and after 1 September 2017 regardless of when the vacancy in the office of the liquidator arose”.

8 At the end of section 1586

Add “on and after 1 September 2017”.

9 Subsection 1588(2) (heading)

Repeal the heading, substitute:

Old regulations continue to apply to money received before 1 September 2017

10 Subsection 1590(2) (heading)

Repeal the heading, substitute:

Old regulations continue to apply to securities received before 1 September 2017

11 At the end of section 1591

Add “on and after 1 September 2017”.

12 Section 1592

Repeal the section, substitute:

1592 Transitional rules for annual administration returns

(1) Section 70‑5 of the Insolvency Practice Schedule (Corporations) applies in relation to a person if the person first began to be an external administrator of a company on or after 1 September 2017.

(2) Section 70‑5 of the Insolvency Practice Schedule (Corporations) also applies in relation to a person if the person first began to be an external administrator of a company before 1 September 2017 as if the reference in that section to an administration return year for the administrator were a reference to:

(a) the first full year starting on or after 1 September 2017 that is an anniversary of when the person first began to be the external administrator of the company; and

(b) each subsequent period of 12 months.

(3) Despite the repeal of the old return provisions by Schedule 2 to the *Insolvency Law Reform Act 2016*, those provisions continue to apply to an external administrator of a company appointed before 1 September 2017:

(a) if the end of the 6‑month period referred to in the old return provisions occurs before 1 March 2018—in relation to that period; and

(b) if the end of that period is not an anniversary of the administrator’s appointment—in relation to the subsequent 6‑month period.

(4) To avoid doubt, despite the repeal of the old return provisions by Schedule 2 to the *Insolvency Law Reform Act 2016*, audits may be continued in relation to accounts lodged under those provisions as if the old Act continued to apply.

(5) In this section:

***old return provisions*** means the following provisions of the old Act:

(a) subsection 438E(1);

(b) subsection 445J(1);

(c) subsection 539(1), other than the extent to which it relates to a liquidator ceasing to act as liquidator.

1592A Transitional rules for end of administration returns

(1) Section 70‑6 of the Insolvency Practice Schedule (Corporations) applies in relation to external administrations that end on or after 1 September 2017.

(2) Despite the repeal of the old return provisions by Schedule 2 to the *Insolvency Law Reform Act 2016*, those provisions continue to apply, in relation to an external administrator of a company, if the external administrator ceases to act as an external administrator for the company before 1 September 2017.

(3) To avoid doubt, despite the repeal of the old return provisions by Schedule 2 to the *Insolvency Law Reform Act 2016*, audits may be continued in relation to accounts lodged under those provisions as if the old Act continued to apply.

(4) In this section:

***old return provisions*** means the following provisions of the old Act, as in force before their repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*:

(a) subsection 438E(2);

(b) subsection 445J(2);

(c) subsection 539(1), to the extent to which it relates to a liquidator ceasing to act as liquidator.

13 Section 1594

After “apply”, insert “on and after 1 September 2017”.

14 Subsection 1596(1)

After “applies”, insert “on and after 1 September 2017”.

15 Sections 1597, 1598 and 1599

After “applies”, insert “on and after 1 September 2017”.

16 At the end of section 1601

Add “on and after 1 September 2017”.

17 Section 1604

Omit “2017”, insert “2018”.

18 Section 1606

After “apply”, insert “on and after 1 September 2017”.

19 Section 1606

Omit “the commencement day”, substitute “that day”.

20 Section 1612

After “apply”, insert “on and after 1 September 2017”.

21 Section 1612

Omit “the commencement day”, substitute “that day”.

22 Section 1613

After “applies”, insert “on and after 1 September 2017”.

23 Section 1615

After “applies”, insert “on and after 1 September 2017”.

24 Section 1615

Omit “the commencement day”, substitute “that day”.

25 Subsection 1618(2)

After “apply”, insert “on and after 1 September 2017”.

26 Subsection 1618(2)

Omit “the commencement day”, substitute “that day”.

27 Subsection 1618(3)

After “applies”, insert “on and after 1 September 2017”.

28 Subsection 1618(3)

Omit “the commencement day”, substitute “that day”.

29 Subsection 1618(4)

After “applies”, insert “on and after 1 September 2017”.

30 Subsection 1618(4)

Omit “the commencement day”, substitute “that day”.

31 Subsection 1618(6)

After “applies”, insert “on and after 1 September 2017”.

32 Subsection 1618(6)

Omit “the commencement day”, substitute “that day”.

33 Subsection 1619(2)

After “apply”, insert “on and after 1 September 2017”.

34 Subsection 1619(2)

Omit “the commencement day”, substitute “that day”.

35 Subsection 1619(4)

After “applies”, insert “on and after 1 September 2017”.

36 Subsection 1619(4)

Omit “the commencement day”, substitute “that day”.

37 Section 1620

After “applies”, insert “on and after 1 September 2017”.

38 Section 1620

Omit “the commencement day”, substitute “that day”.

39 Section 1623

Repeal the section, substitute:

1623 Transitional rules for controller returns

(1) Section 422A, as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, applies in relation to a person if the person first began to be a controller of the property of a corporation on or after 1 September 2017.

(2) Section 422A, as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, also applies in relation to a person if the person first began to be the controller of the property of a corporation before 1 September 2017 as if the reference in that section to a control return year for the controller were a reference to:

(a) the first full year starting on or after 1 September 2017 that is an anniversary of when the person first began to be the controller of the property of a corporation; and

(b) each subsequent period of 12 months.

(3) Despite the repeal of subsections 432(1) and (1A) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, those subsections continue to apply, in relation to a controller of a corporation appointed before 1 September 2017:

(a) if the end of the 6‑month period referred to in paragraph 432(1)(a) occurs before 1 March 2018—in relation to that period; and

(b) if the end of that period is not an anniversary of the administrator’s appointment—in relation to the subsequent 6‑month period.

(4) To avoid doubt, despite the repeal of subsections 432(1) and (1A) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, audits may be continued in relation to accounts lodged under those provisions as if the old Act continued to apply.

1623A Transitional rules for end of control returns

(1) Section 422B, as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, applies in relation to a control of the property of a corporation that ends on or after 1 September 2017.

(2) Despite the repeal of subsections 432(1) and (1A) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, those subsections continue to apply, in relation to controllers that cease to be a controller of property of a corporation, if the cessation occurs before 1 September 2017.

40 Subsection 1627(3)

After “apply”, insert “on and after 1 September 2017”.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

**Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) |
| C[x] = Compilation No. x | /sub‑subparagraph(s) |
| Ch = Chapter(s) | pres = present |
| def = definition(s) | prev = previous |
| Dict = Dictionary | (prev…) = previously |
| disallowed = disallowed by Parliament | Pt = Part(s) |
| Div = Division(s) | r = regulation(s)/rule(s) |
| ed = editorial change | reloc = relocated |
| exp = expires/expired or ceases/ceased to have | renum = renumbered |
| effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = *Legislation Act 2003* | Sch = Schedule(s) |
| LIA = *Legislative Instruments Act 2003* | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given | SLI = Select Legislative Instrument |
| effect | SR = Statutory Rules |
| (md not incorp) = misdescribed amendment | Sub‑Ch = Sub‑Chapter(s) |
| cannot be given effect | SubPt = Subpart(s) |
| mod = modified/modification | underlining = whole or part not |
| No. = Number(s) | commenced or to be commenced |

Endnote 3—Legislation history

| Number and year | FRLI registration or gazettal | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| 193, 2001 | 13 July 2001 | 15 July 2001 (r 1.0.01A) |  |
| 208, 2001 | 2 Aug 2001 | 15 July 2001 | — |
| 318, 2001 | 15 Oct 2001 | 15 Oct 2001 | — |
| 319, 2001 | 15 Oct 2001 | 11 Mar 2002 (r 2) Note: r 7.9.10 and 7.9.11 of Sch 1 (item 15) were disallowed by the Senate on 16 Sept 2002 | — |
| 15, 2002 | 21 Feb 2002 | 21 Feb 2002 | — |
| 16, 2002 | 21 Feb 2002 | r 1–3 and Sch 1: 12:01 am (A.C.T.) 11 Mar 2002 (r 2(1)) Remainder: 28 Dec 2002 (r 2(2)) Note: r 7.9.10, 7.9.11(1), 7.9.11(1)(a), 7.9.11(1)(b) and 7.9.11(2) of Sch 1 (items 78–82) were disallowed by the Senate on 16 Sept 2002 | — |
| 41, 2002 | 7 Mar 2002 | r 1–3 and Sch 1: 12:02 am (A.C.T.) 11 Mar 2002 (r 2(1)) Remainder: 12:01 am (A.C.T.) 28 Dec 2002 (r 2(2)) | — |
| 53, 2002 | 22 Mar 2002 | r 1–3 and Sch 1: 12:01 am (A.C.T.) 11 Mar 2002 (r 2(a)) Remainder: 12:03 am (A.C.T.) 11 Mar 2002 (r 2(b)) | — |
| 126, 2002 | 14 June 2002 | r 1–3 and Sch 1: 12:02 am 11 Mar 2002 (r 2(a)) Sch 2: 12:03 am 11 Mar 2002 (r 2(b)) Remainder: 14 June 2002 (r 2(c)) | — |
| 145, 2002 | 27 June 2002 | r 1–3 and Sch 1: 27 June 2002 Remainder: 1 July 2002 | — |
| 182, 2002 | 1 Aug 2002 | 1 Aug 2002 | — |
| 265, 2002 | 6 Nov 2002 | 6 Nov 2002 | — |
| 282, 2002 | 28 Nov 2002 | 1 Dec 2002 | — |
| 31, 2003 | 11 Mar 2003 | 11 Mar 2003 | — |
| 48, 2003 | 8 Apr 2003 | 8 Apr 2003 | — |
| 85, 2003 | 8 May 2003 | 8 May 2003 | — |
| 126, 2003 | 19 June 2003 | 19 June 2003 | — |
| 127, 2003 | 19 June 2003 | 1 July 2003 | — |
| 194, 2003 | 31 July 2003 | 1 Aug 2003 | — |
| 202, 2003 | 6 Aug 2003 | r 1–3 and Sch 1: 6 Aug 2003 Remainder: 11 Mar 2004 | — |
| 282, 2003 | 13 Nov 2003 | r 1–3 and Sch 1: 13 Nov 2003 (r 2(a)) Sch 2: 11 Mar 2004 (r 2(b)) Remainder: 1 July 2004 (r 2(c)) Note: Sch 3 (items 1–4, 6, 8, 9) were disallowed by the Senate on 24 Mar 2004; rescinded 13 May 2004 | r 4 |
| 367, 2003 | 23 Dec 2003 | 23 Dec 2003 | — |
| 368, 2003 | 23 Dec 2003 | r 1–3 and Sch 1: 23 Dec 2003 Remainder: 11 Mar 2004 | — |
| 369, 2003 | 23 Dec 2003 | r 1–3 and Sch 1: 23 Dec 2003 Remainder: 14 Jan 2004 (*see* r. 2) | — |
| 10, 2004 | 20 Feb 2004 | 1 July 2004 | — |
| 25, 2004 | 26 Feb 2004 | 26 Feb 2004 | — |
| 26, 2004 | 26 Feb 2004 | r 1–3 and Sch 1: 26 Feb 2004 Remainder: 11 Mar 2004 | — |
| 36, 2004 | 18 Mar 2004 | 18 Mar 2004 | — |
| 145, 2004 | 25 June 2004 | r 1–3 and Sch 1: 1 July 2004 Remainder: 1 Oct 2004 | r 4 |
| 149, 2004 | 25 June 2004 | r 1–3 and Sch 1: 1 July 2004 Remainder: 1 Jan 2005 | — |
| 208, 2004 | 9 July 2004 | 9 July 2004 | — |
| 398, 2004 | 23 Dec 2004 | 23 Dec 2004 | — |
| 399, 2004 | 23 Dec 2004 | r 1–3 and Sch 1: 23 Dec 2004 Remainder: 1 Jan 2005 | — |
| 31, 2005 | 10 Mar 2005 (F2005L00539) | r 1–3 and Sch 1 and 2: 11 Mar 2005 Remainder: 1 July 2005 | — |
| 38, 2005 | 24 Mar 2005 (F2005L00717) | 31 Mar 2005 | r 4 |
| 139, 2005 | 17 June 2005 (F2005L01453) | 18 June 2005 | — |
| 160, 2005 | 8 July 2005 (F2005L01926) | 9 July 2005 | — |
| 324, 2005 | 19 Dec 2005 (F2005L04022) | 20 Dec 2005 (r 2) | Sch 2 (item 5), Sch 5 (item 2) and Sch 10 (item 8) |
| 41, 2006 | 16 Feb 2006 (F2006L00547) | 17 Feb 2006 | — |
| 57, 2006 | 22 Mar 2006 (F2006L00802) | 23 Mar 2006 | — |
| 102, 2006 | 10 May 2006 (F2006L01444) | 11 May 2006 | — |
| 126, 2006 | 2 June 2006 (F2006L01617) | 3 June 2006 | — |
| 362, 2006 | 14 Dec 2006 (F2006L03961) | 15 Dec 2006 | — |
| 102, 2007 | 27 Apr 2007 (F2007L01122) | 1 July 2007 | — |
| 193, 2007 | 29 June 2007 (F2007L01900) | 30 June 2007 | r 3 |
| 194, 2007 | 29 June 2007 (F2007L01904) | 30 June 2007 | — |
| 195, 2007 | 29 June 2007 (F2007L01901) | 1 July 2007 | — |
| 196, 2007 | 29 June 2007 (F2007L01903) | 1 July 2007 | — |
| 197, 2007 | 29 June 2007 (F2007L01889) | 1 July 2007 | — |
| 198, 2007 | 29 June 2007 (F2007L01899) | r 1–3 and Sch 1: 1 July 2007 Remainder: 1 Sept 2007 (r 2(b)) | — |
| 199, 2007 | 29 June 2007 (F2007L01898) | 1 Sept 2007 (r 2) | — |
| 227, 2007 | 24 July 2007 (F2007L02255) | 25 July 2007 (r 2) | — |
| 259, 2007 | 24 Aug 2007 (F2007L02637) | 25 Aug 2007 | — |
| 323, 2007 | 28 Sept 2007 (F2007L03801) | 29 Sept 2007 | — |
| 324, 2007 | 28 Sept 2007 (F2007L03804) | r 1–3 and Sch 1: 29 Sept 2007 Schedule 2: 28 Dec 2007 (r. 2(b))  Remainder: 1 July 2008 (r. 2(c)) | — |
| 325, 2007 | 28 Sept 2007 (F2007L03851) | 31 Dec 2007 (. 2) | r 4 |
| 364, 2007 | 18 Dec 2007 (F2007L04728) | 19 Dec 2007 | — |
| 93, 2008 | 3 June 2008 (F2008L01830) | 4 June 2008 | — |
| 94, 2008 | 3 June 2008 (F2008L01827) | 13 June 2008 (r 2) | — |
| 130, 2008 | 26 June 2008 (F2008L02184) | 1 July 2008 | — |
| 158, 2008 | 18 July 2008 (F2008L02510) | 19 July 2008 | — |
| 194, 2008 | 19 Sept 2008 (F2008L03458) | 20 Sept 2008 | — |
| 12, 2009 | 6 Feb 2009 (F2009L00288) | 7 Feb 2009 | — |
| 51, 2009 | 30 Mar 2009 (F2009L01178) | 31 Mar 2009 | — |
| 52, 2009 | 30 Mar 2009 (F2009L01169) | 1 July 2009 | — |
| 70, 2009 | 1 May 2009 (F2009L01627) | 2 May 2009 | — |
| 103, 2009 | 5 June 2009 (F2009L02167) | 6 June 2009 | — |
| 175, 2009 | 10 July 2009 (F2009L02719) | 11 July 2009 | — |
| 198, 2009 | 3 Aug 2009 (F2009L02988) | 4 Aug 2009 | — |
| 327, 2009 | 27 Nov 2009 (F2009L04316) | r 4 and Sch 2: 1 Apr 2010 (r 2(1)(b)) Remainder: 11 Dec 2009 (r 2(1)(a)) | — |
| 328, 2009 | 27 Nov 2009 (F2009L04307) | 28 Nov 2009 (r 2) | — |
| 386, 2009 | 16 Dec 2009 (F2009L04494) | 17 Dec 2009 (r 2) | — |
| 387, 2009 | 16 Dec 2009 (F2009L04516) | 17 Dec 2009 (r 2) | — |
| 54, 2010 | 25 Mar 2010 (F2010L00737) | 26 Mar 2010 (r 2) | — |
| 55, 2010 | 25 Mar 2010 (F2010L00738) | Sch 2: 12 Oct 2011 (r 2(b)) Remainder: 18 Apr 2010 (r 2(a)) | — |
| 88, 2010 | 6 May 2010 (F2010L01097) | r 7 and Sch 2: 1 July 2010 (r 2(b)) Remainder: 6 May 2010 (r 2(a)) | r 4–7 |
| as amended by |  |  |  |
| 41, 2012 | 12 Apr 2012 (F2012L00836) | 6 May 2010 (r 2) | — |
| 266, 2012 | 23 Nov 2012 (F2012L02245) | 24 Nov 2012 (r 2) | — |
| 89, 2010 | 10 May 2010 (F2010L01198) | 1 Jan 2011 (r 2) | — |
| 135, 2010 | 21 June 2010 (F2010L01585) | 22 June 2010 (r 2) | r 4 |
| as amended by |  |  |  |
| 274, 2011 | 9 Dec 2011 (F2011L02616) | 10 Dec 2011 (r 2) | — |
| 184, 2010 | 30 June 2010 (F2010L01799) | 28 June 2010 (r 2) | — |
| 210, 2010 | 12 July 2010 (F2010L01941) | 1 Aug 2010 (r 2) | — |
| 272, 2010 | 27 Oct 2010 (F2010L02820) | 28 Oct 2010 (r 2) | — |
| 301, 2010 | 25 Nov 2010 (F2010L03094) | 26 Nov 2010 (r 2) | — |
| 332, 2010 | 10 Dec 2010 (F2010L03186) | 13 Dec 2010 (r 2 and F2010L03188) | — |
| 66, 2011 | 13 May 2011 (F2011L00753) | 26 May 2011 (r 2) | r 4 |
| 128, 2011 | 30 June 2011 (F2011L01368) | 1 July 2011 (r 2) | — |
| 142, 2011 | 1 Aug 2011 (F2011L01577) | 2 Aug 2011 (r 2) | — |
| 193, 2011 | 21 Oct 2011 (F2011L02103) | Sch 1: 31 Oct 2011 (r 2) | — |
| 272, 2011 | 9 Dec 2011 (F2011L02621) | 10 Dec 2011 (r 2) | r 4 |
| 274, 2011 | 9 Dec 2011 (F2011L02616) | Sch 2: 10 Dec 2011 (r 2) | — |
| 42, 2012 | 11 Apr 2012 (F2012L00826) | 12 Apr 2012 (s 2) | — |
| 43, 2012 | 11 Apr 2012 (F2012L00829) | Sch 2: 12 Apr 2012 Remainder: 13 Apr 2011 (s 2(a)) | — |
| 46, 2012 | 11 Apr 2012 (F2012L00831) | 12 Apr 2012 (s 2) | — |
| 114, 2012 | 20 June 2012 (F2012L01272) | Sch 1: 1 July 2012 (s 2(b) and F2012L01239) | — |
| 170, 2012 | 12 July 2012 (F2012L01545) | 13 July 2012 (s 2) | — |
| 171, 2012 | 13 July 2012 (F2012L01548) | 25 July 2012 (s 2) | — |
| 172, 2012 | 13 July 2012 (F2012L01549) | 12 July 2013 (s 2) |  |
| as amended by |  |  |  |
| 308, 2012 | 11 Dec 2012 (F2012L02414) | 12 Dec 2012 (s 2) | — |
| 233, 2012 | 28 Sept (F2012L01981) | 29 Sept 2012 (s 2) | — |
| 234, 2012 | 2 Oct 2012 (F2012L01989) | 3 Oct 2012 (s 2) | — |
| 247, 2012 | 30 Oct 2012 (F2012L02102) | 1 Nov 2012 (s 2) | — |
| 267, 2012 | 23 Nov 2012 (F2012L02235) | 24 Nov 2012 (s 2) | — |
| 268, 2012 | 26 Nov 2012 (F2012L02261) | Sch 2: 1 July 2013 (s 2(b)) Remainder: 27 Nov 2012 (s 2(a)) | — |
| 25, 2013 | 1 Mar 2013 (F2013L00385) | Sch 2: 1 Mar 2013 (s 2) | — |
| 26, 2013 | 21 Mar 2013 (F2013L00395) | Sch 1: 1 July 2013 (s 2(1) item 2) | — |
| 59, 2013 | 29 Apr 2013 (F2013L00696) | 30 Apr 2013 (s 2) | — |
| 83, 2013 | 16 May 2013 (F2013L00780) | 1 July 2013 (s 2) | — |
| 101, 2013 | 4 June 2013 (F2013L00905) | Sch 2: 1 July 2016 (s 2 item 3) Sch 3: 1 July 2019 (s 2 item 4) Remainder: 1 July 2013 (s 2 items 1, 2) | — |
| 102, 2013 | 4 June 2013 (F2013L00906) | 5 June 2013 (s 2) | — |
| 115, 2013 | 17 June 2013 (F2013L01013) | 18 June 2013 (s 2) | — |
| 117, 2013 | 17 June 2013 (F2013L01010) | Sch 1 (items 3, 4): 18 June 2013 (s 2) | — |
| 125, 2013 | 14 June 2013 (F2013L00993) | Sch 1 (item 1): 1 July 2013 (s 2) | — |
| 150, 2013 | 29 June 2013 (F2013L01279) | 30 June 2013 (s 2) | — |
| 151, 2013 | 28 June 2013 (F2013L01227) | 1 July 2013 (s 2) | — |
| 152, 2013 | 28 June 2013 (F2013L01264) | Sch 1 (items 11–17): 1 July 2013 (s 2) | — |
| 155, 2013 | 28 June 2013 (F2013L01246) | Sch 1 (items 1–86) and Sch 2 (items 3, 4): 1 July 2013 (s 2 items 2, 6) Sch 2 (items 1, 2): 1 July 2015 (s 2 item 5) Sch 3: never commenced (s 2 items 7, 8) | — |
| 190, 2013 | 26 July 2013 (F2013L01436) | Sch 1: 27 July 2013 (s 2) | — |
| 191, 2013 | 26 July 2013 (F2013L01440) | Sch 1: 27 July 2013 (s 2) | — |
| 192, 2013 | 25 July 2013 (F2013L01431) | Sch 1 (item 6): 26 July 2013 (s 2) | — |
| 202, 2013 | 6 Aug 2013 (F2013L01523) | Sch 2: 7 Aug 2013 (s 2) | — |
| 33, 2014 | 14 Mar 2014 (F2014L00261) | Sch 1 (item 2), Sch 2 (items 1–4) and Sch 3 (item 3): 15 Mar 2014 (s 2) | — |
| 88, 2014 | 13 June 2014 (F2014L00711) | Sch 1, 2 and Sch 3 (items 5, 6): 14 June 2014 (s 2) | — |
| 102, 2014 | 30 June 2014 (F2014L00891) | 1 July 2014 (s 2) Note: disallowed by the Senate at 7.39 pm on 19 Nov 2014; rescinded 27 Nov 2014 | — |
| 134, 2014 | 8 Sept 2014 (F2014L01199) | Repealed before commencing (s 2) | — |
| as repealed by |  |  |  |
| 210, 2014 | 15 Dec 2014 (F2014L01704) | 16 Dec 2014 (s 2) | — |
| 175, 2014 | 17 Nov 2014 (F2014L01526) | Sch 1: 1 Dec 2014 (s 2 item 2) Sch 2: 1 Dec 2016 (s 2 item 3) Remainder: 18 Nov 2014 (s 2 item 1) | — |
| 185, 2014 | 1 Dec 2014 (F2014L01612) | Sch 1 (item 3): 1 Dec 2014 (s 2(1) item 2) Sch 2: 2 Dec 2014 (s 2(1) item 3) | — |
| 208, 2014 | 15 Dec 2014 (F2014L01707) | 16 Dec 2014 (s 2) | — |
| 209, 2014 | 16 Dec 2014 (F2014L01728) | 19 Dec 2014 (s 2) | — |
| 3, 2015 | 16 Feb 2015 (F2015L00152) | 17 Feb 2015 (s 2) | — |
| 24, 2015 | 12 Mar 2015 (F2015L00287) | 13 Mar 2015 (s 2) | — |
| 39, 2015 | 30 Mar 2015 (F2015L00367) | Sch 3 (item 1): 31 Mar 2015 (s 2 item 4) | — |
| 91, 2015 | 18 June 2015 (F2015L00840) | Sch 1 (items 11–29, 40–45): 1 July 2015 (s 2(1) item 2) | Sch 1 (items 40–45) |
| 92, 2015 | 18 June 2015 (F2015L00841) | Sch 1 (item 3): 19 June 2015 (s 2(1) item 1) | — |
| 108, 2015 | 29 June 2015 (F2015L00969) | 1 July 2015 (s 2(1) item 1) | — |
| 134, 2015 | 12 Aug 2015 (F2015L01262) | Sch 1 (item 3): 13 Aug 2015 (s 2 (1) item 1) | — |
| 135, 2015 | 13 Aug 2015 (F2015L01270) | 14 Aug 2015 (s 2(1) item 1) | — |
| 157, 2015 | 8 Sept 2015 (F2015L01411) | Sch 1 (items 6, 7): 1 Oct 2015 (s 2(1) item 3) Sch 1 (items 8, 9): 5 Mar 2016 (s 2(1) item 4) Remainder: 9 Sept 2015 (s 2(1) items 1, 2) | — |

| Name | Registration | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Treasury Laws Amendment (2016 Measures No. 1) Regulation 2016 | 26 Feb 2016 (F2016L00156) | Sch 2 (items 19–25): 27 Feb 2016 (s 2(1) item 1) | — |
| Corporations Amendment (Remuneration Disclosures) Regulation 2016 | 15 Apr 2016 (F2016L00514) | 16 Apr 2016 (s 2(1) item 1) | — |
| Tax and Superannuation Laws Amendment (2016 Measures No. 2) Regulation 2016 | 9 May 2016 (F2016L00710) | Sch 1 (item 1): 10 May 2016 (s 2(1) item 2) | — |
| Financial Services Legislation Amendment (Wholesale Margining) Regulation 2016 | 28 Oct 2016 (F2016L01657) | Sch 1: 29 Oct 2016 (s 2(1) item 1) | — |
| Corporations Amendment (Trustee Companies) Regulation 2016 | 12 Dec 2016 (F2016L01902) | 13 Dec 2016 (s 2(1) item 1) | — |
| Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016 | 13 Dec 2016 (F2016L01926) | Sch 1 (items 30–45) and Sch 2: 1 Mar 2017 (s 2(1) items 2, 4) Sch 1 (items 77–102): 1 Sept 2017 (s 2(1) item 3) | — |
| Corporations Legislation Amendment (Professional Standards of Financial Advisers) Regulations 2017 | 13 Feb 2017 (F2017L00117) | Sch 1 (items 15–20): 15 Mar 2017 (s 2(1) item 1) | — |
| Corporations Amendment (Life Insurance Remuneration Arrangements) Regulations 2017 | 14 Mar 2017 (F2017L00212) | 1 Jan 2018 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017 | 27 Mar 2017 (F2017L00321) | Sch 1 (item 1) and Sch 10 (item 1): 28 Mar 2017 (s 2(1) items 2, 7) Sch 4 (items 1, 2): 2 July 2017 (s 2(1) item 3) | — |
| Corporations Amendment (Client Money) Regulations 2017 | 20 Apr 2017 (F2017L00455) | 4 Apr 2018 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Professional Standards Schemes) Regulations 2017 | 24 May 2017 (F2017L00595) | Sch 1 (items 29–39): 25 May 2017 (s 2(1) item 1) | — |
| Corporations Amendment (Crowd‑sourced Funding) Regulations 2017 | 21 June 2017 (F2017L00710) | 28 Sept 2017 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Professional Standards Schemes) Regulations 2018 | 9 Feb 2018 (F2018L00096) | Sch 1 (items 10–12): 10 Feb 2018 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Regulations 2018 | 24 Apr 2018 (F2018L00515) | Sch 1 (items 1–3, 36–42) and Sch 2 (items 1, 2, 4, 5): 25 Apr 2018 (s 2(1) items 2, 4, 5, 8, 9) Sch 3 (items 3–5): 5 Mar 2022 (s 2(1) item 10) | — |
| Corporations Amendment (Client Money Reporting Rules Enforcement Powers) Regulations 2018 | 8 June 2018 (F2018L00743) | 9 June 2018 (s 2(1) item 1) | — |
| Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018 | 22 June 2018 (F2018L00835) | 1 July 2018 (s 2(1) item 1) | — |
| Corporations Amendment (Stay on Enforcing Certain Rights) Regulations (No. 2) 2018 | 29 June 2018 (F2018L00966) | 1 July 2018 (s 2(1) item 1) | — |
| Corporations Amendment (Asia Region Funds Passport) Regulations 2018 | 20 Aug 2018 (F2018L01144) | Sch 1 and 3: 18 Sept 2018 (s 2(1) item 2) | — |
| Corporations Amendment (Crowd‑sourced Funding) Regulations 2018 | 28 Sept 2018 (F2018L01379) | 19 Oct 2018 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Professional Standards Schemes No. 2) Regulations 2018 | 2 Oct 2018 (F2018L01393) | Sch 1 (items 16–21): 3 Oct 2018 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018 | 7 Dec 2018 (F2018L01691) | Sch 1 (items 10, 11): 8 Dec 2018 (s 2(1) item 4) | — |
| Corporations Amendment (Name Exemption) Regulations 2019 | 8 Mar 2019 (F2019L00271) | Sch 1: 9 Mar 2019 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Professional Standards Schemes) Regulations 2019 | 25 Mar 2019 (F2019L00368) | Sch 1 (items 21–27): 26 Mar 2019 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Transition of Chi–X to National Guarantee Fund) Regulations 2019 | 25 Mar 2019 (F2019L00374) | 26 Mar 2019 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Regulations 2019 | 25 Mar 2019 (F2019L00392) | Sch 1 (items 1–40): 26 Mar 2019 (s 2(1) item 2) | — |
| Treasury Laws Amendment (AFCA Cooperation) Regulations 2019 | 5 Apr 2019 (F2019L00537) | Sch 1 (items 1–3): 6 Apr 2019 (s 2(1) item 1) | — |
| Corporations Amendment (Proprietary Company Thresholds) Regulations 2019 | 5 Apr 2019 (F2019L00538) | 1 July 2019 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019 | 5 Apr 2019 (F2019L00539) | Sch 1 (items 1–28): 6 Apr 2019 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Professional Standards Schemes No. 2) Regulations 2019 | 21 Oct 2019 (F2019L01351) | Sch 1 (items 26–36): 22 Oct 2019 (s 2(1) item 1) | — |
| Corporations Amendment (National Guarantee Fund Payments) Regulations 2019 | 18 Nov 2019 (F2019L01474) | 19 Nov 2019 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019 | 29 Nov 2019 (F2019L01526) | 1 Jan 2021 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Financial Services Improved Consumer Protection) (Funeral Expenses Facilities) Regulations 2019 | 29 Nov 2019 (F2019L01533) | 1 Apr 2020 (s 2(1) item 1) | — |
| Corporations Amendment (Design and Distribution Obligations) Regulations 2019 | 16 Dec 2019 (F2019L01626) | 5 Apr 2021 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019 | 17 Dec 2019 (F2019L01641) | Sch 1 (items 2–24): 18 Dec 2019 (s 2(1) item 2) | — |
| Treasury Laws Amendment (Professional Standards Schemes) Regulations 2020 | 12 June 2020 (F2020L00699) | Sch 1 (items 12–16): 1 July 2020 (s 2(1) item 1) | — |
| Corporations Amendment (Stamping Fee Exemption) Regulations 2020 | 29 June 2020 (F2020L00834) | 30 June 2020 (s 2(1) item 1) | — |
| Corporations Amendment (Litigation Funding) Regulations 2020 | 23 July 2020 (F2020L00942) | 24 July 2020 (s 2(1) item 1) | — |
| Corporations and Bankruptcy Legislation Amendment (Extending Temporary Relief for Financially Distressed Businesses and Individuals) Regulations 2020 | 21 Sept 2020 (F2020L01191) | Sch 1 (items 3, 4): 22 Sept 2020 (s 2(1) item 1) | — |
| Financial Sector Reform (Hayne Royal Commission Response) (Regulation of Superannuation) Regulations 2020 | 11 Dec 2020 (F2020L01586) | Sch 1 (items 1–6): 1 Jan 2021 (s 2(1) item 2) Sch 1 (items 8–10): 1 July 2021 (s 2(1) item 3) | — |
| Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2020 | 14 Dec 2020 (F2020L01610) | Sch 1 (items 7–16): 15 Dec 2020 (s 2(1) item 2) Sch 2 (items 1–11): 28 Sept 2022 (s 2(1) item 3) | — |
| Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 | 21 Dec 2020 (F2020L01654) | Sch 1, 2 and 3: 1 Jan 2021 (s 2(1) items 2–4) Sch 4: 22 Dec 2020 (s 2(1) item 5) | — |
| Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021 | 18 Feb 2021 (F2021L00127) | Sch 2: 19 Feb 2021 (s 2(1) item 1) | — |
| Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2021 | 16 Apr 2021 (F2021L00453) | 17 Apr 2021 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Professional Standards Schemes) Regulations 2021 | 30 Apr 2021 (F2021L00520) | Sch 1 (items 6, 7): 1 May 2021 (s 2(1) item 1) | — |
| Financial Sector Reform (Hayne Royal Commission Response—Advice Fees) Regulations 2021 | 14 May 2021 (F2021L00581) | Sch 1: 1 July 2021 (s 2(1) item 2) | — |
| Corporations Amendment (Statutory Minimum) Regulations 2021 | 28 May 2021 (F2021L00660) | Sch 1: 1 July 2021 (s 2(1) item 2) | — |
| Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021 | 25 June 2021 (F2021L00848) | Sch 1 (item 13): 26 June 2021 (s 2(1) item 2) Sch 1 (item 20): 1 July 2021 (s 2(1) item 6) | — |
| Financial Sector Reform (Hayne Royal Commission Response—Breach Reporting and Remediation) Regulations 2021 | 5 Aug 2021 (F2021L01072) | Sch 1 (items 3–11): 1 Oct 2021 (s 2(1) item 1) | — |
| Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021 | 6 Aug 2021 (F2021L01080) | 5 Oct 2021 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Professional Standards Schemes No. 2) Regulations 2021 | 24 Aug 2021 (F2021L01186) | Sch 1 (items 11–14): 25 Aug 2021 (s 2(1) item 1) | — |
| Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021 | 11 Nov 2021 (F2021L01531) | 12 Nov 2021 (s 2(1) item 1) | — |
| Corporations Amendment (Litigation Funding) Regulations 2021 | 25 Nov 2021 (F2021L01608) | Sch 1 (items 5–11): never commenced (s 2(1) items 3, 4) Remainder: 26 Nov 2021 (s 2(1) items 1, 2) | — |
| Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021 | 17 Dec 2021 (F2021L01801) | Sch 1 (items 1–5): 18 Dec 2021 (s 2(1) item 1) Note: disallowed by the Senate at 11.59 am on 10 Feb 2022 | — |
| Treasury Laws Amendment (Miscellaneous and Technical Amendments No. 2) Regulations 2021 | 17 Dec 2021 (F2021L01841) | Sch 1 (items 1–9): 18 Dec 2021 (s 2(1) item 2) Sch 1 (items 16–18): 23 Feb 2022 (s 2(1) item 3) Note: This amending title was affected by an editorial change (see F2022C00319) | — |
| Treasury Laws Amendment (Corporate Insolvency Reforms Consequential Amendments) Regulations 2021 | 20 Dec 2021 (F2021L01847) | Sch 1 (items 10–13): 21 Dec 2021 (s 2(1) item 1) | — |
| Financial Sector Reform Amendment (Hayne Royal Commission Response—Better Advice) Regulations 2021 | 20 Dec 2021 (F2021L01854) | Sch 1 (items 4–7): 1 Jan 2022 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Professional Standards Schemes) Regulations 2022 | 21 Mar 2022 (F2022L00350) | Sch 1 (items 9–11): 22 Mar 2022 (s 2(1) item 2) Sch 1 (items 16, 17): 1 July 2022 (s 2(1) item 3) | — |
| Corporations and Other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Regulations 2022 | 31 Mar 2022 (F2022L00469) | Sch 1 (items 2–30), Sch 2 and Sch 3 (items 1–43): 1 July 2022 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Professional Standards Schemes No. 2) Regulations 2022 | 24 June 2022 (F2022L00831) | Sch 1 (items 7–9): 1 July 2022 (s 2(1) item 1) | — |
| Corporations Amendment (Litigation Funding) Regulations 2022 | 9 Dec 2022 (F2022L01614) | 10 Dec 2022 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2022 | 12 Dec 2022 (F2022L01627) | Sch 1 (items 1–3, 10, 14–16, 20): 13 Dec 2022 (s 2(1) item 2) | — |
| Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022 | 12 Dec 2022 (F2022L01629) | Sch 1 (items 1, 2): 13 Dec 2022 (s 2(1) item 2) Sch 2: 1 Jan 2023 (s 2(1) item 3) | — |
| Corporations Amendment (Registration of Relevant Providers) Regulations 2022 | 16 Dec 2022 (F2022L01668) | 17 Dec 2022 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Modernising Business Communications and Other Measures) Regulations 2022 | 19 Dec 2022 (F2022L01689) | Sch 1 and Sch 2 (items 2–5): 15 Sept 2023 (s 2(1) items 2, 3) | — |
| Corporations Amendment (Design and Distribution Obligations—Income Management Regimes) Regulations 2023 | 3 Mar 2023 (F2023L00193) | 4 Mar 2023 (s 2(1) item 1) | — |
| Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023 | 30 May 2023 (F2023L00625) | Sch 1 (item 41): 31 May 2023 (s 2(1) item 6) | — |
| Corporations Amendment (Financial Services Compensation Scheme of Last Resort) Regulations 2023 | 6 July 2023 (F2023L00988) | 7 July 2023 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023 | 7 July 2023 (F2023L00990) | Sch 1 (items 1–29): 8 July 2023 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Professional Standards Schemes) Regulations 2023 | 18 Oct 2023 (F2023L01394) | Sch 1 (item 4): 19 Oct 2023 (s 2(1) item 1) | — |
| Treasury Laws Amendment (Modernising Business Communications) Regulations 2023 | 27 Oct 2023 (F2023L01423) | Sch 1: 28 Oct 2023 (s 2(1) item 2) Sch 2 (items 1–19): 1 Jan 2024 (s 2(1) item 3) | — |
| Treasury Laws Amendment (ALRC Financial Services Interim Report) Regulations 2023 | 31 Oct 2023 (F2023L01458) | Sch 1 (items 3–87, 112, 113, 124–309): 1 Nov 2023 (s 2(1) item 1) | — |

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- | --- |
| Coronavirus Economic Response Package Omnibus Act 2020 | 22, 2020 | 24 Mar 2020 | Sch 12 (items 26–29): 25 Mar 2020 (s 2(1) item 8) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| **Chapter 1** |  |
| **Part 1.0** |  |
| r 1.0.01A | rep LA s 48D |
| r 1.0.02 | rs No 319, 2001 |
|  | am No 16, 2002; No 41, 2002; No 282, 2002; No 31, 2003; No 127, 2003; No 368, 2003; No 26, 2004; No 398, 2004; No 31, 2005; No 38, 2005; No 102, 2007; No 158, 2008; No 135, 2010; No 210, 2010; No 42, 2012; No 267, 2012; No 117, 2013; No 155, 2013; No 33, 2014; No 24, 2015; No 91, 2015; F2016L01926; F2018L00743; F2018L01144; F2019L01533; F2020L01610; F2021L01801 (disallowed); F2022L00469; F2022L01689; F2023L01458 |
| r 1.0.02AA | ad F2023L01458 |
| r 1.0.02AB | ad F2023L01458 |
| r 1.0.02A | ad No 332, 2010 |
|  | rs No 193, 2011 |
|  | am F2022L01689 |
| r 1.0.02B | ad F2019L00538 |
| r. 1.0.03 | am 2004 No. 399 |
| r 1.0.03A | ad 2004 No 399 |
|  | am 2007 No 195; F2016L01926; F2018L01144 |
| r. 1.0.03B | ad. 2004 No. 399 |
| r 1.0.03C | ad 2004 No 399 |
|  | am F2016L01926 |
| r. 1.0.05 | am. 2001 No. 319; 2003 No. 194 |
| r 1.0.05A | ad No 319, 2001 |
|  | am No 16, 2002; No 41, 2002; F2021L01072 |
|  | rep F2023L01458 |
| r 1.0.07 | am No 319, 2001; F2018L01144; F2022L00469 |
| r 1.0.08 | am F2018L01144; F2022L00469; F2023L00990 |
| r 1.0.09 | am F2022L00469 |
| r 1.0.10 | am F2022L01627 |
| r 1.0.12 | am F2016L01926 |
| r 1.0.16 | am F2018L01144; F2023L00990; F2023L01458 |
| r 1.0.17 | am F2022L01689 |
| r. 1.0.18 | am. 2001 No. 319 |
| r 1.0.20 | am No 198, 2009; F2022L01627 |
| r 1.0.22 | ad No 319, 2001 |
|  | rs F2023L01458 |
| **Part 1.2** |  |
| Part 1.2 | rep. 2001 No. 319 |
|  | ad. 2011 No. 128 |
| **Division 1** |  |
| r. 1.2.01 | rep. 2001 No. 319 |
|  | ad. 2011 No. 128 |
| rr. 1.2.02–1.2.32 | rep. 2001 No. 319 |
| **Chapter 2A** |  |
| **Part 2A.1** |  |
| r. 2A.1.01 | am. 2003 No. 85 |
|  | rs. 2006 No. 41 |
| **Chapter 2B** |  |
| **Part 2B.6** |  |
| r 2B.6.02A | ad F2019L00271 |
| **Chapter 2C** |  |
| **Part 2C.1** |  |
| Part 2C.1 heading | ad. 2007 No. 227 |
|  | rs. 2010 No. 332 |
| Part 2C.1 | rs. 2010 No. 332 |
| **Division 2C.1.1** |  |
| r. 2C.1.01 | rs. 2001 No. 319 |
|  | am. 2007 No. 323 |
|  | rs. 2010 No. 332 |
| Part 2C.2 heading | ad. 2007 No. 227 |
|  | rep. 2010 No. 332 |
| Part 2C.2 | rep. 2010 No. 332 |
| r. 2C.1.02 |  |
| renumbered r. 2C.2.01 | 2007 No. 227 |
| r. 2C.2.01 | rep. 2010 No. 332 |
| **Division 2C.1.2** |  |
| r. 2C.1.02 | ad. 2010 No. 332 |
| r. 2C.1.03 | ad. 2010 No. 332 |
|  | am. 2012 No. 233 |
| r. 2C.1.04 | ad. 2010 No. 332 |
| **Division 2C.1.3** |  |
| Part 2C.3 heading | rep. 2010 No. 332 |
| Division 2C.1.3 heading | ad. 2010 No. 332 |
| r. 2C.3.01 | ad. 2007 No. 227 |
| renumbered r. 2C.1.05 | 2010 No. 332 |
| **Chapter 2D** |  |
| Chapter 2D | rep. 2001 No. 319 |
|  | ad. 2009 No. 51 |
| r. 2D.1.02 | rep. 2001 No. 319 |
| **Part 2D.2** |  |
| Part 2D.2 | ad. 2009 No. 328 |
| **Division 2D.2.2** |  |
| r. 2D.2.01 | ad. 2009 No. 328 |
| r. 2D.2.02 | ad. 2009 No. 328 |
| r. 2D.2.03 | ad. 2009 No. 328 |
| **Part 2D.6** |  |
| **Division 2D.6.1** |  |
| r. 2D.6.01 | ad. 2009 No. 51 |
| **Part 2D.7** |  |
| Part 2D.7 | ad. 2011 No. 128 |
| r. 2D.7.01 | ad. 2011 No. 128 |
| **Chapter 2E** |  |
| Chapter 2E | ad. 2007 No. 198 |
| r. 2E 1.01 | ad. 2007 No. 198 |
| **Chapter 2G** |  |
| Chapter 2G | ad. 2004 No. 208 |
| **Part 2G.2** |  |
| **Division 6** |  |
| r. 2G.2.01 | ad. 2004 No. 208 |
| **Chapter 2K** |  |
| r. 2K.2.01 | am. 2006 No. 57 |
| r. 2K.2.03 | ad. 2006 No. 57 |
| **Chapter 2L** |  |
| Chapter 2L | ad. 2010 No. 54 |
| **Part 2L.2** |  |
| r. 2L.2.01 | ad. 2010 No. 54 |
| **Chapter 2M** |  |
| **Part 2M.3** |  |
| Part 2M.3 | ad. 2004 No. 208 |
| **Division 1** |  |
| r 2M.3.01 | ad No 184, 2010 |
|  | am F2023L00990 |
| r. 2M.3.03 | ad. 2004 No. 208 |
|  | am. 2006 No. 126 |
|  | rs. 2007 No. 193 |
|  | am. No 152 and 192, 2013; F2016L00514 |
| r 2M.3.04 | ad F2023L00990 |
| Division 9 | ad. 2004 No. 399 |
|  | rep. No. 152, 2013 |
| r. 2M.3.30 | ad. 2004 No. 399 |
|  | rep. No. 152, 2013 |
| r. 2M.3.31 | ad. 2004 No. 399 |
|  | rep. No. 152, 2013 |
| r. 2M.3.32 | ad. 2004 No. 399 |
|  | rep. No. 152, 2013 |
| **Part 2M.4** |  |
| r. 2M.4.01A | ad. 2010 No. 184 |
|  | rs. No. 125, 2013 |
| **Part 2M.4A** |  |
| Part 2M.4A | ad. 2012 No. 171 |
| r. 2M.4A.01 | ad. 2012 No. 171 |
| r. 2M.4A.02 | ad. 2012 No. 171 |
| **Part 2M.6** |  |
| r. 2M.6.03 | rep. 2007 No. 194 |
| r. 2M.6.04 | ad. 2005 No. 160 |
|  | rep. 2007 No. 193 |
| r. 2M.6.05 | ad. 2006 No. 126 |
| **Chapter 2N** |  |
| Chapter 2N | ad. 2003 No. 194 |
| **Part 2N.2** |  |
| r 2N.2.01 | ad No 194, 2003 |
|  | am No 196, 2007; No 93, 2008 |
|  | rs F2018L01144 |
|  | am F2022L00469; F2023L01458 |
| **Part 2N.4** |  |
| r 2N.4.01 | ad No 194, 2003 |
|  | rs F2018L01144 |
|  | am F2022L00469 |
| **Chapter 5** |  |
| **Part 5.1** |  |
| r 5.1.02 | rep F2023L01423 |
| r 5.1.50 | ad F2018L00835 |
| **Part 5.2** |  |
| r 5.2.01 (second occurring) | renum F2016L01926 |
| r 5.2.02 (prev r 5.2.01 second occurring) |  |
| r 5.2.50 | ad F2018L00835 |
| **Part 5.3A** |  |
| r 5.3A.01 | rep F2016L01926 |
| r 5.3A.02 | rep F2016L01926 |
| r 5.3A.03 | am No 399, 2004 |
|  | rep F2016L01926 |
| r 5.3A.03A | ad No 114, 2012 |
|  | am F2016L01926 |
| r 5.3A.03AB | ad No 114, 2012 |
|  | rep F2016L01926 |
| r 5.3A.04 | am No 399, 2004; No 325, 2007 |
|  | rep F2016L01926 |
| r 5.3A.06A | ad No 114, 2012 |
|  | am F2016L01926 |
| r 5.3A.06AB | ad No 114, 2012 |
|  | rep F2016L01926 |
| r 5.3A.07 | am No 399, 2004; No 325, 2007; No 114, 2012 |
|  | rep F2016L01926 |
| r 5.3A.07A | ad No 114, 2012 |
|  | am F2016L01926 |
| r. 5.3A.08 | rep. 2007 No. 325 |
| r. 5.3A.09 | rep. 2007 No. 325 |
| r 5.3A.50 | ad F2018L00835 |
|  | am F2018L00966; F2020L01610; F2023L00625; F2023L01458 |
| **Part 5.3B** |  |
| Part 5.3B | ad F2020L01654 |
| **Division 1** |  |
| r 5.3B.01 | ad F2020L01654 |
| **Division 2** |  |
| **Subdivision A** |  |
| r 5.3B.02 | ad F2020L01654 |
|  | am F2021L01847 |
| r 5.3B.03 | ad F2020L01654 |
|  | am F2023L01458 |
| r 5.3B.04 | ad F2020L01654 |
| r 5.3B.05 | ad F2020L01654 |
| r 5.3B.06 | ad F2020L01654 |
| **Subdivision B** |  |
| r 5.3B.07 | ad F2020L01654 |
| r 5.3B.08 | ad F2020L01654 |
| r 5.3B.09 | ad F2020L01654 |
| r 5.3B.10 | ad F2020L01654 |
|  | rep F2021L01847 |
| r 5.3B.11 | ad F2020L01654 |
| **Subdivision C** |  |
| r 5.3B.12 | ad F2020L01654 |
| **Division 3** |  |
| **Subdivision A** |  |
| r 5.3B.13 | ad F2020L01654 |
| **Subdivision B** |  |
| r 5.3B.14 | ad F2020L01654 |
| r 5.3B.15 | ad F2020L01654 |
|  | am F2021L01847 |
| r 5.3B.16 | ad F2020L01654 |
| r 5.3B.17 | ad F2020L01654 |
| r 5.3B.18 | ad F2020L01654 |
| r 5.3B.19 | ad F2020L01654 |
| r 5.3B.20 | ad F2020L01654 |
| r 5.3B.21 | ad F2020L01654 |
| r 5.3B.22 | ad F2020L01654 |
| r 5.3B.23 | ad F2020L01654 |
| r 5.3B.24 | ad F2020L01654 |
| **Subdivision C** |  |
| r 5.3B.25 | ad F2020L01654 |
|  | am F2022L01627 |
| r 5.3B.26 | ad F2020L01654 |
| r 5.3B.27 | ad F2020L01654 |
| r 5.3B.28 | ad F2020L01654 |
| r 5.3B.29 | ad F2020L01654 |
| r 5.3B.30 | ad F2020L01654 |
|  | am F2023L01458 |
| r 5.3B.31 | ad F2020L01654 |
| r 5.3B.32 | ad F2020L01654 |
| **Subdivision D** |  |
| r 5.3B.33 | ad F2020L01654 |
| r 5.3B.34 | ad F2020L01654 |
| r 5.3B.35 | ad F2020L01654 |
| r 5.3B.36 | ad F2020L01654 |
| r 5.3B.37 | ad F2020L01654 |
| r 5.3B.38 | ad F2020L01654 |
| r 5.3B.39 | ad F2020L01654 |
| r 5.3B.40 | ad F2020L01654 |
|  | rep F2021L01847 |
| r 5.3B.41 | ad F2020L01654 |
|  | rep F2021L01847 |
| r 5.3B.42 | ad F2020L01654 |
| r 5.3B.43 | ad F2020L01654 |
| r 5.3B.44 | ad F2020L01654 |
| r 5.3B.45 | ad F2020L01654 |
| **Division 4** |  |
| r 5.3B.46 | ad F2020L01654 |
| r 5.3B.47 | ad F2020L01654 |
| **Division 5** |  |
| **Subdivision A** |  |
| r 5.3B.48 | ad F2020L01654 |
| **Subdivision B** |  |
| r 5.3B.49 | ad F2020L01654 |
| r 5.3B.50 | ad F2020L01654 |
| r 5.3B.51 | ad F2020L01654 |
| r 5.3B.52 | ad F2020L01654 |
| r 5.3B.53 | ad F2020L01654 |
| **Subdivision C** |  |
| r 5.3B.54 | ad F2020L01654 |
| r 5.3B.55 | ad F2020L01654 |
| r 5.3B.56 | ad F2020L01654 |
| r 5.3B.57 | ad F2020L01654 |
| r 5.3B.58 | ad F2020L01654 |
| **Division 6** |  |
| r 5.3B.59 | ad F2020L01654 |
| r 5.3B.60 | ad F2020L01654 |
| r 5.3B.61 | ad F2020L01654 |
| r 5.3B.62 | ad F2020L01654 |
| r 5.3B.63 | ad F2020L01654 |
| r 5.3B.64 | ad F2020L01654 |
| **Division 7** |  |
| r 5.3B.65 | ad F2020L01654 |
| **Part 5.4** |  |
| r 5.4.01AA | ad Act No 22, 2020 |
|  | am F2020L01191 |
|  | rep end of 31 Dec 2020 (r 5.4.01AA(3)) |
| r 5.4.01AAA | ad F2020L01654 |
|  | am F2021L00660; F2022L01689 |
| r 5.4.01A | ad No 114, 2012 |
|  | am F2016L01926; F2022L00469; F2022L01689 |
| r 5.4.01B | ad F2016L01926 |
|  | am F2022L00469 |
| r. 5.4.02 | ad. 2007 No. 325 |
| **Part 5.4C** |  |
| Part 5.4C | ad. 2012 No. 114 |
| r. 5.4C.01 | ad. 2012 No. 114 |
| **Part 5.5** |  |
| Part 5.5 | ad. 2012 No. 114 |
| **Division 1** |  |
| Division 1 heading | ad F2020L01654 |
| r 5.5.01 | ad No 114, 2012 |
|  | am F2016L01926; F2020L01610; F2022L00469 |
| **Division 2** |  |
| Division 2 | ad F2020L01654 |
| **Subdivision A** |  |
| r 5.5.02 | ad No 114, 2012 |
|  | rep F2016L01926 |
|  | ad F2020L01654 |
| r 5.5.03 | ad F2020L01654 |
|  | am F2023L01458 |
| **Subdivision B** |  |
| r 5.5.04 | ad F2020L01654 |
| r 5.5.05 | ad F2020L01654 |
| r 5.5.06 | ad F2020L01654 |
| **Subdivision C** |  |
| r 5.5.07 | ad F2020L01654 |
| r 5.5.08 | ad F2020L01654 |
| r 5.5.09 | ad F2020L01654 |
| **Part 5.6** |  |
| r 5.6.01 | rep F2016L01926 |
| r 5.6.02 | rep F2016L01926 |
| r 5.6.06 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.07 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.08 | rep F2016L01926 |
| r 5.6.09 | rep F2016L01926 |
| r 5.6.10 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.11 | am No 325, 2007; F2016L01926; F2022L01689 |
| r 5.6.11A | ad No 325, 2007 |
|  | am F2016L01926 |
|  | rep F2020L01654 |
| r 5.6.12 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.13 | rep F2016L01926 |
| r 5.6.13A | rep F2016L01926 |
| r 5.6.13B | rep F2016L01926 |
| r 5.6.14 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.14A | rs No 325, 2007 |
|  | am No 114, 2012 |
|  | rep F2016L01926 |
| r 5.6.14B | rep F2016L01926 |
| r 5.6.15 | rep F2016L01926 |
| r 5.6.16 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.17 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.18 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.19 | rep F2016L01926 |
| r 5.6.20 | rep F2016L01926 |
| r 5.6.21 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.22 | rep F2016L01926 |
| r 5.6.23 | rep F2016L01926 |
| r 5.6.23A | ad No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.24 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.26 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.27 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.28 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.29 | rs No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.30 | rep F2016L01926 |
| r 5.6.31 | am No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.31A | rep F2016L01926 |
| r 5.6.32 | rep F2016L01926 |
| r 5.6.33 | rs No 325, 2007 |
|  | rep F2016L01926 |
| r 5.6.34 | rep F2016L01926 |
| r 5.6.36 | rep F2016L01926 |
| r 5.6.36A | rep F2016L01926 |
| r 5.6.39 | am No 114, 2012; F2020L01654; F2022L00469 |
| r 5.6.43A | am F2022L01689 |
| r 5.6.48 | am No 325, 2007; No 114, 2012; F2020L01654; F2022L00469 |
| r 5.6.53 | am No 325, 2007; F2020L01654 |
| r 5.6.54 | am No 325, 2007; F2020L01654 |
| r 5.6.55 | am No 325, 2007; F2020L01654 |
| r 5.6.59 | am No 399, 2004; No 325, 2007; F2020L01654 |
| r 5.6.62 | am No 399, 2004; F2020L01654 |
| r 5.6.65 | am No 325, 2007; No 114, 2012; F2016L01926; F2020L01654; F2022L00469 |
| r 5.6.66 | am No 325, 2007; F2020L01654 |
| r 5.6.67A | ad F2020L01654 |
| r 5.6.68 | am F2020L01654 |
| r. 5.6.69 | am. 2012 No. 114 |
| r 5.6.70B | ad 2012 No 114 |
|  | am F2022L00469 |
| r. 5.6.73 | ad. 2007 No. 325 |
| r 5.6.74 | rs F2023L01458 |
| r 5.6.75 | ad No 114, 2012 |
|  | am F2020L01654; F2023L01423 |
| **Part 5.7B** |  |
| Part 5.7B | ad F2020L01191 |
| r 5.7B.01 | ad F2020L01191 |
| **Chapter 5B** |  |
| **Part 5B.2** |  |
| r. 5B.2.05 | ad. 2007 No. 199 |
| **Part 5B.3** |  |
| r. 5B.3.04 | am. 2001 No. 319 |
| **Chapter 5C** |  |
| **Part 5C.1** |  |
| r 5C.1.01 | am F2018L01144 |
| r 5C.1.02 | am F2018L01144 |
| **Part 5C.11** |  |
| **Division 1** |  |
| r 5C.11.01 | rs No 172, 2012 |
|  | am F2016L01926 |
|  | rs F2020L00942 |
|  | am F2022L01614 |
| **Division 2** |  |
| r. 5C.11.03A | ad. 2011 No. 193 |
| r 5C.11.04 | am F2018L01144 |
| r. 5C.11.05A | rs. 2003 No. 31 |
| **Chapter 5D** |  |
| **Part 5D.1** |  |
| Part 5D.1 | ad. 2010 No. 88 |
| r 5D.1.01 | ad No 88, 2010 |
|  | rs No 43, 2012 |
|  | rep F2023L01423 |
| r. 5D.1.01A | ad. 2012 No. 43 |
| r 5D.1.02 | ad No 88, 2010 |
|  | am F2023L01458 |
| r. 5D.1.03 | ad. 2010 No. 88 |
| r. 5D.1.04 | ad. 2010 No. 88 |
| **Part 5D.2** |  |
| Part 5D.2 | ad. 2010 No. 88 |
| **Division 2.1** |  |
| r 5D.2.01 | ad No 88, 2010 |
|  | am F2019L00392 |
| r. 5D.2.02 | ad. 2010 No. 88 |
| **Division 2.2** |  |
| Division 2.2 | ad. 2010 No 88 |
| r. 5D.2.03 | ad. 2010 No. 88 |
| r. 5D.2.04 | ad. 2010 No. 88 |
| r 5D.2.05 | ad No 88, 2010 |
|  | am F2019L00392 |
| r 5D.2.06 | ad No. 88, 2010 |
|  | am No 43, 2012; F2019L00392 |
| r 5D.2.07 | ad No 88, 2010 |
|  | am F2019L00392 |
| r 5D.2.08 | ad No 88, 2010 |
|  | am F2019L00392 |
| r. 5D.2.09 | ad. 2010 No. 88 |
|  | rep. 2012 No. 43 |
| **Part 5D.3** |  |
| Part 5D.3 | ad. 2010 No. 88 |
| r. 5D.3.01 | ad. 2010 No. 88 |
| **Part 5D.4** |  |
| Part 5D.4 | ad. 2012 No. 43 |
| r 5D.4.01 | ad No 43, 2012 |
|  | am F2023L01458 |
| **Part 5D.5** |  |
| Part 5D.5 | ad F2023L01423 |
| r 5D.5.01 | ad F2023L01423 |
| **Chapter 6** |  |
| **Part 6.2** |  |
| r 6.2.01A | ad F2018L01379 |
| Part 6.5 | ad No 319, 2001 |
|  | rs No 16, 2002 |
|  | rep F2022L01627 |
| r 6.5.01 | ad No 319, 2001 |
|  | rs No 16, 2002; No 41, 2002 |
|  | am No 126, 2002 |
|  | rep F2022L01627 |
| **Part 6.6** |  |
| Part 6.6 | ad. 2001 No. 319 |
| r. 6.6.01 | ad. 2001 No. 319 |
| **Part 6.8** |  |
| Part 6.8 | ad. 2001 No. 319 |
| r. 6.8.01 | ad. 2001 No. 319 |
| r. 6.8.02 | ad. 2001 No. 319 |
| **Part 6.10** |  |
| r 6.10.01 | am F2023L01458 |
| **Chapter 6A** |  |
| Chapter 6A | ad. 2001 No. 319 |
| **Part 6A.1** |  |
| r. 6A.1.01 | ad. 2001 No. 319 |
| **Chapter 6CA** |  |
| Chapter 6CA | ad. 2001 No. 319 |
| r. 6CA.1.01 | ad. 2001 No. 319 |
|  | rs. 2002 No. 41 |
| **Chapter 6D** |  |
| **Part 6D.2** |  |
| r. 6D.2.03 | ad. 2001 No. 319 |
| r 6D.2.04 | ad No 209, 2014 |
| r 6D.2.05 | ad No 209, 2014 |
| r 6D.2.06 | ad No 209, 2014 |
| **Part 6D.3A** |  |
| Part 6D.3A | ad F2017L00710 |
| r 6D.3A.01 | ad F2017L00710 |
|  | am F2018L01379 |
| r 6D.3A.02 | ad F2017L00710 |
|  | am F2018L01379 |
| r 6D.3A.03 | ad F2017L00710 |
| r 6D.3A.04 | ad F2017L00710 |
|  | am F2018L01379 |
| r 6D.3A.05 | ad F2017L00710 |
|  | am F2018L01379 |
| r 6D.3A.06 | ad F2017L00710 |
|  | am F2018L01379 |
| r 6D.3A.07 | ad F2017L00710 |
| r 6D.3A.08 | ad F2017L00710 |
| r 6D.3A.09 | ad F2017L00710 |
|  | am F2018L01379 |
| r 6D.3A.10 | ad F2017L00710 |
| **Part 6D.5** |  |
| Part 6D.5 | ad. 2002 No. 16 |
| r. 6D.5.01 | ad. 2002 No. 16 |
| r. 6D.5.02 | ad. 2005 No. 324 |
| r 6D.5.03 | ad F2018L01379 |
| **Chapter 7** |  |
| Chapter 7 | rs. 2001 No. 319 |
| **Part 7.1** |  |
| **Division 1** |  |
| r. 7.1.01 | rs. 2001 No. 319 |
|  | am. 2004 No. 398; 2007 No. 323 |
|  | rep. 2011 No. 193 |
| r 7.1.02 | ad No 319, 2001 |
|  | rep F2022L01689 |
| r 7.1.03 | rs No 319, 2001; No 15, 2002 |
|  | am F2022L01689 |
|  | rep F2023L01458 |
| r 7.1.03A | ad No 16, 2002 |
|  | am F2022L01689 |
|  | rep F2023L01458 |
| r 7.1.03B | ad No 41, 2002 |
|  | rep F2023L01458 |
| r 7.1.04 | ad No 319, 2001 |
|  | am No 126, 2002; No 126, 2003; No 33, 2014; No 24, 2015; F2022L01689; F2023L01458 |
| r. 7.1.04A | ad. 2002 No. 16 |
|  | am 2002 No. 41 |
| r. 7.1.04B | ad. 2002 No. 41 |
| r. 7.1.04C | ad. 2002 No. 41 |
| r 7.1.04CAA | ad F2021L00453 |
| r. 7.1.04CA | ad. 2007 No. 324 |
| r 7.1.04CB | ad F2021L00127 |
| r. 7.1.04D | ad. 2002 No. 41 |
| r 7.1.04E | ad No 202, 2003 |
| r 7.1.04E (second occurring) | ad No 25, 2004 |
|  | renum No 36, 2004 |
| r 7.1.04F  (prev r 7.1.04E second occurring) | am F2021L00127 |
| r. 7.1.04G | ad. 2005 No. 31 |
| r 7.1.04N | ad No 172, 2012 |
|  | rs F2020L00942 |
|  | am F2021L00848; F2022L01614 |
| r 7.1.05 | ad No 319, 2001 |
|  | am F2023L01458 |
| r 7.1.06 | ad No 319, 2001 |
|  | am No 41, 2002; No 368, 2003; No 172, 2012; F2018L01144; F2020L00942; F2022L01614; F2023L01458 |
| r 7.1.06A | ad No 41, 2002 |
|  | am No 368, 2003; F2023L01458 |
| r 7.1.06B | ad No 31, 2003 |
|  | rep F2019L01641 |
| r. 7.1.07 | ad. 2001 No. 319 |
|  | rs. 2002 No. 16 |
|  | am. 2003 No. 202 |
| r. 7.1.07A | ad. 2002 No. 16 |
| r. 7.1.08 | ad. 2001 No. 319 |
| Renumbered r. 7.1.07B | 2003 No. 31 |
| r 7.1.07C | ad No 31, 2003 |
|  | am F2019L01626 |
| r 7.1.07D | ad No 31, 2003 |
|  | rep F2019L01533 |
| r. 7.1.07E | ad. 2003 No. 282 |
| r. 7.1.07F | ad. 2003 No. 282 |
| r. 7.1.07G | ad. 2003 No. 368 |
| r. 7.1.07H | ad. 2004 No. 25 |
| r 7.1.07I | ad No 42, 2012 |
|  | (1) exp 1 July 2012 (r 7.1.07I(2)(a)) |
|  | rep F2022L01689 |
| r 7.1.07J | ad No 24, 2015 |
| r. 7.1.08A | ad. 2002 No. 16 |
|  | am. 2002 No. 41 |
|  | rep. 2003 No. 31 |
| r 7.1.08AA | ad F2021L00127 |
| r. 7.1.08 | ad. 2003 No. 31 |
|  | am. 2010 No. 89; F2017L00710 |
| r. 7.1.08A | ad. 2012 No. 42 |
| r 7.1.09 | ad No 319, 2001 |
|  | am No 398, 2004; No 42, 2012; F2018L01144; F2023L01458 |
| r. 7.1.10 | ad. 2001 No. 319 |
|  | am. 2002 No. 16; 2007 No. 323 |
| **Division 2** |  |
| r. 7.1.11 | ad. 2001 No. 319 |
|  | am. 2003 No. 31 |
| r. 7.1.12 | ad. 2001 No. 319 |
|  | am. 2003 No. 31 |
| r. 7.1.13 | ad. 2001 No. 319 |
|  | am. 2003 No. 31 |
| r. 7.1.14 | ad. 2001 No. 319 |
|  | am. 2002 No. 16; 2003 No. 31 |
| r. 7.1.15 | ad. 2001 No. 319 |
|  | am. 2003 No. 31 |
| r. 7.1.16 | ad. 2001 No. 319 |
|  | am. 2003 No. 31 |
| r 7.1.17 | ad No 319, 2001 |
|  | am No 16, 2002; No 31, 2003; F2019L01641 |
| r. 7.1.17A | ad. 2003 No. 127 |
| r. 7.1.17B | ad. 2003 No. 368 |
| r. 7.1.17C | ad. 2010 No. 88 |
| r 7.1.18 | ad No 319, 2001 |
|  | am F2023L01458 |
| r 7.1.19 | ad No 319, 2001 |
|  | am F2023L01458 |
| r 7.1.19A | ad No 89, 2010 |
|  | am F2023L01458 |
| r 7.1.20 | ad No 319, 2001 |
|  | am F2023L01458 |
| r 7.1.21 | ad No 319, 2001 |
|  | am F2023L01458 |
| r 7.1.22 | ad No 319, 2001 |
|  | am No 16, 2002; F2019L01641; F2023L01458 |
| r 7.1.22AA | ad F2019L01641 |
|  | am F2020L01610 |
| r. 7.1.22A | ad. 2003 No. 202 |
| r 7.1.23 | ad No 319, 2001 |
|  | am F2023L01458 |
| r 7.1.24 | ad No 319, 2001 |
|  | am F2023L01458 |
| r 7.1.25 | ad No 319, 2001 |
|  | am F2023L01458 |
| r 7.1.26 | ad No 319, 2001 |
|  | am F2023L01458 |
| r. 7.1.27 | ad. 2001 No. 319 |
|  | am. 2003 No. 368 |
| r 7.1.28 | ad No 319, 2001 |
|  | am F2023L01458 |
| **Division 3** |  |
| r 7.1.28AA | ad No 108, 2015 |
| r 7.1.28AB | ad F2021L01801 (disallowed) |
| r. 7.1.28A | ad. 2010 No. 88 |
| r 7.1.29 | ad No 319, 2001 |
|  | am No 41, 2002 |
|  | rs No 85, 2003 |
|  | am No 368, 2003; No 25, 2004; No 46, 2012; F2018L01144; F2023L01458 |
| r. 7.1.29A | ad. 2004 No. 25 |
|  | am. No 101 and 152, 2013 |
|  | rep No 101, 2013 |
| r. 7.1.30 | ad. 2002 No. 16 |
|  | rep F2021L01801 (disallowed) |
| r. 7.1.31 | ad. 2002 No. 16 |
| r. 7.1.32 | ad. 2002 No. 16 |
| r 7.1.33 | ad No 41, 2002 |
|  | rep F2021L00127 |
| r 7.1.33A | ad No 41, 2002 |
|  | am F2018L01144 |
| r. 7.1.33B | ad. 2002 No. 41 |
|  | am. 2003 No 126 and 368 |
| r. 7.1.33C | ad. 2003 No. 48 |
|  | rep. 2003 No. 369 |
| r 7.1.33D | ad No 85, 2003 |
|  | am F2023L01458 |
| r 7.1.33E | ad No 282, 2003 |
|  | am F2018L01144; F2023L01458 |
| r. 7.1.33F | ad. 2003 No. 368 |
| r. 7.1.33G | ad. 2005 No. 324 |
| r. 7.1.33H | ad. 2005 No. 324 |
| **Division 4** |  |
| Division 4 of Part 7.1 | ad. 2002 No. 16 |
| r. 7.1.34 | ad. 2002 No. 16 |
|  | rs. 2003 No. 282 |
|  | am. 2010 No. 89 |
| r. 7.1.35 | ad. 2003 No. 126 |
|  | am. 2005 No. 31 |
| r. 7.1.35A | ad. 2003 No. 368 |
| r. 7.1.35B | ad. 2012 No. 42 |
| r. 7.1.35C | ad. 2012 No. 42 |
| **Division 5** |  |
| Division 5 | ad. 2003 No. 126 |
| r 7.1.40 | ad No 126, 2003 |
|  | am No 368, 2003; No 31, 2005; No 42, 2012; F2023L01458 |
| **Division 6** |  |
| Division 6 | ad. No. 59, 2013 |
| r 7.1.50 | ad No 59, 2013 |
|  | am F2023L01458 |
| **Part 7.2** |  |
| **Division 1** |  |
| r. 7.2.01 | rs. 2001 No. 319 |
| r. 7.2.02 | rs. 2001 No. 319 |
| r. 7.2.03 | ad. 2001 No. 319 |
| r. 7.2.04 | ad. 2001 No. 319 |
| r. 7.2.05 | ad. 2001 No. 319 |
| r 7.2.06 | ad No 319, 2001 |
|  | am F2019L00392 |
| **Division 2** |  |
| r 7.2.07 | ad No. 319, 2001 |
|  | am No 26, 2004; No 210, 2010; F2019L00392 |
| r. 7.2.08 | ad. 2001 No. 319 |
|  | am. 2010 No. 210 |
| **Division 3** |  |
| r. 7.2.09 | ad. 2001 No. 319 |
|  | am. 2002 No. 126; 2012 No. 42 |
| **Division 4** |  |
| r. 7.2.10 | ad. 2001 No. 319 |
| r. 7.2.11 | ad. 2001 No. 319 |
| r. 7.2.12 | ad. 2001 No. 319 |
| **Division 5** |  |
| r. 7.2.13 | ad. 2001 No. 319 |
| r. 7.2.14 | ad. 2001 No. 319 |
| r. 7.2.15 | ad. 2001 No. 319 |
| **Division 6** |  |
| Division 6 of Part 7.2 | ad. 2002 No. 41 |
| r 7.2.16 | ad No 41, 2002 |
|  | am No 126, 2002; F2019L00392 |
| **Part 7.2A** |  |
| Part 7.2A | ad. 2010 No. 210 |
| **Division 7.2A.1** |  |
| r. 7.2A.01 | ad. 2010 No. 210 |
| **Division 7.2A.2** |  |
| r. 7.2A.02 | ad. 2010 No. 210 |
| r. 7.2A.03 | ad. 2010 No. 210 |
| r. 7.2A.04 | ad. 2010 No. 210 |
| r. 7.2A.05 | ad. 2010 No. 210 |
| r. 7.2A.06 | ad. 2010 No. 210 |
| r 7.2A.07 | ad No 210, 2010 |
|  | am F2019L00392 |
| r. 7.2A.08 | ad. 2010 No. 210 |
| r. 7.2A.09 | ad. 2010 No. 210 |
| r. 7.2A.10 | ad. 2010 No. 210 |
| r. 7.2A.11 | ad. 2010 No. 210 |
| r. 7.2A.12 | ad. 2010 No. 210 |
| r. 7.2A.13 | ad. 2010 No. 210 |
| r. 7.2A.14 | ad. 2010 No. 210 |
| r. 7.2A.15 | ad. 2010 No. 210 |
| **Part 7.3** |  |
| **Division 1** |  |
| r. 7.3.01 | rs. 2001 No. 319 |
| rr. 7.3.01A, 7.3.01B | rep. 2001 No. 319 |
| r. 7.3.02 | rs. 2001 No. 319 |
| rr. 7.3.02B–7.3.02D | rep. 2001 No. 319 |
| r. 7.3.03 | rs. 2001 No. 319 |
| r 7.3.04 | rs No 319, 2001 |
|  | am No 41, 2002; F2019L00392 |
| **Division 2** |  |
| r 7.3.05 | rs No 319, 2001 |
|  | am F2019L00392 |
| r. 7.3.06 | rs. 2001 No. 319 |
| **Division 3** |  |
| r. 7.3.07 | rs. 2001 No. 319 |
|  | am. 2002 No. 126; 2012 No. 42 |
| r. 7.3.08 | rs. 2001 No. 319 |
|  | am. 2002 No. 126; 2012 No. 42 |
| **Division 4** |  |
| r. 7.3.09 | rs. 2001 No. 319 |
| r 7.3.10 | rs No 319, 2001 |
|  | am F2023L01458 |
| r. 7.3.10A | rep. 2001 No. 319 |
| r. 7.3.11 | rs. 2001 No. 319 |
| **Division 5** |  |
| r. 7.3.12 | rs. 2001 No. 319 |
| r. 7.3.13 | rs. 2001 No. 319 |
| rr. 7.3.13A–7.3.13C | rep. 2001 No. 319 |
| r. 7.3.14 | rs. 2001 No. 319 |
| r. 7.3.14A | rep. 2001 No. 319 |
| rr. 7.3.15–7.3.18 | rep. 2001 No. 319 |
| **Part 7.4** |  |
| r 7.4.01 | rs No 319, 2001 |
|  | am No 16, 2002; No 26, 2004; No 398, 2004; F2023L01458 |
| r. 7.4.01A | rep. 2001 No. 319 |
| r. 7.4.02 | rs. 2001 No. 319 |
| r. 7.4.03 | rs. 2001 No. 319 |
| r. 7.4.04 | rs. 2001 No. 319 |
| r. 7.4.04A | rep. 2001 No. 319 |
| rr. 7.4.05–7.4.08 | rep. 2001 No. 319 |
| **Part 7.5** |  |
| **Division 1** |  |
| r 7.5.01 | rs No 319, 2001 |
|  | am No 282, 2002; No 26, 2004; No 398, 2004; No 38, 2005; No 193, 2011; F2023L01458 |
| r. 7.5.01A | ad. 2004 No. 26 |
| r. 7.5.02 | ad. 2001 No. 319 |
| r. 7.5.03 | ad. 2001 No. 319 |
|  | am. 2002 No. 282; 2004 No 26 and 398; 2005 No. 38 |
| r. 7.5.04 | ad. 2001 No. 319 |
|  | am. 2002 No. 282; 2004 No 26, 36 and 398 |
| r. 7.5.05 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.06 | ad. 2001 No. 319 |
|  | am. 2002 No. 282; 2004 No 26 and 398 |
| r. 7.5.07 | ad. 2001 No. 319 |
|  | am. 2002 No. 282; 2005 No 38 and 324 |
| r. 7.5.08 | ad. 2001 No. 319 |
|  | am. 2002 No. 282; 2005 No. 38 |
| r 7.5.09 | ad No 319, 2001 |
|  | am No 16, 2002; F2018L01144 |
| r. 7.5.10 | ad. 2001 No. 319 |
| r. 7.5.11 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.12 | ad. 2001 No. 319 |
|  | am. 2002 No. 282 |
|  | rep. 2005 No. 38 |
| r. 7.5.13 | ad. 2001 No. 319 |
| **Division 2** |  |
| r. 7.5.14 | ad. 2001 No. 319 |
| **Division 3** |  |
| r. 7.5.15 | ad. 2001 No. 319 |
| r. 7.5.16 | ad. 2001 No. 319 |
|  | am. 2004 No. 26 |
| r. 7.5.17 | ad. 2001 No. 319 |
| **Division 4** |  |
| **Subdivision 4.1** |  |
| r. 7.5.18 | ad. 2001 No. 319 |
| r 7.5.18A | ad F2019L01474 |
| **Subdivision 4.2** |  |
| r. 7.5.19 | ad. 2001 No. 319 |
|  | am. 2002 No. 282; 2004 No 26 and 398; 2005 No. 38 |
| **Subdivision 4.3** |  |
| r. 7.5.20 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.21 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.22 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.23 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.24 | ad. 2001 No. 319 |
|  | am. 2002 No. 16; 2004 No 26 and 398 |
| r. 7.5.25 | ad. 2001 No. 319 |
|  | am. 2002 No. 16; 2004 No 26 and 398 |
| r. 7.5.26 | ad. 2001 No. 319 |
|  | am. 2002 No. 16; 2004 No 26 and 398 |
| r. 7.5.27 | ad. 2001 No. 319 |
|  | am. 2002 No. 16; 2004 No 26 and 398 |
| r. 7.5.28 | ad. 2001 No. 319 |
|  | am. 2005 No. 38 |
| r. 7.5.29 | ad. 2001 No. 319 |
|  | am. 2005 No. 38 |
| r 7.5.30 | ad No 319, 2001 |
|  | am No 16, 2002; No 38, 2005; F2023L01423 |
| r. 7.5.31 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.32 | ad. 2001 No. 319 |
|  | rep. 2002 No. 282 |
| Subdivision 4.4 | rep. 2005 No. 38 |
| r. 7.5.33 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.34 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.35 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.36 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.37 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.38 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.39 | ad. 2001 No. 319 |
|  | rep. 2002 No. 282 |
| Subdivision 4.5 | rep. 2005 No. 38 |
| r. 7.5.40 | ad. 2001 No. 319 |
|  | am. 2002 No. 282 |
|  | rep. 2005 No. 38 |
| r. 7.5.41 | ad. 2001 No. 319 |
|  | am. 2002 No. 282 |
|  | rep. 2005 No. 38 |
| r. 7.5.42 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.43 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.44 | ad. 2001 No. 319 |
|  | rep. 2005 No. 38 |
| r. 7.5.45 | ad. 2001 No. 319 |
|  | am. 2002 No. 282 |
|  | rep. 2005 No. 38 |
| r. 7.5.46 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
|  | rep. 2005 No. 38 |
| r. 7.5.47 | ad. 2001 No. 319 |
|  | rep. 2002 No. 282 |
| Subdivision 4.6 | rep. 2002 No. 282 |
| r. 7.5.48 | ad. 2001 No. 319 |
|  | rep. 2002 No. 282 |
| r. 7.5.49 | ad. 2001 No. 319 |
|  | rep. 2002 No. 282 |
| r. 7.5.50 | ad. 2001 No. 319 |
|  | rep. 2002 No. 282 |
| r. 7.5.51 | ad. 2001 No. 319 |
|  | rep. 2002 No. 282 |
| r. 7.5.52 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
|  | rep. 2002 No. 282 |
| **Subdivision 4.7** |  |
| r. 7.5.53 | ad. 2001 No. 319 |
| r. 7.5.54 | ad. 2001 No. 319 |
| r. 7.5.55 | ad. 2001 No. 319 |
| r 7.5.56 | ad No 319, 2001 |
|  | am F2023L01423 |
| r. 7.5.57 | ad. 2001 No. 319 |
| r. 7.5.58 | ad. 2001 No. 319 |
| r. 7.5.59 | ad. 2001 No. 319 |
| **Subdivision 4.8** |  |
| r. 7.5.60 | ad. 2001 No. 319 |
| r 7.5.61 | ad No 319, 2001 |
|  | am F2023L01423 |
| r. 7.5.62 | ad. 2001 No. 319 |
| r. 7.5.63 | ad. 2001 No. 319 |
| **Subdivision 4.9** |  |
| r. 7.5.64 | ad. 2001 No. 319 |
|  | am. 2002 No. 282 |
| r. 7.5.65 | ad. 2001 No. 319 |
|  | am. 2002 No. 282 |
| r. 7.5.66 | ad. 2001 No. 319 |
| r. 7.5.67 | ad. 2001 No. 319 |
| r. 7.5.68 | ad. 2001 No. 319 |
|  | am. 2002 No 16 and 282; 2004 No 26 and 398 |
| r. 7.5.69 | ad. 2001 No. 319 |
| r 7.5.70 | ad No 319, 2001 |
|  | am F2023L01423 |
| r. 7.5.71 | ad. 2001 No. 319 |
|  | am. 2002 No. 16; 2005 No. 38 |
|  | rep F2019L01474 |
| **Subdivision 4.10** |  |
| r. 7.5.72 | ad. 2001 No. 319 |
| r 7.5.72A | ad F2019L01474 |
| r 7.5.72B | ad F2019L01474 |
| r. 7.5.73 | ad. 2001 No. 319 |
| r. 7.5.74 | ad. 2001 No. 319 |
|  | am. 2005 No. 38 |
| r. 7.5.75 | ad. 2001 No. 319 |
|  | am 2002 No 16; F2019L01474 |
| r. 7.5.76 | ad. 2001 No. 319 |
| r. 7.5.77 | ad. 2001 No. 319 |
| r. 7.5.78 | ad. 2001 No. 319 |
| r. 7.5.79 | ad. 2001 No. 319 |
| r. 7.5.80 | ad. 2001 No. 319 |
| r. 7.5.81 | ad. 2001 No. 319 |
|  | am. 2002 No. 282; 2004 No 26 and 398; 2005 No. 38 |
| r. 7.5.82 | ad. 2001 No. 319 |
| r. 7.5.83 | ad. 2001 No. 319 |
|  | am. 2004 No. 26 |
| r. 7.5.84 | ad. 2001 No. 319 |
| **Subdivision 4.11** |  |
| r. 7.5.85 | ad. 2001 No. 319 |
|  | rs. 2002 No. 16 |
|  | am. 2004 No 26 and 398 |
| r 7.5.85A | ad F2019L00374 |
| **Division 5** |  |
| r. 7.5.86 | ad. 2001 No. 319 |
| r. 7.5.87 | ad. 2001 No. 319 |
| r. 7.5.88 | ad. 2001 No. 319 |
|  | am. 2002 No. 145; 2010 No. 301 |
| r. 7.5.89 | ad. 2001 No. 319 |
| r. 7.5.90 | ad. 2001 No. 319 |
|  | am. 2002 No. 145 |
| r. 7.5.91 | ad. 2001 No. 319 |
| r. 7.5.92 | ad. 2001 No. 319 |
|  | am. 2002 No 126 and 145 |
| r. 7.5.93 | ad. 2001 No. 319 |
| **Part 7.5A** |  |
| Part 7.5A | ad. No. 150, 2013 |
| **Division 2** |  |
| **Subdivision 2.1** |  |
| r. 7.5A.30 | ad. No. 150, 2013 |
|  | am No 88, 2014 |
|  | (2)(a)–(i) exp end of 30 June 2015 (r 7.5A.30(3)) |
|  | am No 157, 2015 |
| r 7.5A.50 | ad No 191, 2013 |
|  | am No 185, 2014; No 157, 2015 |
| **Subdivision 2.1A** |  |
| Subdivision 2.1A | ad No 157, 2015 |
| r 7.5A.60 | ad No 157, 2015 |
|  | am F2018L01144; F2022L00469 |
| r 7.5A.61 | ad No 157, 2015 |
| r 7.5A.62 | ad No 157, 2015 |
| r 7.5A.63 | ad No 157, 2015 |
|  | am No 157, 2015 |
| r 7.5A.64 | ad No 157, 2015 |
| r 7.5A.65 | ad No 157, 2015 |
| **Subdivision 2.1B** |  |
| Subdivision 2.1B | ad No 157, 2015 |
| r 7.5A.70 | ad No 157, 2015 |
|  | am F2018L01144; F2022L00469; F2023L01458 |
| r 7.5A.71 | ad No 157, 2015 |
| r 7.5A.72 | ad No 157, 2015 |
| r 7.5A.73 | ad No 157, 2015 |
|  | am F2018L01144; F2022L00469; F2022L01689 |
| r 7.5A.74 | ad No 157, 2015 |
| **Subdivision 2.2** |  |
| r 7.5A.101 | ad No 191, 2013 |
| **Subdivision 2.3** |  |
| r 7.5A.102 | ad No 191, 2013 |
| r 7.5A.103 | ad No 191, 2013 |
| r 7.5A.104 | ad No 191, 2013 |
| r 7.5A.105 | ad No 191, 2013 |
| r 7.5A.106 | ad No 191, 2013 |
| r 7.5A.107 | ad No 191, 2013 |
| r 7.5A.108 | ad No 191, 2013 |
| r 7.5A.109 | ad No 191, 2013 |
| r 7.5A.110 | ad No 191, 2013 |
| r 7.5A.111 | ad No 191, 2013 |
| r 7.5A.112 | ad No 191, 2013 |
| r 7.5A.113 | ad No 191, 2013 |
| r 7.5A.114 | ad No 191, 2013 |
| r 7.5A.115 | ad No 191, 2013 |
| **Division 5** |  |
| r 7.5A.150 | ad No 191, 2013 |
| r 7.5A.150A | ad No 88, 2014 |
|  | rs No 185, 2014 |
| r 7.5A.150B | ad No 88, 2014 |
|  | rs No 185, 2014 |
|  | am F2020L01610 |
| r 7.5A.151 | ad No 191, 2013 |
| r 7.5A.200 | ad No 191, 2013 |
| **Division 7** |  |
| r 7.5A.250 | ad No 191, 2013 |
| **Division 8** |  |
| r 7.5A.270 | ad No 191, 2013 |
| **Part 7.6** |  |
| r 7.6.01 | rs No 319, 2001 |
|  | am No 16, 2002; No 41, 2002; No 53, 2002; No 85, 2003; No 126, 2003; No 127, 2003; No 202, 2003; No 282, 2003; No 368, 2003; No 25, 2004 |
|  | (1)(r) exp end of 11 Mar 2004 (r 7.6.01(6)) |
|  | am No 324, 2005; No 259, 2007; No 324, 2007; No 42, 2012; No 172, 2012; No 59, 2013; No 33, 2014 |
|  | ed C125 |
|  | am F2019L01533; F2020L00942; F2020L01586; F2022L01614; F2022L01629; F2023L01458 |
| r 7.6.01AAAA | ad F2021L00127 |
| r 7.6.01AAAB | ad F2021L00127 |
| r. 7.6.01AAA | ad. 2010 No. 89 |
| r. 7.6.01AA | ad. 2008 No. 158 |
|  | rep No 91, 2015 |
| r 7.6.01AB | ad No 172, 2012 |
|  | am F2019L00392; F2020L00942; F2021L01608; F2022L01614 |
| r. 7.6.01A | ad. 2002 No. 16 |
| r 7.6.01B | ad No 41, 2002 |
|  | am F2019L01641 |
| r. 7.6.01BA | ad. No. 101, 2013 |
|  | rep No 101, 2013 |
| r 7.6.01C | ad No 369, 2003 |
|  | am F2023L01458 |
| r. 7.6.02 | ad. 2001 No. 319 |
|  | am. 2005 No. 31; 2009 No. 386; 2010 No. 88; F2018L00515 |
| r 7.6.02AAA | ad No 197, 2007 |
|  | am F2018L00515; F2023L01458 |
| r 7.6.02AA | ad No 26, 2004 |
|  | am No 31, 2005; No 197, 2007; F2023L01423; F2023L01458 |
| r. 7.6.02AB | ad. 2005 No. 324 |
|  | am No 102, 2014 (disallowed); No 108, 2015 |
| r. 7.6.02AC | ad. 2005 No. 324 |
|  | am No 102, 2014 (disallowed); No 108, 2015 |
| r 7.6.02AD | ad No 324, 2005 |
|  | am No 102, 2014 (disallowed); No 108, 2015; F2023L01458 |
| r. 7.6.02AE | ad. 2005 No. 324 |
|  | am No 102, 2014 (disallowed); No 108, 2015 |
| r. 7.6.02AF | ad. 2005 No. 324 |
|  | am No 102, 2014 (disallowed); No 208, 2014 |
| r 7.6.02AG | ad No 324, 2005 |
|  | am No 42, 2012; No 59, 2013; F2018L01144; F2022L00469 |
| r 7.6.02AGA | ad No 42, 2012 |
|  | rep F2022L01689 |
| r. 7.6.02AH | ad. 2005 No. 324 |
|  | am. No. 59, 2013 |
| r 7.6.02AI | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 7.6.02A | ad No 369, 2003 |
|  | am No 42, 2012; F2018L00515; F2021L01072; F2021L01854 |
| r. 7.6.03 | ad. 2001 No. 319 |
| r. 7.6.03A | ad. 2003 No. 282 |
| r. 7.6.03B | ad. 2003 No. 282 |
| r 7.6.03C | ad F2019L00537 |
| r 7.6.03D | ad F2021L01801 (disallowed) |
| r 7.6.04 | ad No 319, 2001 |
|  | am No 16, 2002; No 41, 2002; No 101, 2013; No 155, 2013; No 135, 2015; F2019L01641; F2021L01608; F2022L00469; F2022L01614; F2023L01458 |
| r 7.6.04AA | ad No 135, 2015 |
| r. 7.6.04A | ad. 2003 No. 369 |
|  | am. 2005 No. 324; 2008 No. 158; No 91, 2015 |
| r. 7.6.04B | ad. 2004 No. 25 |
|  | rep. 2005 No. 324 |
| r. 7.6.05 | ad. 2001 No. 319 |
| r. 7.6.06 | ad. 2001 No. 319 |
| r 7.6.06A | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 7.6.06B | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 7.6.06C | ad No 3, 2015 |
|  | am F2017L00117 |
| r 7.6.06D | ad F2021L01854 |
| r. 7.6.07 | ad. 2001 No. 319 |
| r 7.6.07A | ad F2018L01691 |
|  | am F2023L01458 |
| r 7.6.07B | ad F2021L01854 |
| r 7.6.07C | ad F2022L01668 |
|  | rep end of 30 June 2023 (r 7.6.07C(2)) |
| Part 7.6A | ad 2005 No 324 |
|  | rep F2021L01841 |
| r 7.6.08 | ad 2005 No 324 |
|  | rep F2021L01841 |
| **Part 7.6B** |  |
| Part 7.6B | ad. 2009 No. 387 |
| r. 7.6.08A | ad. 2009 No. 387 |
| r 7.6.08B | ad No 387, 2009 |
|  | am F2023L01458 |
| r. 7.6.08C | ad. 2009 No. 387 |
| r 7.6.08D | ad No 387, 2009 |
|  | am F2019L00392 |
| r 7.6.08E | ad No 387, 2009 |
|  | am F2019L00392 |
| **Part 7.7** |  |
| **Division 1** |  |
| r. 7.7.01 | rs. 2001 No. 319 |
|  | am. 2002 No 16 and 41; 2003 No. 282 |
| **Division 2** |  |
| r 7.7.02 | rs No 319, 2001 |
|  | am No 41, 2002; No 53, 2002; No 31, 2003; No 85, 2003; No 202, 2003; No 368, 2003; No 25, 2004; No 324, 2005; No 324, 2007; No 158, 2008; No 91, 2015; F2023L01458 |
| r. 7.7.02A | ad. 2005 No. 324 |
| r. 7.7.03 | ad. 2001 No. 319 |
| r 7.7.03A | ad No 197, 2007 |
|  | am F2023L01458 |
| r. 7.7.04 | ad. 2001 No. 319 |
|  | am. 2003 No. 202; 2005 No. 324; 2010 No. 88 |
| r. 7.7.04A | ad. 2005 No. 324 |
| r. 7.7.04AA | ad. 2012 No. 170 |
| r. 7.7.04AB | ad. 2012 No. 170 |
| r. 7.7.05 | ad. 2001 No. 319 |
|  | rs. 2003 No. 369 |
|  | am. 2005 No. 324 |
| r. 7.7.05A | ad. 2002 No. 16 |
|  | am. 2003 No. 85 |
| r. 7.7.05B | ad. 2003 No. 85 |
|  | rs. 2004 No. 25 |
|  | am. 2005 No. 324; 2007 No. 324 |
| r. 7.7.05C | ad. 2004 No. 25 |
| r. 7.7.06 | ad. 2001 No. 319 |
| r. 7.7.06A | ad. 2004 No. 25 |
| r 7.7.06B | ad No 197, 2007 |
|  | am F2023L01458 |
| r. 7.7.07 | ad. 2001 No. 319 |
|  | am. 2003 No. 202; 2005 No. 324; 2010 No. 88 |
| r. 7.7.07A | ad. 2005 No. 324 |
| r. 7.7.08 | ad. 2001 No. 319 |
|  | rs. 2003 No. 369 |
|  | am. 2005 No. 324 |
| **Division 2A** |  |
| Division 2A | ad No 369, 2003 |
| r 7.7.08A | ad No 369, 2003 |
|  | am No 158, 2008; No 135, 2010; No 91, 2015; F2022L00469; F2023L01458 |
| **Division 2AA** |  |
| Division 2AA | ad. 2010 No. 89 |
| r. 7.7.08B | ad. 2010 No. 89 |
| **Division 2B** |  |
| Division 2B | ad. 2007 No. 324 |
| r. 7.7.08C | ad. 2007 No. 324 |
| **Division 3** |  |
| r. 7.7.09 | ad. 2001 No. 319 |
|  | am. 2003 No. 369 |
|  | rs. 2005 No. 324 |
|  | am. 2010 No. 135 |
| r 7.7.09A | ad 2007 No 324 |
|  | am F2022L00469 |
| r. 7.7.09AA | ad. 2010 No. 89 |
| r. 7.7.09AB | ad. 2010 No. 89 |
| r. 7.7.09B | ad. 2007 No. 259 |
|  | am. 2012 No. 268 |
| r. 7.7.09BA | ad. 2010 No. 89 |
| r. 7.7.09BB | ad. 2010 No. 89 |
| r. 7.7.09BC | ad. 2012 No. 170 |
| r. 7.7.09BD | ad. 2012 No. 170 |
| r. 7.7.09C | ad. 2007 No. 259 |
| r. 7.7.10 | ad. 2001 No. 319 |
|  | rs. 2003 No. 202 |
|  | am. 2005 No. 324; 2008 No. 158; No 91, 2015 |
| r. 7.7.10AA | ad. 2005 No. 324 |
| r. 7.7.10AAA | ad. 2007 No. 324 |
| r. 7.7.10AB | ad. 2005 No. 324 |
| r. 7.7.10AC | ad. 2005 No. 324 |
| r. 7.7.10AD | ad. 2005 No. 324 |
| r. 7.7.10AE | ad. 2005 No. 324 |
| r 7.7.10AF | ad No 324, 2005 |
|  | am F2019L00392 |
| r 7.7.10AG | ad No 324, 2005 |
|  | am F2019L00392 |
| r 7.7.10AH | ad 2005 No 324 |
|  | rep F2021L01841 |
| r. 7.7.10AI | ad. 2012 No. 42 |
| r. 7.7.10A | ad. 2004 No. 149 |
| r 7.7.10B | ad. No 324, 2005 |
|  | am F2023L01458 |
| r 7.7.10C | ad No 324, 2005 |
|  | am F2023L01458 |
| r. 7.7.10D | ad. 2005 No. 324 |
| r. 7.7.10E | ad. 2005 No. 324 |
| r. 7.7.11 | ad. 2001 No. 319 |
|  | am No 202, 2003; No 149, 2004 |
| r. 7.7.11A | ad. 2004 No. 25 |
| r. 7.7.11B | ad. 2004 No. 149 |
| r. 7.7.12 | ad. 2001 No. 319 |
|  | am No 202, 2003; No 149, 2004 |
| r. 7.7.13 | ad. 2004 No. 149 |
| r. 7.7.13A | ad. 2004 No. 149 |
| r. 7.7.13B | ad. 2004 No. 149 |
| **Division 4** |  |
| Division 4 | ad. 2003 No. 369 |
| r. 7.7.14 | ad. 2003 No. 369 |
| **Division 5** |  |
| Division 5 | ad. 2003 No. 369 |
| r. 7.7.20 | ad. 2003 No. 369 |
| r 7.7.20A | ad No 130, 2008 |
|  | am No 55, 2010; F2019L00392 |
| **Division 6** |  |
| Division 6 | ad. 2005 No. 324 |
| r. 7.7.21 | ad. 2005 No. 324 |
|  | rs. No. 172, 2012 |
| **Part 7.7A** |  |
| Part 7.7A | ad. 2012 No. 170 |
|  | am No 108, 2015 |
| **Division 2** |  |
| Division 2 | ad. 2012 No. 268 |
| Subdivision 1 heading | rep No 102, 2014 (disallowed); No 108, 2015 |
| r. 7.7A.1 | ad. 2012 No. 268 |
|  | rep No 102, 2014 (disallowed); No 108, 2015 |
| r 7.7A.05 | ad No 108, 2015 |
| r 7.7A.06 | ad No 108, 2015 |
| r 7.7A.07 | ad No 108, 2015 |
|  | rep F2023L01458 |
| r 7.7A.2 | ad No 102, 2014 (disallowed) |
| r 7.7A.3 | ad No 102, 2014 (disallowed) |
| r 7.7A.4 | ad No 102, 2014 (disallowed) |
| r 7.7A.5 | ad No 102, 2014 (disallowed) |
| r 7.7A.6 | ad No 102, 2014 (disallowed) |
| r 7.7A.7 | ad No 102, 2014 (disallowed) |
| r 7.7A.8 | ad No 102, 2014 (disallowed) |
| **Division 3** |  |
| Division 3 | ad. 2012 No. 170 |
| r 7.7A.10 | ad No 170, 2012 |
|  | am No 102, 2013; No 102, 2014 (disallowed); F2018L01144 |
| r 7.7A.11 | ad No 170, 2012 |
|  | am F2021L00581 |
|  | rs F2021L00848 |
| r 7.7A.11AA | ad F2021L00581 |
| **Division 4** |  |
| Division 4 | ad. 2012 No. 170 |
| **Subdivision 1** |  |
| Subdivision 1 | ad F2017L00212 |
| r 7.7A.11A | ad F2017L00212 |
| r 7.7A.11B | ad F2017L00212 |
| r 7.7A.11C | ad F2017L00212 |
|  | am F2023L01458 |
| r 7.7A.11D | ad F2017L00212 |
|  | am F2023L01458 |
| **Subdivision 2** |  |
| Subdivision 1 heading | ad. 2012 No. 268 |
|  | rs and renum F2017L00212 |
| Subdivision 2 heading (prev Subdivision 1 heading) |  |
| r 7.7A.12 | ad No 170, 2012 |
|  | rs No 268, 2012 |
|  | am No 102, 2014 (disallowed); No 108, 2015; F2023L01458 |
| r. 7.7A.12A | ad. 2012 No. 268 |
|  | rep F2017L00212 |
| r 7.7A.12B | ad 2012 No 268 |
|  | rs No 102, 2014 (disallowed); No 208, 2014 |
|  | am F2020L00834 |
| r. 7.7A.12C | ad. 2012 No. 268 |
| r. 7.7A.12D | ad. 2012 No. 268 |
|  | am. No. 115, 2013; No 102, 2014 (disallowed); No 208, 2014 |
| r. 7.7A.12E | ad. 2012 No. 268 |
| r. 7.7A.12EA | ad. No. 151, 2013 |
| **Subdivision 3** |  |
| Subdivision 3 | ad F2017L00212 |
| r 7.7A.12EB | ad No 102, 2014 (disallowed); F2017L00212 |
| r 7.7A.12EC | ad No 102, 2014 (disallowed); F2017L00212 |
| **Subdivision 4** |  |
| Subdivision 2 heading | rs and renum F2017L00212 |
| Subdivision 4 heading (prev Subdivision 2 heading) |  |
| Subdivision 2 | ad. 2012 No. 268 |
| r 7.7A.12F | ad No 268, 2012 |
|  | am F2023L01458 |
| r 7.7A.12FA | ad No 102, 2014 (disallowed) |
| r. 7.7A.12G | ad. 2012 No. 268 |
| r. 7.7A.12H | ad. 2012 No. 268 |
|  | am No 102, 2014 (disallowed); No 108, 2015 |
| r. 7.7A.12I | ad. 2012 No. 268 |
|  | am No 102, 2014 (disallowed) |
| r 7.7A.12J | ad No 102, 2014 (disallowed) |
| r. 7.7A.13 | ad. 2012 No. 170 |
| r. 7.7A.14 | ad. 2012 No. 170 |
| r. 7.7A.15 | ad. 2012 No. 170 |
| r 7.7A.15A | ad No 102, 2014 (disallowed); No 208, 2014 |
|  | am F2023L01458 |
| **Subdivision 4A** |  |
| Subdivision 4A | ad F2019L01526 |
| r 7.7A.15AJ | ad F2019L01526 |
| r 7.7A.15AK | ad F2019L01526 |
| **Subdivision 5** |  |
| Subdivision 5 heading | ad F2017L00212 |
|  | rep F2019L01526 |
| Subdivision 5 | rep F2019L01526 |
| r 7.7A.15B | ad No 102, 2014 (disallowed); No 208, 2014 |
|  | rep F2019L01526 |
| r 7.7A.16 | ad No 234, 2012 |
|  | rs No 151, 2013 |
|  | am No 102, 2014 (disallowed); No 208, 2014 |
|  | rep F2019L01526 |
| r 7.7A.16A | ad No 151, 2013 |
|  | rep F2019L01526 |
| r 7.7A.16B | ad No 151, 2013 |
|  | am No 102, 2014 (disallowed) |
|  | rep F2019L01526 |
| r 7.7A.16BA | ad No 102, 2014 (disallowed); No 208, 2014 |
|  | rep F2019L01526 |
| r 7.7A.16C | ad No 151, 2013 |
|  | am No 102, 2014 (disallowed); No 208, 2014 |
|  | rep F2019L01526 |
| r 7.7A.16D | ad No 151, 2013 |
|  | rep F2019L01526 |
| r 7.7A.16E | ad No 151, 2013 |
|  | rep F2019L01526 |
| r 7.7A.16F | ad No 151, 2013 |
|  | am No 102, 2014 (disallowed); No 208, 2014 |
|  | rep F2019L01526 |
| **Subdivision 6** |  |
| Subdivision 6 | ad F2017L00212 |
| r 7.7A.16G | ad F2017L00212 |
| r 7.7A.16H | ad F2017L00212 |
| **Subdivision 7** |  |
| Subdivision 3 heading | rs and renum F2017L00212 |
| Subdivision 7 heading (prev Subdivision 3 heading) |  |
| Subdivision 3 | ad. No. 115, 2013 |
| r. 7.7A.17 | ad. No. 115, 2013 |
| r. 7.7A.18 | ad. No. 115, 2013 |
| **Division 6** |  |
| Division 6 | ad. No. 83, 2013 |
| r. 7.7A.40 | ad. No. 83, 2013 |
| **Part 7.8** |  |
| **Division 2** |  |
| Division 2 heading | ad F2018L00743 |
| **Subdivision A** |  |
| Subdivision A heading | ad F2018L00743 |
| r 7.8.01A | ad F2016L01657 |
| r. 7.8.01 | ad. 2001 No. 319 |
|  | am. 2002 No 16 and 41; 2005 No. 31; 2009 No. 70; 2010 No. 210 |
| r 7.8.02 | ad No 319, 2001 |
|  | am No 16, 2002; No 41, 2002; No 70, 2009; No 210, 2010; F2017L00455; F2019L00392 |
| r 7.8.02A | ad F2017L00455 |
| r. 7.8.03 | ad. 2001 No. 319 |
| r. 7.8.04 | ad. 2001 No. 319 |
| r 7.8.05 | ad No 319, 2001 |
|  | am No 41, 2002; F2019L00392 |
| **Subdivision AA** |  |
| Subdivision AA | ad F2018L00743 |
| r 7.8.05A | ad F2018L00743 |
| r 7.8.05B | ad F2018L00743 |
| r 7.8.05C | ad F2018L00743 |
| r 7.8.05D | ad F2018L00743 |
| r 7.8.05E | ad F2018L00743 |
| r 7.8.05F | ad F2018L00743 |
| r 7.8.05G | ad F2018L00743 |
|  | am F2019L00392 |
| r 7.8.05H | ad F2018L00743 |
| r 7.8.05J | ad F2018L00743 |
| r 7.8.05K | ad F2018L00743 |
| r 7.8.05L | ad F2018L00743 |
| r 7.8.05M | ad F2018L00743 |
| r 7.8.05N | ad F2018L00743 |
| r 7.8.05P | ad F2018L00743 |
| r 7.8.05Q | ad F2018L00743 |
| **Subdivision B** |  |
| Subdivision B heading | ad F2018L00743 |
| r. 7.8.06 | ad. 2001 No. 319 |
| **Division 3** |  |
| Division 3 heading | ad F2018L00743 |
| r. 7.8.06A | ad. 2010 No. 89 |
| r 7.8.06B | ad F2016L01657 |
| r 7.8.07 | ad No 319, 2001 |
|  | am F2018L01144; F2023L01458 |
| **Division 4** |  |
| Division 4 heading | ad F2018L00743 |
| r 7.8.08 | ad No 319, 2001 |
|  | am No 16, 2002; No 41, 2002; F2018L01691; F2019L00392 |
| **Division 4A** |  |
| Division 4A heading | ad F2018L00743 |
| **Subdivision A** |  |
| Subdivision A heading | ad F2018L00743 |
| r 7.8.08A | ad No 89, 2010 |
|  | am F2023L01458 |
| r 7.8.08B | ad No 89, 2010 |
|  | am F2023L01458 |
| r. 7.8.09 | ad No 319, 2001 |
|  | am No 16, 2002 |
|  | rep No 41, 2002 |
|  | ad No 89, 2010 |
| r. 7.8.09A | ad No 89, 2010 |
| r 7.8.10 | ad No 319, 2001 |
|  | rep No 41, 2002 |
|  | ad No 89, 2010 |
|  | am F2023L01458 |
| r. 7.8.10A | ad No 89, 2010 |
| **Division 6** |  |
| Division 6 heading | ad F2018L00743 |
| **Subdivision B** |  |
| Subdivision B heading | ad F2018L00743 |
| r. 7.8.11 | ad. 2001 No. 319 |
| r. 7.8.11A | ad. 2012 No. 170 |
| r 7.8.11B | ad F2019L01526 |
| r. 7.8.12 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| **Subdivision C** |  |
| Subdivision C heading | ad F2018L00743 |
| r 7.8.12A | ad No 101, 2013 |
|  | am F2019L01641; F2023L01458 |
| r 7.8.13 | ad 2001 No 319 |
|  | am 2003 No 202; No 101, 2013; F2021L01841 |
| r. 7.8.13A | ad. No. 101, 2013 |
| r. 7.8.14 | ad. 2001 No. 319 |
|  | am. No. 101, 2013 |
| r. 7.8.14A | ad. 2005 No. 31 |
| **Subdivision D** |  |
| Subdivision D heading | ad F2018L00743 |
| r 7.8.14B | ad No 101, 2013 |
|  | am F2019L01641; F2023L01458 |
| r. 7.8.15 | ad. 2001 No. 319 |
|  | am. 2003 No. 126 |
| r. 7.8.16 | ad. 2001 No. 319 |
| **Division 7** |  |
| Division 7 heading | ad F2018L00743 |
| r. 7.8.17 | ad. 2001 No. 319 |
|  | am. 2004 No. 25; 2010 No. 210 |
| r. 7.8.18 | ad. 2001 No. 319 |
|  | am. 2010 No. 210 |
| r. 7.8.19 | ad. 2001 No. 319 |
| r 7.8.20 | ad No 319, 2001 |
|  | am No 16, 2002; No 25, 2004; No 210, 2010; F2018L01144; F2023L01458 |
| r 7.8.20A | ad No 31, 2003 |
|  | am F2023L01458 |
| r. 7.8.21 | ad. 2001 No. 319 |
|  | am. 2002 No. 41; 2003 No 202 and 282; 2004 No. 25 |
| **Division 8** |  |
| Division 8 heading | ad F2018L00743 |
| r 7.8.21A | ad No 324, 2005 |
|  | rs F2021L01080 |
|  | am F2022L01614; F2022L01627; F2023L01458 |
| r 7.8.21B | ad No 42, 2012 |
|  | rep F2021L01080 |
| r 7.8.22 | ad No 41, 2002 |
|  | am No 265, 2002; No 31, 2003 |
|  | rep F2021L01080 |
| r 7.8.22A | ad No 369, 2003 |
|  | rep F2021L01080 |
| r. 7.8.22B | ad. 2008 No. 194 |
|  | rep No 91, 2015 |
| r 7.8.23 | ad No 41, 2002 |
|  | am F2021L01080; F2023L01458 |
| r 7.8.24 | ad No 41, 2002 |
|  | am F2021L01080 |
| r 7.8.25 | ad No 41, 2002 |
|  | am F2021L01080 |
| r 7.8.26 | ad No 172, 2012 |
|  | am F2020L00942 |
|  | rep F2021L01080 |
| **Part 7.8A** |  |
| Part 7.8A | ad F2019L01626 |
| **Division 1** |  |
| r 7.8A.01 | ad F2019L01626 |
|  | am F2023L01458 |
| r 7.8A.02 | ad F2019L01626 |
|  | am F2023L00193; F2023L01458 |
| **Division 2** |  |
| r 7.8A.03 | ad F2019L01626 |
| r 7.8A.04 | ad F2019L01626 |
|  | rs F2023L01458 |
| r 7.8A.05 | ad F2019L01626 |
| r 7.8A.06 | ad F2019L01626 |
| r 7.8A.07 | ad F2019L01626 |
|  | am F2023L01458 |
| r 7.8A.08 | ad F2019L01626 |
| r 7.8A.09 | ad F2019L01626 |
| r 7.8A.10 | ad F2019L01626 |
| **Division 3** |  |
| r 7.8A.20 | ad F2019L01626 |
|  | am F2023L00193 |
| r 7.8A.25 | ad F2019L01626 |
| **Part 7.9** |  |
| **Division 1** |  |
| r 7.9.01 | ad No 319, 2001 |
|  | am No 16, 2002; No 145, 2002; No 10, 2004; No 145, 2004; No 31, 2005; No 102, 2007; No 324, 2007; F2019L01641; F2023L00990; F2023L01458 |
| r. 7.9.02 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 7.9.02A | ad. 2002 No. 16 |
|  | am. 2003 No. 282 |
|  | rs. 2005 No. 324 |
| r. 7.9.02B | ad. 2002 No. 16 |
| r. 7.9.02C | ad. 2003 No. 202 |
|  | rep. 2003 No. 369 |
| **Division 2** |  |
| Division 2 heading | am F2023L01458 |
| **Subdivision 2.1** |  |
| r 7.9.03 | ad No 319, 2001 |
|  | am F2023L01458 |
| **Subdivision 2.2** |  |
| r 7.9.04 | ad No 319, 2001 |
|  | rs No 16, 2002 |
|  | am No 145, 2002; No 202, 2003; No 282, 2003; No 145, 2004; F2017L00321; F2019L01641 |
| **Subdivision 2.3** |  |
| Subdivision 2.3 heading | am F2023L01458 |
| r 7.9.05 | ad No 319, 2001 |
|  | am F2023L01458 |
| **Subdivision 2.4** |  |
| Subdivision 2.4 heading | rs. 2002 No. 16 |
| r. 7.9.06 | ad. 2001 No. 319 |
|  | rep. 2002 No. 41 |
| r 7.9.06A | ad No 16, 2002 |
|  | am F2022L01689 |
| r 7.9.06B | ad No 16, 2002 |
|  | am F2023L01458 |
| **Subdivision 2.5** |  |
| r. 7.9.07 | ad. 2001 No. 319 |
|  | am. 2002 No. 41 |
| Subdivision 2.6 | rep. 2004 No. 145 |
| r. 7.9.07AA | ad. 2002 No. 145 |
|  | rep. 2004 No. 145 |
| **Division 2A** |  |
| Division 2A | ad. 2002 No. 16 |
| r. 7.9.07A | ad. 2002 No. 16 |
| **Division 2B** |  |
| Division 2B | ad. 2002 No. 16 |
| r. 7.9.07B | ad. 2002 No. 16 |
| r. 7.9.07C | ad. 2002 No. 16 |
|  | am. 2002 No. 41; 2009 No. 70 |
| **Division 2BA** |  |
| r 7.9.07CA | ad No 130, 2008 |
|  | am F2019L00392 |
| **Division 2C** |  |
| Division 2C | ad. 2003 No. 31 |
| r. 7.9.07D | ad. 2003 No. 31 |
|  | am 2003 No. 282 |
| r. 7.9.07E | ad. 2003 No. 282 |
| r. 7.9.07F | ad. 2003 No. 282 |
| r 7.9.07FA | ad 2005 No 324 |
|  | rs 2010 No 55 |
|  | am F2021L01841 |
| r. 7.9.07FB | ad. 2005 No. 324 |
| r 7.9.07FC | ad No 324, 2005 |
|  | am F2023L01458 |
| **Division 2D** |  |
| Division 2D | ad. 2003 No. 368 |
| r. 7.9.07J | ad. 2003 No. 368 |
| r. 7.9.07K | ad. 2005 No. 324 |
|  | rs. 2007 No. 324 |
| **Division 2E** |  |
| Division 2E | ad. No. 155, 2013 |
| **Subdivision 2E.1** |  |
| r. 7.9.07L | ad. No. 155, 2013 |
| r. 7.9.07M | ad. No. 155, 2013 |
| r. 7.9.07N | ad. No. 155, 2013 |
| r. 7.9.07P | ad. No. 155, 2013 |
| r. 7.9.07Q | ad. No. 155, 2013 |
| r. 7.9.07R | ad. No. 155, 2013 |
| r. 7.9.07S | ad. No. 155, 2013 |
| r. 7.9.07T | ad. No. 155, 2013 |
| r. 7.9.07U | ad. No. 155, 2013 |
| r. 7.9.07V | ad. No. 155, 2013 |
| r. 7.9.07W | ad. No. 155, 2013 |
| **Subdivision 2E.2** |  |
| Subdivision 2E.2 | ad F2021L01531 |
| 7.9.07Z | ad F2021L01531 |
| 7.9.07ZA | ad F2021L01531 |
| **Subdivision 2E.3** |  |
| Subdivision 2E.3 | ad F2023L00990 |
| r 7.9.07ZB | ad F2023L00990 |
|  | am F2023L01458 |
| r 7.9.07ZC | ad F2023L00990 |
| **Division 3** |  |
| r. 7.9.08 | ad. 2001 No. 319 |
|  | am. 2002 No. 41; 2005 No. 31 |
| r. 7.9.08A | ad. 2002 No. 41 |
| r. 7.9.08B | ad. 2002 No. 41 |
| r 7.9.08C | ad No 282, 2003 |
|  | am F2023L01458 |
| r. 7.9.08D | ad. 2005 No. 31 |
| Division 3A | ad. 2008 No. 194 |
|  | rep No 91, 2015 |
| r. 7.9.08E | ad. 2008 No. 194 |
|  | rep No 91, 2015 |
| **Division 4** |  |
| **Subdivision 4.1** |  |
| r 7.9.09 | ad No 319, 2001 |
|  | am No 16, 2002; No 158, 2008; No 135, 2010; No 91, 2015; F2022L00469; F2023L01458 |
| **Subdivision 4.1A** |  |
| Subdivision 4.1A | ad. 2012 No. 42 |
| r 7.9.09A | ad 2012 No 42 |
|  | am F2022L00469 |
| r. 7.9.09B | ad. 2012 No. 42 |
| r. 7.9.09C | ad. 2012 No. 42 |
| Subdivision 4.2 | ad. 2008 No. 158 |
|  | rep No 91, 2015 |
| r. 7.9.10 | ad No 319, 2001 (Sch 1 item 15 disallowed) |
|  | rs No 16, 2002 (Sch 1 item 78 disallowed) |
|  | ad No 158, 2008 |
|  | rep No 91, 2015 |
| r. 7.9.10A | ad. 2008 No. 158 |
|  | am 2011 No 66 |
|  | rep No 91, 2015 |
| r. 7.9.10B | ad. 2008 No. 158 |
|  | rep No 91, 2015 |
| r. 7.9.10C | ad. 2008 No. 158 |
|  | rep No 91, 2015 |
| r. 7.9.10D | ad. 2008 No. 158 |
|  | rs. 2008 No. 194 |
|  | rep No 91, 2015 |
| r. 7.9.10E | ad. 2008 No. 158 |
|  | am. 2008 No. 194 |
|  | rep No 91, 2015 |
| **Subdivision 4.2A** |  |
| Subdivision 4.2A heading | am F2023L01458 |
| Subdivision 4.2A | ad. 2010 No. 135 |
| r 7.9.11 | ad No 319, 2001 (Sch 1 item 15 disallowed) |
|  | am No 16, 2002 (Sch 1 items 79–82 disallowed) |
|  | ad No 135, 2010 |
|  | am F2022L00469; F2023L01458 |
| r 7.9.11A | ad No 135, 2010 |
|  | am F2023L01458 |
| r 7.9.11B | ad No 135, 2010 |
|  | am F2023L01458 |
| r 7.9.11C | ad No 135, 2010 |
|  | am F2023L01458 |
| r 7.9.11D | ad No 135, 2010 |
|  | am F2023L01458 |
| r 7.9.11E | ad No 135, 2010 |
|  | am No 274, 2011; F2023L01458 |
| r 7.9.11F | ad No 135, 2010 |
|  | am F2023L01458 |
| r 7.9.11G | ad No 135, 2010 |
|  | am F2023L01458 |
| r 7.9.11H | ad No 135, 2010 |
|  | am F2023L01458 |
| **Subdivision 4.2B** |  |
| Subdivision 4.2B | ad. 2010 No. 135 |
| r 7.9.11K | ad 2010 No 135 |
|  | am 2011 No 274; F2022L00469 |
| r. 7.9.11L | ad. 2010 No. 135 |
| r 7.9.11LA | ad No 26, 2013 |
|  | am F2023L01458 |
| r 7.9.11LB | ad No 26, 2013 |
|  | am F2023L01458 |
| r 7.9.11M | ad No 135, 2010 |
|  | am No 274, 2001; F2023L01458 |
| r. 7.9.11N | ad. 2010 No. 135 |
| r. 7.9.11O | ad. 2010 No. 135 |
| r 7.9.11P | ad No 135, 2010 |
|  | am No 274, 2011; F2023L01458 |
| r. 7.9.11Q | ad. 2010 No. 135 |
| r. 7.9.11R | ad. 2010 No. 135 |
| **Subdivision 4.2C** |  |
| Subdivision 4.2C | ad. 2010 No. 135 |
| r 7.9.11S | ad No 135, 2010 |
|  | am F2018L01144; F2022L00469 |
| r. 7.9.11T | ad. 2010 No. 135 |
| r 7.9.11U | ad No 135, 2010 |
|  | am No 274, 2011; F2023L01458 |
| r. 7.9.11V | ad. 2010 No. 135 |
| r. 7.9.11W | ad. 2010 No. 135 |
| r. 7.9.11X | ad. 2010 No. 135 |
|  | am. 2011 No. 274 |
| r. 7.9.11Y | ad. 2010 No. 135 |
| r. 7.9.11Z | ad. 2010 No. 135 |
| **Subdivision 4.2D** |  |
| Subdivision 4.2D | ad F2022L00469 |
| r 7.9.11ZA | ad F2022L00469 |
| r 7.9.11ZB | ad F2022L00469 |
| r 7.9.11ZC | ad F2022L00469 |
| r 7.9.11ZD | ad F2022L00469 |
| r 7.9.11ZE | ad F2022L00469 |
| r 7.9.11ZF | ad F2022L00469 |
| r 7.9.11ZG | ad F2022L00469 |
| r 7.9.11ZH | ad F2022L00469 |
| **Subdivision 4.3** |  |
| r 7.9.12 | ad No 319, 2001 |
|  | am No 16, 2002; No 31, 2005; F2023L01458 |
| r. 7.9.12A | ad. 2002 No. 145 |
|  | am. 2004 No. 145 |
|  | rep. 2004 No. 145 |
| r 7.9.13 | ad No 319, 2001 |
|  | am No 16, 2002; F2019L00392 |
| r. 7.9.13A | ad. 2003 No. 31 |
|  | rep. 2007 No. 324 |
|  | ad. 2008 No. 194 |
|  | rep No 91, 2015 |
| r 7.9.14 | ad No 319, 2001 |
|  | am No 16, 2002; No 41, 2002; No 194, 2008; F2023L01458 |
| r. 7.9.14A | ad. 2002 No. 16 |
| **Subdivision 4.4** |  |
| Subdivision 4.4 heading | rs. 2002 No. 16 |
| r 7.9.14B | ad No 16, 2002 |
|  | am F2019L00392 |
| **Division 4A** |  |
| Division 4A heading | ad. 2002 No. 16 |
| r. 7.9.14C | ad. 2002 No. 16 |
| r 7.9.14D | ad 2010 No 55 |
|  | am F2021L01841 |
| r. 7.9.15 | ad. 2001 No. 319 |
|  | am. 2003 No. 202; 2010 No. 55 |
| r. 7.9.15A | ad. 2004 No. 149 |
| r. 7.9.15B | ad. 2004 No. 149 |
| r. 7.9.15C | ad. 2004 No. 149 |
|  | am. 2007 No. 259 |
| r. 7.9.15CA | ad. 2010 No. 55 |
| r. 7.9.15D | ad. 2005 No. 324 |
| r 7.9.15DA | ad No 259, 2007 |
|  | am No 135, 2010; F2022L00469; F2023L01458 |
| r 7.9.15DB | ad No 259, 2007 |
|  | am No 135, 2010; F2022L00469; F2023L01458 |
| r 7.9.15DC | ad No 259, 2007 |
|  | am No 135, 2010; F2022L00469; F2023L01458 |
| r. 7.9.15E | ad. 2005 No. 324 |
| r. 7.9.15F | ad. 2005 No. 324 |
| r. 7.9.15FA | ad. 2007 No. 259 |
| r 7.9.15G | ad 2005 No 324 |
|  | rep F2021L01841 |
| r. 7.9.15H | ad. 2005 No. 324 |
| r. 7.9.15I | ad. 2005 No. 324 |
| r. 7.9.16 | ad. 2001 No. 319 |
| r 7.9.16A | ad No 41, 2002 |
|  | am F2018L01144 |
| **Division 4B** |  |
| Division 4B | ad. 2003 No. 369 |
| r. 7.9.16G | ad. 2003 No. 369 |
|  | am. No. 26, 2013 |
| **Division 4C** |  |
| Division 4C | ad. 2005 No. 31 |
| **Subdivision 4C.1** |  |
| r 7.9.16J | ad No 31, 2005 |
|  | am F2018L01144; F2019L01641; F2022L00469 |
| r 7.9.16JA | ad 2005 No 139 |
|  | am F2022L00469 |
| r 7.9.16K | ad 2005 No 31 |
|  | am 2005 No 139; F2022L00469 |
| **Subdivision 4C.2** |  |
| r 7.9.16L | ad No 31, 2005 |
|  | am No 135, 2010; F2022L00469 (Sch 3 items 12, 13 md not incorp); F2023L01458 |
| r. 7.9.16M | ad. 2005 No. 31 |
| r. 7.9.16N | ad. 2005 No. 31 |
| **Subdivision 4C.3** |  |
| r. 7.9.16O | ad. 2005 No. 31 |
| **Division 4D** |  |
| Division 4D | ad. 2007 No. 324 |
| **Subdivision 4D.1** |  |
| r 7.9.16T | ad. 2007 No. 324 |
| **Division 5** |  |
| **Subdivision 5.1** |  |
| r. 7.9.17 | ad. 2001 No. 319 |
| **Subdivision 5.2** |  |
| Subdivision 5.2 heading | am F2023L01458 |
| r. 7.9.18 | ad. 2001 No. 319 |
| r 7.9.19 | ad No 319, 2001 |
|  | am No 16, 2002; No 282, 2003; No 149, 2004; F2019L01641; F2023L01458 |
| r. 7.9.19A | ad. 2004 No. 149 |
| r. 7.9.19B | ad. 2004 No. 149 |
| r 7.9.20 | ad No 319, 2001 |
|  | am No 16, 2002; No 202, 2003; No 282, 2003; No 10, 2004; No 149, 2004; No 52, 2009; No 155, 2013; No 202, 2013; No 39, 2015; F2017L00321 |
| r 7.9.20AA | ad 2009 No 52 |
|  | am F2021L01841 |
| r. 7.9.20A | ad. 2004 No. 149 |
| r. 7.9.20B | ad. 2004 No. 149 |
| r. 7.9.21 | ad. 2001 No. 319 |
| r. 7.9.22 | ad. 2001 No. 319 |
| r. 7.9.23 | ad. 2001 No. 319 |
| r. 7.9.24 | ad. 2001 No. 319 |
| **Subdivision 5.3** |  |
| r. 7.9.25 | ad. 2001 No. 319 |
| r. 7.9.26 | ad. 2001 No. 319 |
|  | am. 2002 No. 16; 2004 No. 10 |
| r. 7.9.27 | ad. 2001 No. 319 |
| r. 7.9.28 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| **Subdivision 5.4** |  |
| Subdivision 5.4 heading | rs. 2002 No. 16 |
| r. 7.9.29 | ad. 2001 No. 319 |
| r. 7.9.30 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| **Subdivision 5.4A** |  |
| Subdivision 5.4A | ad. 2010 No. 89 |
| r 7.9.30A | ad No 89, 2010 |
|  | am F2023L01458 |
| r. 7.9.30B | ad. 2010 No. 89 |
| **Subdivision 5.5** |  |
| r. 7.9.31 | ad. 2001 No. 319 |
| r 7.9.31A | ad F2023L00990 |
| r 7.9.32 | ad No 319, 2001 |
|  | am No 16, 2002; F2023L00990 |
| r 7.9.33 | ad No 319, 2001 |
|  | am F2023L00990 |
| **Subdivision 5.6** |  |
| Subdivision 5.6 heading | am F2023L01458 |
| r. 7.9.34 | ad. 2001 No. 319 |
| r 7.9.35 | ad No 319, 2001 |
|  | am F2023L00990 |
| r 7.9.36 | ad No 319, 2001 |
|  | am F2023L00990 |
| r 7.9.37 | ad No 319, 2001 |
|  | am No 52, 2009; F2023L00990 |
| r 7.9.38 | ad No 319, 2001 |
|  | rep F2023L00990 |
| r. 7.9.39 | ad. 2001 No. 319 |
| **Subdivision 5.7** |  |
| r. 7.9.40 | ad. 2001 No. 319 |
| r 7.9.41 | ad No 319, 2001 |
|  | am F2023L00990 |
| r 7.9.42 | ad No 319, 2001 |
|  | am No 16, 2002; F2023L00990 |
| **Subdivision 5.8** |  |
| r 7.9.43 | ad No 319, 2001 |
|  | am F2023L01458 |
| r 7.9.44 | ad No 319, 2001 |
|  | am No 41, 2002; F2023L01458 |
| **Subdivision 5.8A** |  |
| Subdivision 5.8A | ad F2019L00539 |
| r 7.9.44A | ad F2019L00539 |
| r 7.9.44B | ad F2019L00539 |
| r 7.9.44C | ad F2019L00539 |
| **Subdivision 5.9** |  |
| r 7.9.45 | ad No 319, 2001 |
|  | am No 16, 2002; F2023L00990; F2023L01458 |
| r. 7.9.46 | ad. 2001 No. 319 |
| **Subdivision 5.10** |  |
| r. 7.9.47 | ad. 2001 No. 319 |
| Subdivision 5.11 | rep F2018L00515 |
| r. 7.9.48 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
|  | rs. No. 155, 2013 |
|  | rep F2018L00515 |
| r. 7.9.48A (first occurring) | ad. No. 155, 2013 |
|  | rep F2018L00515 |
| r. 7.9.48B (first occurring) | ad. No. 155, 2013 |
|  | rep F2018L00515 |
| r. 7.9.48C | ad. No. 155, 2013 |
|  | rep F2018L00515 |
| r. 7.9.48D | ad. No. 155, 2013 |
|  | rep F2018L00515 |
| r. 7.9.48A (second occurring) | ad. No. 155, 2013 |
|  | rep F2018L00515 |
| r. 7.9.48B (second occurring) | ad. No. 155, 2013 |
|  | rep F2018L00515 |
| **Subdivision 5.12** |  |
| Subdivision 5.12 heading | am F2023L01458 |
| r 7.9.49 | ad No 319, 2001 |
|  | am F2023L01458 |
| r 7.9.50 | ad No 319, 2001 |
|  | am F2022L01689 |
| r. 7.9.51 | ad. 2001 No. 319 |
| r 7.9.52 | ad No 319, 2001 |
|  | am No 16, 2002; F2023L01458 |
| r 7.9.53 | ad No 319, 2001 |
|  | am F2023L01458 |
| r. 7.9.54 | ad. 2001 No. 319 |
| r. 7.9.55 | ad. 2001 No. 319 |
| r 7.9.56 | ad No 319, 2001 |
|  | am F2023L01458 |
| r 7.9.57 | ad No 319, 2001 |
|  | am F2023L01458 |
| r. 7.9.58 | ad. 2001 No. 319 |
| r. 7.9.59 | ad. 2001 No. 319 |
| r. 7.9.60 | ad. 2001 No. 319 |
| Subdivision 5.13 heading | rep. 2003 No. 368 |
| **Division 5AA** |  |
| Division 5AA heading | ad. 2003 No. 368 |
| r. 7.9.61 | ad. 2001 No. 319 |
| renumbered r. 7.6.60A | 2005 No. 31 |
| r 7.9.60B | ad No 31, 2005 |
|  | am No 139, 2005; F2018L01144; F2022L00469 |
| **Division 5AB** |  |
| Division 5AB | ad. 2005 No. 324 |
| r 7.9.61AA | ad No 324, 2005 |
|  | am F2019L01641; F2023L01458 |
| **Division 5A** |  |
| Division 5A | ad. 2002 No. 16 |
| r. 7.9.61A | ad. 2002 No. 16 |
| r. 7.9.61B | ad. 2002 No. 16 |
| r. 7.9.61C | ad. 2002 No. 16 |
|  | rs. 2003 No. 31 |
| **Division 5B** |  |
| Division 5B | ad. 2002 No. 16 |
| r 7.9.61D | ad No 16, 2002 |
|  | am No 41, 2002; No 202, 2003; F2023L01458 |
| **Division 5C** |  |
| Division 5C | ad. 2012 No. 267 |
| r 7.9.61E | ad No 267, 2012 |
|  | rs F2023L01458 |
| **Division 6** |  |
| r 7.9.62 | ad No 319, 2001 |
|  | am No 16, 2002; No 41, 2002; No 31, 2003; No 202, 2003; No 10, 2004; No 158, 2008; No 91, 2015; F2018L01144; F2021L00127; F2023L01458 |
| r. 7.9.63 | ad. 2001 No. 319 |
| r. 7.9.63A | ad. 2002 No. 16 |
| r. 7.9.63B | ad. 2002 No. 16 |
|  | am. 2002 No. 41; 2004 No. 25; 2009 No. 70 |
| r. 7.9.63C | ad. 2002 No. 16 |
|  | am. 2010 No. 210 |
| r 7.9.63D | ad No 16, 2002 |
|  | am F2023L01458 |
| r. 7.9.63E | ad. 2002 No. 16 |
| r. 7.9.63F | ad. 2002 No. 41 |
| r. 7.9.63G | ad. 2002 No. 41 |
| r. 7.9.63H | ad. 2002 No. 41 |
| r. 7.9.63I | ad. 2002 No. 126 |
| **Division 7** |  |
| r 7.9.64 | ad No 391, 2001 |
|  | am No 16, 2002; No 41, 2002; No 202, 2003; F2018L01144; F2022L00469; F2023L01458 |
| r. 7.9.64A | ad. 2002 No. 41 |
| r. 7.9.65 | ad No. 319, 2001 |
|  | am No. 41, 2002; No. 31, 2003; No 194, 2008; F2018L01144 |
| r. 7.9.65A | ad. 2008 No. 194 |
|  | rep No 91, 2015 |
| r 7.9.66 | ad No 319, 2001 |
|  | am No 16, 2002; No 41, 2002; No 194, 2008; F2023L01458 |
| r 7.9.67 | ad No 319, 2001 |
|  | am No 16, 2002; No 41, 2002; F2018L01144; F2022L00469; F2023L01458 |
| r. 7.9.68 | ad. 2001 No. 319 |
|  | am. 2002 No 16 and 41 |
| r. 7.9.68A | ad. 2002 No. 145 |
|  | am. 2004 No. 145 |
|  | rep. 2004 No. 145 |
| r 7.9.69 | ad 2001 No 319 |
|  | am 2002 No 16; F2018L01144; F2022L00469 |
| r 7.9.70 | ad No 319, 2001 |
|  | am F2018L01144; F2022L00469 |
| **Division 8** |  |
| r. 7.9.71 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 7.9.71A | ad. 2003 No. 202 |
| r 7.9.72 | ad No 319, 2001 |
|  | am No 149, 2004; No 31, 2005; F2023L01458 |
| r. 7.9.72A | ad. 2002 No. 16 |
|  | rep. 2005 No. 31 |
| r. 7.9.73 | ad. 2001 No. 319 |
| r. 7.9.74 | ad. 2001 No. 319 |
|  | am. 2002 No 16 and 145; 2004 No. 145 |
| r. 7.9.74A | ad. 2004 No. 149 |
| r. 7.9.74B | ad. 2008 No. 158 |
|  | am. 2011 No. 272 |
|  | rep No 91, 2015 |
| r 7.9.75 | ad No 319, 2001 |
|  | rs No 282, 2003 |
|  | am No 149, 2004; No 31, 2005; No 139, 2005; F2018L01144; F2019L01641 |
| r 7.9.75A | ad No 126, 2002 |
|  | am F2023L00990 |
| r. 7.9.75B | ad. 2002 No. 126 |
| r 7.9.75BA | ad No 52, 2009 |
|  | am F2021L01841 |
|  | rep F2023L00990 |
| r. 7.9.75C | ad. 2004 No. 149 |
| r. 7.9.75D | ad. 2004 No. 149 |
| r. 7.9.76 | ad. 2001 No. 319 |
| r 7.9.77 | ad 2001 No 319 |
|  | am 2009 No 386; F2018L00515 |
| r 7.9.77A | ad F2019L00537 |
| r. 7.9.78 | ad. 2001 No. 319 |
|  | am. 2003 No. 202 |
| r. 7.9.79 | ad. 2001 No. 319 |
|  | rep. 2009 No. 12 |
| r. 7.9.80 | ad. 2001 No. 319 |
|  | rep. 2005 No. 324 |
| r. 7.9.80A | ad. 2002 No. 16 |
|  | rep. 2009 No. 12 |
| r 7.9.80B | ad No 282, 2003 |
|  | am F2023L01458 |
| r. 7.9.80C | ad. 2003 No. 368 |
|  | rep. 2005 No. 324 |
| r. 7.9.80D | ad. 2003 No. 368 |
|  | rep. 2005 No. 324 |
| **Division 9** |  |
| Division 9 | ad. 2002 No. 16 |
| r. 7.9.81 | ad. 2002 No. 16 |
| r. 7.9.82 | ad. 2002 No. 16 |
| Division 10 | ad. 2002 No. 16 |
|  | rep. 2003 No. 369 |
| r. 7.9.83 | ad. 2002 No. 16 |
|  | rep. 2003 No. 369 |
| **Division 11** |  |
| Division 11 | ad. 2002 No. 16 |
| r 7.9.84 | ad 2002 No 16 |
|  | am F2020L01610 |
| r. 7.9.85 | ad. 2002 No. 16 |
| r 7.9.86 | ad No 16, 2002 |
|  | am F2023L01458 |
| r. 7.9.87 | ad. 2002 No. 16 |
| r 7.9.88 | ad 2002 No 16 |
|  | am 2003 No 368; F2020L01610 |
| r 7.9.89 | ad No 16, 2002 |
|  | am No 368, 2003; F2023L01458 |
| r 7.9.90 | ad No 16, 2002 |
|  | am F2023L01458 |
| r 7.9.91 | ad No 16, 2002 |
|  | am F2023L01458 |
| r 7.9.92 | ad No 16, 2002 |
|  | am F2023L01458 |
| r. 7.9.93 | ad. 2002 No. 16 |
|  | am. 2003 No. 368 |
| r 7.9.94 | ad No 16, 2002 |
|  | am F2023L01458 |
| **Division 12** |  |
| Division 12 | ad. 2003 No. 127 |
| r. 7.9.95 | ad. 2003 No. 127 |
| **Division 13** |  |
| Division 13 | ad. 2003 No. 369 |
| **Subdivision A** |  |
| Subdivision A | ad F2018L01379 |
| r 7.9.95A | ad F2018L01379 |
| r 7.9.95B | ad F2018L01379 |
| r 7.9.95C | ad F2018L01379 |
| r 7.9.95D | ad F2018L01379 |
| **Subdivision B** |  |
| Subdivision B heading | ad F2018L01379 |
| r. 7.9.96 | ad. 2003 No. 369 |
| r. 7.9.97 | ad. 2005 No. 31 |
| r. 7.9.97A | ad. 2009 No. 103 |
| **Division 14** |  |
| Division 14 | ad. 2005 No. 324 |
| r. 7.9.98 | ad. 2005 No. 324 |
| r 7.9.98A | ad No 172, 2012 |
|  | am F2020L00942; F2022L01614 |
| **Division 15** |  |
| Division 15 | ad. 2009 No. 327 |
| r. 7.9.99 | ad. 2009 No. 327 |
|  | rs. 2009 No. 327 |
| r. 7.9.100 | ad. 2009 No. 327 |
|  | am. 2009 No. 327; 2011 No. 193 |
| r. 7.9.100A | ad. 2009 No. 327 |
| r. 7.9.101 | ad. 2009 No. 327 |
|  | am. 2011 No. 193 |
| r. 7.9.102 | ad. 2009 No. 327 |
|  | am. 2009 No. 327 |
| **Part 7.10** |  |
| Part 7.10 | ad. 2002 No. 16 |
| r 7.10.01 | rep No 319, 2001 |
|  | ad No 16, 2002 |
|  | rs F2023L01458 |
| r 7.10.02 | ad No 102, 2006 |
|  | am No 247, 2012; No 25, 2013; No 33, 2014; No 88, 2014 |
|  | rs No 185, 2014 |
|  | am No 92, 2015; No 134, 2015; F2016L00156; F2017L00595; F2018L00096; F2018L01393; F2019L00368; F2019L01351; F2020L00699; F2021L00520; F2021L01186; F2022L00350; F2022L00831; F2023L01394 |
| r 7.10.03 | ad No 33, 2014 |
| **Part 7.10B** |  |
| Part 7.10B | ad F2023L00988 |
| r 7.10B.50 | ad F2023L00988 |
| r 7.10B.55 | ad F2023L00988 |
| **Part 7.11** |  |
| **Division 1** |  |
| r 7.11.01 | rs No 319, 2001 |
|  | am No 43, 2012; F2023L01458 |
| r. 7.11.02 | ad. 2001 No. 319 |
|  | rep. 2012 No. 43 |
| r. 7.11.03 | ad. 2001 No. 319 |
| r. 7.11.04 | ad. 2001 No. 319 |
| r. 7.11.05 | ad. 2001 No. 319 |
| r. 7.11.06 | ad. 2001 No. 319 |
| r. 7.11.07 | ad. 2001 No. 319 |
| r. 7.11.08 | ad. 2001 No. 319 |
| **Division 2** |  |
| r. 7.11.09 | ad. 2001 No. 319 |
| **Division 3** |  |
| r. 7.11.10 | ad. 2001 No. 319 |
| r. 7.11.11 | ad. 2001 No. 319 |
| r 7.11.12 | ad No 319, 2001 |
|  | rs No 43, 2012 |
|  | am F2023L01458 |
| r. 7.11.13 | ad. 2001 No. 319 |
|  | rs. 2012 No. 43 |
| r. 7.11.14 | ad. 2001 No. 319 |
| r. 7.11.15 | ad. 2001 No. 319 |
| r. 7.11.16 | ad. 2001 No. 319 |
| r. 7.11.17 | ad. 2001 No. 319 |
| r. 7.11.18 | ad. 2001 No. 319 |
| r. 7.11.19 | ad. 2001 No. 319 |
| r. 7.11.20 | ad. 2001 No. 319 |
| r. 7.11.21 | ad. 2001 No. 319 |
|  | am. 2012 No. 43 |
| r. 7.11.22 | ad. 2001 No. 319 |
|  | rs. 2004 No. 398 |
|  | am. 2007 No. 323 |
| **Division 4** |  |
| r 7.11.23 | ad No 319, 2001 |
|  | am F2023L01458 |
| r. 7.11.24 | ad. 2001 No. 319 |
| r. 7.11.25 | ad. 2001 No. 319 |
| r 7.11.26 | ad No 319, 2001 |
|  | am F2023L01458 |
| r. 7.11.27 | ad. 2001 No. 319 |
| r. 7.11.28 | ad. 2001 No. 319 |
| r. 7.11.29 | ad. 2001 No. 319 |
| r. 7.11.30 | ad. 2001 No. 319 |
|  | am. 2002 No. 282 |
| r. 7.11.31 | ad. 2001 No. 319 |
|  | am. 2002 No. 282 |
| r. 7.11.32 | ad. 2001 No. 319 |
|  | am. 2002 No. 282 |
| r. 7.11.33 | ad. 2001 No. 319 |
| r. 7.11.34 | ad. 2001 No. 319 |
| r. 7.11.35 | ad. 2001 No. 319 |
| r. 7.11.36 | ad. 2001 No. 319 |
| r. 7.11.37 | ad. 2001 No. 319 |
| r. 7.11.38 | ad. 2001 No. 319 |
| r. 7.11.39 | ad. 2001 No. 319 |
| **Division 5** |  |
| r 7.11.40 | ad No 319, 2001 |
|  | am No 43, 2012; F2023L01458 |
| r. 7.11.41 | ad. 2001 No. 319 |
| r. 7.11.42 | ad. 2001 No. 319 |
| **Division 6** |  |
| r. 7.11.43 | ad. 2001 No. 319 |
| **Part 7.12** |  |
| r. 7.12.01 | ad. 2001 No. 319 |
| rr. 7.13.01–7.13.03 | rep. 2001 No. 319 |
| rr. 7.14.01, 7.14.02 | rep. 2001 No. 319 |
| r. 7.15.01 | rep. 2001 No. 319 |
| **Chapter 8** |  |
| Chapter 8 | rep. 2001 No. 319 |
|  | ad. 2008 No. 94 |
| **Part 8.1** |  |
| r 8.1.01 | rep No 319, 2001 |
|  | ad No 94. 2008 |
|  | am No 175, 2014; F2022L01689 |
| r. 8.1.01A | rep. 2001 No. 319 |
| r 8.1.02 | rep No 319, 2001 |
|  | ad No 94, 2008 |
|  | am No 175, 2014; F2022L01689; F2023L01458 |
| r 8.1.03 | ad No 94, 2008 |
|  | am F2022L01689 |
| **Part 8.2** |  |
| **Division 1** |  |
| r 8.2.01 | rep No 319, 2001 |
|  | ad No 94, 2008 |
|  | am No 301, 2010 (md not incorp); No 175, 2014; F2023L01458 |
| r 8.2.02 | rep No 319, 2001 |
|  | ad No 94, 2008 |
|  | am No 301, 2010; No 175, 2014; F2023L01458 |
| r. 8.2.03 | rep. 2001 No. 319 |
|  | ad. 2008 No. 94 |
| r. 8.2.04 | ad. 2008 No. 94 |
|  | am No 190, 2013 |
| rr. 8.3.01–8.3.06 | rep. 2001 No. 319 |
| **Division 4** |  |
| r. 8.4.01 | rep. 2001 No. 319 |
|  | ad. 2008 No. 94 |
| rr. 8.4.01A, 8.4.01B | rep. 2001 No. 319 |
| r. 8.4.02 | rep. 2001 No. 319 |
|  | ad. 2008 No. 94 |
| r. 8.4.03 | rep. 2001 No. 319 |
| rr. 8.4.03A, 8.4.03B | rep. 2001 No. 319 |
| r. 8.4.04 | rep. 2001 No. 319 |
| r. 8.6.01 | rep. 2001 No. 319 |
| rr. 8.7.01–8.7.03 | rep. 2001 No. 319 |
| **Chapter 8A** |  |
| Chapter 8A | ad F2018L01144 |
| **Part 8A.4** |  |
| **Division 1** |  |
| r 8A.4.10 | ad F2018L01144 |
| **Division 4** |  |
| r 8A.4.40 | ad F2018L01144 |
| r 8A.4.45 | ad F2018L01144 |
| **Part 8A.5** |  |
| r 8A.5.10 | ad F2018L01144 |
|  | am F2022L00469; F2023L01458 |
| **Part 8A.7** |  |
| r 8A.7.10 | ad F2018L01144 |
| r 8A.7.15 | ad F2018L01144 |
| r 8A.7.20 | ad F2018L01144 |
| **Chapter 8B** |  |
| Chapter 8B | ad F2022L00469 |
| **Part 8B.4** |  |
| **Division 1** |  |
| r 8B.4.10 | ad F2022L00469 |
| r 8B.4.15 | ad F2022L00469 |
| **Division 4** |  |
| r 8B.4.40 | ad F2022L00469 |
| r 8B.4.45 | ad F2022L00469 |
| r 8B.4.50 | ad F2022L00469 |
| **Part 8B.5** |  |
| r 8B.5.10 | ad F2022L00469 |
| r 8B.5.15 | ad F2022L00469 |
| r 8B.5.20 | ad F2022L00469 |
| **Chapter 9** |  |
| **Part 9.1** |  |
| r 9.1.01 | am No 319, 2001; No 54, 2010; No 3, 2015; F2016L01926; F2017L00117; F2018L01144 |
| r 9.1.02 | am No 319, 2001; No 198, 2007; No 325, 2007; No 54, 2010; No 3, 2015; F2016L01926; F2017L00117; F2018L01144; F2020L01654; F2022L00469; F2023L01458 |
| **Part 9.2** |  |
| Part 9.2 heading | rs F2016L01926 |
| **Division 2** |  |
| Division 2 heading | ad. 2004 No. 208 |
| r. 9.2.01 | rs. 2004 No. 208 |
| r 9.2.02 | rs No 208, 2004 |
|  | am F2016L01926 |
| r. 9.2.03 | rs. 2004 No. 208 |
|  | am. 2011 No. 142 |
| r. 9.2.04 | rs. 2004 No. 208 |
|  | rep. 2007 No. 325 |
| r. 9.2.05 | rep. 2009 No. 198 |
| r. 9.2.06 | rep. 2009 No. 198 |
| r. 9.2.07 | rep. 2009 No. 198 |
| **Division 2A** |  |
| Division 2A | ad. 2004 No. 208 |
| r. 9.2.08 | ad. 2004 No. 208 |
| **Part 9.2A** |  |
| Part 9.2A | ad. 2004 No. 208 |
| **Division 1** |  |
| r 9.2A.01 | ad No 208, 2004 |
|  | am F2016L01926 |
| r. 9.2A.03 | ad. 2004 No. 208 |
| Part 9.4 | rep F2019L00392 |
| r 9.4.01 | rep F2019L00392 |
| r 9.4.02 | am F2018L01144 |
|  | rep F2019L00392 |
| r 9.4.03 | ad No 194, 2003 |
|  | rep F2019L00392 |
| **Part 9.4A** |  |
| r 9.4A.01 | am No 319, 2001; F2018L01144; F2023L01458 |
| r 9.4A.02 | am No 319, 2001; F2018L01144; F2023L01458 |
| **Part 9.4AB** |  |
| Part 9.4AB | ad F2019L00392 |
| r 9.4AB.01 | ad F2019L00392 |
|  | am F2021L01072 |
| r 9.4AB.02 | ad F2019L00392 |
|  | am F2021L00581; F2021L01072 |
| **Part 9.5** |  |
| r 9.5.01 | am F2021L01854 |
| **Part 9.7** |  |
| Part 9.7 | ad. No. 117, 2013 |
| r. 9.7.01 | ad. No. 117, 2013 |
| **Part 9.10** |  |
| Part 9.10 | ad F2019L00392 |
| r 9.10.01 | ad F2019L00392 |
|  | am F2022L01689 |
| **Part 9.12** |  |
| Part 9.12 | ad. 2002 No. 16 |
| Heading to r. 9.12.01 | rs. 2002 No. 41 |
| r. 9.12.01 | ad. 2002 No. 16 |
| r 9.12.02 | ad No 41, 2002 |
|  | rep No 145, 2002 |
|  | ad No 182, 2002 |
|  | am No 364, 2007; F2022L01689; F2023L01458 |
| r. 9.12.03 | ad. 2002 No. 41 |
|  | rep. 2002 No. 145 |
|  | ad. 2003 No. 367 |
| r 9.12.03A (prev r 9.12.04 first occurring) |  |
| r 9.12.04 (first occurring) | ad No 83, 2013 |
|  | renum F2022L01627 |
| r. 9.12.04 (second occurring) | ad No 41, 2002 |
|  | rep No 145, 2002 |
|  | ad No 59, 2013 |
| r 9.12.05 | ad No 33, 2014 |
| **Chapter 10** |  |
| Chapter 10 heading | rs No 135, 2015 |
| Part 10.1 | rep LA s 48C |
| r 10.1.01 | rep LA s 48C |
| r 10.1.02 | rep LA s 48C |
| **Part 10.2** |  |
| Heading to Part 10.2 | rs. 2003 No. 369 |
| Part 10.2 | ad. 2001 No. 319 |
| **Division 1** |  |
| r. 10.2.01 | ad. 2001 No. 319 |
| r. 10.2.02 | ad. 2001 No. 319 |
|  | rs. 2002 No. 16 |
| r. 10.2.02A | ad. 2002 No. 41 |
| r. 10.2.02B | ad. 2002 No. 41 |
| **Division 1A** |  |
| Division 1A | ad. 2002 No. 41 |
| r. 10.2.02C | ad. 2002 No. 41 |
|  | am. 2002 No. 53 |
| **Division 2** |  |
| **Subdivision 2.1** |  |
| r. 10.2.03 | ad. 2001 No. 319 |
| r. 10.2.04 | ad. 2001 No. 319 |
| r. 10.2.05 | ad. 2001 No. 319 |
| r. 10.2.06 | ad. 2001 No. 319 |
| **Subdivision 2.2** |  |
| r. 10.2.07 | ad. 2001 No. 319 |
| **Division 3** |  |
| r. 10.2.08 | ad. 2001 No. 319 |
| r. 10.2.09 | ad. 2001 No. 319 |
| r. 10.2.10 | ad. 2001 No. 319 |
| r. 10.2.11 | ad. 2001 No. 319 |
| **Division 4** |  |
| r. 10.2.12 | ad. 2001 No. 319 |
| r. 10.2.13 | ad. 2001 No. 319 |
| r. 10.2.14 | ad. 2001 No. 319 |
| r. 10.2.15 | ad. 2001 No. 319 |
| r. 10.2.16 | ad. 2001 No. 319 |
| r. 10.2.17 | ad. 2001 No. 319 |
| r. 10.2.18 | ad. 2001 No. 319 |
| **Division 5** |  |
| r. 10.2.19 | ad. 2001 No. 319 |
| r. 10.2.20 | ad. 2001 No. 319 |
| **Division 5A** |  |
| Division 5A | ad. 2002 No. 53 |
| r. 10.2.20A | ad. 2002 No. 53 |
| **Division 5B** |  |
| Division 5B | ad. 2002 No. 126 |
| r. 10.2.20B | ad. 2002 No. 126 |
| **Division 6** |  |
| r. 10.2.21 | ad. 2001 No. 319 |
| r. 10.2.22 | ad. 2001 No. 319 |
| **Division 7** |  |
| r. 10.2.23 | ad. 2001 No. 319 |
| r. 10.2.24 | ad. 2001 No. 319 |
| **Division 8** |  |
| Division 8 | rs. 2002 No. 145 |
| r. 10.2.25 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.26 | ad. 2001 No. 319 |
|  | am. 2002 No. 16; 2005 No. 38 |
| r. 10.2.27 | ad. 2001 No. 319 |
|  | am. 2002 No. 16; 2005 No. 38 |
| r. 10.2.27A | ad. 2002 No. 145 |
| **Division 9** |  |
| r. 10.2.28 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.29 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.29A | ad. 2002 No. 16 |
| r. 10.2.30 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| **Division 10** |  |
| r. 10.2.31 | ad. 2001 No. 319 |
| r. 10.2.32 | ad. 2001 No. 319 |
| **Division 11** |  |
| r. 10.2.33 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| **Division 12** |  |
| r. 10.2.34 | ad. 2001 No. 319 |
| **Division 13** |  |
| r. 10.2.35 | ad. 2001 No. 319 |
| r. 10.2.35A | ad. 2003 No. 31 |
| r 10.2.36 | ad No 319, 2001 |
|  | rs No 31, 2003 |
|  | am F2016L01926 (amdt never applied (Sch 1 item 96)) |
| r. 10.2.37 | ad. 2001 No. 319 |
|  | am. 2002 No. 16; 2003 No. 31 |
| r. 10.2.38 | ad. 2001 No. 319 |
|  | am. 2002 No 16 and 41; 2003 No. 31 |
| r. 10.2.39 | ad. 2001 No. 319 |
| r. 10.2.40 | ad. 2001 No. 319 |
| r. 10.2.40A | ad. 2002 No. 53 |
|  | am. 2002 No. 126 |
| r. 10.2.41 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.42 | ad. 2001 No. 319 |
| r. 10.2.43 | ad. 2001 No. 319 |
| r. 10.2.44 | ad. 2001 No. 319 |
|  | rep. 2007 No. 197 |
| r. 10.2.44A | ad. 2002 No. 41 |
|  | rs. 2003 No. 31 |
|  | am. 2003 No. 202 |
| r. 10.2.45 | ad. 2001 No. 319 |
|  | rep. 2007 No. 197 |
| r. 10.2.46 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
|  | (1)(a) exp 11 Mar 2004 (r 10.2.46(2)) |
| r. 10.2.46A | ad. 2002 No. 16 |
|  | (1)(a), (2)(a), (3)(a), (4)(a) exp 11 Mar 2004 (r 10.2.46A(5)) |
| r 10.2.47 | ad 2001 No 319 |
|  | rep F2018L00515 |
| r. 10.2.47A | ad. 2002 No. 41 |
| **Division 14** |  |
| Division 14 | rs. 2002 No. 16 |
| r. 10.2.48 | ad. 2001 No. 319 |
| r. 10.2.48A | ad. 2003 No. 126 |
| r. 10.2.49 | ad. 2001 No. 319 |
| r 10.2.50 | ad No 319, 2001 |
|  | am No 16, 2002; F2019L00392 |
| r. 10.2.50A | ad. 2002 No. 41 |
|  | (2) exp 11 Mar 2004 (r 10.2.50A(3)) |
| **Division 15** |  |
| r. 10.2.51 | ad. 2001 No. 319 |
|  | am. 2003 No. 282 |
| r. 10.2.52 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.52A | ad. 2002 No. 16 |
|  | am. 2002 No. 41 |
| r. 10.2.53 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.54 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.55 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.56 | ad. 2001 No. 319 |
| r. 10.2.57 | ad. 2001 No. 319 |
| r. 10.2.58 | ad. 2001 No. 319 |
| r. 10.2.59 | ad. 2001 No. 319 |
| r. 10.2.60 | ad. 2001 No. 319 |
| r. 10.2.61 | ad. 2001 No. 319 |
| r. 10.2.62 | ad. 2001 No. 319 |
| r. 10.2.63 | ad. 2001 No. 319 |
| r. 10.2.64 | ad. 2001 No. 319 |
| r. 10.2.65 | ad. 2001 No. 319 |
| r. 10.2.66 | ad. 2001 No. 319 |
| r. 10.2.67 | ad. 2001 No. 319 |
| r. 10.2.68 | ad. 2001 No. 319 |
| r. 10.2.69 | ad. 2001 No. 319 |
| r. 10.2.70 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.71 | ad. 2001 No. 319 |
|  | am. 2002 No 16 and 41 |
| r. 10.2.72 | ad. 2001 No. 319 |
| r. 10.2.73 | ad. 2001 No. 319 |
| r. 10.2.73A | ad. 2002 No. 41 |
| r. 10.2.73B | ad. 2002 No. 41 |
| **Division 16** |  |
| r. 10.2.74 | ad. 2001 No. 319 |
|  | am. 2002 No 16 and 41 |
| r. 10.2.75 | ad. 2001 No. 319 |
|  | am. 2002 No. 41 |
| r. 10.2.76 | ad. 2001 No. 319 |
| r. 10.2.77 | ad. 2001 No. 319 |
|  | rs. 2002 No. 41 |
| r. 10.2.78 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.79 | ad. 2001 No. 319 |
|  | am. 2002 No 16 and 41; 2003 No. 368 |
| r. 10.2.80 | ad. 2001 No. 319 |
| r. 10.2.81 | ad. 2001 No. 319 |
|  | rs. 2003 No. 369 |
| r. 10.2.82 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.83 | ad. 2001 No. 319 |
| r. 10.2.84 | ad. 2001 No. 319 |
| r. 10.2.85 | ad. 2001 No. 319 |
| r. 10.2.86 | ad. 2001 No. 319 |
| r 10.2.87 | ad 2001 No 319 |
|  | am 2002 No 16 |
|  | rep F2018L00515 |
| r. 10.2.87A | ad 2003 No 31 |
| **Division 17** |  |
| r. 10.2.88 | ad. 2001 No. 319 |
| r. 10.2.89 | ad. 2001 No. 319 |
| r. 10.2.90 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.91 | ad. 2001 No. 319 |
| **Division 18** |  |
| r. 10.2.92 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.93 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.94 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.94A | ad. 2002 No. 41 |
| r. 10.2.94B | ad. 2002 No. 41 |
| r. 10.2.95 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.96 | ad. 2001 No. 319 |
| r. 10.2.97 | ad. 2001 No. 319 |
| r. 10.2.98 | ad. 2001 No. 319 |
| r. 10.2.98A | ad. 2002 No. 16 |
| **Division 19** |  |
| r. 10.2.99 | ad. 2001 No. 319 |
| **Division 20** |  |
| r. 10.2.100 | ad. 2001 No. 319 |
| r. 10.2.101 | ad. 2001 No. 319 |
|  | am. 2002 No. 16 |
| r. 10.2.102 | ad. 2001 No. 319 |
|  | am. 2002 No. 41 |
| r. 10.2.103 | ad. 2001 No. 319 |
| r. 10.2.104 | ad. 2001 No. 319 |
| **Division 21** |  |
| r. 10.2.105 | ad. 2001 No. 319 |
| r. 10.2.106 | ad. 2001 No. 319 |
| r. 10.2.107 | ad. 2001 No. 319 |
| r. 10.2.108 | ad. 2001 No. 319 |
| r. 10.2.109 | ad. 2001 No. 319 |
| r. 10.2.110 | ad. 2001 No. 319 |
| r. 10.2.111 | ad. 2001 No. 319 |
| r. 10.2.112 | ad. 2001 No. 319 |
| r. 10.2.113 | ad. 2001 No. 319 |
| r. 10.2.114 | ad. 2001 No. 319 |
| r. 10.2.115 | ad. 2001 No. 319 |
| **Division 22** |  |
| r. 10.2.116 | ad. 2001 No. 319 |
| r. 10.2.117 | ad. 2001 No. 319 |
| **Division 23** |  |
| r. 10.2.118 | ad. 2001 No. 319 |
| **Division 24** |  |
| r. 10.2.119 | ad. 2001 No. 319 |
| **Division 24A** |  |
| Division 24A | ad. 2002 No. 16 |
| r. 10.2.119A | ad. 2002 No. 16 |
| r. 10.2.119B | ad. 2002 No. 41 |
| r. 10.2.119C | ad. 2002 No. 41 |
| **Division 25** |  |
| Division 25 | ad. 2001 No. 319 |
| r. 10.2.120 | ad. 2001 No. 319 |
| **Division 25A** |  |
| Division 25A | ad. 2002 No. 16 |
| r. 10.2.120A | ad. 2002 No. 16 |
| **Division 25B** |  |
| Division 25B | ad. 2002 No. 16 |
| r. 10.2.120B | ad. 2002 No. 16 |
|  | am. 2002 No. 41 |
| **Division 26** |  |
| Division 26 | rep F2018L00515 |
| r. 10.2.121 | ad. 2001 No. 319 |
|  | rep F2018L00515 |
| **Division 27** |  |
| r. 10.2.122 | ad. 2001 No. 319 |
|  | rep. 2002 No. 16 |
|  | ad. 2002 No. 41 |
| r. 10.2.123 | ad. 2001 No. 319 |
| r. 10.2.124 | ad. 2001 No. 319 |
|  | rs. 2002 No. 16 |
|  | am. 2002 No. 41 |
| r. 10.2.125 | ad. 2001 No. 319 |
| r. 10.2.126 | ad. 2001 No. 319 |
| r. 10.2.127 | ad. 2001 No. 319 |
| r. 10.2.128 | ad. 2001 No. 319 |
| r. 10.2.129 | ad. 2001 No. 319 |
| r. 10.2.130 | ad. 2001 No. 319 |
| r. 10.2.131 | ad. 2001 No. 319 |
| r. 10.2.132 | ad. 2001 No. 319 |
| r. 10.2.133 | ad. 2001 No. 319 |
| r. 10.2.134 | ad. 2001 No. 319 |
| r. 10.2.135 | ad. 2001 No. 319 |
| **Division 27A** |  |
| Division 27A of Part 10.2 | ad. 2002 No. 41 |
| r. 10.2.135A | ad. 2002 No. 41 |
| **Division 28** |  |
| r. 10.2.136 | ad. 2001 No. 319 |
| r. 10.2.137 | ad. 2001 No. 319 |
| r. 10.2.138 | ad. 2001 No. 319 |
|  | am. 2002 No. 41 |
| **Division 29** |  |
| Division 29 of Part 10.2 | ad No 16, 2002 |
| r 10.2.139 | ad No 16, 2002 |
| r 10.2.140 | ad No 16, 2002 |
| r 10.2.141 | ad No 16, 2002 |
| r 10.2.142 | ad No 16, 2002 |
| r 10.2.143 | ad No 16, 2002 |
| r 10.2.144 | ad No 16, 2002 |
| r 10.2.145 | ad No 16, 2002 |
| r 10.2.146 | ad No 16, 2002 |
|  | am. 2002 No. 41 |
| **Division 30** |  |
| Division 30 of Part 10.2 | ad No 16, 2002 |
| r 10.2.147 | ad No 16, 2002 |
| r 10.2.148 | ad No 16, 2002 |
|  | am No. 41, 2002 |
| r 10.2.149 | ad No 16, 2002 |
| r 10.2.150 | ad No 16, 2002 |
| r 10.2.151 | ad No 16, 2002 |
|  | am. 2002 No. 41 |
| r 10.2.152 | ad No 16, 2002 |
| r 10.2.153 | ad No 16, 2002 |
| r 10.2.154 | ad No 16, 2002 |
| r 10.2.155 | ad No 16, 2002 |
| r 10.2.156 | ad No 16, 2002 |
|  | am. 2002 No. 41 |
| r 10.2.157 | ad No 16, 2002 |
| r 10.2.158 | ad No 16, 2002 |
| r 10.2.159 | ad No 16, 2002 |
| r 10.2.160 | ad No 16, 2002 |
| r 10.2.161 | ad No 16, 2002 |
| r 10.2.162 | ad No 16, 2002 |
| r 10.2.163 | ad No 16, 2002 |
| r 10.2.164 | ad No 16, 2002 |
| r 10.2.165 | ad No 16, 2002 |
| r 10.2.166 | ad No 16, 2002 |
| r 10.2.167 | ad No 16, 2002 |
| r 10.2.168 | ad No 16, 2002 |
| r 10.2.169 | ad No 16, 2002 |
|  | am. 2002 No. 41 |
| r 10.2.170 | ad No 16, 2002 |
| **Division 31** |  |
| Division 31 of Part 10.2 | ad No 16, 2002 |
| r 10.2.171 | ad No 16, 2002 |
| r 10.2.172 | ad No 16, 2002 |
| r 10.2.173 | ad No 16, 2002 |
| r 10.2.174 | ad No 16, 2002 |
| r 10.2.175 | ad No 16, 2002 |
| **Division 32** |  |
| Division 32 of Part 10.2 | ad No 16, 2002 |
| r 10.2.176 | ad No 16, 2002 |
| r 10.2.177 | ad No 16, 2002 |
| r 10.2.178 | ad No 16, 2002 |
| r 10.2.179 | ad No 16, 2002 |
| **Division 33** |  |
| Division 33 of Part 10.2 | ad No 16, 2002 |
| r 10.2.180 | ad No 16, 2002 |
| r 10.2.181 | ad No 16, 2002 |
| r 10.2.182 | ad No 16, 2002 |
| r 10.2.183 | ad No 16, 2002 |
| r 10.2.184 | ad No 16, 2002 |
| r 10.2.185 | ad No 16, 2002 |
| r 10.2.186 | ad No 16, 2002 |
| r 10.2.187 | ad No 16, 2002 |
| r 10.2.188 | ad No 16, 2002 |
| r 10.2.189 | ad No 16, 2002 |
|  | am F2018L01144 |
| r 10.2.190 | ad No 16, 2002 |
| r 10.2.191 | ad No 16, 2002 |
| r 10.2.192 | ad No 16, 2002 |
| r 10.2.193 | ad No 16, 2002 |
| **Division 34** |  |
| Division 34 of Part 10.2 | ad No 16, 2002 |
| r 10.2.194 | ad No 16, 2002 |
| **Division 35** |  |
| Division 35 of Part 10.2 | ad No 16, 2002 |
| r 10.2.195 | ad No 16, 2002 |
| **Division 36** |  |
| Division 36 of Part 10.2 | ad No 16, 2002 |
| r 10.2.196 | ad No 16, 2002 |
| **Division 37** |  |
| Division 37 of Part 10.2 | ad No 16, 2002 |
| r 10.2.197 | ad No 16, 2002 |
|  | am 2002 No. 41 |
| r 10.2.198 | ad No 16, 2002 |
|  | am 2002 No. 41 |
| **Division 38** |  |
| Division 38 of Part 10.2 | ad No 16, 2002 |
| r 10.2.199 | ad No 16, 2002 |
| **Division 39** |  |
| Division 39 of Part 10.2 | ad No 16, 2002 |
| r 10.2.200 | ad No 16, 2002 |
|  | am. 2002 No. 41 |
| Division 40 | ad No 16, 2002 |
|  | rep F2022L01627 |
| r 10.2.201 | ad No 16, 2002 |
|  | am No 126, 2002 |
|  | rep F2022L01627 |
| r 10.2.201A | ad No 126, 2002 |
|  | rep F2022L01627 |
| **Division 41** |  |
| Division 41 of Part 10.2 | ad No 16, 2002 |
| r 10.2.202 | ad No 16, 2002 |
|  | am. 2003 No. 368 |
| **Division 42** |  |
| Division 42 of Part 10.2 | ad No 16, 2002 |
| r 10.2.203 | ad No 16, 2002 |
| **Division 43** |  |
| Division 43 of Part 10.2 | ad No 16, 2002 |
| r 10.2.204 | ad No 16, 2002 |
| **Division 44** |  |
| Division 44 of Part 10.2 | ad No 16, 2002 |
| r 10.2.205 | ad No 16, 2002 |
| **Division 45** |  |
| Division 45 of Part 10.2 | ad No 16, 2002 |
| r 10.2.206 | ad No 16, 2002 |
|  | am. 2002 No. 41 |
| r 10.2.207 | ad No 16, 2002 |
|  | rs. 2002 No. 41 |
| **Division 46** |  |
| Division 46 of Part 10.2 | ad No 16, 2002 |
| r 10.2.208 | ad No 16, 2002 |
| r 10.2.209 | ad No 16, 2002 |
| **Division 47** |  |
| Division 47 of Part 10.2 | ad. 2002 No. 41 |
| r. 10.2.210 | ad. 2002 No. 41 |
| **Division 48** |  |
| Division 48 of Part 10.2 | ad. 2002 No. 41 |
| r. 10.2.211 | ad. 2002 No. 41 |
| **Division 49** |  |
| Division 49 of Part 10.2 | ad. 2002 No. 41 |
| r. 10.2.212 | ad. 2002 No. 41 |
| **Division 50** |  |
| Division 50 of Part 10.2 | ad. 2003 No. 85 |
| r. 10.2.213 | ad. 2003 No. 85 |
| Division 51 of Part 10.2 | ad. 2003 No. 369 |
|  | rep. 2005 No. 324 |
| r. 10.2.214 | ad. 2003 No. 369 |
|  | rep. 2005 No. 324 |
| **Division 52** |  |
| Division 52 of Part 10.2 | ad. 2004 No. 26 |
| r. 10.2.215 | ad. 2004 No. 26 |
| **Part 10.5** |  |
| Part 10.5 | ad No. 208, 2004 |
| r 10.5.01 | ad No. 208, 2004 |
|  | am No. 399, 2004; No. 126, 2004 |
| **Part 10.15** |  |
| Part 10.14 heading | rep No 193, 2011 |
| Part 10.15 heading | ad No 193, 2011 |
| r 10.14.01 heading | rep No 193, 2011 |
| r 10.15.01 heading | ad No 193, 2011 |
| r 10.14.02 | ad No 210, 2010 |
|  | renum No 193, 2011 |
| r 10.15.02 (prev r 10.14.02) | renum No 193, 2011 |
| r 10.14.03 | ad No 210, 2010 |
| r 10.15.03 (prev r 10.14.03) | renum No 193, 2011 |
| r 10.14.04 | ad No 210, 2010 |
| r 10.15.04 (prev r 10.14.04) | renum No 193, 2011 |
| r 10.14.05 | ad No 210, 2010 |
| r. 10.15.05 (prev r 10.14.05) | renum No 193, 2011 |
| r 10.14.06 | ad No 210, 2010 |
| r. 10.15.06 (prev r 10.14.06) | renum No 193, 2011 |
| **Part 10.18** |  |
| Part 10.18 | ad No 170, 2012 |
| r 10.18.01 | ad No 170, 2012 |
|  | rep 1 July 2013 (r 10.18.01(3)) |
| **Part 10.19** |  |
| Part 10.19 | ad No 155, 2013 |
| r 10.19.01 | ad No 155, 2013 |
| Part 10.20 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.01 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.02 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.03 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.04 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.05 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.06 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.07 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.08 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.09 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.10 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.11 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.12 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.13 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.14 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.15 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.16 | ad No 3, 2015 |
|  | rep F2017L00117 |
| r 10.20.17 | ad No 3, 2015 |
|  | rep F2017L00117 |
| **Part 10.21** |  |
| Part 10.21 | ad No 157, 2015 |
| r 10.21.01 | ad No 157, 2015 |
| **Part 10.22** |  |
| Part 10.22 | ad No 135, 2015 |
| r 10.22.01 | ad No 135, 2015 |
| r 10.22.02 | ad No 135, 2015 |
| **Part 10.23** |  |
| Part 10.23 | ad F2016L00514 |
| r 10.23.01 | ad F2016L00514 |
| **Part 10.24** |  |
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| r 10.24.01 | ad F2016L01657 |
| **Part 10.25** |  |
| Part 10.25 | ad F2016L01926 |
| r 10.25.01 | ad F2016L01926 |
| r 10.25.02 | ad F2016L01926 |
| **Part 10.25** |  |
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| r 10.25.01 (second occurring) | ad F2017L00321 |
| **Part 10.26** |  |
| Part 10.26 | ad F2017L00455 |
| r 10.26.01 | ad F2017L00455 |
| **Part 10.27** |  |
| Part 10.27 | ad F2018L00515 |
| r 10.27.01 | ad F2018L00515 |
| r 10.27.02 | ad F2018L00515 |
| r 10.27.03 | ad F2018L00515 |
| r 10.27.04 | ad F2018L00515 |
| **Part 10.28** |  |
| Part 10.28 | ad F2018L00743 |
| r 10.28.01 | ad F2018L00743 |
| **Part 10.29** |  |
| Part 10.29 | ad F2019L00539 |
| r 10.29.01 | ad F2019L00539 |
| r 10.29.02 | ad F2019L00539 |
| r 10.29.03 | ad F2019L00539 |
| r 10.29.04 | ad F2019L00539 |
| **Part 10.30** |  |
| Part 10.30 | ad F2019L00538 |
| r 10.30.01 | ad F2019L00538 |
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| Part 10.31 | ad F2019L00392 |
| r 10.31.01 | ad F2019L00392 |
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| Part 10.32 | ad F2019L00537 |
| r 10.32.01 | ad F2019L00537 |
| **Part 10.33** |  |
| Part 10.33 | ad F2019L01526 |
| r 10.33.01 | ad F2019L01526 |
| r 10.33.02 | ad F2019L01526 |
| **Part 10.34** |  |
| Part 10.34 | ad F2019L01474 |
| r 10.34.01 | ad F2019L01474 |
| **Part 10.35** |  |
| Part 10.35 | ad F2021L01531 |
| r 10.35.01 | ad F2021L01531 |
| **Part 10.37** |  |
| Part 10.37 | ad F2019L01533 |
| r 10.37.01 | ad F2019L01533 |
| **Part 10.38** |  |
| Part 10.38 | ad F2020L00942 |
| r 10.38.01 | ad F2020L00942 |
| **Part 10.39** |  |
| Part 10.39 | ad F2021L01080 |
| r 10.39.01 | ad F2021L01080 |
| **Part 10.40** |  |
| Part 10.40 | ad F2020L01586 |
| r 10.40.01 | ad F2020L01586 |
| r 10.40.02 | ad F2020L01586 |
| **Part 10.41** |  |
| Part 10.41 | ad F2021L01072 |
| r 10.41.01 | ad F2021L01072 |
| **Part 10.42** |  |
| Part 10.42 | ad F2021L00127 |
| r 10.42.01 | ad F2021L00127 |
| **Part 10.43** |  |
| Part 10.43 | ad F2020L01654 |
| r 10.43.01 | ad F2020L01654 |
| **Part 10.45** |  |
| Part 10.45 | ad F2021L00660 |
| r 10.45.01 | ad F2021L00660 |
| Part 10.46 | ad F2021L01801 (disallowed) |
| r 10.46.01 | ad F2021L01801 (disallowed) |
| r 10.46.02 | ad F2021L01801 (disallowed) |
| **Part 10.47** |  |
| Part 10.47 | ad F2021L01608 |
| r 10.47.01 | ad F2021L01608 |
| **Part 10.48** |  |
| Part 10.48 (first occurring) | ad F2022L01614 |
| r 10.48.01 (first occurring) | ad F2022L01614 |
| **Part 10.49** |  |
| Part 10.48 (second occurring) | ad F2022L01689 |
|  | renum F2023L01458 |
| Part 10.49 (prev Part 10.48 (second occuring)) |  |
| r 10.48.01 (second occurring) | ad F2022L01689 |
|  | renum F2023L01458 |
| r 10.49.01 (prev r 10.48.01 (second occuring)) |  |
| **Part 10.50** |  |
| Part 10.50 | ad F2023L00990 |
| r 10.50.01 | ad F2023L00990 |
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| **Part 12.4** |  |
| r 12.4.04 | am F2023L01423 |
| **Part 12.6** |  |
| r 12.1.01 | ed C124 |
| r 12.06.01A | ad No 184, 2010 |
| **Part 12.7** |  |
| **Division 2** |  |
| r 12.7.06 | ad No 85, 2003 |
|  | am No 368, 2003 |
| **Part 12.8** |  |
| **Division 1** |  |
| r 12.8.02 | am No 227, 2007; No 175, 2009 |
| r 12.8.03 | am F2022L01689 |
| **Division 2** |  |
| r 12.8.06 | am No 227, 2007 |
| r 12.8.08 | am No 319, 2001 |
| **Schedule 1** |  |
| Schedule 1 | am No 319, 2001; No 194, 2003; No 208, 2004; No 399, 2004; No 195, 2007; No 198, 2009; No 387, 2009; No 152, 2013; F2016L01926; F2019L00392; F2020L01610; F2022L01689 |
| **Schedule 2** |  |
| Form 105 | rs No 198, 2009 |
| Form 2M01 | ad No 399, 2004 |
|  | rep No 152, 2013 |
| Form 2M02 | ad No 399, 2004 |
|  | rep No 152, 2013 |
| Form 2M03 | ad No 399, 2004 |
|  | rep No 152, 2013 |
| Form 309 | rep No 195, 2007 |
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| Form 509H | am No 16, 2002 |
|  | rs No 325, 2007 |
|  | am Act No 22, 2020; F2020L01654; F2021L00660; F2022L01689 |
| Form 5249 | rep F2022L01689 |
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| Form 521 | rep F2016L01926 |
| Form 522 | rep No 399, 2004 |
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| Form 524 | rep No 399, 2004 |
| Form 525 | rep No 399, 2004 |
| Form 529 | am No 325, 2007 |
|  | rs No 198, 2009 |
| Form 529A | rep F2016L01926 |
| Form 529B | rep F2016L01926 |
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| Form 531A | rep F2016L01926 |
| Form 531B | am No 325, 2007 |
|  | rep F2016L01926 |
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| Form 534 | rep No 114, 2012 |
| Form 540 | rep No 399, 2004 |
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| Form 605 | rs F2018L01144 |
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| Form 587 | am F2020L01610 |
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| Form 717 | rep No 319, 2001 |
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|  | am No 16, 2002; No 26, 2004 |
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|  | am No 26, 2004 |
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| Form 908 | rep No 399, 2004 |
| Form 910 | rep F2019L00392 |
| **Schedule 2A** |  |
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| Form 3 | ad No 319, 2001 |
| Form 4 | ad No 319, 2001 |
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| **Schedule 3** |  |
| Schedule 3 | am No 319, 2001; No 398, 2004 |
| **Schedule 4** |  |
| Schedule 4 | am No 319, 2001; No 398, 2004; No 332, 2010; F2018L01144 |
| Schedule 5A | rep No 194, 2007 |
| Schedule 5B | ad No 160, 2005 |
|  | am No 126, 2006 |
|  | rep No 193, 2007 |
| **Schedule 5C** |  |
| Schedule 5C | ad No 126, 2006 |
|  | am F2023L01458 |
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| Schedule 6 | am No 318, 2001; No 319, 2001; No 362, 2006; No 272, 2010; F2018L01144; F2019L01641; F2022L00469 |
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| Schedule 7A | ad No 171, 2012 |
|  | am F2023L01458 |
| **Schedule 8** |  |
| Schedule 8 | am No 319, 2001 |
|  | ed C124 |
|  | am F2022L00469 |
| **Schedule 8A** |  |
| Schedule 8A | am No 325, 2007 |
| **Schedule 8AA** |  |
| Schedule 8AA | ad No 88, 2010 |
|  | am No 43, 2012; F2016L01902; F2022L01627 |
| **Schedule 8AB** |  |
| Schedule 8AB | ad No 88, 2010 |
| **Schedule 8AC** |  |
| Schedule 8AC | ad No 88, 2010 |
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|  | am No 43, 2012 |
| **Schedule 8AE** |  |
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| Schedule 8B | ad No 15, 2002 |
|  | rep F2023L01458 |
| **Schedule 8C** |  |
| Schedule 8C | ad No 26, 2004 |
|  | am No 70, 2009 |
|  | am No 190, 2013; F2023L01458 |
| **Schedule 8D** |  |
| Schedule 8D | ad No 3, 2015 |
|  | rep F2017L00117 |
|  | ad F2021L01531 |
|  | am F2023L01458 |
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| Schedule 9 heading | am No 319, 2001 |
|  | rs 2012 No 43 |
| Schedule 9 | am No 319, 2001; No 26, 2004; No 325, 2007 |
|  | rs No 43, 2012 |
| **Schedule 10** |  |
| Schedule 10 | ad No 319, 2001 |
|  | am No 16, 2002 |
|  | rs No 31, 2005 |
|  | am No 155, 2013; F2018L01144; F2019L00539; F2022L00469; F2022L01689 |
| **Schedule 10A** |  |
| Schedule 10A heading | am No 16, 2002 |
|  | rs No 94, 2008; No 135, 2010; No 42, 2012 |
| Schedule 10A | ad No 319, 2001 |
|  | am No 16, 2002; No 41, 2002; No 31, 2003; No 369, 2003; No 31, 2005; No 94, 2008; No 158, 2008; No 135, 2010; No 301, 2010; No 42, 2012; No 155, 2013; No 175, 2014; No 91, 2015; F2016L00710; F2022L00469; F2023L01458 |
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| Schedule 10AA | ad No 94, 2008 |
|  | am No 301, 2010; No 175, 2014 |
| Schedule 10B heading | am No 16, 2002 |
|  | rep No 31, 2005 |
|  | ad No 158, 2008 |
|  | rep No 91, 2015 |
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|  | am No 16, 2002; No 41, 2002; No 26, 2004 |
|  | rep No 31, 2005 |
|  | ad No 158, 2008 |
|  | am No 194, 2008; No 55, 2010; No 66, 2011 |
|  | rep No 91, 2015 |
| **Schedule 10BA** |  |
| Schedule 10BA | ad No 324, 2005 (md) |
|  | am F2018L01144; F2022L00469; F2023L01458 |
| **Schedule 10C** |  |
| Schedule 10C heading | am F2023L01458 |
| Schedule 10C | ad No 319, 2001 |
|  | am No 16, 2002; No 41, 2002 |
|  | rep No 31, 2005 |
|  | ad No 135, 2010 |
|  | am F2023L01458 |
| **Schedule 10D** |  |
| Schedule 10D | ad No 135, 2010 |
|  | am No 155, 2013; F2019L00539 |
| **Schedule 10E** |  |
| Schedule 10E | ad No 135, 2010 |
|  | am No 274, 2011; F2018L01144 |
| **Schedule 10F** |  |
| Schedule 10F | ad F2022L00469 |
| **Schedule 11** |  |
| Schedule 11 | am No 208, 2001 |
|  | rep No 319, 2001 |
| Schedule 10D heading  (second occurring) | rs and renum F2016L01926 |
| Schedule 10D  (second occurring) | ad No 319, 2001 am No 31, 2003; F2016L01926 |
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