

2013-2014-2015

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

Presented and read a first time

**Corporations Amendment
(Crowd-sourced Funding) Bill 2015**

No. , 2015

(Treasury)

A Bill for an Act to amend the *Corporations Act 2001*, and for related purposes

B15HU125.v42.docx 20/11/2015 11:06 AM

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OPC drafter to complete	
1. Does this Bill need a message? (See H of R Practice, sixth ed, pp. 423-427, and OGC advice.) If yes: <ul style="list-style-type: none"> List relevant clauses/items— Prepare message advice (see Drafting Direction 4.9) Give a copy of the message advice to the Legislation area. 	No
2. Does this Bill need a notice? (See H of R Standing Order 178 and Drafting Direction 3.2.) If no list relevant clauses/items—	Yes
3. Is there any constitutional reason why this Bill should not be introduced in the Senate? (See Constitution sections 53 and 55 and Drafting Direction 3.2.)	No

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A Bill for an Act to amend the *Corporations Act 2001*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Corporations Amendment (Crowd-sourced Funding) Act 2015*.

2 Commencement

(1) Each provision of this Act 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 3 and anything in	The day this Act receives the Royal Assent.	

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
this Act not elsewhere covered by this table		
2. Schedules 1 and 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 3	The day after this Act receives the Royal Assent.	

- 1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.
- 4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

3 Schedules

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

Schedule 1—Main amendments

Part 1—Amendment of the Corporations Act 2001

Corporations Act 2001

1 Section 9

Insert:

application facility, in relation to a CSF offer, has the meaning given by subsection @738ZA(3).

closed, in relation to a CSF offer, has the meaning given by subsection @738N(3).

communication facility, in relation to a CSF offer, has the meaning given by subsection @738ZA(5).

complete, in relation to a CSF offer, has the meaning given by subsection @738N(7).

CSF is short for crowd-sourced funding.

Note: Crowd-sourced funding is dealt with in Part 6D.3A.

CSF intermediary has the meaning given by section @738C.

CSF offer has the meaning given by section @738B.

CSF offer document, in relation to a CSF offer, has the meaning given by subsection @738J(1).

defective, in relation to a CSF offer document, has the meaning given by subsection @738U(1).

eligible CSF company has the meaning given by section @738H.

general CSF risk warning has the meaning given by subsection @738ZA(2).

hosting arrangement, in relation to a CSF offer, has the meaning given by subsection @738L(2).

1 *retail client*, when used in Part 6D.3A, has the meaning given by
2 section @738D.

3 *suspended*, in relation to a CSF offer, has the meaning given by
4 subsection @738N(6).

5 **6 Section 611 (table items 12 and 13)**

6 Repeal the table items, substitute:

7

Initial public offering (IPO) fundraising

- 12 An acquisition that results from an issue, under a disclosure document or a CSF offer document, of securities in the company in which the acquisition is made if:
- (a) the issue is to a promoter; and
 - (b) the document disclosed the effect that the acquisition would have on the promoter's voting power in the company; and
 - (c) no other disclosure document or CSF offer document has previously been issued or published by or on behalf of the company.

Underwriting of fundraising

- 13 An acquisition that results from an issue, under a disclosure document or a CSF offer document, of securities in the company in which the acquisition is made if:
- (a) the issue is to a person as underwriter to the issue or sub-underwriter; and
 - (b) the document disclosed the effect that the acquisition would have on the person's voting power in the company.

8 **7 Part 6D.2 (heading)**

9 Repeal the heading, substitute:

10 **Part 6D.2—Disclosure to investors about securities** 11 **(other than for CSF offers)**

12 **8 Before section 704**

13 Insert:

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Schedule 1 Main amendments

Part 1 Amendment of the Corporations Act 2001

1 **703B Part generally does not apply in relation to CSF offers**

2 Part 6D.3A (Crowd-sourced funding) contains a separate regime
3 for the making of CSF offers. The provisions in this Part do not
4 apply in relation to CSF offers, except as expressly provided in this
5 Part or in Part 6D.3A.

6 Note: The fact that a company makes a CSF offer of securities does not
7 prevent the company from also making an offer of securities of the
8 same class in reliance on a provision of section 708 (see section
9 @738E).

10 **9 Section 704**

11 After “an offer of securities”, insert “, other than a CSF offer,”.

12 **10 Section 706**

13 After “An offer of securities for issue”, insert “, other than a CSF
14 offer,”.

15 **11 Part 6D.3 (heading)**

16 Repeal the heading, substitute:

17 **Part 6D.3—Prohibitions, liabilities and remedies**
18 **(other than for CSF offers)**

19 **12 Before Division 1 of Part 6D.3**

20 Insert:

21 **Division 1A—Introduction**

22 **725A Part generally does not apply in relation to CSF offers**

23 Part 6D.3A (Crowd-sourced funding) contains a separate regime
24 for the making of CSF offers. The provisions in this Part do not
25 apply in relation to CSF offers, except as expressly provided in this
26 Part or in Part 6D.3A.

27 Note: The fact that a company makes a CSF offer of securities does not
28 prevent the company from also making an offer of securities of the
29 same class in reliance on a provision of section 708 (see section
30 @738E).

1 **13 Subparagraph 734(7)(c)(i)**

2 After “lodged,” insert “a CSF offer document that has been published
3 on a platform of a CSF intermediary,”.

4 **14 After Part 6D.3**

5 Insert:

6 **Part 6D.3A—Crowd-sourced funding**

7 **Division 1—Introduction**

8 **@738A Object**

9 The object of this Part is to provide a disclosure regime that can be
10 used for certain offers of securities for issue in small unlisted
11 companies, instead of complying with the requirements of
12 Part 6D.2.

13 **@738B Meaning of *CSF offer***

14 A *CSF offer* is an offer that is:

- 15 (a) eligible to be made under this Part (see Division 2); and
16 (b) expressed to be made under this Part.

17 **@738C Meaning of *CSF intermediary***

18 A *CSF intermediary* is a financial services licensee whose licence
19 expressly authorises the licensee to provide a crowd funding
20 service.

21 Note 1: Section @766F defines when a person provides a *crowd-funding*
22 *service*.

23 Note 2: Because a CSF intermediary is a financial services licensee, the
24 intermediary must (in addition to complying with this Part) comply
25 with the provisions of Chapter 7 that apply to financial services
26 licensees.

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Schedule 1 Main amendments

Part 1 Amendment of the Corporations Act 2001

1 **@738D Meaning of *retail client* in relation to a CSF offer**

2 If a person (not being the company making the CSF offer) is a
3 retail client for the purposes of Chapter 7 in relation to the
4 provision of a crowd-funding service that relates to a particular
5 CSF offer, then, for the purposes of this Part, the person is a *retail*
6 *client* in relation to that CSF offer.

7 **@738E Offer of the securities may also be made in reliance on**
8 **section 708**

9 The fact that a company makes a CSF offer of securities does not
10 prevent the company from also making an offer, in reliance on a
11 provision of section 708, of securities that are of the same class as
12 those offered under the CSF offer.

13 **@738F Application of provisions of Chapter 7 relating to how**
14 **obligations etc. apply to different kinds of persons**

- 15 (1) Subject to subsections (2) and (3), the following provisions of
16 Chapter 7 (the *applied provisions*) have effect for the purposes of
17 this Part as if references in the provisions to that Chapter were
18 instead references to this Part:
- 19 (a) section 761F (meaning of person—generally includes a
20 partnership);
 - 21 (b) section 761FA (meaning of person—generally includes
22 multiple trustees);
 - 23 (c) section 769B (people are generally responsible for the
24 conduct of agents, employees etc).
- 25 (2) Subsection (1) does not apply to provisions of the sections
26 mentioned in subsection (1) that are expressed to relate only to
27 specific provisions of Chapter 7 or to specific Parts, Divisions or
28 Subdivisions of Chapter 7.
- 29 (3) The regulations may provide that one or more of the applied
30 provisions have effect for specified purposes subject to
31 modifications specified in the regulations. The regulations have
32 effect accordingly.

1 **Division 2—Offers that are eligible to be made under this**
2 **Part**

3 **@738G Offers that are eligible to be made under this Part**

- 4 (1) An offer is eligible to be made under this Part if:
- 5 (a) it is an offer by a company for the issue of securities of the
6 company; and
 - 7 (b) the company is an eligible CSF company (see section
8 @738H) at the time when the offer is made; and
 - 9 (c) the securities are of a class specified in the regulations; and
 - 10 (d) the offer complies with the issuer cap (see subsection (2) of
11 this section); and
 - 12 (e) the funds sought to be raised by the offer are not intended by
13 the company to be used, to any extent, by the company or a
14 related party of the company, to invest in securities or
15 interests in other entities or schemes; and
 - 16 (f) any other requirements specified in the regulations are
17 satisfied in relation to the securities or the offer.

18 Note: If an offer of securities is expressed to be made under this Part but is
19 not eligible to be made under this Part, ASIC may make a stop order
20 under section 739.

21 *The issuer cap*

- 22 (2) For the purpose of this section, an offer of securities for issue in a
23 company (the *new offer*) complies with the issuer cap if the total
24 of:
- 25 (a) the maximum amount sought to be raised by the new offer;
26 and
 - 27 (b) all amounts raised, in the period of 12 months before the time
28 when the new offer is made, pursuant to CSF offers that were
29 made in that period by the company or by related parties of
30 the company; and
 - 31 (c) all amounts raised, in the period of 12 months before the time
32 when the new offer is made, pursuant to offers made by the
33 company, or by related parties of the company, that did not
34 need disclosure because of subsection 708(1) or (10);
- 35 does not exceed:

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Schedule 1 Main amendments

Part 1 Amendment of the Corporations Act 2001

- 1 (d) \$5 million; or
2 (e) if the regulations prescribe a different amount—the
3 prescribed amount.

4 Note: Amounts raised by CSF offers that were made before the start of the
5 12 month period referred to in paragraph (2)(b) are not to be counted.
6 For when a CSF offer is *made*, see subsection @738N(1).

7 *Meaning of related party*

- 8 (3) For the purpose of this Part, each of the following is a *related party*
9 of a company:
10 (a) a related body corporate of the company;
11 (b) an entity controlled by:
12 (i) a person who controls the company; or
13 (ii) an associate of that person.

14 @738H *Meaning of eligible CSF company*

- 15 (1) A company is an *eligible CSF company* at a particular time (the
16 *test time*) if all of the following conditions are satisfied in relation
17 to the company at the test time:
18 (a) the company is a public company limited by shares;
19 (b) the company's principal place of business is in Australia;
20 (c) a majority of the company's directors (not counting alternate
21 directors) ordinarily reside in Australia;
22 (d) the company complies with the assets and turnover test (see
23 subsection (2));
24 (e) neither the company, nor any related party of the company, is
25 a listed corporation;
26 (f) neither the company, nor any related party of the company,
27 has a substantial purpose of investing in securities or interests
28 in other entities or schemes.

29 *The assets and turnover test*

- 30 (2) The company complies with the assets and turnover test at the test
31 time if:
32 (a) the value of the consolidated gross assets of the company,
33 and of all its related parties is less than:

- 1 (i) \$5 million; or
2 (ii) if the regulations prescribe a different amount—the
3 prescribed amount; and
4 (b) the consolidated annual revenue of the company, and of all
5 its related parties, is less than:
6 (i) \$5 million; or
7 (ii) if the regulations prescribe a different amount—the
8 prescribed amount.

9 **Division 3—Making offers under this Part**

10 **@738J CSF offer document to be prepared**

- 11 (1) A document (a *CSF offer document*) must be prepared for a CSF
12 offer.
13 (2) A CSF offer document for a CSF offer must contain the
14 information required by the regulations. The document may also
15 set out the CSF offer.
16 Note: See also subsections @738W(8) and (9) about the effect of
17 supplementary or replacement CSF offer documents.

18 **@738K Other requirements for CSF offer document**

- 19 The information in a CSF offer document must be worded and
20 presented in a clear, concise and effective manner. The document
21 must also comply with any other requirements prescribed by the
22 regulations.
23 Note 1: If this section is contravened, ASIC may make a stop order under
24 section 739.
25 Note 2: See also subsections @738W(8) and (9) about the effect of
26 supplementary or replacement CSF offer documents.

27 **@738L CSF offer document to be published on platform of a single 28 CSF intermediary**

- 29 (1) A CSF offer of a company's securities must be made by
30 publishing, on a platform of a single CSF intermediary, a CSF
31 offer document that complies with section @738J. If the CSF offer

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Schedule 1 Main amendments

Part 1 Amendment of the Corporations Act 2001

- 1 document does not set out the CSF offer, the CSF offer must be
2 published together with the offer document.
- 3 Note 1: Section 1309 creates offences for providing false or misleading
4 information to CSF intermediaries.
- 5 Note 2: See also section @738Q (gatekeeper obligations of CSF
6 intermediaries).
- 7 (2) The arrangement (the *hosting arrangement*) between the company
8 and the CSF intermediary for the publication of the CSF offer
9 document must require all applications made in response to the
10 offer, and all application money in respect of such applications, to
11 be sent or paid to the intermediary and dealt with by the
12 intermediary in accordance with this Part.
- 13 Note: See also section @738ZB (which deals with the responsible
14 intermediary's obligations in relation to application money).
- 15 (3) The company must not make the CSF offer otherwise than in
16 accordance with subsections (1) and (2).
- 17 Note: Failure to comply with this subsection is an offence (see
18 subsection 1311(1)).
- 19 (4) This section does not prevent the CSF offer from being advertised
20 or publicised in a way that does not contravene subsection
21 @738ZG(1).
- 22 (5) The *responsible intermediary* for the CSF offer is the CSF
23 intermediary referred to in subsection (1).
- 24 (6) The *offer platform* for the CSF offer is the platform on which the
25 CSF offer document is published as referred to in subsection (1).
- 26 (7) The *maximum subscription amount* for the CSF offer is the
27 amount specified in the CSF offer document as the maximum
28 amount sought to be raised by the offer.
- 29 (8) The *minimum subscription amount* for the CSF offer is the
30 amount specified in the CSF offer document as the minimum
31 amount sought to be raised by the offer.

1 **@738M Consents needed for publication of CSF offer document**

- 2 (1) The company making a CSF offer must not arrange for a CSF offer
3 document to be published on a platform of a CSF intermediary
4 unless each of the following persons has consented in writing to
5 the publication of that CSF offer document on a platform of that
6 CSF intermediary:
7 (a) each director of the company;
8 (b) each person named in the CSF offer document as a proposed
9 director of the company.

10 Note: Failure to comply with this subsection is an offence (see
11 subsection 1311(1)).

- 12 (2) If the CSF offer document for a CSF offer includes a statement by
13 a person, or a statement said in the document to be based on a
14 statement by a person, the company making the offer must not
15 arrange for the document to be published on a platform of a CSF
16 intermediary unless:
17 (a) the person has consented in writing to the statement being
18 included in the document in the form and context in which it
19 is included; and
20 (b) the document states that the person has given this consent;
21 and
22 (c) the person has not withdrawn this consent before the
23 company arranges for the document to be published on a
24 platform of that CSF intermediary.

25 Note: Failure to comply with this subsection is an offence (see
26 subsection 1311(1)).

- 27 (3) A company that makes a CSF offer must keep a consent required
28 by subsection (1) or (2) for 7 years after the consent was given.

29 Note: Failure to comply with this subsection is an offence (see
30 subsection 1311(1)).

- 31 (4) An offence based on subsection (1), (2) or (3) is an offence of strict
32 liability.

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Schedule 1 Main amendments

Part 1 Amendment of the Corporations Act 2001

1 **@738N When a CSF offer is *made, open, closed, suspended and***
2 ***complete***

3 *When a CSF offer is made*

- 4 (1) A CSF offer is ***made*** at the time when a CSF offer document for
5 the offer is first published on a platform of the responsible
6 intermediary.

7 *When a CSF offer is open*

- 8 (2) A CSF offer is ***open*** during the period starting at the time when the
9 offer is made and ending at the time when the offer is closed, but
10 not including any part of that period while the offer is suspended.

11 *When a CSF offer is closed*

- 12 (3) Subject to subsections (4) and (5), the responsible intermediary for
13 a CSF offer may close the offer at any time by giving notice on the
14 offer platform that the offer is closed. If the intermediary does so,
15 the offer is ***closed*** from the time when notice is so given on the
16 offer platform.

17 Note: See also section @738P (which deals with removal of a CSF offer
18 document from the offer platform) and section @738ZB (which deals
19 with the responsible intermediary's obligations in relation to
20 application money).

- 21 (4) The responsible intermediary for a CSF offer must close the offer
22 as soon as practicable after the first of the following occurs:
23 (a) the period of 3 months starting from when the offer was
24 made ends;
25 (b) if the CSF offer document specifies a period during which
26 the offer is to be open, or a date after which the offer is no
27 longer to be open—that period ends or that date occurs;
28 (c) the responsible intermediary considers that the offer is fully
29 subscribed to the maximum subscription amount for the
30 offer;
31 (d) the company making the offer notifies the responsible
32 intermediary under section @738S that the company wants
33 the offer withdrawn;

1 (e) section @738Q prohibits the continued publication of the
2 CSF offer document on the offer platform.

3 Note 1: Failure to comply with this subsection is an offence (see
4 subsection 1311(1)).

5 Note 2: See also subsection @738X(2), which requires the responsible
6 intermediary to either close or suspend the CSF offer if the
7 intermediary becomes aware that the CSF offer document is defective.

8 (5) The hosting arrangement for a CSF offer may impose limits on the
9 responsible intermediary's power to close the offer otherwise than
10 in circumstances when the intermediary:

11 (a) is required by subsection (4) to close the offer; or

12 (b) is required by subsection @738X(2) to either close or
13 suspend the offer because the CSF offer document is
14 defective.

15 *When an offer is suspended*

16 (6) A CSF offer is *suspended* during the period of any suspension of
17 the offer under section @738X (responsible intermediary's
18 obligations on becoming aware that CSF offer document is
19 defective).

20 *When a CSF offer is complete*

21 (7) A CSF offer is *complete* if:

22 (a) the offer is closed because of paragraph (4)(a), (b) or (c); and

23 (b) all periods within which people could withdraw applications
24 made pursuant to the offer have ended; and

25 (c) the applications that have been received by the responsible
26 intermediary and that have not been withdrawn or rejected
27 represent at least the minimum subscription amount for the
28 offer.

29 Note: For when applications can be withdrawn, see section @738T.

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Schedule 1 Main amendments

Part 1 Amendment of the Corporations Act 2001

1 **@738P CSF offer document to be removed from offer platform if**
2 **offer closes in certain circumstances**

- 3 (1) If a CSF offer is closed otherwise than because of paragraph
4 @738N(4)(a), (b) or (c), the responsible intermediary must remove
5 the CSF offer document from the offer platform.

6 Note 1: Failure to comply with this subsection is an offence (see
7 subsection 1311(1)).

8 Note 2: For removal of the CSF offer document for a CSF offer if the offer is
9 suspended, see subsection @738X(2).

- 10 (2) If a CSF offer is closed because of paragraph @738N(4)(a), (b) or
11 (c), the responsible intermediary may (but is not required to)
12 remove the CSF offer document from the offer platform.

13 **@738Q Gatekeeper obligations of CSF intermediaries**

14 *CSF intermediary to conduct checks before publishing CSF offer*
15 *document*

- 16 (1) A CSF intermediary must not publish a CSF offer document (or a
17 document that purports to be a CSF offer document) on a platform
18 of the intermediary unless the intermediary has, before starting to
19 publish the document, conducted the checks prescribed by the
20 regulations to a reasonable standard.

21 Note: Failure to comply with this subsection is an offence (see
22 subsection 1311(1)).

- 23 (2) For the purposes of this section, the regulations may prescribe what
24 constitutes a reasonable standard in relation to all or any of the
25 checks.

- 26 (3) An offence based on subsection (1) is an offence of strict liability.

- 27 (4) For the purpose of a provision of this Part that refers to a matter
28 that a CSF intermediary knows, has reason to believe or is satisfied
29 or not satisfied, if:

- 30 (a) a CSF intermediary contravenes subsection (1) by not
31 conducting a check (or by not conducting a check to a
32 reasonable standard); and

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1 (b) had the intermediary conducted the check (or conducted it to
2 a reasonable standard), the intermediary would have known
3 or had reason to believe the matter, or would have been
4 satisfied or not satisfied in relation to the matter;
5 then the matter is taken to be one that the intermediary knows or
6 has reason to believe, or in relation to which the intermediary is
7 satisfied or not satisfied (as the case requires).

8 *CSF intermediary not to publish CSF offer document if not*
9 *satisfied of certain matters etc.*

- 10 (5) A CSF intermediary must not publish a CSF offer document (or a
11 document that purports to be a CSF offer document) on a platform
12 of the intermediary, or continue to publish such a document while
13 the offer is open, if:
- 14 (a) the intermediary is not satisfied as to the identity of the
15 company making the offer, or of any of the directors or other
16 officers of the company; or
 - 17 (b) the intermediary has reason to believe that any of the
18 directors or other officers of the company are not of good
19 fame or character; or
 - 20 (c) subject to subsection (6)—the intermediary has reason to
21 believe that the company, or a director or other officer of the
22 company, has, in relation to the offer, knowingly engaged in
23 conduct that is misleading or deceptive or likely to mislead or
24 deceive; or
 - 25 (d) the intermediary has reason to believe that the offer to which
26 the document relates is not eligible to be made under this
27 Part.

28 Note 1: The CSF intermediary must close the offer (see paragraph
29 @738N(4)(e)).

30 Note 2: The question whether a CSF intermediary is not satisfied in relation to
31 a matter, or has reason to believe a matter, is affected by
32 subsection (4).

33 Note 3: Failure to comply with this subsection is an offence (see
34 subsection 1311(1)).

- 35 (6) In the case of a CSF offer document that has already started to be
36 published on a platform of a CSF intermediary, paragraph (5)(c)
37 does not apply in relation to there being a misleading or deceptive

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Schedule 1 Main amendments

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1 statement, an omission, or a new circumstance, that renders the
2 document defective (as defined in section @738U).

3 Note: The consequences of a CSF offer document being defective are dealt
4 with in Division 4. If the responsible intermediary becomes aware that
5 the document is defective, they must remove the document from the
6 offer platform and either close or suspend the offer (see subsection
7 @738X(2)).

8 *CSF intermediary to have adequate arrangements to ensure*
9 *compliance with gatekeeper obligations*

10 (7) A CSF intermediary must have in place adequate arrangements,
11 recorded in writing, to ensure compliance with its obligations
12 under subsections (1) and (5).

13 Note: Failure to comply with this subsection is an offence (see
14 subsection 1311(1)).

15 **@738R Company and related parties not to have more than one** 16 **CSF offer open at any one time**

17 (1) A company must not make a CSF offer at a time when another
18 CSF offer previously made by the company, or by a related party
19 of the company, is open or suspended.

20 Note: Failure to comply with this subsection is an offence (see
21 subsection 1311(1)).

22 (2) A company must not make a CSF offer at the same time as the
23 company, or a related party of the company, makes another CSF
24 offer.

25 Note: Failure to comply with this subsection is an offence (see
26 subsection 1311(1)).

27 **@738S Company may notify responsible intermediary that it wants** 28 **CSF offer withdrawn**

29 The company making a CSF offer may, at any time before the offer
30 is complete, notify the responsible intermediary that the company
31 wants the offer withdrawn.

32 Note: The responsible intermediary must close the offer (see subsection
33 @738N(4)).

1 **@738T Withdrawal of applications made pursuant to CSF offer**

2 A person who has made an application pursuant to a CSF offer
3 may withdraw the application:

4 (a) as permitted by section @738X (responsible intermediary's
5 obligations on becoming aware that CSF offer document is
6 defective) or @738ZD (cooling-off rights for retail clients);

7 or

8 (b) in any other circumstances allowed by the responsible
9 intermediary, and in accordance with any requirements of the
10 intermediary for withdrawal in those circumstances.

11 Note: If an applicant withdraws their application, the responsible
12 intermediary must return the application money (see section
13 @738ZB).

14 **Division 4—Defective etc. CSF offer documents**

15 **@738U When a CSF offer document is *defective***

16 (1) A CSF offer document is *defective* if:

17 (a) the CSF offer document contains a misleading or deceptive
18 statement; or

19 (b) there is an omission from the CSF offer document of
20 information required by section @738J; or

21 (c) since the document was first published on a platform of a
22 CSF intermediary, a new circumstance has arisen that would
23 have been required by section @738J to be included in the
24 document if it had arisen before the document was so
25 published.

26 (2) For the purpose of this section, a person is taken to make a
27 misleading statement about a future matter (including the doing of,
28 or refusing to do, an act) if the person does not have reasonable
29 grounds for making the statement. This subsection does not limit
30 the meaning of a reference to a misleading statement.

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1 **@738V Obligation to notify company making offer, and responsible**
2 **intermediary, if CSF offer document is defective**

3 (1) If, while a CSF offer is open, the company making the offer
4 becomes aware that the CSF offer document is defective, the
5 company must notify the responsible intermediary as soon as
6 practicable.

7 Note: Failure to comply with this subsection is an offence (see
8 subsection 1311(1)).

9 (2) If, while a CSF offer is open, the responsible intermediary becomes
10 aware that the CSF offer document is defective, the intermediary
11 must notify the company making the offer as soon as practicable.

12 Note: Failure to comply with this subsection is an offence (see
13 subsection 1311(1)).

14 (3) If, while a CSF offer is open, any other person referred to in the
15 table in subsection @738Y(5) becomes aware that the CSF offer
16 document is defective, the person must notify the company making
17 the offer, and the responsible intermediary, as soon as practicable.

18 Note: Failure to comply with this subsection is an offence (see
19 subsection 1311(1)).

20 (4) An offence based on subsection (1), (2) or (3) is an offence of strict
21 liability.

22 **@738W Company may provide replacement or supplementary CSF**
23 **document in certain circumstances**

24 *When company may provide a replacement or supplementary CSF*
25 *offer document*

26 (1) The company making a CSF offer may provide the responsible
27 intermediary with a supplementary CSF offer document, or a
28 replacement CSF offer document, to supplement or replace the
29 CSF offer document (the ***affected offer document***) as provided for
30 in the following paragraphs:

31 (a) if the company becomes aware that the affected offer
32 document is defective, the company may provide a
33 supplementary CSF offer document, or a replacement CSF
34 offer document, that corrects the defect;

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- 1 (b) if the company becomes aware that the affected offer
2 document does not comply with section @738K (other
3 requirements for CSF offer documents), the company may
4 provide a supplementary CSF offer document, or a
5 replacement CSF offer document, that corrects the
6 non-compliance;
- 7 (c) the company may provide a supplementary CSF offer
8 document, or a replacement CSF offer document, in any
9 other circumstances permitted by the regulations, and in
10 accordance with any conditions prescribed by those
11 regulations.
- 12 Note 1: Defective CSF offer documents give rise to liabilities under section
13 @738Y.
- 14 Note 2: Regulations for the purpose of paragraph (c) may (for example) limit
15 the kinds of changes that may be incorporated into a supplementary or
16 replacement CSF offer document provided under that paragraph.
- 17 Note 3: This section applies to a CSF offer document that has already been
18 previously supplemented or replaced.
- 19 (2) A supplementary CSF offer document or a replacement CSF offer
20 document:
- 21 (a) must not be provided otherwise than as permitted by
22 subsection (1); and
- 23 (b) if it is provided as permitted by paragraph (1)(a) or (b)—
24 must not incorporate any changes made otherwise than:
- 25 (i) for the purpose of correcting a defect or non-compliance
26 as mentioned in that paragraph; or
- 27 (ii) as permitted by the regulations; and
- 28 (c) if it is provided as permitted by paragraph (1)(c)—must
29 comply with any conditions imposed by regulations made for
30 the purpose of that paragraph.
- 31 *Form of supplementary or replacement CSF offer document*
- 32 (3) At the beginning of a supplementary CSF document, there must be:
- 33 (a) a statement that it is a supplementary CSF offer document;
34 and
- 35 (b) an identification of the affected offer document it
36 supplements; and

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- 1 (c) a statement that it is to be read together with the affected
2 offer document.
- 3 (4) At the beginning of a replacement CSF offer document, there must
4 be:
5 (a) a statement that it is a replacement CSF offer document; and
6 (b) an identification of the affected offer document it replaces.
- 7 *Responsible intermediary may publish supplementary or*
8 *replacement CSF offer document on offer platform*
- 9 (5) If, in accordance with this section, the company making a CSF
10 offer provides the responsible intermediary with a supplementary
11 CSF offer document or a replacement CSF offer document, then
12 subject to subsection (6), the intermediary may:
13 (a) in the case of a supplementary CSF offer document—publish
14 the supplementary CSF offer document on the offer platform
15 (together with the affected offer document); or
16 (b) in the case of a replacement CSF offer document—substitute
17 the replacement offer document for the affected offer
18 document on the offer platform.
- 19 Note: The responsible intermediary is not required to publish the
20 supplementary or replacement CSF offer document. See also the
21 provisions of section @738X relating to suspension or closure of CSF
22 offers.
- 23 (6) The following provisions apply in relation to a supplementary CSF
24 offer document or a replacement CSF offer document in the same
25 way as they apply to any CSF offer document:
26 (a) section @738M (consents needed for publication of CSF
27 offer document);
28 (b) section @738Q (gatekeeper obligations of CSF
29 intermediaries).
- 30 (7) However, subsection @738M(2) does not apply so as to require a
31 fresh consent to be obtained in relation to a statement if the
32 supplementary CSF offer document, or replacement CSF offer
33 document, does not make any material change to either the form of
34 the statement as it was included in the affected offer document, or
35 the context in which it was included.
-

1 *Consequences of publication of a supplementary CSF offer*
2 *document*

- 3 (8) If a supplementary CSF offer document for a CSF offer is
4 published on the offer platform, then, for the purposes of the
5 application of this Chapter to events that occur after that document
6 is first published on the platform, the CSF offer document is taken
7 to be the affected offer document together with the supplementary
8 CSF offer document.

9 *Consequences of publication of a replacement CSF offer document*

- 10 (9) If a replacement CSF offer document for a CSF offer is published
11 on the offer platform, then, for the purposes of the application of
12 this Chapter to events that occur after that document is first
13 published on the platform, the CSF offer document is taken to be
14 the replacement CSF offer document.

15 **@738X Responsible intermediary's obligations on becoming aware**
16 **that CSF offer document is defective**

17 *When this section applies*

- 18 (1) This section applies if the responsible intermediary for a CSF offer
19 becomes aware, while the offer is open, that the CSF offer
20 document is defective.

21 Note: See also section @738V, which imposes notification obligations in
22 relation to defective CSF offer documents.

23 *Responsible intermediary must suspend or close the CSF offer*

- 24 (2) The responsible intermediary must, as soon as practicable:
25 (a) remove the CSF offer document from the offer platform; and
26 (b) either:
27 (i) close the offer; or
28 (ii) suspend the offer by giving notice on the offer platform
29 that the offer is suspended.

30 Note: Failure to comply with this subsection is an offence (see
31 subsection 1311(1)).

32 Note 2: See also section @738N, which deals with closure of CSF offers.

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1 (3) If the responsible intermediary suspends the offer, the notice
2 required by subparagraph (2)(b)(ii) must continue to appear on the
3 offer platform until the suspension ends (see subsection (6)) or the
4 offer closes.

5 Note: Failure to comply with this subsection is an offence (see
6 subsection 1311(1)).

7 (4) An offence based on subsection (2) or (3) is an offence of strict
8 liability.

9 *Consequences of publication of supplementary or replacement*
10 *CSF offer document*

11 (5) Subsections (6) and (7) apply if:

12 (a) for the purpose of correcting the defect in the CSF offer
13 document, the company making the CSF offer provides the
14 responsible intermediary with a supplementary CSF offer
15 document or a replacement CSF offer document; and

16 (b) the responsible intermediary publishes the supplementary
17 CSF offer document or replacement CSF offer document on
18 the offer platform.

19 (6) If the CSF offer has been suspended, the suspension of the CSF
20 offer ends when the supplementary CSF offer document or
21 replacement CSF offer document is first published on the offer
22 platform.

23 (7) The responsible intermediary must, as soon as practicable after the
24 supplementary CSF offer document or replacement CSF offer
25 document is first published on the offer platform, give each person
26 who has already applied pursuant to the CSF offer a written notice,
27 accompanied by that document, advising the person that they may,
28 within one month after the date of the notice, withdraw their
29 application and be repaid.

30 Note 1: Failure to comply with this subsection is an offence (see
31 subsection 1311(1)).

32 Note 2: If the suspension does not end under this subsection, the responsible
33 intermediary must return the application money when the offer closes
34 (see section @738ZB).

35 (8) An offence based on subsection (7) is an offence of strict liability.

- 1 (9) A person who is given a notice under subsection (7) may, within
2 one month after the date of the notice, withdraw their application.
3 The withdrawal must be by notice in writing to the responsible
4 intermediary.

5 Note: If an applicant withdraws their application, the responsible
6 intermediary must return the application money (see section
7 @738ZB).

8 **@738Y Other liabilities relating to defective CSF offer documents**

9 *Obligations giving rise to liabilities*

- 10 (1) A company must not offer securities under a CSF offer document
11 if the document is defective.

12 Note 1: A defect may be corrected by a supplementary CSF offer document or
13 a replacement CSF offer document (see section @738W).

14 Note 2: If this subsection is contravened, ASIC may make a stop order under
15 section 739.

- 16 (2) For the purpose of subsection (1), a company is taken to offer
17 securities under a CSF offer document at all times, before the offer
18 is closed, when the offer document is published on a platform of a
19 CSF intermediary.

- 20 (3) A CSF intermediary must not publish (or continue to publish) a
21 CSF offer document on a platform of the intermediary if:

- 22 (a) the document is defective; and
23 (b) the intermediary knows that the document is defective.

24 Note 1: A defect may be corrected by a supplementary CSF offer document or
25 a replacement CSF offer document (see section @738W).

26 Note 2: The question whether a CSF intermediary knows that a document is
27 defective is affected by subsection @738Q(4).

28 *Criminal liability*

- 29 (4) A person commits an offence if:
30 (a) the person contravenes subsection (1) or (3) in relation to a
31 defective CSF offer document; and
32 (b) the statement, omission or new circumstance because of
33 which the document is defective is materially adverse from
34 the point of view of an investor.
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1 Note: For exceptions to liability, see section @738Z.

2 *Right to recover loss or damage*

3 (5) A person who suffers loss or damage because an offer of securities
4 under a CSF offer document contravenes subsection (1) may
5 recover the amount of the loss or damage from a person referred to
6 in the following table if the loss or damage is one that the table
7 makes the person liable for. This is so even if the person did not
8 commit, and was not involved in, the contravention.

9

People liable on disclosure document

Item	These people ...	are liable for loss or damage caused by ...
1	the company making the CSF offer	any contravention of subsection (1) in relation to the CSF offer document
2	each director of the company making the CSF offer	any contravention of subsection (1) in relation to the CSF offer document
3	a person named in the CSF offer document with their consent as a proposed director of the company	any contravention of subsection (1) in relation to the CSF offer document
4	an underwriter (but not a sub-underwriter) to the issue named in the CSF offer document with their consent	any contravention of subsection (1) in relation to the CSF offer document
5	a person named in the CSF offer document with their consent as having made a statement: (a) that is included in the CSF offer document; or (b) on which a statement made in the CSF offer document is based	the inclusion of the statement in the CSF offer document
6	a person who contravenes, or is involved in the contravention of, subsection (1)	that contravention

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People liable on disclosure document

Item	These people ...	are liable for loss or damage caused by ...
7	a CSF intermediary that publishes the CSF offer document on a platform of the intermediary	a contravention of subsection (1) in relation to the CSF offer document, but only if paragraph (3)(b) is satisfied

1 Note: For exceptions to liability, see section @738Z.

2 (6) An action under subsection (5) may be begun at any time within 6
3 years after the day the cause of action arose.

4 @738Z Exceptions to liability under section @738Y

5 *Lack of knowledge*

6 (1) A person:

7 (a) does not commit an offence against subsection @738Y(4) in
8 respect of a contravention of subsection @738Y(1) that
9 relates to a CSF offer document; and

10 (b) is not liable under subsection @738Y(5) in respect of a
11 contravention of subsection @738Y(1) that relates to a CSF
12 offer document;

13 if the person did not know that the CSF offer document was
14 defective.

15 Note: In a prosecution for an offence, a defendant bears an evidential burden
16 in relation to the matter in this subsection (see subsection 13.3(3) of
17 the *Criminal Code*).

18 (2) Subsection (1) does not apply to a liability of a CSF intermediary
19 that is covered by item 7 of the table in subsection @738Y(5).

20 *Reasonable reliance on information given by someone else—* 21 *statements and omissions*

22 (3) A person does not commit an offence against subsection
23 @738Y(4) in respect of a contravention of subsection @738Y(1),
24 and is not liable under subsection @738Y(5) in respect of a
25 contravention of subsection @738Y(1), because of a misleading or
26 deceptive statement in, or an omission from, a CSF offer document

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1 if the person placed reasonable reliance on information given to
2 them by:

- 3 (a) if the person is a body—someone other than a director,
4 employee or agent of the body; or
5 (b) if the person is an individual—someone other than an
6 employee or agent of the individual.

7 Note: In a prosecution for an offence, a defendant bears an evidential burden
8 in relation to the matter in this subsection (see subsection 13.3(3) of
9 the *Criminal Code*).

10 (4) Subsection (3) does not apply to a liability of a CSF intermediary
11 that is covered by item 7 of the table in subsection @738Y(5).

12 (5) For the purposes of subsection (3), a person is not the agent of a
13 body or individual merely because they perform a particular
14 professional or advisory function for the body or individual.

15 *Withdrawal of consent—statements and omissions*

- 16 (6) A person who is named in a CSF offer document as:
17 (a) being a proposed director or underwriter; or
18 (b) making a statement included in the document; or
19 (c) making a statement on the basis of which a statement is
20 included in the document;

21 does not commit an offence against subsection @738Y(1), and is
22 not liable under subsection @738Y(5) in respect of a contravention
23 of subsection @738Y(1), because of a misleading or deceptive
24 statement in, or an omission from, a CSF offer document if the
25 person publicly withdrew their consent to being named in the
26 document in that way.

27 Note: In a prosecution for an offence, a defendant bears an evidential burden
28 in relation to the matter in this subsection (see subsection 13.3(3) of
29 the *Criminal Code*).

1 **Division 5—Other obligations of CSF intermediaries**

2 **@738ZA General obligations of CSF intermediaries relating to their** 3 **platforms etc.**

4 *The general CSF risk warning*

- 5 (1) The responsible intermediary for a CSF offer must ensure that the
6 general CSF risk warning appears prominently on the offer
7 platform at all times while the offer is open or suspended.

8 Note: Failure to comply with this subsection is an offence (see
9 subsection 1311(1)).

- 10 (2) The **general CSF risk warning** is a statement in the terms
11 specified in the regulations.

12 *Providing a facility for the making of applications*

- 13 (3) The responsible intermediary for a CSF offer must ensure that:
14 (a) at all times while the offer is open, a facility (the **application**
15 **facility**) is provided for the making of applications pursuant
16 to the CSF offer; and
17 (b) a retail client cannot make an application pursuant to the CSF
18 offer by means of the application facility unless the person
19 completes an acknowledgement that complies with the
20 requirements of the regulations; and
21 (c) a person cannot make an application pursuant to the CSF
22 offer by means of the application facility while the offer is
23 suspended or after it has closed.

24 Note: Failure to comply with this subsection is an offence (see
25 subsection 1311(1)).

- 26 (4) The responsible intermediary for a CSF offer must reject any
27 application for the issue of securities pursuant to the offer if the
28 application is made otherwise than by means of the application
29 facility.

30 Note: Failure to comply with this subsection is an offence (see
31 subsection 1311(1)).

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1

Providing a communication facility

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- (5) The responsible intermediary for a CSF offer must, at all times while the offer is open or suspended, provide a facility (the ***communication facility***) that can be used for the following purposes:

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- (a) for people who access the CSF offer document through the offer platform:

(i) to make posts relating to the offer; and

(ii) to see posts relating to the offer made by others; and

(iii) to ask the company making the offer, or the intermediary, questions relating to the offer;

- (b) for the company or the intermediary to make posts responding to questions and posts.

14

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Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

16

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Note 2: A statement made in good faith on the communication facility for a CSF offer does not contravene subsection @738ZG(1) (restrictions on advertising and publicity) (see subsection @738ZG(8)).

19

20

- (6) If a person who makes a post using the communication facility is an officer, employee or agent of:

21

22

23

24

- (a) the company making the CSF offer, or a related party of the company; or

- (b) the responsible intermediary, or an associate of the intermediary;

the person must clearly disclose that fact in the post that they make.

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Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

29

30

- (7) The regulations may make provision in relation to the operation, management or use of the communication facility.

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Note: For example, regulations may prohibit, or require, the removal of material from the communication facility.

1

Cooling-off rights

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- (8) The responsible intermediary for a CSF offer must ensure that the following appear prominently on the offer platform at all times while the offer is open or suspended:

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- (a) a statement drawing attention to the rights of persons under section @738ZD to withdraw applications;
- (b) a statement specifying a method by which a person may exercise a right under that section to withdraw an application.

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Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

11

Disclosure of fees and interests

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- (9) The responsible intermediary for a CSF offer must ensure that the following appear prominently on the offer platform at all times while the offer is open or suspended:

- (a) the fees the intermediary charges the company making the offer;
- (b) a disclosure of any direct or indirect pecuniary interest that the intermediary, or an associate of the intermediary, has or expects to acquire in the company or a related party of the company.

21

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Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

23

24

@738ZB Responsible intermediary's obligations relating to application money

25

26

Usual obligations of financial services licensees apply subject to this section

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- (1) Subdivision A of Division 2 of Part 7.8, and the other relevant provisions in Part 7.8, apply in relation to money (**application money**) that is received by the responsible intermediary for a CSF offer in respect of applications made pursuant to the offer, subject to the following provisions of this section.

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1 *Obligation to pay application money to company if offer is*
2 *complete and securities have been issued*

3 (2) If the CSF offer is complete and the company making the offer has
4 issued securities pursuant to the offer, the responsible intermediary
5 must, as soon as practicable, pay to the company the application
6 money it received for the issue of those securities, less any amount
7 that the intermediary is entitled to retain under the hosting
8 arrangement.

9 Note: Failure to comply with this subsection is an offence (see
10 subsection 1311(1)).

11 *Obligation to repay application money to applicants in certain*
12 *circumstances*

13 (3) If:
14 (a) the CSF offer is closed otherwise than because of paragraph
15 @738N(4)(a), (b) or (c); or
16 (b) the CSF offer is closed because of paragraph @738N(4)(a),
17 (b) or (c) and the following conditions are met:
18 (i) all periods within which people could withdraw
19 applications made pursuant to the offer have ended;
20 (ii) the applications that have been received by the
21 intermediary and that have not been withdrawn or
22 rejected do not represent at least the minimum
23 subscription amount for the offer;

24 the responsible intermediary must, as soon as practicable, return to
25 the applicants who made applications that have not been
26 withdrawn or rejected all application money received in respect of
27 those applications.

28 Note 1: Failure to comply with this subsection is an offence (see
29 subsection 1311(1)).

30 Note 2: For when applications can be withdrawn, see section @738T.

31 (4) If:
32 (a) a person who has made an application pursuant to the CSF
33 offer withdraws that application; or
34 (b) an application made by a person pursuant to the CSF offer is
35 rejected, or is unsuccessful, for any other reason;

1 the responsible intermediary must, as soon as practicable, return to
2 the applicant the application money received in respect of the
3 application.

4 Note 1: Failure to comply with this subsection is an offence (see
5 subsection 1311(1)).

6 Note 2: For when applications can be withdrawn, see section @738T.

7 (5) An offence based on subsection (2), (3) or (4) is an offence of strict
8 liability.

9 **Division 6—Additional protections for retail clients**

10 **@738ZC Caps on investment by retail clients pursuant to CSF** 11 **offers**

- 12 (1) The responsible intermediary for a CSF offer must reject an
13 application made by a person pursuant to the offer if:
14 (a) the person is a retail client in relation to the offer; and
15 (b) having regard only to CSF offers for which the intermediary
16 is the responsible intermediary, the application would result
17 in the total amount paid or payable by the person in respect
18 of applications made by the person, in any period of 12
19 months, pursuant to CSF offers made by the same company,
20 exceeding:
21 (i) \$10,000; or
22 (ii) if the regulations prescribe a different amount—the
23 prescribed amount.

24 Note: Failure to comply with this subsection is an offence (see
25 subsection 1311(1)).

- 26 (2) If 2 or more persons (the *joint applicants*) make a joint application
27 for the issue of securities pursuant to a CSF offer, then, unless the
28 regulations provide otherwise, this section applies in relation to the
29 joint application as if each of the joint applicants had instead made
30 a separate application for a number of securities worked out by
31 dividing the number of securities applied for in the joint
32 application by the number of joint applicants.

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1 **@738ZD Cooling-off rights for retail clients**

2 (1) If a person who is a retail client in relation to a CSF offer makes an
3 application pursuant to the offer, the person may withdraw the
4 application within 5 business days after the application is made.

5 Note: If an applicant withdraws their application, the responsible
6 intermediary must return the application money (see section
7 @738ZB).

8 (2) A withdrawal of an application pursuant to subsection (1) can only
9 be made by a method specified on the offer platform as required by
10 paragraph @738ZA(8)(b).

11 **@738ZE Company making CSF offer or CSF intermediary etc.
12 must not financially assist retail client to acquire
13 securities**

14 (1) This section applies to the following persons in relation to a CSF
15 offer made by a company or that a company intends to make:

- 16 (a) the company;
17 (b) a related party of the company;
18 (c) a CSF intermediary that is or intends to be the responsible
19 intermediary in relation to the CSF offer;
20 (d) an associate of such a CSF intermediary.

21 (2) A person to whom this section applies must not:

- 22 (a) financially assist a person who is a retail client in relation to
23 the CSF offer to acquire securities pursuant to the offer; or
24 (b) arrange financial assistance for such a person to acquire
25 securities pursuant to the CSF offer.

26 Note 1: This subsection applies to financial assistance provided by the
27 company even if that assistance does not contravene section 260A.

28 Note 2: Failure to comply with this subsection is an offence (see
29 subsection 1311(1)).

30 (3) Without limiting subsection (2), the prohibition on financial
31 assistance:

- 32 (a) applies whether the financial assistance is provided or
33 arranged before or after the acquisition of securities pursuant
34 to the CSF offer; and
-

1 (b) extends to the provision of financial assistance in the form of
2 a dividend.

3 (4) In this section, *financially assist* and *financial assistance* have the
4 same meanings as they have in section 260A.

5 **Division 7—Other matters**

6 **@738ZF Offering securities of a company that does not exist**

7 A person must not make an offer that:

- 8 (a) is expressed to be made under this Part; and
9 (b) relates to a company that has not been formed or does not
10 exist.

11 Note: Failure to comply with this section is an offence (see
12 subsection 1311(1)).

13 **@738ZG Restrictions on advertising and publicity**

14 *Prohibition*

15 (1) A person must not:

- 16 (a) advertise a CSF offer or an intended CSF offer; or
17 (b) publish a statement that:
18 (i) directly or indirectly refers to a CSF offer or an intended
19 CSF offer; or
20 (ii) is reasonably likely to induce people to apply for
21 securities pursuant to a CSF offer or an intended CSF
22 offer.

23 Note: Failure to comply with this subsection is an offence (see
24 subsection 1311(1)).

25 (2) None of the following constitutes advertising a CSF offer, or
26 publishing a statement, as mentioned in subsection (1):

- 27 (a) the publication of a CSF offer or a CSF offer document (or
28 both), or any other information relating to a CSF offer, on a
29 platform of the responsible intermediary;
30 (b) an advertisement or publication that does not refer to any
31 particular CSF offer or intended CSF offer, and that does
32 either or both of the following:
-

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- 1 (i) identifies a person as being a CSF intermediary;
2 (ii) provides general material about the services provided by
3 a CSF intermediary.

4 Paragraph (a) does not apply to statements made on the
5 communication facility for a CSF offer.

6 Note: Subsection (8) deals with statements made on the communication
7 facility for a CSF offer. For the meaning of *communication facility*,
8 see subsection @738ZA(5).

- 9 (3) In deciding for the purpose of subsection (1) whether a statement:
10 (a) indirectly refers to a CSF offer, or intended CSF offer, of
11 securities; or
12 (b) is reasonably likely to induce people to apply for securities
13 pursuant to a CSF offer or an intended CSF offer;
14 have regard to whether the statement:
15 (c) forms part of the normal advertising of a body's products or
16 services and is genuinely directed at maintaining its existing
17 customers, or attracting new customers, for those products or
18 services; and
19 (d) communicates information that materially deals with the
20 affairs of the body; and
21 (e) is likely to encourage investment decisions being made on
22 the basis of the statement rather than on the basis of
23 information contained in a CSF offer document.

- 24 (4) Subsection (1) does not apply if any of subsections (6) to (9)
25 provide that the advertisement or publication does not contravene
26 subsection (1).

27 Note: A defendant bears an evidential burden in relation to the matter in
28 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- 29 (5) An offence based on subsection (1) is an offence of strict liability.

30 *Exception for publicising CSF offer or intended CSF offer*

- 31 (6) An advertisement or publication that refers to a CSF offer or an
32 intended CSF offer does not contravene subsection (1) if the
33 advertisement or publication states that a person should, in
34 deciding whether to make an application pursuant to the offer,
35 consider the CSF offer document for the offer and the general CSF

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1 risk warning (whether or not the advertisement or publication also
2 contains other material).

3 Note: If an advertisement or publication of a kind referred to in this
4 subsection is defective (as defined in subsection 739(6)), ASIC may
5 make a stop order under section 739.

6 *Exception for publishers*

- 7 (7) A person does not contravene subsection (1) by publishing an
8 advertisement or statement if the person:
9 (a) publishes it in the ordinary course of a media business; and
10 (b) did not know, and had no reason to suspect, that its
11 publication would amount to a contravention of
12 subsection (1).

13 *Exception for statements made on communication facility for CSF*
14 *offer*

- 15 (8) A statement made in good faith on the communication facility for a
16 CSF offer does not contravene subsection (1).

17 *Other general exceptions*

- 18 (9) An advertisement or publication does not contravene subsection (1)
19 in relation to a CSF offer, or an intended CSF offer, if it:
20 (a) consists solely of a notice or report of a general meeting of
21 the company making, or intending to make, the offer; or
22 (b) consists solely of a report about the company making, or
23 intending to make, the CSF offer that is published by the
24 company and:
25 (i) does not contain information that materially affects
26 affairs of the company, other than information
27 previously made available in a CSF offer document that
28 has been published on a platform of a CSF intermediary,
29 a disclosure document that has been lodged, an annual
30 report or a report referred to in paragraph (a); and
31 (ii) does not refer (whether directly or indirectly) to the CSF
32 offer or intended CSF offer; or
33 (c) is a news report or is genuine comment, in the media, relating
34 to:
-

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- 1 (i) a CSF offer document for the CSF offer that has been
2 published on a platform of a CSF intermediary, or
3 information contained in such a document; or
4 (ii) a notice or report covered by paragraph (a) or (b); or
5 (d) is a report about securities of the company (or proposed
6 company) making, or intending to make, the CSF offer that is
7 published by someone who is not:
8 (i) the company; or
9 (ii) acting at the instigation of, or by arrangement with, the
10 company; or
11 (iii) a director of the company; or
12 (iv) a CSF intermediary that is or will be the responsible
13 intermediary for the offer; or
14 (v) any other person who has an interest in the success of
15 the issue of the securities.

16 Paragraphs (c) and (d) do not apply if anyone gives consideration
17 or another benefit for publishing the report.

18 *Meaning of media*

- 19 (10) For the purposes of this section, the *media* consists of:
20 (a) newspapers and magazines; and
21 (b) radio and television broadcasting services; and
22 (c) electronic services (including services provided through the
23 internet) that:
24 (i) are operated on a commercial basis; and
25 (ii) are similar to newspapers, magazines or radio or
26 television broadcasts.

27 **@738ZH Liabilities under other laws not affected**

28 This Part does not affect any liability that a person has under any
29 other law.

30 **@738ZI Companies eligible for limited governance requirements**

31 A company is covered under this section in relation to a financial
32 year if:

- 1 (a) the company is an eligible CSF company at the end of the
2 financial year; and
3 (b) the application for the company's registration stated that the
4 company will be covered under this section on registration
5 and intends to make a CSF offer after registration; and
6 (c) the financial year ends within 5 years after the company's
7 registration; and
8 (d) in a case where the financial year ends later than 12 months
9 after the company's registration—the company has
10 completed a CSF offer; and
11 (e) either:
12 (i) the financial year is the first financial year that ended
13 after its registration; or
14 (ii) the company was covered under this section in relation
15 to every earlier financial year that ended after its
16 registration.

17 **@738ZJ Regulations relating to how CSF intermediaries are to deal**
18 **with applications**

19 The regulations may make provision relating to how CSF
20 intermediaries are to deal with applications made pursuant to CSF
21 offers, including (but not limited to) the following:

- 22 (a) the order in which applications are to be dealt with;
23 (b) circumstances in which applications must or may be rejected;
24 (c) when applications are to be counted towards the maximum
25 subscription amount, or the minimum subscription amount, in
26 relation to a CSF offer.

27 **15 At the end of subsection 739(1)**

28 Add:

- 29 ; or (d) an offer of securities under a CSF offer document, or the
30 publication of a CSF offer document on a platform of a CSF
31 intermediary, contravenes subsection @738Y(1) (which
32 relates to defective CSF offer documents); or
33 (e) a CSF offer document does not comply with section @738K
34 (other requirements for CSF offer documents); or

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1 (f) an advertisement or publication of a kind referred to in
2 subsection @738ZG(6) is defective (see subsection (6) of this
3 section); or

4 (g) an offer of securities that is expressed to be made under
5 Part 6D.3A is not eligible to be made under that Part.

6 **16 Paragraph 739(1A)(a)**

7 Omit “paragraph (1)(a) or (b)”, substitute “paragraph (1)(a), (b), (d), (e)
8 or (g)”.

9 **17 Paragraph 739(1A)(b)**

10 After “paragraph (1)(c)” insert “or (f)”.

11 **18 Subsection 739(6)**

12 After “subsection “734(5) or (6)”, insert “, or @738ZG(6),”.

13 **19 Paragraph 739(6)(c)**

14 Omit “if the advertisement or publication”, substitute “in the case of an
15 advertisement or publication of a kind referred to in subsection 734(5)
16 that”.

17 **20 After paragraph 740(1)(b)**

18 Insert:

19 ; and (c) for the purpose of subsection @738H(2), assets or revenue of
20 any of the bodies are taken also to be assets or revenue of
21 each of the other bodies.

22 **21 After paragraph 740(2)(d)**

23 Insert:

24 ; and (e) for the purpose of subsection @738H(2), assets or revenue of
25 the body are taken also to be assets or revenue of the
26 controller.

27 **22 Section 761A**

28 Insert:

29 *crowd-funding service* that a person provides has the meaning
30 given by section @766F.

1 **23 Subsection 761G(8)**

2 After “this Chapter”, insert “or Part 6D.3A”.

3 **24 Section 761GA**

4 After “traditional trustee company service”, insert “or a crowd-funding
5 service”.

6 **25 After paragraph 766A(1)(e)**

7 Insert:

8 (ea) provide a crowd-funding service (see section @766F); or

9 **26 After subsection 766C(2)**

10 (2A) Despite subsections (1) and (2), providing a crowd-funding service
11 does not constitute *dealing* in a financial product.

12 **27 At the end of Division 4 of Part 7.1**

13 Add:

14 **@766F Meaning of provide a crowd-funding service**

15 *Meaning of provides a crowd-funding service*

16 (1) A person provides a *crowd-funding service* if:

- 17 (a) a CSF offer document for a CSF offer of securities of a
18 company is published on a platform operated by the person;
19 and
20 (b) applications may be made to the person for the issue, by the
21 company, of securities pursuant to the offer.

22 Note: CSF offers are dealt with in Part 6D.3A (Crowd-sourced funding).

23 (2) The financial service constituted by providing a *crowd-funding*
24 *service* is taken to include (in addition to the matters mentioned in
25 subsection (1)), performing all other aspects of the role of a CSF
26 intermediary under Part 6D.3A.

27 *To whom, and when, a crowd-funding service is provided*

28 (3) A person who uses the application facility for the CSF offer to
29 make an application pursuant to the offer is a person to whom the

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1 crowd-funding service is provided. The time at which the
2 crowd-funding service is provided to the person is the time when
3 the person first uses the application facility to make an application
4 pursuant to the offer.

5 Note: For the meaning of *application facility*, see subsection @738ZA(3).

6 (4) The company making the CSF offer is a person to whom the
7 crowd-funding service is provided. The time at which the
8 crowd-funding service is provided to the company is the time when
9 the company enters into the hosting arrangement for the offer.

10 Note: For the meaning of *hosting arrangement*, see subsection @738L(2).

11 **28 Subparagraph 1018A(4)(c)(i)**

12 Omit “or disclosure document that has been lodged with ASIC,”,
13 substitute “, a disclosure document that has been lodged with ASIC, a
14 CSF offer document that has been published on a platform of a CSF
15 intermediary”.

16 **29 Subparagraph 1018A(4)(d)(i)**

17 Omit “or disclosure document that has been lodged with ASIC”,
18 substitute “, a disclosure document that has been lodged with ASIC or a
19 CSF offer document that has been published on a platform of a CSF
20 intermediary”.

21 **30 After subparagraph 1041H(3)(a)(ii)**

22 Insert:

23 (ia) section @738Y (other liabilities relating to defective
24 CSF offer documents); or

25 **31 After subparagraph 1041K(1)(a)(ii)**

26 Insert:

27 (ia) section @738Y (other liabilities relating to defective
28 CSF offer documents); or

29 **32 After paragraph 1309(1)(c)**

30 Insert:

31 or (ca) a CSF intermediary;

1 **33 After paragraph 1311(1A)(da)**

2 Insert:
3 (dba) Part 6D.3A;

4 **34 Schedule 3 (after table item 245)**

5 Insert:

245A	Subsection @738L(3)	300 penalty units or imprisonment for 5 years, or both.
245B	Subsection @738M(1), (2) or (3)	5 penalty units.
245C	Subsection @738N(4)	30 penalty units or imprisonment for 6 months, or both.
245D	Subsection @738P(1)	30 penalty units or imprisonment for 6 months, or both.
245E	Subsection @738Q(1)	50 penalty units.
245F	Subsection @738Q(5)	60 penalty units or imprisonment for 1 year, or both.
245G	Subsection @738Q(7)	30 penalty units or imprisonment for 6 months, or both.
245H	Subsection @738R(1) or (2)	300 penalty units or imprisonment for 5 years, or both.
245J	Subsection @738V(1), (2) or (3)	50 penalty units.
245K	Subsection @738X(2) or (3)	50 penalty units.
245L	Subsection @738X(7)	30 penalty units.
245M	Subsection @738Y(4)	300 penalty units or imprisonment for 5 years, or both.
245N	Subsection @738ZA(1), (3), (4), (5), (6), (8) or (9)	60 penalty units or imprisonment for 1 year, or both.
245P	Subsection @738ZB(2), (3) or (4)	50 penalty units.
245Q	Subsection @738ZC(1)	30 penalty units.
245R	Subsection @738ZE(2)	300 penalty units or imprisonment for 5 years, or both.
245S	Section @738ZF	300 penalty units or imprisonment for 5 years, or both.

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245T Subsection @738ZG(1) 30 penalty units.

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1 **Part 2—Amendments of other Acts**

2 *Australian Securities and Investments Commission Act 2001*

3 **35 Subsection 5(1)**

4 Insert:

5 *crowd-funding service* has the same meaning as in Chapter 7 of
6 the *Corporations Act 2001*.

7 **36 After subsection 12BAB(1B)**

8 Insert:

9 *Meaning of provide a crowd-funding service*

10 (1C) Subject to paragraph (2)(b), the provision by a person of a
11 crowd-funding service constitutes the provision, by the person, of a
12 financial service for the purposes of this Division.

13 (1D) For the purpose of this Division, the persons to whom, and time
14 when, a crowd-funding service is provided are as specified in
15 subsections @766F(3) and (4) of the *Corporations Act 2001*.

16 **37 At the end of paragraphs 12DA(1A)(a) and 12DB(2)(a)**

17 Add:

18 (iii) section @738Y of the Corporations Act (other liabilities
19 relating to CSF offer documents); or

1 **Schedule 2—Related amendments of**
2 **corporate governance requirements**
3

4 *Corporations Act 2001*

5 **1 After paragraph 117(2)(mb)**

6 Insert:
7 (mc) for a public company limited by shares—whether the
8 company will be covered under section @738ZI on
9 registration and intends to make a CSF offer after
10 registration;

11 **2 At the end of section 250N**

12 Add:
13 (5) A company need not comply with subsection (1) if it is covered
14 under section @738ZI in relation to the most recent financial year
15 ending earlier than 18 months after its registration.
16 (6) A company need not comply with subsection (2) if it is covered
17 under section @738ZI in relation to the financial year mentioned in
18 subsection (2).

19 **3 Subsection 298(1AA)**

20 After “company limited by guarantee”, insert “or a company covered
21 under subsection (1AC)”.

22 **4 After subsection 298(1AB)**

23 Insert:
24 (1AC) This subsection covers a company if:
25 (a) the company is covered under section @738ZI in relation to
26 the relevant financial year; and
27 (b) the company has not had its financial report for the financial
28 year audited because subsection 301(5) exempts it from the
29 requirement to do so under subsection 301(1).

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Related amendments of corporate governance requirements **Schedule 2**

1 (1AD) In the case of a company covered under subsection (1AC), the
2 report must include:

- 3 (a) the general information required by section 299; and
4 (b) the specific information required by section 300.

5 **5 At the end of section 301**

6 Add:

7 (5) A company need not comply with subsection (1) if:

- 8 (a) it is covered under section @738ZI in relation to the financial
9 year mentioned in subsection (1); and
10 (b) as at the end of that financial year, the company has raised
11 less than \$1 million from all CSF offers, and offers of
12 securities that need disclosure to investors under Part 6D.2,
13 that it has made at any time.

14 **6 Subsection 314(1)**

15 Omit “(1AA) or (1AE)”, substitute “(1AA), (1AE) or (1AF)”.

16 **7 After subsection 314(1AE)**

17 Insert:

18 (1AF) If a company is covered under section @738ZI in relation to the
19 financial year mentioned in subsection (1):

- 20 (a) it may provide the reports, or the concise report, for the
21 financial year by making a copy of the reports, or the concise
22 report, readily accessible on a website; and
23 (b) it need not comply with subsection (1AB).

24 **8 After subsection 314(2)**

25 Insert:

26 (2A) If the company is covered under section @738ZI in relation to the
27 financial year mentioned in subsection (1), apply subsection (2) to
28 the company in relation to that financial year with these
29 modifications:

- 30 (a) omit paragraphs (2)(c) and (d);

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Schedule 2 Related amendments of corporate governance requirements

- 1 (b) omit the words “and that the full financial report and
2 auditor’s report will be sent to the member free of charge if
3 the member asks for them” in paragraph (2)(e).

4 **9 At the end of section 327A**

5 Add:

- 6 (4) The directors of a company need not comply with subsection (1) if:
7 (a) the company was an eligible CSF company at the time of its
8 registration; and
9 (b) the application for the company’s registration stated that the
10 company will be covered under section @738ZI on
11 registration and intends to make a CSF offer after
12 registration.

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1 **Schedule 3—Exemption powers**
2

3 *Corporations Act 2001*

4 **1 Section 791C**

5 Repeal the section, substitute:

6 **791C Exemptions by Minister**

7 (1) The Minister may exempt a particular financial market, or a class
8 of financial market, from all or specified provisions of this Part. An
9 exemption may be unconditional, or subject to conditions specified
10 in the exemption.

11 Note: The provisions of this Part include regulations made for the purposes
12 of this Part (see section 761H).

13 (2) The Minister may, at any time:

14 (a) vary an exemption to:

15 (i) impose conditions, or additional conditions, on the
16 exemption; or

17 (ii) vary or revoke any of the conditions on the exemption;

18 or

19 (b) revoke an exemption.

20 (3) However, the Minister may only take action under subsection (2)
21 after:

22 (a) giving notice, and an opportunity to make submissions on the
23 proposed action, to the operator of each financial market
24 known by the Minister to be covered by the exemption; and

25 (b) if the exemption covers a class of financial markets—a notice
26 has been published on ASIC’s website allowing a reasonable
27 period within which the operator of each financial market
28 covered by the exemption may make submissions on the
29 proposed action, and that period has ended.

30 (4) If an exemption is expressed to apply in relation to a class of
31 financial markets (whether or not it is also expressed to apply in
32 relation to one or more financial markets otherwise than by
33 reference to membership of a class), then the exemption, and any

1 variation or revocation of the exemption, is a legislative
2 instrument.

3 (5) If subsection (4) does not apply to an exemption, then the
4 exemption, and any variation or revocation of the exemption, must
5 be in writing and the Minister must publish notice of it in the
6 Gazette.

7 **2 Saving of exemptions**

8 If, immediately before the commencement of this item, an exemption is
9 in force under section 791C of the *Corporations Act 2001*, that
10 exemption has effect after that commencement as if it had been made in
11 accordance with section 791C as substituted by item 1.

12 **3 At the end of Part 7.2A**

13 Add:

14 **798M Exemptions by Minister**

15 (1) The Minister may exempt a particular financial market, or class of
16 financial markets, from all or specified provisions of this Part. An
17 exemption may be unconditional, or subject to conditions specified
18 in the exemption.

19 Note: The provisions of this Part include regulations made for the purposes
20 of this Part (see section 761H).

21 (2) The Minister may, at any time:

22 (a) vary an exemption to:

23 (i) impose conditions, or additional conditions, on the
24 exemption; or

25 (ii) vary or revoke any of the conditions on the exemption;
26 or

27 (b) revoke an exemption.

28 (3) However, the Minister may only take action under subsection (2)
29 after:

30 (a) giving notice, and an opportunity to make submissions on the
31 proposed action, to the operator of each financial market
32 known by the Minister to be covered by the exemption; and

1 (b) if the exemption covers a class of financial markets—a notice
2 has been published on ASIC’s website allowing a reasonable
3 period within which the operator of each financial market
4 covered by the exemption may make submissions on the
5 proposed action, and that period has ended.

6 (4) If an exemption is expressed to apply in relation to a class of
7 financial markets (whether or not it is also expressed to apply in
8 relation to one or more financial markets otherwise than by
9 reference to membership of a class), then the exemption, and any
10 variation or revocation of the exemption, is a legislative
11 instrument.

12 (5) If subsection (4) does not apply to an exemption, then the
13 exemption, and any variation or revocation of the exemption, must
14 be in writing and the Minister must publish notice of it in the
15 Gazette.

16 **4 Section 820C**

17 Repeal the section, substitute:

18 **820C Exemptions by Minister**

19 (1) The Minister may exempt a particular clearing and settlement
20 facility, or class of clearing and settlement facilities, from all or
21 specified provisions of this Part. An exemption may be
22 unconditional, or subject to conditions specified in the exemption.

23 Note: The provisions of this Part include regulations made for the purposes
24 of this Part (see section 761H).

25 (2) The Minister may, at any time:

26 (a) vary an exemption to:

27 (i) impose conditions, or additional conditions, on the
28 exemption; or

29 (ii) vary or revoke any of the conditions on the exemption;
30 or

31 (b) revoke an exemption.

32 (3) However, the Minister may only take action under subsection (2)
33 after:

- 1 (a) giving notice, and an opportunity to make submissions on the
2 proposed action, to the operator of each clearing and
3 settlement facility known by the Minister to be covered by
4 the exemption; and
- 5 (b) if the exemption covers a class of clearing and settlement
6 facilities—a notice has been published on ASIC’s website
7 allowing a reasonable period within which the operator of
8 each clearing and settlement facility covered by the
9 exemption may make submissions on the proposed action,
10 and that period has ended.
- 11 (4) If an exemption is expressed to apply in relation to a class of
12 clearing and settlement facilities (whether or not it is also
13 expressed to apply in relation to one or more clearing and
14 settlement facilities otherwise than by reference to membership of
15 a class), then the exemption, and any variation or revocation of the
16 exemption, is a legislative instrument.
- 17 (5) If subsection (4) does not apply to an exemption, then the
18 exemption, and any variation or revocation of the exemption, must
19 be in writing and the Minister must publish notice of it in the
20 Gazette.

21 5 Saving of exemptions

22 If, immediately before the commencement of this item, an exemption is
23 in force under section 820C of the *Corporations Act 2001*, that
24 exemption has effect after that commencement as if it had been made in
25 accordance with section 820C as substituted by item 4.

26 6 At the end of Division 6 of Part 7.5

27 Add:

28 893B Exemptions by Minister

- 29 (1) The Minister may exempt a particular financial market, or class of
30 financial markets, from all or specified provisions of this Part. An
31 exemption may be unconditional, or subject to conditions specified
32 in the exemption.

33 Note: The provisions of this Part include regulations made for the purposes
34 of this Part (see section 761H).

- 1 (2) The Minister may, at any time:
2 (a) vary an exemption to:
3 (i) impose conditions, or additional conditions, on the
4 exemption; or
5 (ii) vary or revoke any of the conditions on the exemption;
6 or
7 (b) revoke an exemption.
- 8 (3) However, the Minister may only take action under subsection (2)
9 after:
10 (a) giving notice, and an opportunity to make submissions on the
11 proposed action, to the operator of each financial market
12 known by the Minister to be covered by the exemption; and
13 (b) if the exemption covers a class of financial markets—a notice
14 has been published on ASIC’s website allowing a reasonable
15 period within which the operator of each financial market
16 covered by the exemption may make submissions on the
17 proposed action, and that period has ended.
- 18 (4) If an exemption is expressed to apply in relation to a class of
19 financial markets (whether or not it is also expressed to apply in
20 relation to one or more financial markets otherwise than by
21 reference to membership of a class), then the exemption, and any
22 variation or revocation of the exemption, is a legislative
23 instrument.
- 24 (5) If subsection (4) does not apply to an exemption, then the
25 exemption, and any variation or revocation of the exemption, must
26 be in writing and the Minister must publish notice of it in the
27 Gazette.