



# **ASIC Supervisory Cost Recovery Levy Regulations 2017**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 27 June 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

Mathias Cormann  
Minister for Finance  
for the Minister for Revenue and Financial Services

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## Part 1—Preliminary

### 1 Name

This instrument is the *ASIC Supervisory Cost Recovery Levy Regulations 2017*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information        |              |              |
|---------------------------------|--------------|--------------|
| Column 1                        | Column 2     | Column 3     |
| Provisions                      | Commencement | Date/Details |
| 1. The whole of this instrument | 1 July 2017. | 1 July 2017  |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *ASIC Supervisory Cost Recovery Levy Act 2017*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) ASIC;
- (b) leviable entity.

- (1) In this instrument:

**Act** means the *ASIC Supervisory Cost Recovery Levy Act 2017*.

**amount of credit** has the same meaning as in subsection 3(2) of the National Credit Code.

**annual determination** means the legislative instrument made for a financial year by ASIC under section 73.

**Australian credit licence** has the same meaning as in the *National Consumer Credit Protection Act 2009*.

**basic banking product** has the same meaning as in section 910A of the *Corporations Act 2001*.

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**credit** has the same meaning as in the *National Consumer Credit Protection Act 2009*.

**credit activity** has the same meaning as in the *National Consumer Credit Protection Act 2009*.

**credit contract** has the same meaning as in the *National Consumer Credit Protection Act 2009*.

**credit provider** has the same meaning as in the *National Consumer Credit Protection Act 2009*.

**deal** has the same meaning as **dealing** in section 761A of the *Corporations Act 2001*.

**entity metric**: a leviable entity's **entity metric** for a sub-sector for a financial year is the amount worked out for the entity under a provision of Part 3 that specifies an amount to be the entity's entity metric for the sub-sector for the financial year.

Note: See also section 12.

**financial year** means a period of 12 months starting on 1 July.

**graduated levy component** for a sub-sector for a financial year has the meaning given by section 10.

**large futures exchange** has the meaning given by subsection 52(3).

**large securities exchange** has the meaning given by subsection 51(3).

**minimum levy component** for a sub-sector for a financial year means the minimum levy component specified in Part 3 for the sub-sector.

**National Credit Code** has the same meaning as in the *National Consumer Credit Protection Act 2009*.

**overseas market** has the meaning given by subsection 46(3).

**over-the-counter**, in relation to a financial product, means a financial product that cannot be traded on:

- (a) a large futures exchange; or
- (b) a large securities exchange; or
- (c) a market licensed under subsection 795B(2) of the *Corporations Act 2001* that operates as an exchange; or
- (d) a small futures exchange; or
- (e) a small securities exchange; or
- (f) a small securities (self-listing) exchange.

**participant** has the same meaning as in section 761A of the *Corporations Act 2001*.

**registrable superannuation entity** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

**relevant financial products** has the same meaning as in section 910A of the *Corporations Act 2001*.



**securities** has the same meaning as in section 9 of the *Corporations Act 2001*.

**small amount credit contract** has the same meaning as in the *National Consumer Credit Protection Act 2009*.

**small derivatives market** has the meaning given by subsection 50(3).

**small futures exchange** has the meaning given by subsection 49(3).

**small securities exchange** has the meaning given by subsection 48(3).

**small securities (self-listing) exchange** has the meaning given by subsection 47(3).

**sub-sector** means a group of one or more entities each of which meets the criteria specified in a provision of Part 3 for an entity to form part of the sub-sector.

Note 1: Within each such provision, the name of the sub-sector is identified in bold italics.

Note 2: For a list of sub-sectors, see Schedule 1.

**sub-sector population**, in relation to a sub-sector, for a financial year, means the number of entities specified by ASIC in an annual determination to be the number of entities that form part of the sub-sector at any time in the financial year.

**sub-sector regulatory costs**, in relation to a sub-sector, for a financial year, means the Australian dollar amount specified by ASIC in a determination made under subsection 10(2) of the Act to be the extent to which ASIC's regulatory costs for the financial year are attributable to the sub-sector.

- (2) Other expressions used in this instrument that are defined in section 9 or 761A of the *Corporations Act 2001* have the same meaning as they have in those sections.

## Part 2—General provisions

### Division 1—Regulatory costs

#### 5 Amounts not included in regulatory costs

For the purposes of paragraph 10(4)(c) of the Act, the following amounts must not be included in the amount of ASIC's regulatory costs for a financial year:

- (a) the cost of operating the Superannuation Complaints Tribunal (as established under the *Superannuation (Resolution of Complaints) Act 1993*);
- (b) the cost of operating the Companies Auditors Disciplinary Board (as established under the *Australian Securities and Investments Commission Act 2001*);
- (c) the cost of operating a committee convened under section 40-45 of Schedule 2 to the *Corporations Act 2001*;
- (d) the cost of operating and maintaining a public register kept by ASIC under the *Corporations Act 2001*;
- (e) the cost of regulating approved SMSF auditors (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);
- (f) the cost of preliminary investigations and reports by liquidators into the failure of a company with few or no assets;
- (g) if the financial year commences before 1 July 2019, the costs associated with achieving the outcome described in Budget Paper No. 2, Budget Measures 2016-17, Part 2, topic headed "Australian Securities and Investments Commission—improving outcomes in financial services".

## **Division 2—Amount of levy payable**

### **Subdivision 2.1—General**

#### **6 Amount of levy**

The amount of levy payable by a liable entity for a financial year is the sum of each levy component the entity has for the financial year.

#### **7 Levy component**

*When an entity has a levy component*

- (1) A liable entity has a **levy component** for a financial year in respect of each sub-sector of which the entity forms part at any time in the financial year.

*Amount of a levy component*

- (2) The amount of a liable entity's levy component for a financial year in respect of a sub-sector is:
  - (a) if a provision of Part 3 provides that the basic levy component applies to the sub-sector for the financial year—the basic levy component for the entity for the sub-sector for the financial year; or
  - (b) otherwise—the amount of the levy component worked out for the entity and the sub-sector under Part 3.

Note: For the basic levy component, see section 9.

#### **8 Levy component for liable entities that are deregistered**

However, the amount of levy payable by a liable entity for a financial year is nil if:

- (a) the entity is required to lodge a return relating to the financial year with ASIC under section 11 of the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017*; and
- (b) before the end of the day on which the return is required to be lodged:
  - (i) the entity is deregistered under Part 5A.1 of the *Corporations Act 2001*; or
  - (ii) ASIC publishes a notice regarding the proposed deregistration of the entity under section 601AA or 601AB of that Act; and
- (c) the entity's registration has not been reinstated before the end of that day.

### **Subdivision 2.2—Levy components**

#### **9 Basic levy component**

- (1) The **basic levy component** for a liable entity for a sub-sector for a financial year is the amount worked out using the formula:

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$$\text{Sub-sector regulatory costs} \times \frac{\text{Basic rate entity metric}}{\text{Sub-sector metric}}$$

where:

**basic rate entity metric** means:

- (a) unless paragraph (b) applies—the entity’s entity metric for the sub-sector for the financial year; or
- (b) if no provision in Part 3 specifies an amount to be the entity metric for the sub-sector for the financial year—1.

**sub-sector metric** means the number specified by ASIC in an annual determination to be the sum of the amounts of **basic rate entity metric** for all leviable entities that form part of the sub-sector for the financial year.

**sub-sector regulatory costs** means the sub-sector regulatory costs in relation to the sub-sector for the financial year.

- (2) However, if a component of the formula is nil or a negative amount, the amount of the basic levy component is nil.

## 10 Graduated levy component

- (1) The **graduated levy component** for a leviable entity for a sub-sector for a financial year is the amount worked out using the formula:

$$\left[ \text{Sub-sector regulatory costs} - \left( \text{Minimum levy component} \times \text{Sub-sector population} \right) \right] \times \frac{\text{Graduated entity metric}}{\text{Sub-sector metric}}$$

where:

**graduated entity metric** means:

- (a) unless paragraph (b) applies—the entity’s entity metric for the sub-sector for the financial year; or
- (b) if a provision of Part 3 specifies a minimum levy threshold for the sub-sector for the financial year—the difference between the entity’s entity metric for the sub-sector for the financial year and the minimum levy threshold.

**minimum levy component** means the minimum levy component for the sub-sector for the financial year.

**sub-sector metric** means the number specified by ASIC in an annual determination to be the sum of the amounts of **graduated entity metric** for all leviable entities that form part of the sub-sector for the financial year.

**sub-sector population** means the sub-sector population in relation to the sub-sector for the financial year.

**sub-sector regulatory costs** means the sub-sector regulatory costs in relation to the sub-sector for the financial year.

- (2) However, if a component of the formula is nil or a negative amount, the amount of the graduated levy component is nil.

### 11 Pro-rata of entity metric

- (1) This section applies to a leviable entity for a financial year if:
- (a) a provision of Part 3 (the *pro-rata provision*) that applies to the entity provides that there is a pro-rata of the entity metric for a sub-sector for a financial year; and
  - (b) the number of counted days for the entity for the financial year under the pro-rata provision is less than the number of days in the financial year.
- (2) The *entity metric* for the leviable entity is to be reduced by multiplying it by the following fraction:

$$\frac{\text{Counted days}}{\text{Number of days in the financial year}}$$

where:

*counted days* means the number of days counted for the entity under the pro-rata provision.

### 12 Rules about amounts

- (1) An amount worked out under this Division must be rounded to the nearest whole dollar (rounding 50 cents upwards).
- (2) If an entity metric worked out under this instrument is not a whole number, the entity metric must be rounded to the nearest whole number (rounding 0.5 upwards).
- (3) If an entity metric is an amount worked out in Australian dollars, the amount of the entity metric is instead the number of dollars in the amount.
- (4) If a minimum levy threshold is an amount in Australian dollars, the amount of the threshold is instead the number of dollars in the amount.

## Part 3—Sectors, sub-sectors and levy components

### Division 1—Corporate sector

#### Subdivision 1.1—General

#### 13 Corporate sector

- (1) Each section in Subdivisions 1.2 and 1.3 specifies criteria for identifying one or more leviable entities that form part of the sub-sector mentioned in the section.
- (2) The sub-sectors for which criteria are specified in this Division are in the *corporate sector*.
- (3) A leviable entity may form part of 2 or more sub-sectors in the corporate sector.

#### 14 Basic levy component applies to sub-sectors in Subdivision 1.2

The basic levy component applies to each sub-sector specified in a section of Subdivision 1.2.

Note: For the basic levy component, see section 9.

#### Subdivision 1.2—Sub-sectors to which basic levy component applies

#### 15 Auditors of disclosing entities

- (1) A leviable entity forms part of the *auditors of disclosing entities* sub-sector in a financial year if, at any time in the financial year, the entity is, or has consented to be, an audit entity for a disclosing entity with quoted securities.

##### *Entity metric*

- (2) The leviable entity's *entity metric* for the sub-sector for the financial year is the total of the fees paid or payable to the entity in the financial year for the auditing and review of financial reports that relate to:
  - (a) a disclosing entity with quoted securities; or
  - (b) an entity controlled by a disclosing entity with quoted securities.
- (3) For the purposes of paragraph (2)(b), the question of whether a disclosing entity controls another entity is to be decided in accordance with the accounting standard AASB 10 *Consolidated Financial Statements*.

#### 16 Large proprietary companies

A leviable entity forms part of the *large proprietary companies* sub-sector in a financial year if, at any time in the financial year, the entity is a large proprietary company.

## 17 Public companies (unlisted)

A leviable entity forms part of the *public companies (unlisted)* sub-sector in a financial year if, at any time in the financial year, the entity is a public company that is not listed.

## 18 Registered company auditors

A leviable entity forms part of the *registered company auditors* sub-sector in a financial year if, at any time in the financial year, the entity is a registered company auditor.

## Subdivision 1.3—Sub-sectors to which graduated levy component applies

### 19 Listed corporations

- (1) A leviable entity forms part of the *listed corporations* sub-sector in a financial year if, at any time in the financial year, the entity is a listed corporation.

#### *Levy component*

- (2) The amount of a leviable entity's levy component in respect of the sub-sector for the financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

#### *Entity metric*

- (3) The leviable entity's *entity metric* for the sub-sector for the financial year is:
  - (a) if the entity's market capitalisation for the financial year (as worked out under subsection (5)) is less than the maximum levy threshold—the entity's market capitalisation for the financial year; or
  - (b) if the entity's market capitalisation for the financial year (as worked out under subsection (5)) equals or exceeds the maximum levy threshold—the maximum levy threshold.
- (4) However:
  - (a) there is a pro-rata of the entity metric; and
  - (b) for the purposes of section 11, the number of counted days is the number of days in the financial year on which the leviable entity was a listed corporation.
- (5) A leviable entity's market capitalisation for a financial year is worked out by:
  - (a) if the entity is listed on a financial market at the end of the financial year—multiplying:
    - (i) the price for the entity's main class of securities at the time the financial market closes on the last trading day on or before 30 June of the financial year; by
    - (ii) the number of securities in that class at that relevant time; or

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- (b) if the entity is not listed on a financial market at the end of the financial year—multiplying:
  - (i) the last price for the entity’s main class of securities on the day before the entity stops being listed on the financial market; by
  - (ii) the number of securities in that class at that relevant time.
- (6) The **maximum levy threshold** for the sub-sector is \$20,000,000,000.
- (7) The **minimum levy component** for the sub-sector is \$4,000.
- (8) The **minimum levy threshold** for the sub-sector is \$5,000,000.

### 20 Registered liquidators

- (1) A leviable entity forms part of the **registered liquidators** sub-sector in a financial year if, at any time in the financial year, the entity is a registered liquidator.

#### *Levy component*

- (2) The amount of a leviable entity’s levy component in respect of the sub-sector for the financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

#### *Entity metric*

- (3) The leviable entity’s **entity metric** for the sub-sector for the financial year is the sum of:
  - (a) the number of the following appointments under Chapter 5 of the *Corporations Act 2001* accepted by the entity in the financial year:
    - (i) an appointment as a controller;
    - (ii) an appointment as a liquidator;
    - (iii) an appointment as a managing controller;
    - (iv) an appointment as a receiver;
    - (v) an appointment as a receiver and manager;
    - (vi) an appointment as a scheme manager;
    - (vii) an appointment as a voluntary administrator;
    - (viii) an appointment as an administrator of a deed of company arrangement; and
  - (b) the number of appointments of the kind mentioned in subparagraph (a)(i) to (viii) that were accepted in an earlier financial year and that the entity is still acting in at the start of the financial year for which the levy component is to be calculated; and
  - (c) the number of the following events that are published on the publication website maintained by ASIC under regulation 5.6.75 of the *Corporations Regulations 2001* for the entity in the financial year:
    - (i) notice of meetings;
    - (ii) notice of disclaimer of property;
    - (iii) notice to submit particulars of debt or claims;



- (iv) notice to creditors to submit formal proof;
  - (v) notice of intention to declare dividend; and
  - (d) the number of the following documents lodged with ASIC by the entity in the financial year:
    - (i) a notice of the outcome of a proposal to pass a resolution without a meeting (however, if more than one proposal to pass a resolution without a meeting in relation to the same administration is decided on the same day, count the proposals as a single lodgement);
    - (ii) an executed deed of company arrangement (however, if the deed involves more than one company under external administration, count the deed as a single lodgement).
- (4) The *minimum levy component* for the sub-sector is \$2,500.

## Division 2—Deposit-taking and credit sector

### Subdivision 2.1—General

#### 21 Deposit-taking and credit sector

- (1) Each section in Subdivisions 2.2 and 2.3 specifies criteria for identifying one or more leviable entities that form part of the sub-sector mentioned in the section.
- (2) The sub-sectors for which criteria are specified in this Division are in the *deposit-taking and credit sector*.
- (3) A leviable entity may form part of 2 or more sub-sectors in the deposit-taking and credit sector.

#### 22 Basic levy component applies to sub-sectors in Subdivision 2.2

The basic levy component applies to each sub-sector specified in a section of Subdivision 2.2.

Note: For the basic levy component, see section 9.

### Subdivision 2.2—Sub-sectors to which basic levy component applies

#### 23 Margin lenders

- (1) A leviable entity forms part of the *margin lenders* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial services licence that authorises the holder to deal in a financial product by issuing margin lending facilities.

*Entity metric*

- (2) The leviable entity's *entity metric* for the sub-sector for the financial year is the number of days in the financial year on which the entity holds a licence of the kind mentioned in subsection (1).

#### 24 Small amount credit providers

- (1) A leviable entity forms part of the *small amount credit providers* sub-sector in a financial year if, at any time in the financial year, the entity:
  - (a) holds an Australian credit licence that authorises the holder to engage in credit activities as a credit provider; and
  - (b) provides credit under a small amount credit contract.

*Entity metric*

- (2) The leviable entity's *entity metric* for the sub-sector for the financial year is the gross amount of credit provided by the entity in the financial year under small amount credit contracts.

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## Subdivision 2.3—Sub-sectors to which graduated levy component applies

### 25 Credit intermediaries

- (1) A liable entity forms part of the *credit intermediaries* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian credit licence that authorises the entity to engage in credit activities other than as a credit provider.

#### *Levy component*

- (2) The amount of a liable entity's levy component in respect of the sub-sector for the financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

#### *Entity metric*

- (3) The liable entity's *entity metric* for the sub-sector for the financial year is the number of credit representatives (within the meaning of the *National Consumer Credit Protection Act 2009*) the entity has at the end of the financial year.
- (4) However:
  - (a) there is a pro-rata of the entity metric; and
  - (b) for the purposes of section 11, the number of counted days is the number of days in the financial year on which the liable entity holds a licence of the kind mentioned in subsection (1).
- (5) The *minimum levy component* for the sub-sector is \$1,000.

### 26 Credit providers

- (1) A liable entity forms part of the *credit providers* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian credit licence that authorises the holder to engage in credit activities as a credit provider.

#### *Levy component*

- (2) The amount of a liable entity's levy component in respect of the sub-sector for the financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) if the entity's entity metric for the sub-sector for the financial year exceeds the minimum levy threshold—the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

#### *Entity metric*

- (3) The liable entity's *entity metric* for the sub-sector for the financial year is the gross amount of credit provided by the entity in the financial year under credit contracts (other than small amount credit contracts).

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- (4) The *minimum levy component* for the sub-sector is \$2,000.
- (5) The *minimum levy threshold* for the sub-sector is \$100,000,000.

### 27 Deposit product providers

- (1) A leivable entity forms part of the *deposit product providers* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial services licence that authorises the holder to deal in a financial product by issuing deposit products.

#### *Levy component*

- (2) The amount of a leivable entity's levy component in respect of the sub-sector for the financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) if the entity's entity metric for the sub-sector for the financial year exceeds the minimum levy threshold—the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

#### *Entity metric*

- (3) The leivable entity's *entity metric* for the sub-sector for the financial year is the total value of deposits held at the end of the financial year in deposit products issued by the entity (whether the deposit product was issued in the financial year or an earlier financial year).
- (4) However:
  - (a) there is a pro-rata of the entity metric; and
  - (b) for the purposes of section 11, the number of counted days is the number of days in the financial year on which the leivable entity holds a licence of the kind mentioned in subsection (1).
- (5) The *minimum levy component* for the sub-sector is \$2,000.
- (6) The *minimum levy threshold* for the sub-sector is \$10,000,000.

### 28 Payment product providers

- (1) A leivable entity forms part of the *payment product providers* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial services licence that authorises the holder to deal in a financial product through which, or through the acquisition of which, non-cash payments can be made.

Note: For non-cash payments, see section 763D of the *Corporations Act 2001*.

#### *Levy component—financial year starting on 1 July 2017*

- (2) The basic levy component applies in respect of the sub-sector for the financial year starting on 1 July 2017.

Note: For the basic levy component, see section 9.

*Entity metric—financial year starting on 1 July 2017*

- (3) The leviable entity's **entity metric** for the sub-sector for the financial year starting on 1 July 2017 is the number of days in the financial year on which the entity holds a licence of the kind mentioned in subsection (1).

*Levy component—financial year starting on or after 1 July 2018*

- (4) The amount of a leviable entity's levy component in respect of the sub-sector for a financial year starting on or after 1 July 2018 is the sum of:
- (a) the minimum levy component for the sub-sector; and
  - (b) the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

*Entity metric—financial year starting on or after 1 July 2018*

- (5) The leviable entity's **entity metric** for the sub-sector for a financial year starting on or after 1 July 2018 is the gross revenue received in the financial year by the entity in connection with non-cash payment products issued by the entity less expenses incurred in the financial year from dealing in non-cash payment facilities.
- (6) The **minimum levy component** for the sub-sector is \$2,000.

## Division 3—Investment management, superannuation and related services sector

### Subdivision 3.1—General

#### 29 Investment management, superannuation and related services sector

- (1) Each section in Subdivisions 3.2 and 3.3 specifies criteria for identifying one or more leviable entities that form part of the sub-sector mentioned in the section.
- (2) The sub-sectors for which criteria are specified in this Division are in the *investment management, superannuation and related services sector*.
- (3) A leviable entity may form part of 2 or more sub-sectors in the investment management, superannuation and related services sector.

#### 30 Basic levy component applies to sub-sectors in Subdivision 3.2

The basic levy component applies to each sub-sector specified in a section of Subdivision 3.2.

Note: For the basic levy component, see section 9.

### Subdivision 3.2—Sub-sectors to which basic levy component applies

#### 31 Custodians

A leviable entity forms part of the *custodians* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial services licence that authorises the holder to provide a custodial or depository service.

#### 32 Managed discretionary account providers

- (1) A leviable entity forms part of the *managed discretionary account providers* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial services licence that authorises the holder to deal in a financial product by issuing financial products in respect of:
  - (a) interests in managed investment schemes limited to MDA services (within the meaning of the *ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968*); or
  - (b) miscellaneous financial investment products limited to MDA services; whether or not the licence also authorises the holder to deal in other financial products.

*Entity metric*

- (2) The leviable entity's *entity metric* for the sub-sector for the financial year is the number of days in the financial year on which the entity holds a licence of the kind mentioned in subsection (1).

### 33 Traditional trustee company service providers

- (1) A liable entity forms part of the **traditional trustee company service providers** sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial services licence that authorises the holder to provide traditional trustee company services.

*Entity metric*

- (2) The liable entity's **entity metric** for the sub-sector for the financial year is the number of days in the financial year on which the entity holds a licence of the kind mentioned in subsection (1).

### Subdivision 3.3—Sub-sectors to which graduated levy component applies

### 34 Operators of investor directed portfolio services

- (1) A liable entity forms part of the **operators of investor directed portfolio services** sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial services licence that authorises the holder to operate an IDPS (within the meaning of section 21 of *ASIC Class Order [CO 13/763]*).

*Levy component*

- (2) The amount of a liable entity's levy component in respect of the sub-sector for a financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

*Entity metric*

- (3) The liable entity's **entity metric** for the sub-sector for the financial year is the sum of the following amounts:
  - (a) the amount of gross revenue received from IDPS activities undertaken under the entity's licence in the financial year;
  - (b) any amount (to the extent that it is not covered under paragraph (a)) paid or payable in the financial year from the IDPS for the performance of obligations imposed on an entity as an operator of the IDPS (even if those obligations are performed by another entity).
- (4) Revenue is to be calculated for the purposes of this section in accordance with accounting standards in force at the relevant time (even if the standard does not otherwise apply to the financial year or some or all of the entities concerned).
- (5) The **minimum levy component** for the sub-sector is \$10,000.

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### 35 Responsible entities

- (1) A liable entity forms part of the **responsible entities** sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial services licence that authorises the holder to operate a registered scheme.

#### *Levy component*

- (2) The amount of a liable entity's levy component in respect of the sub-sector for the financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) if the entity's entity metric for the sub-sector for the financial year exceeds the minimum levy threshold—the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

#### *Entity metric*

- (3) The liable entity's **entity metric** for the sub-sector for the financial year is the total value of assets in all registered schemes operated by the entity at the end of the financial year, disregarding any assets that are an interest in another registered scheme operated by the entity.
- (4) However:
  - (a) there is a pro-rata of the entity metric; and
  - (b) for the purposes of section 11, the number of counted days is the number of days in the financial year on which the liable entity holds a licence of the kind mentioned in subsection (1).
- (5) The **minimum levy component** for the sub-sector is \$7,000.
- (6) The **minimum levy threshold** for the sub-sector is \$10,000,000.

### 36 Superannuation trustees

- (1) A liable entity forms part of the **superannuation trustees** sub-sector in a financial year if, at any time in the financial year, the entity is an RSE licensee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

#### *Levy component*

- (2) The amount of a liable entity's levy component in respect of the sub-sector for the financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) if the entity's entity metric for the sub-sector for the financial year exceeds the minimum levy threshold—the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.



*Entity metric*

- (3) The liable entity's **entity metric** for the sub-sector for the financial year is the total value of assets in all registrable superannuation entities operated by the entity at the end of the financial year, disregarding any assets that are an interest in another registrable superannuation entity operated by the entity.
- (4) However:
  - (a) there is a pro-rata of the entity metric; and
  - (b) for the purposes of section 11, the number of counted days is the number of days in the financial year on which the liable entity was an RSE licensee.
- (5) The **minimum levy component** for the sub-sector is \$18,000.
- (6) The **minimum levy threshold** for the sub-sector is \$250,000,000.

**37 Wholesale trustees**

- (1) A liable entity forms part of the **wholesale trustees** sub-sector in a financial year if, at any time in the financial year, the entity holds an Australia financial services licence that authorises the holder to deal in a financial product by issuing interests in, or arranging for the issue of interests in, a managed investment scheme to wholesale clients.

*Levy component—financial year starting on 1 July 2017*

- (2) The basic levy component applies in respect of the sub-sector for the financial year starting on 1 July 2017.

Note: For the basic levy component, see section 9.

*Entity metric—financial year starting on 1 July 2017*

- (3) The liable entity's **entity metric** for the sub-sector for the financial year starting on 1 July 2017 is the number of days in the financial year on which the entity holds a licence of a kind mentioned in subsection (1).

*Levy component—financial year starting on or after 1 July 2018*

- (4) The amount of a liable entity's levy component in respect of the sub-sector for a financial year starting on or after 1 July 2018 is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

*Entity metric—financial year starting on or after 1 July 2018*

- (5) The liable entity's **entity metric** for the sub-sector for a financial year starting on or after 1 July 2018 is the total value of assets at the end of the financial year in all unregistered managed investment schemes issued by the entity, disregarding any assets that are an interest in another unregistered managed investment scheme issued by the entity.
- (6) However:

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- (a) there is a pro-rata of the entity metric for the sub-sector for a financial year starting on or after 1 July 2018; and
  - (b) for the purposes of section 11, the number of counted days is the number of days in the financial year on which the leviable entity holds a licence of the kind mentioned in subsection (1).
- (7) The *minimum levy component* for the sub-sector is \$1,000.

## **Division 4—Financial advice sector**

### **Subdivision 4.1—General**

#### **38 Financial advice sector**

- (1) Each section in Subdivisions 4.2 and 4.3 specifies criteria for identifying one or more leviable entities that form part of the sub-sector mentioned in the section.
- (2) The sub-sectors for which criteria are specified in this Division are in the *financial advice sector*.
- (3) A leviable entity may form part of 2 or more sub-sectors in the financial advice sector.

#### **39 Basic levy component applies to sub-sectors in Subdivision 4.2**

The basic levy component applies to each sub-sector specified in a section of Subdivision 4.2.

Note: For the basic levy component, see section 9.

### **Subdivision 4.2—Sub-sectors to which basic levy component applies**

#### **40 Licensees that provide only general advice to retail or wholesale clients**

A leviable entity forms part of the *licensees that provide only general advice to retail or wholesale clients* sub-sector in a financial year if:

- (a) the entity holds, at any time in the financial year, an Australian financial services licence; and
- (b) the licence authorises the holder to provide financial product advice that is only general advice.

#### **41 Licensees that provide personal advice to only wholesale clients**

A leviable entity forms part of the *licensees that provide personal advice to only wholesale clients* sub-sector in a financial year if the entity holds, at any time in the financial year, an Australian financial services licence that authorises the holder to provide financial product advice to only wholesale clients.

#### **42 Licensees that provide personal advice to retail clients on only products that are not relevant financial products**

- (1) A leviable entity forms part of the *licensees that provide personal advice to retail clients on only products that are not relevant financial products* sub-sector in a financial year if:
  - (a) the entity holds, at any time in the financial year, an Australian financial services licence; and
  - (b) the licence authorises the holder to provide financial product advice (including a class of product advice) to retail clients, on only one or more of the following products:

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- (i) basic banking products;
- (ii) general insurance products;
- (iii) consumer credit insurance (within the meaning of section 910A of the *Corporations Act 2001*).

### *Entity metric*

- (2) The leviable entity's **entity metric** for the sub-sector for the financial year is the number of days in the financial year on which the entity holds a licence of the kind mentioned in subsection (1).

## **Subdivision 4.3—Sub-sectors to which graduated levy component applies**

### **43 Licensees that provide personal advice on relevant financial products to retail clients**

- (1) A leviable entity forms part of the **licensees that provide personal advice on relevant financial products to retail clients** sub-sector in a financial year if:
  - (a) the entity holds, at any time in the financial year, an Australian financial services licence; and
  - (b) the licence authorises the holder to provide financial product advice (including a class of product advice) on relevant financial products to retail clients.

### *Levy component*

- (2) The amount of a leviable entity's levy component in respect of the sub-sector for a financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

### *Entity metric*

- (3) The leviable entity's **entity metric** for the sub-sector for the financial year is the number of relevant providers (within the meaning of section 910A of the *Corporations Act 2001*) that:
  - (a) are registered on the Register of Relevant Providers (within the meaning of section 910A of that Act) at the end of the financial year; and
  - (b) are authorised to provide personal advice to retail clients on behalf of the entity.
- (4) For the purposes of working out the number of relevant providers under subsection (3) for an entity that also forms part of the large futures exchange participants sub-sector (see section 64), the large securities exchange participants sub-sector (see section 65) or the securities dealer sub-sector (see section 67) at any time in the financial year, disregard relevant providers that only provide the following kinds of advice:
  - (a) advice on financial products that are admitted to quotation;

- (b) advice on financial products that are traded on a prescribed foreign financial market (within the meaning of subregulation 7.7A.12D(2) of the *Corporations Regulations 2001*);
  - (c) advice on basic banking products.
- (5) However:
- (a) there is a pro-rata of the entity metric; and
  - (b) for the purposes of section 11, the number of counted days is the number of days in the financial year on which the leviable entity holds a licence of the kind mentioned in subsection (1).
- (6) The ***minimum levy component*** for the sub-sector is \$1,500.

## Division 5—Market infrastructure and intermediaries sector

### Subdivision 5.1—General

#### 44 Market infrastructure and intermediaries sector

- (1) Each section in Subdivisions 5.2 and 5.3 specifies criteria for identifying one or more leviable entities that form part of the sub-sector mentioned in the section.
- (2) The sub-sectors for which criteria are specified in this Division are in the *market infrastructure and intermediaries sector*.
- (3) A leviable entity may form part of 2 or more sub-sectors in the market infrastructure and intermediaries sector unless otherwise specified in this Division.

#### 45 Basic levy component applies to sub-sectors in Subdivision 5.2

The basic levy component applies to each sub-sector specified in a section of Subdivision 5.2.

Note: For the basic levy component, see section 9.

### Subdivision 5.2—Sub-sectors to which basic levy component applies

#### 46 Overseas market operators

- (1) A leviable entity forms part of the *overseas market operators* sub-sector in a financial year if, at any time in the financial year, the entity operates an overseas market.

*Entity metric*

- (2) The leviable entity's *entity metric* for the sub-sector for the financial year is:
  - (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the market; or
  - (b) if the entity operated 2 or more overseas markets in the financial year—the sum of the days worked out under paragraph (a) for each of those markets.
- (3) A licensed market is an *overseas market* if the market is licensed under subsection 795B(2) of the *Corporations Act 2001*.

#### 47 Small securities exchange operators with self-listing function only

- (1) A leviable entity forms part of the *small securities exchange operators with self-listing function only* sub-sector in a financial year if, at any time in the financial year, the entity is the operator of a small securities (self-listing) exchange.

*Entity metric*

- (2) The leviable entity's *entity metric* for the sub-sector for the financial year is:

- (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the exchange; or
  - (b) if the entity operated 2 or more small securities (self-listing) exchanges in the financial year—the sum of the days worked out under paragraph (a) for each of those exchanges.
- (3) A licensed market is a ***small securities (self-listing) exchange***, in relation to a financial year, if:
- (a) the market is not an overseas market; and
  - (b) only ordinary shares of the market operator can be traded on the market; and
  - (c) less than 10 million transactions in ordinary shares of the market operator are entered into on the market in the financial year.

#### **48 Small securities exchange operators**

- (1) A liable entity forms part of the ***small securities exchange operators*** sub-sector in a financial year if, at any time in the financial year, the entity is the operator of a small securities exchange.

*Entity metric*

- (2) The liable entity's ***entity metric*** for the sub-sector for the financial year is:
- (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the exchange; or
  - (b) if the entity operated 2 or more small securities exchanges in the financial year—the sum of the days worked out under paragraph (a) for each of those exchanges.
- (3) A licensed market is a ***small securities exchange***, in relation to a financial year, if:
- (a) less than 10 million transactions in securities are entered into on the market in the financial year; and
  - (b) the market is not:
    - (i) an overseas market; or
    - (ii) a small securities (self-listing) exchange.

#### **49 Small futures exchange operators**

- (1) A liable entity forms part of the ***small futures exchange operators*** sub-sector in a financial year if, at any time in the financial year, the entity is the operator of a small futures exchange.

*Entity metric*

- (2) The liable entity's ***entity metric*** for the sub-sector for the financial year is:
- (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the exchange; or
  - (b) if the entity operated 2 or more small futures exchanges in the financial year—the sum of the days worked out under paragraph (a) for each of those exchanges.

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- (3) A licensed market is a **small futures exchange**, in relation to a financial year, if:
- (a) less than 10 million transactions in futures contracts are entered into on the market in the financial year; and
  - (b) the market is not:
    - (i) an overseas market; or
    - (ii) a small securities (self-listing) exchange; or
    - (iii) a small securities exchange.

## 50 Small derivatives market operators

- (1) A liable entity forms part of the **small derivatives market operators** sub-sector in a financial year if, at any time in the financial year, the entity is the operator of a small derivatives market.

### *Entity metric*

- (2) The liable entity's **entity metric** for the sub-sector for the financial year is:
- (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the market; or
  - (b) if the entity operated 2 or more small derivatives markets in the financial year—the sum of the days worked out under paragraph (a) for each of those markets.
- (3) A licensed market is a **small derivatives market**, in relation to a financial year, if:
- (a) less than 10 million derivative transactions are entered into on the market in the financial year; and
  - (b) the market is not:
    - (i) an overseas market; or
    - (ii) a small securities (self-listing) exchange; or
    - (iii) a small securities exchange; or
    - (iv) a small futures exchange.

## 51 Large securities exchange operators

- (1) A liable entity forms part of the **large securities exchange operators** sub-sector in a financial year if, at any time in the financial year, the entity is the operator of a large securities exchange.

### *Entity metric*

- (2) The liable entity's **entity metric** for the sub-sector for the financial year is:
- (a) unless paragraph (b) applies—the total value of all transactions that:
    - (i) are entered into on, or reported to, the large securities exchange operated by the entity in the financial year; and
    - (ii) are within the operating rules of the exchange; and
    - (iii) are not invalid or cancelled; or
  - (b) if the entity operated 2 or more large securities exchanges in the financial year—the sum of the amounts worked out under paragraph (a) for each of those exchanges.



- (3) A licensed market is a **large securities exchange**, in relation to a financial year, if:
- (a) 10 million or more transactions in securities are entered into on the market in the financial year; and
  - (b) the market is not an overseas market.

## 52 Large futures exchange operators

- (1) A leviable entity forms part of the **large futures exchange operators** sub-sector in a financial year if, at any time in the financial year, the entity is the operator of a large futures exchange.

### *Entity metric*

- (2) The leviable entity's **entity metric** for the sub-sector for the financial year is:
- (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the exchange; or
  - (b) if the entity operated 2 or more large futures exchanges in the financial year—the sum of the days worked out under paragraph (a) for each of those exchanges.
- (3) A licensed market is a **large futures exchange**, in relation to a financial year, if:
- (a) 10 million or more futures transactions are entered into on the market in the financial year; and
  - (b) the market is not:
    - (i) an overseas market; or
    - (ii) a large securities exchange.

## 53 Exempt market operators

- (1) A leviable entity forms part of the **exempt market operators** sub-sector in a financial year if, at any time in the financial year, the entity is the operator of a financial market that is exempt from the operation of the whole of Part 7.2 of the *Corporations Act 2001* (other than because of an exemption granted to a class of financial market under section 791C of that Act).

### *Entity metric*

- (2) The leviable entity's **entity metric** for the sub-sector for the financial year is:
- (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the market; or
  - (b) if the entity operated 2 or more exempt markets in the financial year—the sum of the days worked out under paragraph (a) for each of those markets.

## 54 Tier 1 clearing and settlement facility operators

- (1) A leviable entity forms part of the **Tier 1 clearing and settlement facility operators** sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian CS facility licence that was granted in relation to a clearing and settlement facility that:
- (a) is systemically important in Australia; and

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- (b) has a strong connection to the Australian financial system.

### *Entity metric*

- (2) The leviable entity's **entity metric** for the sub-sector for the financial year is:
  - (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the facility; or
  - (b) if the entity operated 2 or more clearing and settlement facilities of the kind mentioned in subsection (1) in the financial year—the sum of the days worked out under paragraph (a) for each of those facilities.

## 55 Tier 2 clearing and settlement facility operators

- (1) A leviable entity forms part of the **Tier 2 clearing and settlement facility operators** sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian CS facility licence that was granted under subsection 824B(2) of the *Corporations Act 2001* in relation to a clearing and settlement facility that:
  - (a) is systemically important in Australia; and
  - (b) has no strong connection to the Australian financial system.

### *Entity metric*

- (2) The leviable entity's **entity metric** for the sub-sector for the financial year is:
  - (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the facility; or
  - (b) if the entity operated 2 or more clearing and settlement facilities of the kind mentioned in subsection (1) in the financial year—the sum of the days worked out under paragraph (a) for each of those facilities.

## 56 Tier 3 clearing and settlement facility operators

- (1) A leviable entity forms part of the **Tier 3 clearing and settlement facility operators** sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian CS facility licence that was granted in relation to a clearing and settlement facility that:
  - (a) is not systemically important in Australia; and
  - (b) has no strong connection to the Australian financial system.

### *Entity metric*

- (2) The leviable entity's **entity metric** for the sub-sector for the financial year is:
  - (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the facility; or
  - (b) if the entity operated 2 or more clearing and settlement facilities of the kind mentioned in subsection (1) in the financial year—the sum of the days worked out under paragraph (a) for each of those facilities.

### 57 Tier 4 clearing and settlement facility operators

- (1) A liable entity forms part of the ***Tier 4 clearing and settlement facility operators*** sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian CS facility licence that 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.

*Entity metric*

- (2) The liable entity's ***entity metric*** for the sub-sector for the financial year is:
  - (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the facility; or
  - (b) if the entity operated 2 or more clearing and settlement facilities of the kind mentioned in subsection (1) in the financial year—the sum of the days worked out under paragraph (a) for each of those facilities.

### 58 Exempt CS facility operators

- (1) A liable entity forms part of the ***exempt CS facility operators*** sub-sector in a financial year if, at any time in the financial year, the entity is the operator of a clearing and settlement facility that is exempt from the operation of the whole of Part 7.3 of the *Corporations Act 2001*.

*Entity metric*

- (2) The liable entity's ***entity metric*** for the sub-sector for the financial year is:
  - (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the facility; or
  - (b) if the entity operated 2 or more clearing and settlement facilities of the kind mentioned in subsection (1) in the financial year—the sum of the days worked out under paragraph (a) for each of those facilities.

### 59 Australian derivative trade repository operators

- (1) A liable entity forms part of the ***Australian derivative trade repository operators*** sub-sector in a financial year if, at any time in the financial year, the entity operates a licensed derivative trade repository.

*Entity metric*

- (2) The liable entity's ***entity metric*** for the sub-sector for the financial year is:
  - (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the repository; or
  - (b) if the entity operated 2 or more licensed derivative trade repositories in the financial year—the sum of the days worked out under paragraph (a) for each of those facilities.

### 60 Credit rating agencies

- (1) A liable entity forms part of the ***credit rating agencies*** sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial

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services licence that authorises the holder to provide general advice by issuing a credit rating.

### *Entity metric*

- (2) The leviable entity's **entity metric** for the sub-sector for the financial year is the number of days in the financial year on which the entity holds a licence of the kind mentioned in subsection (1).

## 61 Retail over-the-counter derivatives issuers

- (1) A leviable entity forms part of the **retail over-the-counter derivatives issuers** sub-sector in a financial year if:
- (a) the entity holds, at any time in the financial year, an Australian financial services licence that authorises the holder to provide both of the following financial services to retail clients:
    - (i) dealing in a financial product by issuing derivatives;
    - (ii) making a market for derivatives; and
  - (b) the entity is not a body regulated by APRA or a participant in a clearing and settlement facility.

### *Entity metric*

- (2) The leviable entity's **entity metric** for the sub-sector for the financial year is the number of days in the financial year on which the entity holds a licence of the kind mentioned in subsection (1).

## 62 Wholesale electricity dealers

A leviable entity forms part of the **wholesale electricity dealers** sub-sector in a financial year if, at any time in the financial year:

- (a) the entity incurs 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; and
- (b) the entity is not:
  - (i) a body regulated by APRA; or
  - (ii) a participant in a financial market; or
  - (iii) a participant in a clearing and settlement facility.

## Subdivision 5.3—Sub-sectors to which graduated levy component applies

## 63 Corporate advisors

- (1) A leviable entity forms part of the **corporate advisors** sub-sector in a financial year if, at any time in the financial year:
- (a) the entity:
    - (i) holds an Australian financial services licence; or
    - (ii) is exempt from the requirement to hold such a licence under paragraph 911A(2)(1) or subsection 926A(2) of the *Corporations Act 2001* (other than because of an exemption under the *ASIC*

*Corporations (Foreign Financial Services Providers—Limited Connection) Instrument 2017/182*; and

- (b) the entity, or an authorised representative of the entity, provides or holds out that it provides, one or more of the financial services mentioned in subsection (2).
- (2) For the purposes of paragraph (1)(b), the financial services are:
- (a) financial product advice provided in Australia to a wholesale client in the course of advising on any of the following:
    - (i) takeover bids or merger proposals;
    - (ii) the structure, pricing, acquisition or disposal of assets or enterprises;
    - (iii) raising or reducing capital through the issue or acquisition of equities or debt; and
  - (b) dealing in a financial product in Australia by underwriting the issue, acquisition or sale of the product.

*Levy component*

- (3) The amount of a leviable entity's levy component in respect of the sub-sector for the financial year is the sum of:
- (a) the minimum levy component for the sub-sector; and
  - (b) if the entity's entity metric for the sub-sector for the financial year exceeds the minimum levy threshold—the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

*Entity metric*

- (4) The leviable entity's **entity metric** for the sub-sector for the financial year is the total gross revenue made in the financial year by the entity, and the authorised representative of the entity, from providing the financial services mentioned in subsection (2).
- (5) The **minimum levy component** for the sub-sector is \$1,000.
- (6) The **minimum levy threshold** for the sub-sector is \$100,000.

## **64 Large futures exchange participants**

- (1) A leviable entity forms part of the **large futures exchange participants** sub-sector in a financial year if, at any time in the financial year, the entity is a participant in a large futures exchange.

*Levy component*

- (2) The amount of a leviable entity's levy component in respect of the sub-sector for the financial year is the sum of:
- (a) the minimum levy component for the sub-sector; and
  - (b) the IT percentage of the graduated levy component for the entity for the sub-sector; and

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- (c) 10% of the non-IT percentage of the graduated levy component for the entity for the sub-sector; and
- (d) 90% of the non-IT percentage of the graduated levy component for the entity for the sub-sector.

### *Entity metric (messages)*

- (3) The leviable entity's **entity metric** for the sub-sector for the financial year is the number of messages that:
  - (a) are sent by the entity in the financial year to a large futures exchange; and
  - (b) are reported by the operator of the large futures exchange to ASIC's Market Surveillance System; and
  - (c) are recognised by ASIC's Market Surveillance System as orders or executed transactions.

### *Entity metric (transactions)*

- (4) However, in working out the graduated levy component for the purposes of paragraph (2)(d), the leviable entity's **entity metric** for the sub-sector for the financial year is instead the number of transactions that:
  - (a) are executed on, or reported to, a large futures exchange by the entity in the financial year; and
  - (b) are reported by the operator of the large futures exchange to ASIC's Market Surveillance System; and
  - (c) are recognised by ASIC's Market Surveillance System as executed transactions.
- (5) In this section:

**IT percentage**, for the sub-sector for the financial year, means the percentage determined by ASIC in an annual determination to be the percentage that corresponds to the extent to which the sub-sector regulatory costs in relation to the sub-sector for the financial year are attributable to costs relating to information technology.

**non-IT percentage**, for the sub-sector for the financial year, means 100% minus the IT percentage for the sub-sector for the financial year.

- (6) The **minimum levy component** for the sub-sector is \$9,000.

## 65 Large securities exchange participants

- (1) A leviable entity forms part of the **large securities exchange participants** sub-sector in a financial year if, at any time in the financial year, the entity is a participant in a large securities exchange.

### *Levy component*

- (2) The amount of a leviable entity's levy component in respect of the sub-sector for the financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and

- (b) the IT percentage of the graduated levy component for the entity for the sub-sector; and
- (c) 10% of the non-IT percentage of the graduated levy component for the entity for the sub-sector; and
- (d) 90% of the non-IT percentage of the graduated levy component for the entity for the sub-sector.

*Entity metric (messages)*

- (3) The leviable entity's **entity metric** for the sub-sector for the financial year is the number of messages that:
  - (a) are sent by the entity in the financial year to a large securities exchange; and
  - (b) are reported by the operator of the large securities exchange to ASIC's Market Surveillance System; and
  - (c) are recognised by ASIC's Market Surveillance System as orders or executed transactions.

*Entity metric (transactions)*

- (4) However, in working out the graduated levy component for the purposes of paragraph (2)(d), the leviable entity's **entity metric** for the sub-sector for the financial year is instead the number of transactions that:
  - (a) are executed on, or reported to, a large securities exchange by the entity in the financial year; and
  - (b) are reported by the operator of the large securities exchange to ASIC's Market Surveillance System; and
  - (c) are recognised by ASIC's Market Surveillance System as executed transactions.

- (5) In this section:

**IT percentage**, for the sub-sector for the financial year, means the percentage determined by ASIC in an annual determination to be the percentage that corresponds to the extent to which the sub-sector regulatory costs in relation to the sub-sector for the financial year are attributable to costs relating to information technology.

**non-IT percentage**, for the sub-sector for the financial year, means 100% minus the IT percentage for the sub-sector for the financial year.

- (6) The **minimum levy component** for the sub-sector is \$9,000.

## 66 Over-the-counter traders

- (1) A leviable entity forms part of the **over-the-counter traders** sub-sector in a financial year if, at any time in the financial year, the entity:
  - (a) holds an Australian financial services licence or is exempt from the requirement to hold such a licence under paragraph 911A(2)(l) or subsection 926A(2) of the *Corporations Act 2001* (other than because of an exemption under the *ASIC Corporations (Foreign Financial Services Providers—Limited Connection) Instrument 2017/182*); and

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- (b) deals in, or holds out that it deals in, over-the-counter financial products by:
  - (i) acquiring over-the-counter financial products from professional investors; or
  - (ii) disposing of over-the-counter financial products to professional investors; or
  - (iii) issuing over-the-counter financial products to professional investors; and
- (c) either:
  - (i) forms part of the corporate advisors sub-sector (see section 63); or
  - (ii) is a related body corporate of an entity that forms part of the corporate advisors sub-sector; and
- (d) does not form part of any of the following sub-sectors:
  - (i) the responsible entities sub-sector (see section 35);
  - (ii) the superannuation trustees sub-sector (see section 36);
  - (iii) the wholesale trustees sub-sector (see section 37).

*Levy component*

- (2) The amount of a leviable entity's levy component in respect of the sub-sector for the financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

*Entity metric*

- (3) The leviable entity's **entity metric** for the sub-sector for the financial year is the number of persons who:
  - (a) ordinarily act on behalf of the entity or an authorised representative of the entity in the financial year; and
  - (b) in so acting have, at any time in the financial year, carried out one or more of the following activities in relation to dealing in an over-the-counter financial product with a professional investor:
    - (i) determining the terms on which the entity is willing to deal;
    - (ii) making or accepting an offer or an invitation to deal;
    - (iii) managing the financial risk arising from dealing in the financial product.
- (4) In counting persons for the purposes of subsection (3):
  - (a) count a person engaged on a part-time basis as an appropriate fraction of a person engaged on a full-time basis; and
  - (b) count a person engaged for only a part of the year as an appropriate fraction of a person engaged for the whole of the year; and
  - (c) if the entity is exempt from the requirement to hold an Australian financial services licence as mentioned in paragraph (1)(a)—disregard a person who satisfies both of the following:
    - (i) the person carried out the activity at a place outside Australia;



(ii) the person carried out the activity in relation to a professional investor that was outside Australia.

(5) The **minimum levy component** for the sub-sector is \$1,000.

## 67 Securities dealers

- (1) A leviable entity forms part of the **securities dealers** sub-sector in a financial year if:
- (a) the entity holds, at any time in the financial year, an Australian financial services licence that authorises the holder to deal in securities; and
  - (b) the entity is not, at any time in the financial year, a participant in a clearing and settlement facility, a large futures exchange or a large securities exchange; and
  - (c) more than \$250,000 in transactions for the entity are executed on, or reported to, a large securities exchange in the financial year.

### *Levy component*

- (2) The amount of a leviable entity's levy component in respect of the sub-sector for a financial year is the sum of:
- (a) the minimum levy component for the sub-sector; and
  - (b) the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

### *Entity metric*

- (3) The leviable entity's **entity metric** for the sub-sector for the financial year is the total value of transactions in securities (as measured by the buy price plus the sale price of securities) that:
- (a) are executed for the entity on, or reported for the entity to, a large securities exchange in the financial year; and
  - (b) are reported by the operator of the large securities exchange to ASIC's Market Surveillance System; and
  - (c) are recognised by ASIC's Market Surveillance System as executed transactions.
- (4) The **minimum levy component** for the sub-sector is \$1,000.

## Division 6—Insurance sector

### Subdivision 6.1—General

#### 68 Insurance sector

- (1) Each section in Subdivisions 6.2 and 6.3 specifies criteria for identifying one or more leviable entities that form part of the sub-sector mentioned in the section.
- (2) The sub-sectors for which criteria are specified in this Division are in the *insurance sector*.
- (3) A leviable entity may form part of 2 or more sub-sectors in the insurance sector unless otherwise specified in this Division.

#### 69 Basic levy component applies to sub-sectors in Subdivision 6.2

The basic levy component applies to each sub-sector specified in a section of Subdivision 6.2.

Note: For the basic levy component, see section 9.

### Subdivision 6.2—Sub-sectors to which basic levy component applies

#### 70 Insurance product distributors

A leviable entity forms part of the *insurance product distributors* sub-sector in a financial year if:

- (a) the entity holds, at any time in the financial year, an Australian financial services licence that authorises the holder to deal in general insurance, life risk insurance products or investment life insurance products; and
- (b) the entity does not form part of the insurance product providers sub-sector (see section 72) in the financial year.

#### 71 Risk management product providers

- (1) A leviable entity forms part of the *risk management product providers* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial services licence that authorises the holder to deal in a product for managing financial risks that is not a financial product specified in section 764A of the *Corporations Act 2001*.

*Entity metric*

- (2) The leviable entity's *entity metric* for the sub-sector for the financial year is the number of days in the financial year on which the entity holds a licence of the kind mentioned in subsection (1).

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**Subdivision 6.3—Sub-sectors to which graduated levy component applies****72 Insurance product providers**

- (1) A leviable entity forms part of the *insurance product providers* sub-sector in a financial year if:
  - (a) the entity holds, at any time in the financial year, an Australian financial services licence that authorises the holder to deal in:
    - (i) a general insurance product; or
    - (ii) a life risk insurance product; or
    - (iii) an investment life insurance product; and
  - (b) either or both of the following applies:
    - (i) the entity is a body of the kind mentioned in paragraph 3(2)(c) or (e) of the *Australian Prudential Regulation Authority Act 1998*;
    - (ii) the entity has entered into an arrangement covered by subsection (2).
- (2) This subsection covers an arrangement if:
  - (a) the arrangement is an intermediary authorisation (within the meaning of paragraph 911A(2)(b) of the *Corporations Act 2001*); and
  - (b) the product provider mentioned in that paragraph does not hold an Australian financial services licence; and
  - (c) the product provider:
    - (i) is authorised by APRA to carry on an insurance business under section 12 of the *Insurance Act 1973*; or
    - (ii) is authorised, or is a subsidiary of a body authorised, by APRA to be a non-operating holding company of a general insurer under section 18 of the *Insurance Act 1973*; or
    - (iii) is registered as a life company under the *Life Insurance Act 1995*; or
    - (iv) is registered, or is a subsidiary of a body registered, as a non-operating holding company of a life company under the *Life Insurance Act 1995*.

*Levy components*

- (3) The amount of a leviable entity's levy component in respect of the sub-sector for the financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) if the entity's entity metric for the sub-sector for the financial year exceeds the minimum levy threshold—the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

*Entity metric*

- (4) The leviable entity's *entity metric* for the sub-sector for the financial year is the sum of:
  - (a) to the extent subparagraph (1)(a)(i) applies:
    - (i) the gross amount of premiums written in Australia and received in the financial year by the entity, while it carries on a general insurance

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- business (less any reinsurance expenses incurred in the financial year); and
- (ii) the gross amount of premiums written in Australia and received in the financial year by a product provider mentioned in subsection (2), under offers covered by the entity's Australian financial services licence, and while the product provider carries on a general insurance business (less any reinsurance expenses incurred in the financial year); and
- (b) to the extent subparagraph (1)(a)(ii) or (iii) applies:
  - (i) the net amount of revenue received by the entity in the financial year for life insurance products (less any reinsurance expenses incurred in the financial year); and
  - (ii) the net amount of revenue received by a product provider mentioned in subsection (2) in the financial year for life insurance products, under offers covered by the entity's Australian financial services licence (less any reinsurance expenses incurred in the financial year).
- (5) The *minimum levy component* for the sub-sector is \$20,000.
- (6) The *minimum levy threshold* for the sub-sector is \$5,000,000.

## **Part 4—Miscellaneous**

### **73 Annual determination**

ASIC may, by legislative instrument, make an annual determination for a financial year specifying matters required or permitted by these regulations to be specified by ASIC in an annual determination.

## Schedule 1—List of sub-sectors

Note: See section 4 (definition of *sub-sector*)

| <b>List of sub-sectors</b> |   |                   |
|----------------------------|---|-------------------|
| <b>Item</b>                | <b>Sub-sectors</b>  | <b>Provisions</b> |
| 1                          | Auditors of disclosing entities   | section 15        |
| 2                          | Australian derivative trade repository operators  | section 59        |
| 3                          | Corporate advisors  | section 63        |
| 4                          | Credit intermediaries   | section 25        |
| 5                          | Credit providers  | section 26        |
| 6                          | Credit rating agencies  | section 60        |
| 7                          | Custodians  | section 31        |
| 8                          | Deposit product providers   | section 27        |
| 9                          | Exempt CS facility operators  | section 58        |
| 10                         | Exempt market operators   | section 53        |
| 11                         | Insurance product distributors  | section 70        |
| 12                         | Insurance product providers   | section 72        |
| 13                         | Large futures exchange operators  | section 52        |
| 14                         | Large futures exchange participants   | section 64        |
| 15                         | Large proprietary companies   | section 16        |
| 16                         | Large securities exchange operators   | section 51        |
| 17                         | Large securities exchange participants  | section 65        |
| 18                         | Licenses that provide only general advice to retail or wholesale clients  | section 40        |
| 19                         | Licenses that provide personal advice on relevant financial products to retail clients                            | section 43        |
| 20                         | Licenses that provide personal advice to only wholesale clients   | section 41        |
| 21                         | Licenses that provide personal advice to retail clients on only products that are not relevant financial products | section 42        |
| 22                         | Listed corporations   | section 19        |
| 23                         | Managed discretionary account providers   | section 32        |
| 24                         | Margin lenders  | section 23        |
| 25                         | Operators of investor directed portfolio services   | section 34        |
| 26                         | Overseas market operators   | section 46        |
| 27                         | Over-the-counter traders  | section 66        |
| 28                         | Payment product providers   | section 28        |
| 29                         | Public companies (unlisted)   | section 17        |
| 30                         | Registered company auditors   | section 18        |
| 31                         | Registered liquidators  | section 20        |
| 32                         | Responsible entities  | section 35        |

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| <b>List of sub-sectors</b> |   |                   |
|----------------------------|---|-------------------|
| <b>Item</b>                | <b>Sub-sectors</b>  | <b>Provisions</b> |
| 33                         | Retail over-the-counter derivatives issuers                         | section 61        |
| 34                         | Risk management product providers                                   | section 71        |
| 35                         | Securities dealers  | section 67        |
| 36                         | Small amount credit providers                                       | section 24        |
| 37                         | Small derivative market operators                                   | section 50        |
| 38                         | Small futures exchange operators                                    | section 49        |
| 39                         | Small securities exchange operators                                 | section 48        |
| 40                         | Small securities exchange operators with self-listing function only | section 47        |
| 41                         | Superannuation trustees   | section 36        |
| 42                         | Tier 1 clearing and settlement facility operators                   | section 54        |
| 43                         | Tier 2 clearing and settlement facility operators                   | section 55        |
| 44                         | Tier 3 clearing and settlement facility operators                   | section 56        |
| 45                         | Tier 4 clearing and settlement facility operators                   | section 57        |
| 46                         | Traditional trustee company service providers                       | section 33        |
| 47                         | Wholesale electricity dealers                                       | section 62        |
| 48                         | Wholesale trustees  | section 37        |

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