



ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018

I, the Honourable Paul de Jersey AC QC, Administrator of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 29 June 2018

Paul de Jersey
Administrator

By His Excellency's Command

Kelly O'Dwyer
Minister for Revenue and Financial Services

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1 Name

This instrument is the *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018*.

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. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	30 June 2018
2. Schedules 1 to 3	The day after this instrument is registered.	30 June 2018
3. Schedule 4	1 July 2018.	1 July 2018
4. Schedules 5 and 6	The day after this instrument is registered.	30 June 2018
5. Schedules 7 and 8	1 July 2018.	1 July 2018
6. Schedule 9	The day after this instrument is registered.	30 June 2018
7. Schedule 10	1 July 2018.	1 July 2018
8. Schedule 11	The day after this instrument is registered.	30 June 2018
9. Schedule 12	1 July 2018.	1 July 2018
10. Schedules 13 and 14	The day after this instrument is registered.	30 June 2018
11. Schedules 15 and 16	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made.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 following:

- (a) the *ASIC Supervisory Cost Recovery Levy Act 2017*;
- (b) the *Corporations (Fees) Act 2001*;
- (c) the *Corporations (Review Fees) Act 2003*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Regulatory costs

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 At the end of Division 1 of Part 2

Add:

5A Amounts included in regulatory costs

For the purposes of paragraph 10(5)(e) of the Act, the amount of ASIC's regulatory costs for a financial year may include an amount of ASIC's operating costs for a financial year before the 2017-18 financial year that:

- (a) ASIC is eligible to recover in the 2017-18 financial year, and later financial years, under item 29 of Schedule 1 to the *ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Act 2017*; and
- (b) ASIC has not previously recovered under that item; and
- (c) do not relate to amounts covered by subsection 10(4) of the Act.

Schedule 2—Exempt and regulated entities

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 After Division 1 of Part 2

Insert:

Division 1A—Exempt and regulated entities

5B Exempt entities

For the purposes of the definition of *exempt entity* in section 7 of the Act, the class of persons who, on 30 June in the 2017-18 financial year or a later financial year, are entities registered under the *Australian Charities and Not-for-profits Commission Act 2012* is prescribed for that financial year.

5C Regulated entities

For the purposes of paragraph (h) of the definition of *regulated entity* in section 7 of the Act, the class of persons:

- (a) who are persons regulated by ASIC in respect of whom ASIC may exercise a power conferred under section 11 or 12A of the *Australian Securities and Investments Commission Act 2001*; and
- (b) none of whom would, apart from this section, be leviable entities; is prescribed.

Schedule 3—Listed corporations sub-sector

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 After subsection 19(5)

Insert:

(5A) However, if the liable entity is an exempt foreign entity under the listing rules of the Australian Stock Exchange Limited, disregard the number of securities of the entity that were not held in Australia, at the relevant time mentioned in paragraph (5)(a) or (5)(b) (whichever is applicable), for the purposes of working out:

- (a) the main class of securities mentioned in subparagraph (5)(a)(i) or (5)(b)(i);
and
- (b) the number of securities mentioned in subparagraph (5)(a)(ii) or (5)(b)(ii).

Schedule 4—Small and medium amount credit providers sub-sector

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 Subsection 4(1)

Insert:

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

2 Section 24 (heading)

Repeal the heading, substitute:

24 Small and medium amount credit providers

3 Subsection 24(1)

Omit “*small amount credit providers*”, substitute “*small and medium amount credit providers*”.

4 Paragraph 24(1)(b)

After “contract”, insert “or a medium amount credit contract”.

5 Subsection 24(2)

After “contracts”, insert “or medium amount credit contracts”.

6 Subsection 26(3)

After “small amount credit contracts”, insert “or medium amount credit contracts”.

7 Schedule 1 (table item 36)

Repeal the item, substitute:

36	Small and medium amount credit providers	section 24
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Schedule 5—Responsible entities sub-sector and wholesale trustees sub-sector

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 Subsection 35(3)

Repeal the subsection, substitute:

Entity metric

- (3) The leviable 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:
- (a) any assets that are an interest in another registered scheme operated by the entity; and
 - (b) if the entity also forms part of the wholesale trustees sub-sector in the financial year—any assets that are an interest in an unregistered managed investment scheme issued by the entity.

2 Subsection 37(5)

Repeal the subsection, substitute:

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 total value of assets at the end of the financial year in all unregistered managed investment schemes issued by the entity, disregarding:
- (a) any assets that are an interest in another unregistered managed investment scheme issued by the entity; and
 - (b) if the entity also forms part of the responsible entities sub-sector in the financial year—any assets that are an interest in a registered scheme operated by the entity.

Schedule 6—Superannuation trustees sub-sector

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 Subsection 36(3)

Repeal the subsection, substitute:

Entity metric

- (3) The leviable 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:
- (a) any assets that are an interest in another registrable superannuation entity operated by the entity; and
 - (b) any assets that are employer sponsored receivables.

Schedule 7—Small securities exchange operators sub-sector

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 After paragraph 48(3)(a)

Insert:

(aa) the market is a prescribed financial market; and

Schedule 8—New and established specialised market operators sub-sectors

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 Subsection 4(1) (definition of *small derivatives market*)

Repeal the definition.

2 Subsection 4(1)

Insert:

specialised market has the meaning given by subsection 52A(4).

3 Section 50

Repeal the section.

4 After section 52

Insert:

52A New specialised market operators

- (1) A leviable entity forms part of the *new specialised market operators* sub-sector in a financial year if:
 - (a) the entity was first granted an Australian market licence to operate a specialised market in that financial year or the previous 2 financial years; and
 - (b) the entity had not held an Australian market licence at any time before the entity was first granted the licence mentioned in paragraph (a); and
 - (c) the specialised market had not been operated by any entity in Australia or outside Australia before the entity was first granted an Australian market licence to operate the specialised market; and
 - (d) at any time in the financial year, the entity is the operator of the specialised market.

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 operated the specialised market.
- (3) For the purposes of subsection (2), if the entity was first granted an Australian market licence to operate a specialised market in the financial year before the previous financial year, disregard the days between:
 - (a) the day that is 24 months after the day on which the entity was first granted an Australian market licence to operate the specialised market; and
 - (b) 30 June of the financial year mentioned in paragraph (1)(d).
- (4) A licensed market is a *specialised market*, in relation to a financial year, if:
 - (a) the market is licensed under subsection 795B(1) of the *Corporations Act 2001* 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; or
 - (v) a large securities exchange; or
 - (vi) a large futures exchange.

52B Established specialised market operators

- (1) A leviable entity forms part of the *established specialised market operators* sub-sector in a financial year if:
- (a) at any time in the financial year the entity is the operator of a specialised market; and
 - (b) one or more of the following apply:
 - (i) the entity was first granted an Australian market licence to operate the specialised market in a financial year before the previous financial year;
 - (ii) the specialised market had been operated by any entity in Australia or outside Australia before the entity was first granted an Australian market licence to operate the specialised market;
 - (iii) the entity held an Australian market licence before the entity was first granted an Australian market licence to operate the specialised 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 specialised market; or
 - (b) if the entity operated 2 or more such specialised markets in the financial year—the sum of the days worked out under paragraph (a) for each of those markets.
- (3) For the purposes of paragraph (2)(a), if the entity was first granted an Australian market licence to operate a specialised market in the financial year before the previous financial year and subparagraphs (1)(b)(ii) and (iii) do not apply to the entity, disregard the days between:
- (a) 1 July of the financial year mentioned in paragraph (1)(a); and
 - (b) the day that is 24 months after the day on which the entity was first granted an Australian market licence to operate the specialised market.

5 Schedule 1 (after table item 8)

Insert:

8A Established specialised market operators section 52B

6 Schedule 1 (after table item 24)

Insert:

24A New specialised market operators section 52A

7 Schedule 1 (table item 37)

Repeal the item.

Schedule 9—Participant in a clearing and settlement facility

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 Paragraph 61(1)(b)

Omit “or a participant in a clearing and settlement facility”.

2 Subparagraph 62(b)(ii)

Omit “market; or”, substitute “market.”.

3 Subparagraph 62(b)(iii)

Repeal the subparagraph.

4 Paragraph 67(1)(b)

Omit “a participant in a clearing and settlement facility,”.

Schedule 11—Credit rating agencies

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 Subsection 4(1)

Insert:

supervisory college means a college of regulators established for a credit rating agency:

- (a) that has significant cross border operations; and
- (b) that has affiliates or branches in more than one country; and
- (c) whose credit ratings are relied on by investors and other users of credit ratings in more than one country.

2 Section 60

Repeal the section.

3 Before section 63

Insert:

62B 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 services licence that authorises the holder to provide general advice by issuing a credit rating.

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 days in the financial year on which:
- (a) the entity holds a licence of the kind mentioned in subsection (1); and
 - (b) there is a supervisory college for the entity.
- (4) The *minimum levy component* for the sub-sector is \$2,000.

4 Schedule 1 (table item 6)

Repeal the item, substitute:

6	Credit rating agencies	section 62B
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Schedule 12—Large futures exchange participants sub-sector and large securities exchange participants sub-sector

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 Subsection 4(1)

Insert:

lot means a single futures contract with predefined terms and values.

2 Subsection 64(2)

Repeal the subsection, substitute:

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

3 After subsection 64(3)

Insert:

- (3A) For the purposes of subsection (3), 2 or more reports that relate to the same message, and contain the same information, are counted as one message.

4 Subsections 64(4) and (5)

Repeal the subsections, substitute:

Entity metric (lots)

- (4) However, in working out the graduated levy component for the purposes of paragraph (2)(c), the leviable entity's *entity metric* for the sub-sector for the financial year is instead the number of lots 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 lots.
- (5) For the purposes of subsection (4), 2 or more reports that relate to the same lot, and contain the same information, are counted as one lot.

5 Subsection 65(2)

Repeal the subsection, substitute:

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

6 After subsection 65(3)

Insert:

- (3A) For the purposes of subsection (3), 2 or more reports that relate to the same message, and contain the same information, are counted as one message.

7 Subsection 65(4)

Omit "paragraph (2)(d)", substitute "paragraph (2)(c)".

8 Subsection 65(5)

Repeal the subsection, substitute:

- (5) For the purposes of subsection (4), 2 or more reports that relate to the same transaction, and contain the same information, are counted as one transaction.

Schedule 13—Over-the-counter traders sub-sector and securities dealers sub-sector

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 Subparagraph 66(1)(c)(ii)

Omit “sub-sector; and”, substitute “sub-sector.”.

2 Paragraph 66(1)(d)

Repeal the paragraph.

3 After subsection 66(1)

Insert:

- (1A) However, a leviable entity does not form part of the *over-the-counter traders* sub-sector in a financial year if, at all times in the financial year that the entity deals in (or holds out that it deals in) over-the-counter financial products, the entity so deals (or so holds out) only in its capacity as an entity that forms part of one or more of the following sub-sectors:
- (a) the responsible entities sub-sector (see section 35);
 - (b) the superannuation trustees sub-sector (see section 36);
 - (c) the wholesale trustees sub-sector (see section 37).

4 After subsection 67(3)

Insert:

- (3A) For the purposes of subsection (3), 2 or more reports that relate to the same transaction, and contain the same information, are counted as one transaction.

Schedule 14—Application and transitional provisions

ASIC Supervisory Cost Recovery Levy Regulations 2017

1 After Part 4

Insert:

Part 5—Application and transitional provisions

Division 1—Application provisions relating to the ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018

74 Application of amendments—Schedules 1, 2, 3, 5, 6, 9, 11 and 13 to the *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018*

The amendments to this instrument made by Schedules 1, 2, 3, 5, 6, 9, 11 and 13 to the *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018* apply in relation to the 2017-18 financial year and later financial years.

75 Application of amendments—Schedules 4, 7, 8, 10 and 12 to the *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018*

The amendments to this instrument made by Schedules 4, 7, 8, 10 and 12 to the *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018* apply in relation to the 2018-19 financial year and later financial years.

Schedule 15—Review fee for proprietary companies

Corporations (Review Fees) Regulations 2003

1 Subregulations 4(4) and (6)

After “a review fee”, insert “for a company or registered scheme”.

2 Subregulation 4(6) (definition of *previous indexable amount*)

Repeal the definition, substitute:

previous indexable amount is the amount of the review fee for the company or registered scheme that was applicable immediately before that 1 July.

3 Subregulation 4(7)

After “a review fee”, insert “for a company or a registered scheme”.

4 After subregulation 4(7)

Insert:

- (7A) In the financial year starting on 1 July 2018, the review fee for a proprietary company is the amount worked out under subregulation (6) or (7) (as the case requires) increased by \$4.

Note: This increase will be reflected in subsequent financial years, as part of the review fee for the preceding financial year.

Schedule 16—Prescribed fees for certain notices lodged with ASIC

Corporations (Fees) Regulations 2001

1 Subregulation 3(1) (note)

Omit “4,”.

2 Regulation 4

Repeal the regulation.