



# Corporations Regulations 2001

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Volume 2: regulations 7.1.02–7.6.08E

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**Volume 4: regulations 9.1.01–12.9.03**

Volume 5: Schedules 1, 2 and 2A

Volume 6: Schedules 3–13

Volume 7: Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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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 25 May 2017 (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 Legislation Register ([www.legislation.gov.au](http://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 series page on the Legislation 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 series page on the Legislation 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **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;
- (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 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;

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- (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 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;
- (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;

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- (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;
  - (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 deregistration or winding up of the scheme;
  - (viii) the name and address of the auditor of the scheme;
- (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:

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- (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 (within the meaning of section 910A of the Act):
- (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.

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| <b>Part 1</b> | <b>University</b>                      |
|---------------|--|
| 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                      |

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**Part 1**     **University**

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|     |  |
|-----|--|
| 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                                |

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**Part 2**     **Institution**

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|     |                  |
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| 201 | Avondale College |
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**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
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- (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.

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**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.

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## Part 9.4—Penalty notice offences and penalties

### 9.4.01 Prescribed offences (Act s 1313)

For paragraph (b) of the definition of *prescribed offence* in subsection 1313(8) of the Act, an offence against a provision mentioned in Schedule 3 to the Act, to which a penalty of 5 penalty units applies, is prescribed.

### 9.4.02 Prescribed penalties (Act s 1313)

For an offence prescribed by regulation 9.4.01 for which a person may be, or has been, given a notice under subsection 1313(1) of the Act, the amount of the penalty is:

- (a) if the person is an individual—1.25 penalty units; and
- (b) if the person is a body corporate—6.25 penalty units.

### 9.4.03 Late payment of review fee—prescribed offence and penalty (Act s 1313 and 1364)

- (1) For paragraph (b) of the definition of *prescribed offence* in subsection 1313(8) of the Act, the failure to pay a review fee by the due date specified for the fee in subsection 1351(3) of the Act is prescribed.

Note: The failure to pay is made an offence by section 1311 of the Act.

- (2) For paragraph 1364(2)(n) of the Act, 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: Subsection 1351(3) of the Act provides for when a fee imposed by the *Corporations (Review Fees) Act 2003* is due.

- (3) In this regulation:

*review fee* means a fee imposed by section 5 of the *Corporations (Review Fees) Act 2003*.

## **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.

***issuer*** has the same meaning as in section 761E of the Act.

***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;
- (d) register of holders of options of a corporation.

### **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 that is required to keep 1 or more registers must ensure that its registers and index (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 that is required to keep 1 or more registers that the person wishes to inspect a register or index of the corporation, 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 9.5—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);
- (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:

$$\frac{\text{Amount} \times \text{Days interest payable} \times \text{Interest rate}}{\text{Days in the financial year}}$$

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 9.12—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 participants in the facility operated CLS Bank International:
  - (a) section 794E—settlement of non-cash payments between participants;
  - (b) Part 7.3—settlement of non-cash payments between participants in relation to the provision or transfer of a financial product mentioned in paragraph 764A(1)(a), (b), (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 participant in the facility operated by CLS Bank International:
  - (a) must be regulated by APRA; and



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- (b) must not use the services of CLS Bank International as a retail client within the meaning of section 761G of the Act.
- (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 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 bank; or
- (b) a financial services licensee within the meaning of section 761A of the *Corporations Act 2001*.

*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 participants in the facility or any Australian operations of CLS Bank International.

*participant*, for 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 participant.

### **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

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- (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).

**9.12.04 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

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- (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.

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- (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
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- (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 SEGCG; and



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- (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.
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- (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.

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**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:

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- (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

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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.

| <b>Regulated principals and regulated activities</b> |  |   |  |
|--|--|---|--|
| <b>Item</b>  | <b>These persons are <i>regulated principals</i></b>   | <b>These are the regulated principal's <i>regulated activities</i></b>  | <b>This is the <i>relevant old legislation (if any)</i></b>                        |
| 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. |

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| <b>Regulated principals and regulated activities</b> |   |  |  |
|--|---|--|--|
| <b>Item</b>  | <b>These persons are <i>regulated principals</i></b>  | <b>These are the regulated principal's <i>regulated activities</i></b>   | <b>This is the <i>relevant old legislation (if any)</i></b>  |
| 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<br>(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  |

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| <b>Regulated principals and regulated activities</b> |   |  |  |
|--|---|--|--|
| <b>Item</b>  | <b>These persons are <i>regulated principals</i></b>  | <b>These are the regulated principal's <i>regulated activities</i></b>   | <b>This is the <i>relevant old legislation</i> (if any)</b>  |
| 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<br>(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 <i>Insurance (Agents and Brokers) Act 1984</i>   | (a) While the suspension is in force—no activities<br>(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 <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement, and any associated provisions |
| 10   | A person whose registration is suspended under section 25 of the <i>Insurance (Agents and Brokers) Act 1984</i> 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 <i>Insurance (Agents and Brokers) Act 1984</i><br>(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 <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement, and any associated provisions |



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| <b>Regulated principals and regulated activities</b> |   |   |  |
|--|---|---|--|
| <b>Item</b>  | <b>These persons are <i>regulated principals</i></b>  | <b>These are the regulated principal's <i>regulated activities</i></b>  | <b>This is the <i>relevant old legislation</i> (if any)</b>  |
| 11   | A person whose registration is suspended under section 31H of the <i>Insurance (Agents and Brokers) Act 1984</i>  | (a) While the suspension is in force—no activities<br>(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 <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement, and any associated provisions |
| 12   | A person whose registration is suspended under section 31H of the <i>Insurance (Agents and Brokers) Act 1984</i> 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 <i>Insurance (Agents and Brokers) Act 1984</i><br>(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 <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement, and any associated provisions |

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| <b>Regulated principals and regulated activities</b> |   |  |  |
|--|---|--|--|
| <b>Item</b>  | <b>These persons are <i>regulated principals</i></b>  | <b>These are the regulated principal's <i>regulated activities</i></b>   | <b>This is the <i>relevant old legislation</i> (if any)</b>  |
| 13   | <p>A person who was a registered insurance broker within the meaning of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement, if:</p> <p>(a) the person's registration under that Act expired because of the operation of subsection 21(3) of that Act; and</p> <p>(b) either:</p> <p style="padding-left: 20px;">(i) it is less than 8 weeks after the registration expired; or</p> <p style="padding-left: 20px;">(ii) the person applied for renewal of registration within 8 weeks after the registration expired</p> | <p>The person's business as an insurance broker, within the meaning of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement, carried on from the date that the registration ceased to have effect</p>  | <p>All the provisions of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement, and any associated provisions</p>   |
| 14   | <p>A person who:</p> <p>(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</p> <p>(b) is an Australian ADI, a life company under the <i>Life Insurance Act 1995</i>, a general insurer under the <i>Insurance Act 1973</i> or an approved trustee under the <i>Superannuation Industry (Supervision) Act 1993</i></p>   | <p>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</p> | <p>For a body that was an insurer within the meaning of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement—all the provisions of that Act as then in force, and any associated provisions</p> <p>In any other case—subject to any regulations made for the purposes of this item, there is no relevant old legislation</p> |

| <b>Regulated principals and regulated activities</b> |  |   |   |
|--|--|---|---|
| <b>Item</b>  | <b>These persons are <i>regulated principals</i></b>   | <b>These are the regulated principal's <i>regulated activities</i></b>  | <b>This is the <i>relevant old legislation</i> (if any)</b> |
| 15   | <p>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:</p> <p>(a) that are not regulated activities for the purpose of items 1 to 5 of the table; and</p> <p>(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</p> | <p>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</p> | <p>There is no relevant old legislation</p>                 |

**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).

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- (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:
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- (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

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- 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.

**10.2.47 Dispute resolution requirements: no external dispute resolution scheme**

For section 1444 of the Act, paragraph 912A(2)(b) of the Act does not apply in relation to a financial services licensee at any time within 2 years after the FSR commencement unless, at that time:

- (a) there is an external dispute resolution scheme in existence that satisfies subparagraphs 912A(2)(b)(i) and (ii) of the Act; and
- (b) the external dispute resolution scheme has been in existence for a period of at least 3 months.

**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:

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- (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:
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- (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: 50 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)).

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- (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).

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- (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
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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.

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- (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.

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- (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.

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**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 dealer's 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 broker's 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;
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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.

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**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;

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(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.

### **10.2.87 Dispute resolution requirements: no external dispute resolution scheme**

For section 1444 of the Act, paragraph 1017G(2)(b) of the Act does not apply in relation to a particular activity of, or a particular financial product offered by, an issuer or a regulated person at any time within 2 years after the FSR commencement unless, at that time:

- (a) there is an external dispute resolution scheme in existence that satisfies subparagraphs 1017G(2)(b)(i) and (ii) of the Act; and
- (aa) the external dispute resolution scheme applies to that activity or financial product; and
- (b) the external dispute resolution scheme has been in existence for a period of at least 3 months.

#### **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.

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## 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.

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**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

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- (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 Licences, 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.

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**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.

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**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

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- (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:
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- (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

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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:

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- (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.

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**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.

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**Division 26—Transitional matters under relevant old legislation:  
Superannuation (Resolution of Complaints) Act 1993**

**10.2.121 Life insurance broker**

- (1) For section 1444 of the Act, a reference in the definition of *life insurance broker* in subsection 3(2) of the *Superannuation (Resolution of Complaints) Act 1993* to a financial services licensee includes a regulated principal:
  - (a) mentioned in item 5 of the table in section 1430 of the Act; and
  - (b) who is registered under Part III of the *Insurance (Agents and Brokers) Act 1984* in respect of life insurance.
- (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 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.

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**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.

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**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:

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- (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

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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.
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- (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.

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- (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 exchange 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.

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**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.

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- (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).

**Chapter 10** Repeals, transitional matters and application provisions

**Part 10.2** Transitional arrangements relating to Financial Services Reform legislation

**Division 31** Effect on fundraising of transition to licensed markets and licensed CS facilities

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**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.

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- (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 managed investment 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 40—Telephone monitoring during takeovers**

### **10.2.201 Telephone monitoring**

- (1) For section 1444 of the Act, this regulation applies in relation to a takeover bid:
  - (a) for which the bid period starts before the FSR commencement; and
  - (b) to which Subdivision D of Division 5 of Part 6.5 of the Act would apply.
- (2) Subdivision D of Division 5 of Part 6.5 of the Act does not apply to the takeover bid.

#### **10.2.201A References to financial services licensees**

For section 1444 of the Act:

- (a) a reference in paragraph 648J(4)(c) of the Act to a professional investor includes the holder of a licence of any type granted or issued under the old Corporations Act; and
- (b) a reference in subregulation 6.5.01(3) to a financial services licensee includes the holder of a licence of any type granted or issued under the old Corporations Act.

## **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.

| <b>Item</b>   | <b>AUS No.</b> | <b>Title</b>  |
|---------------|----------------|---|
| <b>Part 1</b> |                |   |
| 101           | 104            | Glossary of Terms   |
| 102           | 202            | Objective and General Principles Governing an Audit of a Financial Report<br>Note: This standard was issued in July 2002.                     |
| 103           | 204            | Terms of Audit Engagements  |
| 104           | 206            | Quality Control for Audit Work<br>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<br>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<br>Note: This standard was issued in July 2002.  |

**Chapter 10** Repeals, transitional matters and application provisions**Part 10.5** Transitional provisions relating to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004

## Regulation 10.5.01

| <b>Item</b>   | <b>AUS No.</b> | <b>Title</b>   |
|---------------|----------------|--|
| 114           | 404            | Audit Implications Relating to Entities Using a Service Entity   |
| 115           | 502            | Audit Evidence<br>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  |
| 119           | 510            | Initial Engagements - Opening Balances   |
| 120           | 512            | Analytical Procedures  |
| 121           | 514            | Audit Sampling & Selective Testing Procedures  |
| 122           | 516            | Audit of Accounting Estimates  |
| 123           | 518            | Related Parties  |
| 124           | 520            | Management Representations   |
| 125           | 522            | Audit Evidence Implications of Externally Managed Assets of Superannuation, Provident or Similar Funds   |
| 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  |
| <b>Part 2</b> |                |  |
| 201           | 202            | Objective and General Principles Governing an Audit of a Financial Report<br>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<br>Note: This standard was issued in June 2004.                       |
| 202           | 402            | Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatements<br>Note: This standard was issued in February 2004.               |
| 203           | 406            | The Auditor's Procedures In Response to Assessed Risks   |
| 204           | 502            | Audit Evidence   |



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| <b>Item</b>   | <b>AUS<br/>No.</b> | <b>Title</b>   |
|---------------|--------------------|--|
|               |                    | Note: This standard was issued in February 2004.               |
| <b>Part 3</b> |                    |  |
| 301           | 206                | Quality Control for Audits of Historical Financial Information |
|               |                    | Note: This standard was issued in June 2004.                   |

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(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
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- (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

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- (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;

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- (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.

## 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

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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

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- (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.

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#### **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.

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#### 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

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- (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

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- (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 What is a 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.

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**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.

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- (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.