

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

ASIC Supervisory Cost Recovery Levy Act 2017

ASIC Supervisory Cost Recovery Levy Regulations 2017

The *ASIC Supervisory Cost Recovery Levy Act 2017* (the Act) imposes a levy on entities regulated by the Australian Securities and Investments Commission (ASIC) to recover its regulatory costs. Section 9 of the Act provides that the amount of levy payable for a leviable entity in a financial year is the amount worked out in accordance with the regulations.

Section 13 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the Regulations) apply either a flat or a graduated levy to entities in each industry subsector regulated by ASIC. The type of levy and the formula for calculating the amount of levy payable is different for each industry subsector. This approach is appropriate and equitable because of the range of industry subsectors regulated by ASIC, variations in ASIC's regulatory costs for each industry subsector and the differences in size and levels of activity undertaken by each entity in each industry subsector. Entities may fall in multiple subsectors each financial year depending on their activities and licence authorisations.

The Regulations prescribe flat levies to apportion ASIC's regulatory costs in subsectors where these costs are approximately the same for each entity and the administrative and regulatory burden associated with calculating more tailored levies outweighs the benefits of having additional granularity.

Graduated (variable) levies have been prescribed for subsectors where ASIC's regulatory costs vary significantly across its regulated population. Some of the graduated levies will include a fixed minimum component and a variable component to apportion ASIC's regulatory costs. Others are based only on a variable component depending on an entity's share of the total activity in an industry subsector. The levy prescribed for listed corporations also includes a maximum cap.

For entities in subsectors that have a graduated levy with a minimum amount, the minimum amount imposed for all entities in the subsector will recover ASIC's actual direct and indirect costs of undertaking stakeholder engagement, policy advice, guidance, education and a portion of ASIC's capital allowance. These costs are generally more stable over time. As all industry participants have similar access to the outcomes of these activities, these costs are shared across all participants in the subsector through the minimum levy.

The graduated (variable) component of the levy for subsectors will recover ASIC's remaining costs (that is, the costs of ASIC's surveillance and enforcement activities, including enforcement funded by the Enforcement Special Account) to regulate the

subsector. These costs will be apportioned using the total reported industry metric above the minimum threshold for the subsector, for example, total industry funds under management for Responsible Entities of Managed Investment Schemes above the subsector's minimum threshold.

The Regulations also prescribe a maximum levy cap for listed corporations. This is because ASIC's regulatory costs in this subsector do not continue to increase as a function of entity size. This is not the case for other regulated subsectors subject to a graduated levy.

In addition, the Regulations:

- establish the criteria for determining the subsectors an entity is a part of;
- set out the formulas and metrics to be used for calculating the amount of levy payable for entities in each subsector;
- provide for ASIC to make an annual legislative instrument specifying information about each of the regulated industry subsectors that must be used in the formulas for calculating the amount of levy payable by entities in each subsector; and
- prescribe certain amounts that should not be included as part of ASIC's regulatory costs.

Public consultation on the Regulations was conducted between 4 May 2017 and 26 May 2017. There were 47 submissions received through the consultation process from various industry participants and industry bodies. The Regulations were adapted in response to the feedback received.

The Act requires the Minister to be satisfied that the regulations are consistent with the objectives of the cost recovery regime in subsection 9(2) of the Act.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 July 2017.

The total regulatory costs associated with ASIC's industry funding model – including costs related to requirements imposed through the Regulations – are detailed in the Explanatory Memorandum to the *ASIC Supervisory Cost Recovery Levy Bill 2017*.

As detailed in the Explanatory Memorandum, the introduction of the model is anticipated to increase regulatory costs by \$21.1 million per annum. However, this is likely to decline once industry's data reporting systems are in place and ASIC is able to pre-fill forms based on prior year returns and other data collection mechanisms.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Supervisory Cost Recovery Levy Regulations 2017

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Regulations:

- apply either a flat or a graduated levy to entities in each industry subsector regulated by ASIC;
- establish the criteria for determining the subsectors an entity is a part of;
- set out the formulas and metrics to be used for calculating the amount of levy payable for entities in each subsector;
- provide for ASIC to make an annual legislative instrument specifying information about each of the regulated industry subsectors that must be used in the formulas for calculating the amount of levy payable by entities in each subsector; and
- prescribe certain amounts that should not be included as part of ASIC's regulatory costs.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Details of the ASIC Supervisory Cost Recovery Levy Regulations 2017

This Attachment sets out further details of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the Regulations). All references are to the Regulations unless otherwise stated.

Part 1 – Preliminary

Section 1 – Name

This section provides that the title of the instrument is the *ASIC Supervisory Cost Recovery Levy Regulations 2017*.

Section 2 – Commencement

This section provides that the Regulations commence on 1 July 2017.

Section 3 - Authority

This section provides that the Regulations are made under the *ASIC Supervisory Cost Recovery Levy Act 2017*.

Section 4 – Definitions

This section sets out the meaning of some of the key words or terms that are used in the Regulations. Many of the expressions used in the instrument have the same meaning as in sections 9 and 761A of the *Corporations Act 2001*.

Part 2 – General provisions

Section 5 – Amounts not included in regulatory costs

This section prescribes that certain amounts are not to be considered part of ASIC's regulatory costs and therefore will not be recovered as part of the industry funding regime. The amounts not included as part of ASIC's regulatory costs include the costs of:

- operating the Superannuation Complaints Tribunal;
- operating the Company Auditors Disciplinary Board;
- operating the Insolvency Practitioners Disciplinary Committees;
- maintaining and operating ASIC's public registers;
- supervising approved SMSF auditors (the costs of which are recovered by the Australian Taxation Office);

- financing preliminary investigations and reports by liquidators into the failure of companies with few or no assets through ASIC's Assetless Administration Fund; and
- additional non-ongoing activities undertaken by ASIC to combat misconduct in Australia's financial services industry and bolster consumer confidence to deliver on the 2016-17 Budget Measure 'Australian Securities and Investments Commission—improving outcomes in financial services' until 30 June 2019.

The costs incurred by ASIC to provide services that form part of a chargeable matter will also not be recovered from industry as these amounts are already recovered through fees for service. ASIC's regulatory costs will also only include the difference between the costs to ASIC from lodgements for leviable activities and other revenue received from such activities to avoid double recovery. These amounts have not been excluded under the Regulations as revenue for leviable activities and will continue to be collected until 1 July 2018.

Section 6 – Amount of levy

The section provides that the total amount of supervisory levy that a regulated entity must pay is equal to the sum of the levy amounts applicable to the entity for each industry subsector the entity falls under for a financial year.

Section 7 – Levy component

Under this section, an entity's levy component for a financial year includes its share of basic and graduated levies for each industry subsector the entity is a part of in a financial year.

Section 8 – Levy component for entities that are deregistered

If an entity is deregistered (or ASIC publishes a notice regarding the proposed deregistration of the entity) before the entity's return for a financial year is required to be lodged and the entity's registration is not reinstated before that day, the entity will not be required to pay the levy. In such cases, the amount of levy that would otherwise have been payable will not be recovered as the relevant entity no longer exists.

Section 9 – Basic levy component

This section prescribes a standard formula for calculating the amount of levy that is payable by entities in relation to their activities in subsectors. The formula apportions ASIC's regulatory costs for the subsector to each entity based on each entity's share of activity (the entity metric) within the subsector. As a default, the formula will apportion ASIC's regulatory costs for each subsector equally between the entities in a subsector in a financial year.

The formula is, however, flexible so that it can apply in cases where a different metric is used in some subsectors. For example, for some subsectors in the market infrastructure and intermediary sector, the basic levy component formula will apportion ASIC's regulatory costs for each subsector in proportion to the number of days each entity operates each market that falls within the subsector. A specific

explanation of how the formula operates in relation to reach relevant subsector is included in the explanation of the relevant subsectors below. In each case, ASIC's regulatory costs and total amount of activity in the subsector (the subsector metric) for a financial year will be prescribed in ASIC's annual legislative instrument.

Section 10 – Graduated levy component

This section prescribes the formula for calculating the graduated (variable) levy payable by an entity in relation to its activity in a subsector that is subject to a graduated rate of levy. The formula provides for all entities in prescribed subsectors to pay a minimum levy amount and an additional variable component based on each entity's share of relevant activity within the subsector.

Of ASIC's total regulatory costs for these subsectors, the minimum levy component of the formula in section 10 will recover an amount equal to the minimum levy for each subsector multiplied by the number of entities in that subsector. This minimum levy amount recovers ASIC's actual direct and indirect costs of undertaking stakeholder engagement, policy advice, guidance, education and a portion of ASIC's capital allowance.

The remaining amount of ASIC's regulatory costs for the subsector will be recovered through the graduated component of the formula. This is calculated by first reducing ASIC's total costs by the amount to be recovered under the minimum levy component of the formula and then apportioning this to each entity in the subsector based on each entity's share of total business activity within the subsector.

In some subsectors, the graduated component only applies beyond a prescribed threshold. In these cases, ASIC's remaining regulatory costs will be apportioned to each entity in the subsector based on each entity's share of total business activity within the subsector above the prescribed threshold.

A specific explanation of how this formula operates in relation to each relevant subsector is provided in the explanation of the relevant subsectors below. ASIC's regulatory costs and total amount of activity in the subsector (the subsector metric) for the financial year will be prescribed in ASIC's annual legislative instrument.

Section 11 - Pro-rata of entity metric

This section provides for a standard formula to pro-rata the amount of levy payable by an entity as applicable in some subsectors. Under the standard pro-rata formula, an entity would only pay the levy in relation to the number of days in the financial year the entity was part of the relevant subsector or held the relevant licence. A specific explanation of how the formula operates in relation to each prescribed subsector is provided in the explanation of those subsectors below. Entities that fall within multiple subsectors that have a pro-rata will pay levy amounts in accordance with the pro-rata rules for each of those subsectors.

Section 12 – Rules about amounts

This section provides for standard rounding rules, rounding up amounts of 50 cents to the nearest whole dollar.

Part 3 – Sectors, sub-sectors and levy components

Section 13 – Corporate sector

This section provides that Division 1 of Part 3 of the Regulations specifies the criteria for identifying the entities that are part of the subsectors within the corporate sector. Entities may fall within multiple subsectors within the corporate sector during a financial year.

There is no specific subsector for small proprietary companies. Instead, ASIC's regulatory costs in relation to small proprietary companies will be recovered through an increase to the annual review fee for proprietary companies in the *Corporations (Review Fees) Regulations 2003*. This approach will minimise the regulatory burden of the Industry Funding Model on small proprietary companies by ensuring that they only have to pay one fee each year.

As the annual review fee for proprietary companies is indexed annually for inflation and as the payment of levies under the Industry Funding Model only occurs after the end of the 2017-18 financial year, the prescribed annual fee for proprietary companies in the *Corporations (Review Fees) Regulations 2001* can only be amended closer to 1 July 2018.

Section 14 – Basic levy component applies to subsectors

This section prescribes the corporate subsectors that are subject to the basic levy component formula in section 9 of these regulations. The relevant subsectors are:

- auditors of disclosing entities (section 15);
- large proprietary companies (section 16);
- unlisted public companies (section 17); and
- registered company auditors (section 18).

Section 15- Auditors of disclosing entities

Auditors of disclosing entities with quoted securities are subject to a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs will be divided between entities based on each entity's share of total fees paid or payable in the financial year for the auditing and review of financial reports that relate to disclosing entities with quoted securities and entities controlled by disclosing entities with quoted securities. The total amount of fees paid or payable for the auditing and review of financial reports of these entities will be prescribed by ASIC in its annual legislative instrument.

Determining whether a disclosing entity controls another is determined in accordance with the accounting standard *AASB10 Consolidated Financial Statements*, which is a disallowable legislative instrument that is incorporated from time to time. The accounting standard is accessible on the Federal Register of Legislation and the Australian Accounting Standards Board's website.

There is no pro-rata of the levy amount as the formula already provides for an effective scale of business activity – an entity that operates for part of the year will receive fewer fees than if the entity had operated for the full year.

Section 16- Large proprietary companies

Large proprietary companies will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared equally between all large proprietary companies in the financial year. ASIC will prescribe the number of large proprietary companies for each financial year as part of its annual legislative instrument.

There is no pro-rata of the levy as the low annual levy rate means that pro-rating the levy would be administratively burdensome, disproportionately increasing costs to be passed through to the subsector.

Section 17- Public companies (unlisted)

Unlisted public companies will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs will be shared between all unlisted public companies in the financial year. ASIC will prescribe the number of unlisted public companies for each financial year as part of its annual legislative instrument.

There is no pro-rata of the levy as the low annual levy rate means that pro-rating the levy would be administratively burdensome, disproportionately increasing costs to be passed through to the subsector.

Section 18- Registered company auditors

Registered company auditors will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared equally between all registered company auditors in the financial year. ASIC will prescribe the number of registered company auditors for each financial year as part of its annual legislative instrument.

There is no pro-rata of the levy as the low annual levy rate means that pro-rating the levy would be administratively burdensome, disproportionately increasing costs to be passed through to the subsector.

Section 19- Listed corporations

Listed corporations (including corporations whose securities are only permitted to be traded on a financial market together with other securities) will pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. All listed corporations will pay a minimum levy of \$4,000 if they have a market capitalisation under \$5 million. Entities that have a market capitalisation of \$5 million or more will pay an additional graduated component depending on each entity's share of the total market capitalisation of listed corporations in the subsector. However, entities that have a market capitalisation of \$20 billion or more will be treated as having a market capitalisation of \$20 billion. This will provide for a maximum amount of levy that entities in the subsector will be required to pay (although the

actual maximum amount will vary from year to year depending on the number of entities, the total market capitalisation of all entities in the subsector and the regulatory costs to be recovered in each year). In the case where securities of the listed corporation are only permitted to be traded on the financial market together with other securities, market capitalisation is worked out based on the price for the securities of the listed corporation together with the other entity.

ASIC will prescribe its regulatory costs and the total market capitalisation for listed corporations as part of its annual legislative instrument.

The pro-rata provision in section 11 of the Regulations applies to this subsector so that each entity will only pay the levy based on the proportion of the number of days in the financial year the entity was a listed corporation.

Section 20 – Registered liquidators

Registered liquidators will pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. Registered liquidators will pay a minimum levy of \$2,500 and then a variable amount depending on each entity's share of the total number of prescribed notifiable events that occur each year. ASIC will prescribe its regulatory costs and the total number of prescribed notifiable events for each financial year as part of its annual legislative instrument.

There is no pro-rata of the graduated levy amount as the formula already provides for an effective scale of business activity – an entity that only operates for part of the year would have less prescribed notifiable events than if the entity had operated for the full year.

Section 21 – Deposit-taking and credit sector

This section provides that Division 2 of Part 3 of the Regulations specifies the criteria for identifying the entities that are part of the subsectors within the deposit-taking and credit sector. Entities may fall within multiple subsectors within the sector depending on the activities they undertake during a financial year.

Section 22 – Subsectors to which basic levy component applies

This section prescribes the deposit-taking and credit subsectors that are subject to the basic levy component formula in section 9 of these Regulations. The relevant subsectors are:

- margin lenders (section 23); and
- small amount credit providers (section 24);

Sections 23 - Margin lenders

Entities that hold an Australian Financial Services Licence (AFSL) with an authorisation to deal in a financial product by issuing margin lending facilities during a financial year will fall within this subsector for the financial year.

Margin lenders will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. The subsector regulatory costs will be shared equally based on the number of margin lenders in the financial year. However, an entity that does not operate for a full financial year will only share in the regulatory costs for the subsector in proportion to the number of days in the financial year the entity had the relevant AFSL authorisation. ASIC will prescribe its regulatory costs and the number of entities in the subsector as part of its annual legislative instrument.

Sections 24 – Small amount credit providers

Entities that hold an Australian credit licence authorising it to engage in credit activities as a credit provider and provide credit under a small amount credit contract during a financial year will fall within this subsector for the financial year.

Small amount credit providers will pay a levy calculated in accordance with the basic levy component formula in section 9 of the regulations. The subsector regulatory costs will be shared between entities based on each entity's share of the total amount of credit provided under small amount credit contracts in the financial year. The total amount of credit provided under small amount credit contracts in the financial year will be prescribed by ASIC in its annual legislative instrument. The levy will be calculated on the actual amount of credit provided to consumers during the financial year (rather than approvals).

There is no pro-rata of the levy amount as the formula already provides for an effective scale of business activity – an entity that operates for part of the year will provide less credit under small amount credit contracts than if the entity had operated for the full year.

There is no minimum levy for the small amount credit providers subsector as entities that fall within the subsector would also fall within the credit provider subsector and so would have to pay the \$2,000 minimum levy applicable in that subsector.

Section 25 – Credit intermediaries

Entities that hold an Australian credit licence authorising it to engage in credit activities other than as a credit provider during a financial year will fall within this subsector for the financial year.

Credit intermediaries will have to pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. Each credit intermediary will pay a minimum levy of \$1,000 and then a variable amount depending on the number of credit representatives the entity has as a proportion of the total number of credit representatives in the subsector. ASIC will prescribe its regulatory costs for the subsector and the total number of credit representatives in the subsector for a financial year as part of its annual legislative instrument.

The pro-rata provision in section 11 of the Regulations applies to this subsector so that an entity will only pay the levy based in proportion to the number of days in the financial year an entity holds the relevant credit licence.

Section 26 –Credit providers

An entity that holds an Australian credit licence authorising it to engage in credit activities as a credit provider during a financial year will fall within this subsector for the financial year.

Credit providers must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. All Credit providers (including those that only provide credit under small amount credit contracts – see section 24 above) will pay a minimum levy of \$2,000. Credit providers that provide more than \$100 million in credit contracts (other than under small amount credit contracts) will also pay a variable component depending on the entity's share of the total value of credit contracts above the \$100 million threshold provided by the subsector each financial year. The graduated component of the levy will be calculated on the actual amount of credit provided to consumers during the financial year (rather than approvals). ASIC will prescribe its regulatory costs and the total value of credit above the \$100 million threshold provided by the subsector in a financial year as part of its annual legislative instrument.

There is no pro-rata of the levy amount as the formula already provides for an effective scale of business activity – an entity that operates for part of the year will provide less credit than if it had operated for the full year.

Section 27 –Deposit product providers

Entities that hold an AFSL with an authorisation to deal in a financial product by issuing deposit products during a financial year will fall within this subsector for the financial year.

Deposit product providers must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. All deposit product providers will pay a minimum levy of \$2,000. A deposit product provider that holds more than \$10 million in deposits at the end of a financial year will also pay a variable component depending on its share of the total value of deposits above the \$10 million threshold held by the subsector in the financial year. ASIC will prescribe its regulatory costs and the total value of deposits held above the \$10 million threshold in the subsector in a financial year as part of its annual legislative instrument. The value of deposits held is already reported to APRA by deposit product providers. The amount reported as at the end of each financial year will provide the basis for calculating the levy amounts.

The pro-rata provision in section 11 of the Regulations applies to this subsector so that an entity will only pay the levy based in proportion to the number of days in the financial year the entity held the relevant licence.

Section 28 –Payment product providers

Entities that hold an AFSL with an authorisation to deal in a financial product through which, or through the acquisition of which, non-cash payments can be made during a financial year will fall within this subsector for the financial year.

For the 2017-18 financial year, payment product providers must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs will be shared equally between each entity in the subsector. However, if an entity does not operate for a full financial year, it will only share in the regulatory costs for the subsector for that year in proportion to the number of days in the financial year that it held the relevant AFSL. ASIC will prescribe its regulatory costs and the number of entities in the subsector as part of its annual legislative instrument.

For all future financial years, payment product providers must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. Payment product providers will pay a minimum levy of \$2,000. Each entity will also pay a variable component depending on its share of the total relevant revenue received by the subsector in the financial year. ASIC will prescribe its regulatory costs and the amount of relevant revenue received by the subsector for each financial year as part of its annual legislative instrument.

Subsection 28(5) of the regulations prescribes the relevant revenue for determining the amount of levy payable by payment product providers is the gross revenue received in the financial year by an entity in connection with non-cash payment products issued by the entity less expenses incurred during the financial year from dealing in non-cash payment facilities. Revenue received in connection with non-cash payment products would include:

- one-off or point-in-time fees collected from product holders (for example, fees for acquiring the product or annual fees);
- income collected from the product holders when using the facility (for example, transaction fees or ATM fees); and
- income generated through a product holder's use of the product (for example, interchange fees).

Section 29 – Investment management, superannuation and related services sector

This section provides that Division 3 of Part 3 of the Regulations specifies the criteria for identifying the entities that are part of the subsectors within the investment management, superannuation and related services sector. Entities may fall within multiple subsectors within the sector depending on their AFSL authorisations and activities during the year.

Section 30 – Subsectors to which basic levy component applies

This section prescribes the subsectors within the investment management, superannuation and related services sector that are subject to the basic levy component formula in section 9 of the Regulations. The relevant subsectors are:

- custodians (section 31);
- managed discretionary account providers (section 32); and
- traditional trustee company service providers (section 33).

Section 31 – Custodians

Entities that hold an AFSL authorising them to provide a custodial or depository service during a financial year will fall within the custodians subsector for that financial year.

Custodians will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. The subsector regulatory costs will be shared equally between all entities in the subsector. ASIC's regulatory costs for the subsector and the total number of custodians operating in a financial year will be prescribed in ASIC's annual legislative instrument.

There is no pro-rata of the levy as the low annual levy rate means that pro-rating the levy would be administratively burdensome, disproportionately increasing costs to be passed through to the subsector.

Section 32 – Managed discretionary account providers

An entity will fall within the managed discretionary account providers subsector in a financial year if it holds an AFSL authorising it to deal in a financial product by issuing financial products in respect of interests in managed investment schemes limited to MDA services or miscellaneous financial investment products limited to MDA services (whether or not the entity's AFSL authorisation permits dealing in other financial products). MDA Services has the same meaning as the *ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968* which is a disallowable legislative instrument that is incorporated from time to time. The instrument is available on the Federal Register of Legislation and the ASIC website.

Managed discretionary account providers will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. The subsector regulatory costs will be shared equally between all entities in the subsector. However, if an entity does not operate for the full financial year, it will only share in the regulatory costs for the subsector in proportion to the number of days in the financial year that it holds the relevant AFSL authorisation. ASIC's regulatory costs for the subsector and the total number of managed discretionary account providers operating in a financial year will be prescribed in ASIC's annual legislative instrument.

Section 33 – Traditional trustee company service providers

Entities that hold an AFSL authorising them to provide traditional trustee company services during a financial year will fall within the traditional trustee company service providers subsector for that financial year.

Traditional trustee company service providers will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. The subsector regulatory costs will be shared equally between all entities in the subsector. However, if an entity does not operate for the full financial year, it will only share in the regulatory costs for the subsector in proportion to the number of days in the financial year that it held the relevant AFSL authorisation. ASIC's regulatory costs for the subsector and the total number of traditional trustee company

service providers operating in a financial year will be prescribed in ASIC's annual legislative instrument.

Section 34 – Operators of investor directed portfolio services (IDPS)

Entities that hold an AFSL authorising them to operate an IDPS within the meaning of section 21 of *ASIC Class Order CO13/763* during a financial year will fall within the IDPS operators subsector for that financial year. *ASIC Class Order CO13/763* is a disallowable legislative instrument that is incorporated from time to time. It can be accessed on the Federal Register of Legislation and on the ASIC website.

Operators of IDPS must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. All IDPS operators will pay a minimum levy of \$10,000 plus a variable component depending on each entity's share of the total amount of gross revenue from IDPS activity in the subsector for the financial year. ASIC will prescribe its regulatory costs and the total amount of gross revenue from all IDPS activity for the subsector for each financial year as part of its annual legislative instrument.

There is no pro-rata of the levy amount as the formula already provides for an effective scale of business activity – an entity that operates for part of the financial year will receive less revenue from IDPS activity than if it had operated for the full year.

Section 35 – Responsible entities

Entities that hold an AFSL authorising them to operate a registered scheme during a financial year will fall within the responsible entities subsector for that financial year.

Responsible entities must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. All responsible entities in the subsector will pay a minimum levy of \$7,000. Where the total value of assets in all registered schemes operated by a responsible entity at the end of the financial year exceeds \$10 million, that entity will also have to pay a graduated levy amount. The graduated levy amount is equal to the share of the value of assets in all registered schemes operated by the entity as a proportion of the total value of assets in all registered schemes in the subsector for the financial year which have a value above the \$10 million threshold. ASIC will prescribe its regulatory costs and the total value of assets in all registered schemes that have a value about the \$10 million threshold as part of its annual legislative instrument.

The total value of assets in a registered scheme for a financial year is the total assets as shown in financial statements lodged with ASIC under the *Corporations Act 2001*. In cases where there are no financial statements lodged with ASIC, the total value of assets can be ascertained from the balance sheet of the registered scheme as prepared as general purpose financial statements for the financial year in accordance with the relevant accounting standards. For the purposes of the levy calculation, the total value of assets should not include any assets that are an interest in another registered scheme operated by the entity.

The pro-rata provision in section 11 of the Regulations applies to this subsector so that an entity will only pay the levy in proportion to the number of days in the financial year the entity held the relevant AFSL authorisation.

Section 36 – Superannuation trustees

Entities that are a registerable superannuation entities (RSE) licensee during a financial year will fall within the superannuation trustees subsector for that financial year.

Superannuation trustees must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. All superannuation trustees will pay a minimum levy of \$18,000. Where the total value of assets in all RSEs operated by an entity at the end of the financial year exceeds \$250 million, that entity will also have to pay a graduated levy amount. The graduated levy amount is equal to the share of the value of assets in all RSEs operated by the entity as a proportion of the total value of assets in all RSEs in the subsector for the financial year above the \$250 million threshold. ASIC will prescribe its regulatory costs and the total value of assets in all RSEs for each financial year as part of its annual legislative instrument.

The total value of assets in a RSE for a financial year is the total value of assets as shown in its financial statements lodged with ASIC under the *Corporations Act 2001*. In cases where there are no financial statements lodged with ASIC, the total value of assets can be ascertained from the balance sheet of the RSE as prepared as general purpose financial statements for the financial year in accordance with the relevant accounting standards. For the purposes of the levy calculation, the total value of assets should not include any assets that are an interest in another RSE operated by the entity.

The pro-rata provision in section 11 of the Regulations applies to this subsector so that an entity will only pay the levy in proportion to the number of days in the financial year the entity held the relevant licence.

Section 37 – Wholesale trustees

Entities that hold an AFSL authorising them to deal in a financial product by issuing interests in, or arranging for the issue of the interests in, a managed investment scheme to wholesale clients during a financial year will fall within the wholesale trustees subsector for that financial year.

For the 2017-18 financial year, wholesale trustees must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. The subsector regulatory costs will be shared equally between each entity in the subsector. However, if an entity does not operate for the full financial year, it will only share in the regulatory costs for the subsector in proportion to the number of days in the financial year that it holds the relevant AFSL. ASIC will prescribe its regulatory costs and the number of entities in the subsector as part of its annual legislative instrument.

For all future financial years, wholesale trustees must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. All

wholesale trustees will pay a minimum levy of \$1,000. Each entity will also pay a graduated component depending on its share of the total value of assets in all unregistered managed investment schemes in the subsector each financial year. ASIC will prescribe its regulatory costs and the total value of assets in all unregistered managed investment schemes for each financial year as part of its annual legislative instrument.

The total value of assets in an unregistered managed investment scheme is the total value of assets as shown in financial statements lodged with ASIC under the *Corporations Act 2001*. In cases where there are no financial statements lodged with ASIC, the total value of assets can be ascertained from the balance sheet of the unregistered managed investment scheme as prepared as general purpose financial statements for the financial year in accordance with the relevant accounting standards. For the purposes of the levy calculation, the total value of assets should not include any assets that are an interest in another unregistered managed investment scheme operated by the entity.

The pro-rata provision in section 11 of the Regulations applies to this subsector so that an entity will only pay the levy in proportion to the number of days in the financial year the entity held the relevant licence.

Section 38 – Financial advice sector

This section provides that Division 4 of Part 3 of the Regulations specifies the criteria for identifying the entities that are part of the subsectors within the financial advice sector. The subsectors in the financial advice sector are mutually exclusive and an entity will therefore only be able to fall under one of the subsectors at any one time. Subsection 38(3) of the regulations which provides that a leviable entity may form part of 2 or more sub-sectors in the financial advice sector covers situations where entities change authorisations during a financial year and therefore fall within multiple subsectors for that year.

Section 39 – Subsectors to which the basic levy component applies

This section prescribes the subsectors within the financial advice sector that are subject to the basic levy component formula in section 9 of the Regulations. The relevant subsectors are:

- licensees that provide only general advice (section 40);
- licensees that provide personal advice only to wholesale clients (but not to retail clients) (section 41); and
- licensees that provide personal advice to retail clients in relation to products that are not relevant financial products (section 42).

Section 40 – Licensees that provide only general advice

An entity will fall within this subsector for a financial year if the entity holds an AFSL authorising it to provide financial product advice that is only general advice. Entities that are only able to provide general advice will therefore fall within this subsector.

Entities in this subsector will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. The subsector regulatory costs will be shared equally between all entities in the subsector. ASIC's regulatory costs for the subsector and the total number of relevant licensees operating in this subsector in a financial year will be prescribed in ASIC's annual legislative instrument.

There is no pro-rata of the levy as the low annual levy rate means that pro-rating the levy would be administratively burdensome, disproportionately increasing costs to be passed through to the subsector.

Section 41 – Licensees that provide personal advice only to wholesale clients (but not to retail clients)

An entity will fall within this subsector for a financial year if the entity holds an AFSL authorising it to provide financial product advice only to wholesale clients. This subsector will therefore consist of all AFSL license holders who are only able to provide financial product advice to wholesale clients.

Entities in this subsector will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. The subsector regulatory costs will be shared equally between all entities in the subsector. ASIC's regulatory costs for the subsector and the total number of relevant licensees operating in the subsector in a financial year will be prescribed in ASIC's annual legislative instrument.

There is no pro-rata of the levy as the low annual levy rate means that pro-rating the levy would be administratively burdensome, disproportionately increasing costs to be passed through to the subsector.

Section 42 – Licensees that provide personal advice to retail clients in relation to products that are not relevant financial products

An entity will fall within this subsector in a financial year if it holds an AFSL that authorises it to provide financial product advice to retail clients only on basic banking products, general insurance products and consumer credit insurance.

Entities in this subsector will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. The subsector regulatory costs will be shared equally between all entities that are part of the subsector for the full financial year. However, if an entity does not operate for the full financial year, it will only share in the regulatory costs for the subsector in proportion to the number of days in the financial year that it holds the relevant AFSL. ASIC's regulatory costs for the subsector and the total number of relevant licensees operating in the subsector in a financial year will be prescribed in ASIC's annual legislative instrument.

Section 43 – Licensees that provide personal advice to retail clients in relation to products that are relevant financial products

An entity will fall within this subsector in a financial year if it holds an AFSL that authorises it to provide financial product advice on relevant financial products to retail customers.

Entities in this subsector must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. All licensees within this subsector will pay a minimum levy of \$1,500 and an additional variable component depending on each entity's share of the total number of registered financial planners authorised to provide advice on the entity's behalf. ASIC will prescribe its regulatory costs and the total number of registered financial planners in the subsector in a financial year as part of its annual legislative instrument.

If an entity falls within this subsector and the large futures exchange subsector (section 64), the large securities exchange subsector (section 65) or the securities dealer subsector (section 67), its authorised financial planners will not be counted towards the levy calculation as long as they only provide advice on:

- financial products that are admitted to quotations;
- financial products that are traded on a prescribed foreign market; or
- basic banking products.

As such, ASIC's associated regulatory costs of these activities will be attributed to those subsectors rather than the financial advice sector.

Further, AFSL holders that are authorised to deal in securities so that they can arrange through a market participant to execute trades for clients will also fall within the securities dealer subsector (section 67) with the associated costs of those activities to ASIC to be recovered through that subsector.

The pro-rata provision in section 11 of the Regulations applies to this subsector so that an entity will only pay the levy in proportion to the number of days in the financial year the entity held the relevant AFSL.

Section 44 – Market infrastructure and intermediaries sector

This section provides that Division 5 of Part 3 of the Regulations specifies the criteria for identifying the entities that are part of the subsectors within the market infrastructure and intermediaries sector. Entities may fall within multiple subsectors within the sector depending on their regulatory permissions and the activities they undertake during a financial year (unless a provision provides otherwise).

Section 45 – Subsectors to which basic levy component applies

This section prescribes the subsectors within the market infrastructure and intermediaries sector that are subject to the basic levy component formula in section 9 of the Regulations. The relevant subsectors are:

- overseas market operators (section 46);
- small securities exchange operators with self-listing function only (section 47);
- small securities exchange operators (section 48);
- small futures exchange operators (section 49);

- small derivatives market operators (section 50);
- large securities exchange operators (section 51);
- large futures exchange operators (section 52);
- exempt market operators (section 53);
- tiers 1 - 4 clearing and settlement facility operators (sections 54 - 57);
- exempt CS facility operators (section 58);
- Australian derivative trade repository operators (section 59);
- credit rating agencies (section 60);
- retail over-the-counter- derivatives issuers (section 61); and
- wholesale electricity dealers (section 62).

Section 46 – Overseas market operators

Entities that operate an overseas market that is licensed under subsection 795B(2) of the *Corporations Act 2001* during a financial year will fall within this subsector for the financial year.

Entities that fall within the overseas market operators' subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each overseas market that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant markets in the subsector were operated as part of its annual legislative instrument.

Section 47 – Small securities exchange operators with self-listing function only

An entity that operates a market during a financial year where only ordinary shares of the entity can be traded will fall within this subsector for the financial year. However, an entity will not fall within this subsector if the market is an overseas market (see section 46) or 10 million or more transactions are entered into on the market in the financial year.

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each market that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant markets in the subsector were operated as part of its annual legislative instrument.

Section 48 – Small securities exchange

An entity that operates a market during a financial year where less than 10 million transactions in securities are entered into on the market in the financial year will fall within this subsector for the financial year. However, an entity will not fall within this subsector if the market being operated was an overseas market (see section 46) or a small securities (self-listing) exchange (see section 47).

Entities that fall within the subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each market that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant markets in the subsector were operated as part of its annual legislative instrument.

Section 49 – Small futures exchange operators

An entity that operates a market during a financial year where less than 10 million transactions in futures contracts are entered into on the market in the financial year will fall within this subsector for the financial year. However, an entity will not fall within this subsector if the market being operated was an overseas market (see section 46), a small securities (self-listing) exchange (see section 47) or a small securities exchange (see section 48).

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each market that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant markets in the subsector were operated as part of its annual legislative instrument.

Section 50 – Small derivatives market operators

An entity that operates a market during a financial year where less than 10 million derivative transactions are entered into on the market in the financial year will fall within this subsector for the financial year. However, an entity will not fall within this subsector if the market being operated was an overseas market (see section 46), a small securities (self-listing) exchange (see section 47), a small securities exchange (see section 48) or a small futures exchange (see section 49).

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each market that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant markets in the subsector were operated as part of its annual legislative instrument.

Section 51 – Large securities exchange operators

An entity that operates a market during a financial year where 10 million or more transactions in securities are entered into on the market in the financial year will fall within this subsector for the financial year. However, an entity will not fall within this subsector if the market being operated was an overseas market (see section 46).

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between entities based on the value of all transactions (corrected for cancellations) that are entered on or reported to exchanges operated by the entity as a proportion of the total value of all transactions (corrected for cancellations) that are entered on or reported to all exchanges within the subsector. ASIC will prescribe its regulatory costs for the subsector and the total value of all transactions that are entered on or reported to all exchanges within the subsector as part of its annual legislative instrument.

Section 52 – Large futures exchange operators

An entity that operates a market during a financial year where 10 million or more futures transactions are entered into on the market in the financial year will fall within this subsector for the financial year. However, an entity will not fall within this subsector if the market being operated was an overseas market (see section 46) or a large securities exchange (see section 51).

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each market that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant markets in the subsector operated as part of its annual legislative instrument.

Section 53 – Exempt market operators

An entity that operates a market during a financial year that is exempt from the operation of the whole of Part 7.2 of the *Corporations Act 2001* will fall within this subsector for the financial year. However an entity will not fall within this subsector if the market was exempt from the whole of Part 7.2 of the *Corporations Act 2001* because of an exemption granted to a class of financial markets under section 791C of the Act.

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each market that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant markets in the subsector operated as part of its annual legislative instrument.

Sections 54 to 57 – Clearing and settlement facility operators (tiers 1 -4)

There are four subsectors for clearing and settlement facility operators within the market infrastructure and intermediaries sector. Determining which of the four subsectors (tiers 1 to 4) an entity will fall within for a financial year is based on the systemic importance and the strength of the domestic connection of the clearing and settlement facility an entity is licenced to operate.

ASIC and the Reserve Bank of Australia consider matters set out in section 827A of the *Corporations Act 2001* when determining whether a clearing and settlement facility is systemically important and the strength of the domestic connection to Australia. These matters include:

- the nature of the facility's services, and the financial products that it clears or settles;
- the size, or proposed size of the facility;
- the degree of retail or wholesale participation; and
- common participants with other clearing and settlement facilities or financial markets.

Additionally the Council of Financial Regulators published guidance 'Application of the Regulatory Influence Framework for Cross-border Central Counterparties' in March 2014 that sets out graduated or tiered requirements for clearing and settlement facilities.

Tier 1 clearing and settlement facility operators (section 54)

An entity will fall within the tier 1 clearing and settlement facility operators subsector if it holds a licence that was granted in relation to a clearing and settlement facility that is systemically important in Australia and has a strong domestic connection to the Australian financial system.

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each clearing and settlement facility that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant clearing and settlement facilities in the subsector operated as part of its annual legislative instrument.

Tier 2 clearing and settlement facility operators (section 55)

An entity will fall within the tier 2 clearing and settlement facility operators subsector if it holds an Australian CS facility licence that was granted in relation to a clearing and settlement facility that is systemically important in Australia but does not have a strong domestic connection to the Australian financial system.

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each clearing and settlement facility that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant clearing and settlement facilities in the subsector operated as part of its annual legislative instrument.

Tier 3 clearing and settlement facility operators (section 56)

An entity will fall within the tier 3 clearing and settlement facility operators subsector if it holds an Australian CS facility licence that was granted in relation to a clearing and settlement facility that is not systemically important in Australia and does not have a strong domestic connection to the Australian financial system.

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each clearing and settlement facility that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant clearing and settlement facilities in the subsector operated as part of its annual legislative instrument.

Tier 4 clearing and settlement facility operators (section 57)

An entity will fall within the tier 4 clearing and settlement facility operators subsector if it holds an Australian CS facility licence that only authorises the entity to operate a clearing and settlement facility for the sole purpose of clearing and settling trades in the entity's own shares.

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each clearing and settlement facility that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant clearing and settlement facilities in the subsector operated as part of its annual legislative instrument.

Section 58 – Exempt CS facility operators

An entity that operates a market during a financial year that is exempt from the operation of the whole of Part 7.3 of the *Corporations Act 2001* will fall within this subsector for the financial year.

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each CS facility

that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant CS facilities in the subsector operated as part of its annual legislative instrument.

Section 59 – Australian derivative trade repository operators

An entity that operates a licensed derivative trade repository during a financial year will fall within this subsector for the financial year.

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each repository that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant repositories in the subsector operated as part of its annual legislative instrument.

Section 60 – Credit rating agencies

An entity that holds an AFSL that authorises it to provide general advice by issuing a credit rating during a financial year will fall within this subsector for the financial year.

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared equally between all entities in the subsector. However, if an entity does not hold the required AFSL authorisation for the full financial year, it will only share in the regulatory costs for the subsector in proportion to the number of days in the financial year that it held the required AFSL licence authorisation. ASIC will prescribe its regulatory costs for the subsector and the number of entities that are part of the subsector as part of its annual legislative instrument.

Section 61 – Retail over-the-counter derivatives issuers

An entity will fall within this subsector for a financial year if during the financial year it held an AFSL authorisation to provide the following financial services to retail clients:

- dealing in a financial product by issuing derivatives; and
- making a market for derivatives.

The entity will not however fall within the subsector if it is regulated by APRA or is a participant in a clearing and settlement facility.

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared equally between all entities in the subsector. However, if an entity does not hold the required AFSL authorisation for the full financial year, it will only share in the regulatory costs for the subsector in proportion to the number of days in the financial year that it held the required AFSL

licence authorisation. ASIC will prescribe its regulatory costs for the subsector and the number of entities that are part of the subsector as part of its annual legislative instrument.

Section 62 – Wholesale electricity dealers

An entity will fall within this subsector for a financial year if during the financial year it incurred liabilities as part of the ordinary business operations of the entity in dealing in, or making a market in, over-the-counter derivatives that relate to the wholesale price of electricity as long as the entity is not:

- regulated by APRA; or
- a participant in a financial market; or
- a participant in a clearing and settlement facility.

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared equally between all entities in the subsector. ASIC will prescribe its regulatory costs for the subsector and the number of entities that are part of the subsector as part of its annual legislative instrument.

There is no pro-rata of the levy as the low annual levy rate means that pro-rating the levy would be administratively burdensome, disproportionately increasing costs to be passed through to the subsector.

Section 63 – Corporate advisors

An entity will fall within the corporate advisors subsector if:

- it holds an AFSL or is exempt from holding one under paragraph 911A(2)(1) or subsection 926A(2) of the *Corporations Act 2001*; and
- either the entity or the entity's authorised representative provides or holds out that it provides any of the types of financial services prescribed in subsection 63(2) of the Regulations.

However, an entity will not fall within the subsector if its exemption to hold an AFSL is as a result of the *ASIC Corporations (Foreign Financial Services Providers – Limited Connection Instrument 2017/182)*, which is a disallowable legislative instrument that is incorporated from time to time. The instrument is available on the Federal Register of Legislation and on the ASIC website.

Entities that fall within the corporate advisors subsector must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. All entities in the subsector will pay a minimum levy of \$1,000. Entities within the subsector that make more than \$100,000 in gross revenue from providing the prescribed financial services in a financial year will also pay a variable component depending on the entity's share of the total amount of gross revenue made by all entities in the subsector in the financial year. In calculating the gross revenue received

by each entity, amounts earned by an entity's authorised representatives is also included. ASIC will prescribe its regulatory costs and the gross amount of revenue made by the subsector as part of its annual legislative instrument.

There is no pro-rata of the levy amount as the formula already provides for an effective scale of business activity – an entity that operates for part of the financial year will receive less revenue than if it had operated for the full year.

Section 64 – Large futures exchange participants

An entity will fall within the large futures exchange participants subsector for a financial year if the entity is a participant in a large futures exchange during a financial year.

Entities that fall within the large futures exchange participants subsector must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. Entities in this subsector will pay a minimum levy of \$9,000 and an additional graduated component depending on each entity's share of the total number of messages sent and transactions reported on a large futures exchange that are recognised by ASIC's Market Surveillance System. ASIC will prescribe its regulatory costs and the total number of reported messages and transactions recognised by the Market Surveillance System for the financial year as part of its annual legislative instrument.

Consistent with the previous Market Surveillance System cost recovery arrangements, 90 per cent of ASIC's non-information technology costs will be recovered based on the number of recognised transactions reported to large futures exchange. The remaining 10 per cent non-information technology costs as well as 100 per cent of ASIC's information technology costs will be recovered based on the number of recognised messages reported to a large futures exchange. ASIC's annual legislative instrument will also specify the total amount of information technology costs attributable to the subsector (with the difference between the total costs and the information technology costs representing the non-information technology costs for the subsector).

There is no pro-rata of the levy amount as the formula already provides for an effective scale of business activity – an entity that operates for part of the financial year will send less messages and report less transactions on a large futures exchange than if it had operated for the full year.

Section 65 – Large securities exchange participants

An entity will fall within the large securities exchange participants subsector for a financial year if the entity is a participant in a large securities exchange during a financial year.

Entities that fall within the large securities exchange participants subsector must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. Entities in this subsector will pay a minimum levy of \$9,000 and an additional graduated component depending on each entity's share of the total number of messages sent and transactions entered on or reported to a large securities exchange

that are recognised by ASIC's Market Surveillance System. ASIC will prescribe its regulatory costs and the total number of reported messages and transactions recognised by the Market Surveillance System for the financial year as part of its annual legislative instrument.

Consistent with the previous Market Surveillance System cost recovery arrangements, 90 per cent of ASIC's non-information technology costs will be recovered based on the number of recognised transactions reported to large securities exchange. The remaining 10 per cent non-information technology costs as well as 100 per cent of ASIC's information technology costs will be recovered based on the number of recognised messages reported to a large securities exchange. ASIC's annual legislative instrument will also specify the total amount of information technology costs attributable to the subsector (with the difference between the total costs and the information technology costs representing the non-information technology costs for the subsector).

There is no pro-rata of the levy amount as the formula already provides for an effective scale of business activity – an entity that operates for part of the financial year will send less messages and report less transactions on a large securities exchange than if it had operated for the full year.

Section 66 – Over-the-counter traders

An entity will fall within the over-the-counter traders subsector if:

- it holds an AFSL or is exempt from holding one under paragraph 911A(2)(l) or subsection 926A(2) of the *Corporations Act 2001*;
- deals in, or holds out that it deals in over-the-counter products as prescribed in paragraph 66(1)(b) of the Regulations;
- forms part of the corporate advisors subsector (section 63) or is a related body corporate of an entity that forms part of the corporate advisors subsectors; and
- is not part of any of the following subsectors:
 - responsible entities (section 35);
 - superannuation trustees (section 36);
 - wholesale trustees (Section 37).

However, an entity will not fall within the subsector if its exemption to hold an AFSL is as a result of the *ASIC Corporations (Foreign Financial Services Providers – Limited Connection Instrument 2017/182)*, which is a disallowable legislative instrument that is incorporated from time to time. The instrument is available on the Federal Register of Legislation and on the ASIC website.

Entities that fall within the over-the-counter traders subsector must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. Entities in this subsector will pay a minimum levy of \$1,000 and an additional variable component depending on each entity's share of the total number of

full time equivalent persons who engage in prescribed activities during the year. The relevant persons who are counted toward calculating the levy include those who ordinarily act on behalf of the entity and those that ordinarily act on behalf of the entity's authorised representative. Paragraph 66(3)(b) prescribed the relevant activity that these persons must engage in to be counted for the purposes of calculating the amount of levy payable. However, these persons will not be counted if they carry out the activity outside Australia and if the activity is carried out in relation to a professional investor that was outside Australia.

ASIC will prescribe its regulatory costs and the total number of full time equivalent persons who engage in the prescribed activity in the subsector as part of its annual legislative instrument.

The pro-rata provision in section 11 of the Regulations applies to this subsector so that an entity will only pay the levy in proportion to the number of days in the financial year the entity held the AFSL.

Section 67 – Securities dealers

An entity will fall within the securities dealers subsector for a financial year if it:

- holds an AFSL that authorises it to deal in securities at any time during the financial year;
- is not a participant in a clearing and settlement facility, a large futures exchange or a large securities exchange at any time during the financial year; and
- more than \$250,000 in transactions for the entity have been executed on, or reported to a large securities exchange in the financial year.

Entities that fall within the securities dealers subsector must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. Entities in this subsector will pay a minimum levy of \$1,000 and an additional variable component depending on each entity's share of the total value of transactions in securities within the subsector (as defined in subsection 67(3) of the Regulations). ASIC will prescribe its regulatory costs and the total value of relevant transactions in the subsector as part of its annual legislative instrument.

There is no pro-rata of the levy amount as the formula already provides for an effective scale of business activity – an entity that operates for part of the financial year will undertake less activity than if it had operated for the full year.

Section 68 – Insurance sector

This section provides that Division 6 of Part 3 of the Regulations specifies the criteria for identifying the entities that are part of the subsectors within the insurance sector. Entities may fall within multiple subsectors within the insurance sector depending on their AFSL authorisations and activities during a financial year (unless a provision provides otherwise).

Section 69 – Subsectors to which the basic levy component applies

This section prescribes the subsectors within the insurance sector that are subject to the basic levy component formula in section 9 of the Regulations. The relevant subsectors are:

- insurance product distributors (section 70); and
- risk management product providers (section 71).

Section 70 – Insurance product distributors

Entities that hold an AFSL with an authorisation to deal in general insurance, life risk insurance products or investment life products during a financial year will fall within this subsector for the financial year. However, an entity will not fall within this subsector in a financial year if the entity also falls within the insurance product providers (see section 72) subsector for the financial year.

Entities that fall within the insurance product distributors' subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared equally between all entities in the subsector. ASIC will prescribe its regulatory costs for the subsector and the number of entities that are part of the subsector as part of its annual legislative instrument.

There is no pro-rata of the levy as the low annual levy rate means that pro-rating the levy would be administratively burdensome, disproportionately increasing costs to be passed through to the subsector.

Section 71 – Risk management product providers

Entities that hold an AFSL with an authorisation to deal in a financial product for managing financial risk that is not a financial product specified in section 764A of the *Corporations Act 2001* during a financial year will fall within this subsector for the financial year.

Entities that fall within the risk management product providers' subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared equally between all entities in the subsector. However, if an entity does not hold the relevant AFSL authorisation for the full financial year, it will only share in the regulatory costs for the subsector in proportion to the number of days in the financial year that it held the required AFSL licence authorisation. ASIC will prescribe its regulatory costs for the subsector and the number of entities that are part of the subsector as part of its annual legislative instrument.

Section 72 – Insurance product providers

An entity will fall within the insurance product providers' subsector for a financial year if during the financial year the entity:

- holds an AFSL with an authorisation to deal in general insurance, life risk insurance products or investment life products; and
- the entity is either:
 - a body of the type referred to in paragraphs 3(2)(c) or (e) of the *Australian Prudential Regulation Authority Act 1998*; or
 - a party to the types of arrangements prescribed in subsection 72(2) of the Regulations. An entity that falls within this subsector is considered not to fall within the insurance products distributors' subsector (see section 70).

Entities that fall within the insurance product providers' subsector must pay a levy calculated in accordance with the graduated levy formula in section 10 of the Regulations. All entities in the subsector will pay a minimum levy of \$20,000. Entities within the subsector that have more \$5 million in relevant insurance product income in the financial year will also pay a variable component depending on each entity's share of the total amount of relevant insurance product income in the subsector. An entity's relevant insurance product income is the amount calculated under subsection 72(4) of the Regulations and is based on existing APRA's arrangements. ASIC will prescribe its regulatory costs and the total amount of relevant insurance product income in the subsector as part of its annual legislative instrument.

Part 4 – Miscellaneous

Section 73 – Annual determination

This section provides for ASIC to make annual legislative instruments specifying information as required under these Regulations. The information to be prescribed includes ASIC's regulatory costs for each subsector and the amount of activity for each subsector for the year.

Schedule 1 – List of subsectors

The schedule provides a list of all subsectors subject to a levy amount and indicates the relevant section in the Regulations.