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| [KA](#)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)*

| [Mea](#)

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

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<b>OPC drafter to complete</b>	
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"><li>• List relevant clauses/items—</li><li>• Prepare message advice (see Drafting Direction 4.9)</li><li>• Give a copy of the message advice to the Legislation area.</li></ul>	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

1

2

3

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

4

The Parliament of Australia enacts:

5

### **1 Short title**

6

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

7

8

### **2 Commencement**

9

- (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.

10

11

12

13

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>

1. Sections 1 to 3 and anything in

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## Schedule 1 Main amendments

### Part 1 Amendment of the Corporations Act 2001

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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.

### 7 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.

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Main amendments **Schedule 1**  
Amendment of the Corporations Act 2001 **Part 1**

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1 **Schedule 1—Main amendments**

2 **Part 1—Amendment of the Corporations Act 2001**

3 *Corporations Act 2001*

4 **1 Section 9**

5 Insert:

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

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

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

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

14 *CSF* is short for crowd-sourced funding.

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

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

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

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

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

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

23 *general CSF risk warning* has the meaning given by subsection  
24 @738ZA(2).

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

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Main amendments **Schedule 1**  
Amendment of the Corporations Act 2001 **Part 1**

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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) ~~(a)~~ the issue is to a promoter; and
- (b) ~~(b)~~ the disclosure document or CSF offer document is the first issued by the company; and
- (b) ~~(b)~~ disclosed the effect that the acquisition would have on the promoter's voting power in the company; ~~and~~
- (c) ~~(c)~~ no other disclosure document or CSF offer document has previously been issued or published by or on behalf of the company.

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### *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 disclosure document or CSF offer document ~~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:

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Schedule 1 Main amendments

Part 1 Amendment of the Corporations Act 2001

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

3 **8 Before section 704**

4 Insert:

5 **703B Part generally does not apply in relation to CSF offers**

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

10 Note: The fact that a company makes a CSF offer of securities does not  
11 prevent the company from also making an offer of securities of the  
12 same class in reliance on a provision of section 708 (see section  
13 @738E).

14 **9 Section 704**

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

16 **10 Section 706**

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

19 **11 Part 6D.3 (heading)**

20 Repeal the heading, substitute:

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

23 **12 Before Division 1 of Part 6D.3**

24 Insert:

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Main amendments **Schedule 1**  
Amendment of the Corporations Act 2001 **Part 1**

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1 **Division 1A—Introduction**

2 **725A Part generally does not apply in relation to CSF offers**

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

7 Note: The fact that a company makes a CSF offer of securities does not  
8 prevent the company from also making an offer of securities of the  
9 same class in reliance on a provision of section 708 (see section  
10 @738E).

11 **13 Subparagraph 734(7)(c)(i)**

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

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

15 Insert:

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

17 **Division 1—Introduction**

18 **@738A Object**

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

23 **@738B Meaning of *CSF offer***

24 A *CSF offer* is an offer that is:  
25 (a) eligible to be made under this Part (see Division 2); and  
26 (b) expressed to be made under this Part.

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Schedule 1 Main amendments

Part 1 Amendment of the Corporations Act 2001

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1 **@738C Meaning of CSF intermediary**

2 A *CSF intermediary* is a financial services licensee or authorised  
3 representative of a financial services licensee whose licence  
4 expressly authorises the licensee to:

5 a) arrange a person to deal in a financial product;

6 b) issue, apply for, acquire, vary or dispose a financial product, on  
7 behalf of another or itself -service.

8 ~~Note 1: Section @766F defines when a person provides a *crowd-funding*~~  
9 ~~*service.*~~

10 Note 12: Because a CSF intermediary is a financial services licensee, the  
11 intermediary must (in addition to complying with this Part) comply  
12 with the provisions of Chapter 7 that apply to financial services  
13 licensees.

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14 **@738D Meaning of retail client in relation to a CSF offer**

15 If a person (not being the company making the CSF offer) is a  
16 retail client for the purposes of Chapter 7 in relation to the  
17 provision of a crowd-funding service that relates to a particular  
18 CSF offer, then, for the purposes of this Part, the person is a *retail*  
19 *client* in relation to that CSF offer.

20 **@738E Offer of the securities may also be made in reliance on**  
21 **section 708**

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

26 **@738F Application of provisions of Chapter 7 relating to how**  
27 **obligations etc. apply to different kinds of persons**

- 28 (1) Subject to subsections (2) and (3), the following provisions of  
29 Chapter 7 (the *applied provisions*) have effect for the purposes of  
30 this Part as if references in the provisions to that Chapter were  
31 instead references to this Part:

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Main amendments **Schedule 1**  
Amendment of the Corporations Act 2001 **Part 1**

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- 1 (a) section 761F (meaning of person—generally includes a  
2 partnership);  
3 (b) section 761FA (meaning of person—generally includes  
4 multiple trustees);  
5 (c) section 769B (people are generally responsible for the  
6 conduct of agents, employees etc).
- 7 (2) Subsection (1) does not apply to provisions of the sections  
8 mentioned in subsection (1) that are expressed to relate only to  
9 specific provisions of Chapter 7 or to specific Parts, Divisions or  
10 Subdivisions of Chapter 7.
- 11 (3) The regulations may provide that one or more of the applied  
12 provisions have effect for specified purposes subject to  
13 modifications specified in the regulations. The regulations have  
14 effect accordingly.

## 15 **Division 2—Offers that are eligible to be made under this** 16 **Part**

### 17 **@738G Offers that are eligible to be made under this Part**

- 18 (1) An offer is eligible to be made under this Part if:  
19 (a) it is an offer by a company for the issue of securities of the  
20 company; and  
21 (b) the company is an eligible CSF company (see section  
22 @738H) at the time when the offer is made; and  
23 (c) the securities are of a class specified in the regulations; and  
24 (d) the offer complies with the issuer cap (see subsection (2) of  
25 this section); and  
26 (e) the funds sought to be raised by the offer are not intended by  
27 the company to be used, to any extent, by the company or a  
28 related party of the company, to invest in securities or  
29 interests in other entities or schemes; and  
30 (f) any other requirements specified in the regulations are  
31 satisfied in relation to the securities or the offer.

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

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## Schedule 1 Main amendments

### Part 1 Amendment of the Corporations Act 2001

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#### *The issuer cap*

- 1
- 2 (2) For the purpose of this section, an offer of securities for issue in a
- 3 company (the *new offer*) complies with the issuer cap if the total
- 4 of:
- 5 (a) the maximum amount sought to be raised by the new offer;
- 6 and
- 7 (b) all amounts raised, in the period of 12 months before the time
- 8 when the new offer is made, pursuant to CSF offers that were
- 9 made in that period by the company or by related parties of
- 10 the company; and
- 11 (c) all amounts raised, in the period of 12 months before the time
- 12 when the new offer is made, pursuant to offers made by the
- 13 company, or by related parties of the company, that did not
- 14 need disclosure because of subsection 708(1) or (10);
- 15 does not exceed:
- 16 (d) \$15 million; or
- 17 (e) if the regulations prescribe a different amount—the
- 18 prescribed amount.

19 Note: Amounts raised by CSF offers that were made before the start of the

20 12 month period referred to in paragraph (2)(b) are not to be counted.

21 For when a CSF offer is *made*, see subsection @738N(1).

#### *Meaning of related party*

- 22
- 23 (3) For the purpose of this Part, each of the following is a *related party*
- 24 of a company:
- 25 (a) a related body corporate of the company;
- 26 (b) an entity controlled by:
- 27 (i) a person who controls the company; or
- 28 (ii) an associate of that person.

#### **@738H Meaning of eligible CSF company**

- 29
- 30 (1) A company is an *eligible CSF company* at a particular time (the
- 31 *test time*) if all of the following conditions are satisfied in relation
- 32 to the company at the test time:
- 33 (a) ~~(a)~~ the company is a public Dear or proprietary company
- 34 limited by shares;

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Main amendments **Schedule 1**  
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- 1 (b) ~~(b)~~ the company's principal place of business is in  
2 Australia;
- 3 (c) ~~(c)~~ ~~a majority at least two~~ of the company's directors (not  
4 counting alternate directors) ordinarily reside in Australia;
- 5 (d) ~~(d)~~ the company complies with the assets and  
6 turnover test (see subsection (2));
- 7 (e) ~~(e)~~ neither the company, nor any related party of the  
8 company, is a listed corporation;
- 9 ~~(f)~~ ~~(f)~~ neither the company, nor any related party of the  
10 company, has a substantial purpose of investing in securities  
11 or interests in other entities or schemes;
- 12 ~~(f)~~ ~~(g)~~ Its financial accounts have been audited by an  
13 international recognised accounting firm pursuant to  
14 Australian Accounting Standards (AAS).
- 15 -

## *The assets and turnover test*

- 16
- 17 (2) The company complies with the assets and turnover test at the test  
18 time if:
- 19 (a) the value of the consolidated gross assets of the company,  
20 and of all its related parties is less than:
- 21 (i) \$5 million; or
- 22 (ii) if the regulations prescribe a different amount—the  
23 prescribed amount; and
- 24 (b) the consolidated annual revenue of the company, and of all  
25 its related parties, is less than:
- 26 (i) \$5 million; or
- 27 (ii) if the regulations prescribe a different amount—the  
28 prescribed amount.

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

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

- 31 (1) A document (a *CSF offer document*) must be prepared for a CSF  
32 offer.

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## Schedule 1 Main amendments

### Part 1 Amendment of the Corporations Act 2001

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- 1 (2) A CSF offer document for a CSF offer must contain the  
2 information required by the regulations {This is very vague and  
3 possibly lead to the same information as would be required for a  
4 public listing, there is a need to be specific not unlike reference to  
5 s705(2). The document may also set out the CSF offer.

6 Note: See also subsections @738W(8) and (9) about the effect of  
7 supplementary or replacement CSF offer documents.

#### 8 @738K Other requirements for CSF offer document

9 The information in a CSF offer document must be worded and  
10 presented in a clear, concise and effective manner. The document  
11 must also comply with any other requirements prescribed by the  
12 regulations.

13 Note 1: If this section is contravened, ASIC may make a stop order under  
14 section 739.

15 Note 2: See also subsections @738W(8) and (9) about the effect of  
16 supplementary or replacement CSF offer documents.

#### 17 @738L CSF offer document to be published on platform of a single 18 CSF intermediary

- 19 (1) A CSF offer of a company's securities must be made by  
20 publishing, on a platform of a single CSF intermediary, a CSF  
21 offer document that complies with section @738J. If the CSF offer  
22 document does not set out the CSF offer, the CSF offer must be  
23 published together with the offer document.

24 Note 1: Section 1309 creates offences for providing false or misleading  
25 information to CSF intermediaries.

26 Note 2: See also section @738Q (gatekeeper obligations of CSF  
27 intermediaries).

- 28 (2) The arrangement (the *hosting arrangement*) between the company  
29 and the CSF intermediary for the publication of the CSF offer  
30 document must require all applications made in response to the  
31 offer, and all application money in respect of such applications, to  
32 be sent or paid to the intermediary and dealt with by the  
33 intermediary in accordance with this Part.

34 Note: See also section @738ZB (which deals with the responsible  
35 intermediary's obligations in relation to application money).

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Main amendments **Schedule 1**  
Amendment of the Corporations Act 2001 **Part 1**

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- 1 (3) The company must not make the CSF offer otherwise than in  
2 accordance with subsections (1) and (2).
- 3 Note: Failure to comply with this subsection is an offence (see  
4 subsection 1311(1)).
- 5 (4) This section does not prevent the CSF offer from being advertised  
6 or publicised in a way that does not contravene subsection  
7 @738ZG(1).
- 8 (5) The *responsible intermediary* for the CSF offer is the CSF  
9 intermediary referred to in subsection (1).
- 10 (6) The *offer platform* for the CSF offer is the platform on which the  
11 CSF offer document is published as referred to in subsection (1).
- 12 (7) The *maximum subscription amount* for the CSF offer is the  
13 amount specified in the CSF offer document as the maximum  
14 amount sought to be raised by the offer.
- 15 (8) The *minimum subscription amount* for the CSF offer is the  
16 amount specified in the CSF offer document as the minimum  
17 amount sought to be raised by the offer.

## @738M Consents needed for publication of CSF offer document

- 19 (1) The company making a CSF offer must not arrange for a CSF offer  
20 document to be published on a platform of a CSF intermediary  
21 unless each of the following persons has consented in writing to  
22 the publication of that CSF offer document on a platform of that  
23 CSF intermediary:
- 24 (a) each director of the company;
- 25 ~~(b) each person named in the CSF offer document as a proposed~~  
26 ~~director of the company.~~
- 27 Note: Failure to comply with this subsection is an offence (see  
28 subsection 1311(1)).
- 29 (2) If the CSF offer document for a CSF offer includes a statement by  
30 a person, or a statement said in the document to be based on a  
31 statement by a person, the company making the offer must not  
32 arrange for the document to be published on a platform of a CSF  
33 intermediary unless:

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## Schedule 1 Main amendments

### Part 1 Amendment of the Corporations Act 2001

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- 1 (a) the person has consented in writing to the statement being  
2 included in the document in the form and context in which it  
3 is included; and  
4 (b) the document states that the person has given this consent;  
5 and  
6 (c) the person has not withdrawn this consent before the  
7 company arranges for the document to be published on a  
8 platform of that CSF intermediary.

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

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

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

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

#### 17 **@738N When a CSF offer is *made, open, closed, suspended and*** 18 ***complete***

##### 19 *When a CSF offer is made*

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

##### 23 *When a CSF offer is open*

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

##### 27 *When a CSF offer is closed*

- 28 (3) Subject to subsections (4) and (5), the responsible intermediary for  
29 a CSF offer may close the offer at any time by giving notice on the  
30 offer platform that the offer is closed. If the intermediary does so,  
31 the offer is ***closed*** from the time when notice is so given on the  
32 offer platform.

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Main amendments **Schedule 1**  
Amendment of the Corporations Act 2001 **Part 1**

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

- 5 (4) The responsible intermediary for a CSF offer must close the offer  
6 as soon as practicable after the first of the following occurs:  
7 (a) the period of 3 months starting from when the offer was  
8 made ends;  
9 (b) if the CSF offer document specifies a period during which  
10 the offer is to be open, or a date after which the offer is no  
11 longer to be open—that period ends or that date occurs;  
12 (c) the responsible intermediary considers that the offer is fully  
13 subscribed to the maximum subscription amount for the  
14 offer;  
15 (d) the company making the offer notifies the responsible  
16 intermediary under section @738S that the company wants  
17 the offer withdrawn;  
18 (e) section @738Q prohibits the continued publication of the  
19 CSF offer document on the offer platform.

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

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

- 25 (5) The hosting arrangement for a CSF offer may impose limits on the  
26 responsible intermediary's power to close the offer otherwise than  
27 in circumstances when the intermediary:  
28 (a) is required by subsection (4) to close the offer; or  
29 (b) is required by subsection @738X(2) to either close or  
30 suspend the offer because the CSF offer document is  
31 defective.

32 *When an offer is suspended*

- 33 (6) A CSF offer is *suspended* during the period of any suspension of  
34 the offer under section @738X (responsible intermediary's  
35 obligations on becoming aware that CSF offer document is  
36 defective).

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Main amendments **Schedule 1**  
Amendment of the Corporations Act 2001 **Part 1**

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- 1 (2) For the purposes of this section, the regulations may prescribe what  
2 constitutes a reasonable standard in relation to all or any of the  
3 checks.
- 4 (3) An offence based on subsection (1) is an offence of strict liability.
- 5 (4) For the purpose of a provision of this Part that refers to a matter  
6 that a CSF intermediary knows, has reason to believe or is satisfied  
7 or not satisfied, if:
- 8 (a) a CSF intermediary contravenes subsection (1) by not  
9 conducting a check (or by not conducting a check to a  
10 reasonable standard); and
- 11 (b) had the intermediary conducted the check (or conducted it to  
12 a reasonable standard), the intermediary would have known  
13 or had reason to believe the matter, or would have been  
14 satisfied or not satisfied in relation to the matter;
- 15 then the matter is taken to be one that the intermediary knows or  
16 has reason to believe, or in relation to which the intermediary is  
17 satisfied or not satisfied (as the case requires).
- 18 *CSF intermediary not to publish CSF offer document if not*  
19 *satisfied of certain matters etc.*
- 20 (5) A CSF intermediary must not publish a CSF offer document (or a  
21 document that purports to be a CSF offer document) on a platform  
22 of the intermediary, or continue to publish such a document while  
23 the offer is open, if:
- 24 (a) the intermediary is not satisfied as to the identity of the  
25 company making the offer, or of any of the directors or other  
26 officers of the company; or
- 27 (b) the intermediary has reason to believe that any of the  
28 directors or other officers of the company are not of good  
29 fame or character; or
- 30 (c) subject to subsection (6)—the intermediary has reason to  
31 believe that the company, or a director or other officer of the  
32 company, has, in relation to the offer, knowingly engaged in  
33 conduct that is misleading or deceptive or likely to mislead or  
34 deceive; or

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1 (d) the intermediary has reason to believe that the offer to which  
2 the document relates is not eligible to be made under this  
3 Part.

4 Note 1: The CSF intermediary must close the offer (see paragraph  
5 @738N(4)(e)).

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

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

11 (6) In the case of a CSF offer document that has already started to be  
12 published on a platform of a CSF intermediary, paragraph (5)(c)  
13 does not apply in relation to there being a misleading or deceptive  
14 statement, an omission, or a new circumstance, that renders the  
15 document defective (as defined in section @738U).

16 Note: The consequences of a CSF offer document being defective are dealt  
17 with in Division 4. If the responsible intermediary becomes aware that  
18 the document is defective, they must remove the document from the  
19 offer platform and either close or suspend the offer (see subsection  
20 @738X(2)).

21 *CSF intermediary to have adequate arrangements to ensure*  
22 *compliance with gatekeeper obligations*

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

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

#### 28 **@738R Company and related parties not to have more than one** 29 **CSF offer open at any one time**

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

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

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

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

## 6 **@738S Company may notify responsible intermediary that it wants** 7 **CSF offer withdrawn**

8 The company making a CSF offer may, at any time before the offer  
9 is complete, notify the responsible intermediary that the company  
10 wants the offer withdrawn.

11 Note: The responsible intermediary must close the offer (see subsection  
12 @738N(4)).

## 13 **@738T Withdrawal of applications made pursuant to CSF offer**

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

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

20 (b) in any other circumstances allowed by the responsible  
21 intermediary, and in accordance with any requirements of the  
22 intermediary for withdrawal in those circumstances.

23 Note: If an applicant withdraws their application, the responsible  
24 intermediary must return the application money (see section  
25 @738ZB).

## 26 **Division 4—Defective etc. CSF offer documents**

### 27 **@738U When a CSF offer document is *defective***

28 (1) A CSF offer document is *defective* if:  
29 (a) the CSF offer document contains a misleading or deceptive  
30 statement; or  
31 (b) there is an omission from the CSF offer document of  
32 information required by section @738J; or

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

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

#### 11 **@738V Obligation to notify company making offer, and responsible** 12 **intermediary, if CSF offer document is defective**

13 (1) If, while a CSF offer is open, the company making the offer  
14 becomes aware that the CSF offer document is defective, the  
15 company must notify the responsible intermediary as soon as  
16 practicable.

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

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

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

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

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

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

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1 **@738W Company may provide replacement or supplementary CSF**  
2 **document in certain circumstances**

3 *When company may provide a replacement or supplementary CSF*  
4 *offer document*

5 (1) The company making a CSF offer may provide the responsible  
6 intermediary with a supplementary CSF offer document, or a  
7 replacement CSF offer document, to supplement or replace the  
8 CSF offer document (the *affected offer document*) as provided for  
9 in the following paragraphs:

- 10 (a) if the company becomes aware that the affected offer  
11 document is defective, the company may provide a  
12 supplementary CSF offer document, or a replacement CSF  
13 offer document, that corrects the defect;
- 14 (b) if the company becomes aware that the affected offer  
15 document does not comply with section @738K (other  
16 requirements for CSF offer documents), the company may  
17 provide a supplementary CSF offer document, or a  
18 replacement CSF offer document, that corrects the  
19 non-compliance;
- 20 (c) the company may provide a supplementary CSF offer  
21 document, or a replacement CSF offer document, in any  
22 other circumstances permitted by the regulations, and in  
23 accordance with any conditions prescribed by those  
24 regulations.

25 Note 1: Defective CSF offer documents give rise to liabilities under section  
26 @738Y.

27 Note 2: Regulations for the purpose of paragraph (c) may (for example) limit  
28 the kinds of changes that may be incorporated into a supplementary or  
29 replacement CSF offer document provided under that paragraph.

30 Note 3: This section applies to a CSF offer document that has already been  
31 previously supplemented or replaced.

32 (2) A supplementary CSF offer document or a replacement CSF offer  
33 document:

- 34 (a) must not be provided otherwise than as permitted by  
35 subsection (1); and
- 36 (b) if it is provided as permitted by paragraph (1)(a) or (b)—  
37 must not incorporate any changes made otherwise than:
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- 1 (i) for the purpose of correcting a defect or non-compliance  
2 as mentioned in that paragraph; or  
3 (ii) as permitted by the regulations; and  
4 (c) if it is provided as permitted by paragraph (1)(c)—must  
5 comply with any conditions imposed by regulations made for  
6 the purpose of that paragraph.

7 *Form of supplementary or replacement CSF offer document*

- 8 (3) At the beginning of a supplementary CSF document, there must be:  
9 (a) a statement that it is a supplementary CSF offer document;  
10 and  
11 (b) an identification of the affected offer document it  
12 supplements; and  
13 (c) a statement that it is to be read together with the affected  
14 offer document.
- 15 (4) At the beginning of a replacement CSF offer document, there must  
16 be:  
17 (a) a statement that it is a replacement CSF offer document; and  
18 (b) an identification of the affected offer document it replaces.

19 *Responsible intermediary may publish supplementary or*  
20 *replacement CSF offer document on offer platform*

- 21 (5) If, in accordance with this section, the company making a CSF  
22 offer provides the responsible intermediary with a supplementary  
23 CSF offer document or a replacement CSF offer document, then  
24 subject to subsection (6), the intermediary may:  
25 (a) in the case of a supplementary CSF offer document—publish  
26 the supplementary CSF offer document on the offer platform  
27 (together with the affected offer document); or  
28 (b) in the case of a replacement CSF offer document—substitute  
29 the replacement offer document for the affected offer  
30 document on the offer platform.

31 Note: The responsible intermediary is not required to publish the  
32 supplementary or replacement CSF offer document. See also the  
33 provisions of section @738X relating to suspension or closure of CSF  
34 offers.

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- 1 (6) The following provisions apply in relation to a supplementary CSF  
2 offer document or a replacement CSF offer document in the same  
3 way as they apply to any CSF offer document:  
4 (a) section @738M (consents needed for publication of CSF  
5 offer document);  
6 (b) section @738Q (gatekeeper obligations of CSF  
7 intermediaries).

- 8 (7) However, subsection @738M(2) does not apply so as to require a  
9 fresh consent to be obtained in relation to a statement if the  
10 supplementary CSF offer document, or replacement CSF offer  
11 document, does not make any material change to either the form of  
12 the statement as it was included in the affected offer document, or  
13 the context in which it was included.

14 *Consequences of publication of a supplementary CSF offer*  
15 *document*

- 16 (8) If a supplementary CSF offer document for a CSF offer is  
17 published on the offer platform, then, for the purposes of the  
18 application of this Chapter to events that occur after that document  
19 is first published on the platform, the CSF offer document is taken  
20 to be the affected offer document together with the supplementary  
21 CSF offer document.

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

- 23 (9) If a replacement CSF offer document for a CSF offer is published  
24 on the offer platform, then, for the purposes of the application of  
25 this Chapter to events that occur after that document is first  
26 published on the platform, the CSF offer document is taken to be  
27 the replacement CSF offer document.

28 **@738X Responsible intermediary's obligations on becoming aware**  
29 **that CSF offer document is defective**

30 *When this section applies*

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

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

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

- 4 (2) The responsible intermediary must, as soon as practicable:  
5 (a) remove the CSF offer document from the offer platform; and  
6 (b) either:  
7 (i) close the offer; or  
8 (ii) suspend the offer by giving notice on the offer platform  
9 that the offer is suspended.

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

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

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

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

- 19 (4) An offence based on subsection (2) or (3) is an offence of strict  
20 liability.

21 *Consequences of publication of supplementary or replacement*  
22 *CSF offer document*

- 23 (5) Subsections (6) and (7) apply if:  
24 (a) for the purpose of correcting the defect in the CSF offer  
25 document, the company making the CSF offer provides the  
26 responsible intermediary with a supplementary CSF offer  
27 document or a replacement CSF offer document; and  
28 (b) the responsible intermediary publishes the supplementary  
29 CSF offer document or replacement CSF offer document on  
30 the offer platform.
- 31 (6) If the CSF offer has been suspended, the suspension of the CSF  
32 offer ends when the supplementary CSF offer document or  
33 replacement CSF offer document is first published on the offer  
34 platform.
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1 (7) The responsible intermediary must, as soon as practicable after the  
2 supplementary CSF offer document or replacement CSF offer  
3 document is first published on the offer platform, give each person  
4 who has already applied pursuant to the CSF offer a written notice,  
5 accompanied by that document, advising the person that they may,  
6 within one month after the date of the notice, withdraw their  
7 application and be repaid.

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

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

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

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

18 Note: If an applicant withdraws their application, the responsible  
19 intermediary must return the application money (see section  
20 @738ZB).

## 21 **@738Y Other liabilities relating to defective CSF offer documents**

### 22 *Obligations giving rise to liabilities*

23 (1) A company must not offer securities under a CSF offer document  
24 if the document is defective.

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

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

29 (2) For the purpose of subsection (1), a company is taken to offer  
30 securities under a CSF offer document at all times, before the offer  
31 is closed, when the offer document is published on a platform of a  
32 CSF intermediary.

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

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- 1 (a) the document is defective; and  
2 (b) the intermediary knows that the document is defective.
- 3 Note 1: A defect may be corrected by a supplementary CSF offer document or  
4 a replacement CSF offer document (see section @738W).
- 5 Note 2: The question whether a CSF intermediary knows that a document is  
6 defective is affected by subsection @738Q(4).

#### 7 *Criminal liability*

- 8 (4) A person commits an offence if:  
9 (a) the person contravenes subsection (1) or (3) in relation to a  
10 defective CSF offer document; and  
11 (b) the statement, omission or new circumstance because of  
12 which the document is defective is materially adverse from  
13 the point of view of an investor.

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

#### 15 *Right to recover loss or damage*

- 16 (5) A person who suffers loss or damage because an offer of securities  
17 under a CSF offer document contravenes subsection (1) may  
18 recover the amount of the loss or damage from a person referred to  
19 in the following table if the loss or damage is one that the table  
20 makes the person liable for. This is so even if the person did not  
21 commit, and was not involved in, the contravention.  
22

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#### **People liable on disclosure document**

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<b>Item</b>	<b>These people ...</b>	<b>are liable for loss or damage caused by ...</b>
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	any contravention of subsection (1) in relation to the CSF offer document

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<b>People liable on disclosure document</b>		
<b>Item</b>	<b>These people ...</b>	<b>are liable for loss or damage caused by ...</b>
	named in the CSF offer document with their consent	
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
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;

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- 1 if the person did not know that the CSF offer document was  
2 defective.
- 3 Note: In a prosecution for an offence, a defendant bears an evidential burden  
4 in relation to the matter in this subsection (see subsection 13.3(3) of  
5 the *Criminal Code*).
- 6 (2) Subsection (1) does not apply to a liability of a CSF intermediary  
7 that is covered by item 7 of the table in subsection @738Y(5).
- 8 *Reasonable reliance on information given by someone else—*  
9 *statements and omissions*
- 10 (3) A person does not commit an offence against subsection  
11 @738Y(4) in respect of a contravention of subsection @738Y(1),  
12 and is not liable under subsection @738Y(5) in respect of a  
13 contravention of subsection @738Y(1), because of a misleading or  
14 deceptive statement in, or an omission from, a CSF offer document  
15 if the person placed reasonable reliance on information given to  
16 them by:  
17 (a) if the person is a body—someone other than a director,  
18 employee or agent of the body; or  
19 (b) if the person is an individual—someone other than an  
20 employee or agent of the individual.
- 21 Note: In a prosecution for an offence, a defendant bears an evidential burden  
22 in relation to the matter in this subsection (see subsection 13.3(3) of  
23 the *Criminal Code*).
- 24 (4) Subsection (3) does not apply to a liability of a CSF intermediary  
25 that is covered by item 7 of the table in subsection @738Y(5).
- 26 (5) For the purposes of subsection (3), a person is not the agent of a  
27 body or individual merely because they perform a particular  
28 professional or advisory function for the body or individual.
- 29 *Withdrawal of consent—statements and omissions*
- 30 (6) A person who is named in a CSF offer document as:  
31 (a) being a proposed director or underwriter; or  
32 (b) making a statement included in the document; or  
33 (c) making a statement on the basis of which a statement is  
34 included in the document;
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1 does not commit an offence against subsection @738Y(1), and is  
2 not liable under subsection @738Y(5) in respect of a contravention  
3 of subsection @738Y(1), because of a misleading or deceptive  
4 statement in, or an omission from, a CSF offer document if the  
5 person publicly withdrew their consent to being named in the  
6 document in that way.

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

### 11 **@738ZA General obligations of CSF intermediaries relating to their** 12 **platforms etc.**

#### 13 *The general CSF risk warning*

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

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

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

#### 21 *Providing a facility for the making of applications*

- 22 (3) The responsible intermediary for a CSF offer must ensure that:  
23 (a) at all times while the offer is open, a facility (the *application*  
24 *facility*) is provided for the making of applications pursuant  
25 to the CSF offer; and  
26 (b) a retail client cannot make an application pursuant to the CSF  
27 offer by means of the application facility unless the person  
28 completes an acknowledgement that complies with the  
29 requirements of the regulations; and  
30 (c) a person cannot make an application pursuant to the CSF  
31 offer by means of the application facility while the offer is  
32 suspended or after it has closed.

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

3 (4) The responsible intermediary for a CSF offer must reject any  
4 application for the issue of securities pursuant to the offer if the  
5 application is made otherwise than by means of the application  
6 facility.

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

#### 9 *Providing a communication facility*

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

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

- 16 (i) to make posts relating to the offer; and
- 17 (ii) to see posts relating to the offer made by others; and
- 18 (iii) to ask the company making the offer, or the  
19 intermediary, questions relating to the offer;

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

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

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

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

- 29 (a) the company making the CSF offer, or a related party of the  
30 company; or
- 31 (b) the responsible intermediary, or an associate of the  
32 intermediary;

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

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

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

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

## 5 *Cooling-off rights*

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

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

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

## 15 *Disclosure of fees and interests*

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

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

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

## 27 **@738ZB Responsible intermediary's obligations relating to** 28 **application money**

### 29 *Usual obligations of financial services licensees apply subject to* 30 *this section*

31 (1) Subdivision A of Division 2 of Part 7.8, and the other relevant  
32 provisions in Part 7.8, apply in relation to money (***application***  
33 ***money***) that is received by the responsible intermediary for a CSF

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1 offer in respect of applications made pursuant to the offer, subject  
2 to the following provisions of this section.

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

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

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

13 *Obligation to repay application money to applicants in certain*  
14 *circumstances*

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

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

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

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

33 (4) If:  
34 (a) a person who has made an application pursuant to the CSF  
35 offer withdraws that application; or

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1 (b) an application made by a person pursuant to the CSF offer is  
2 rejected, or is unsuccessful, for any other reason;  
3 the responsible intermediary must, as soon as practicable, return to  
4 the applicant the application money received in respect of the  
5 application.

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

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

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

## 11 **Division 6—Additional protections for retail clients**

### 12 **@738ZC Caps on investment by retail clients pursuant to CSF** 13 **offers**

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

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

- 28 (2) If 2 or more persons (the *joint applicants*) make a joint application  
29 for the issue of securities pursuant to a CSF offer, then, unless the  
30 regulations provide otherwise, this section applies in relation to the  
31 joint application as if each of the joint applicants had instead made  
32 a separate application for a number of securities worked out by  
33 dividing the number of securities applied for in the joint  
34 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
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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:

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- 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.

#### 16 Paragraph 739(1A)(a)

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

#### 17 Paragraph 739(1A)(b)

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

#### 18 Subsection 739(6)

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

#### 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”.

#### 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.

#### 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.

#### 22 Section 761A

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

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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;

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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

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## Schedule 2—Related amendments of corporate governance requirements

### *Corporations Act 2001*

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

Insert:

- (mc) for a public company limited by shares—whether the company will be covered under section @738ZI on registration and intends to make a CSF offer after registration;

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

Add:

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

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

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

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

Insert:

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

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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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- 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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## Schedule 3—Exemption powers

### *Corporations Act 2001*

#### **1 Section 791C**

Repeal the section, substitute:

#### **791C Exemptions by Minister**

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

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

- (2) The Minister may, at any time:
- (a) vary an exemption to:
    - (i) impose conditions, or additional conditions, on the exemption; or
    - (ii) vary or revoke any of the conditions on the exemption; or
  - (b) revoke an exemption.
- (3) However, the Minister may only take action under subsection (2) after:
- (a) giving notice, and an opportunity to make submissions on the proposed action, to the operator of each financial market known by the Minister to be covered by the exemption; and
  - (b) if the exemption covers a class of financial markets—a notice has been published on ASIC’s website allowing a reasonable period within which the operator of each financial market covered by the exemption may make submissions on the proposed action, and that period has ended.
- (4) If an exemption is expressed to apply in relation to a class of financial markets (whether or not it is also expressed to apply in relation to one or more financial markets otherwise than by reference to membership of a class), then the exemption, and any

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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

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- 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:

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- 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).

Sensitive: Legal



# Sensitive: Legal

Main amendments **Schedule 1**  
Amendment of the Corporations Act 2001 **Part 1**

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- 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.

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