

EXPOSURE DRAFT



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ASIC Supervisory Cost Recovery Levy Regulations 2017

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

Dated 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Mathias Cormann [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Finance
for the Minister for Revenue and Financial Services

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Part 1—Preliminary

1 Name

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

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as the <i>ASIC Supervisory Cost Recovery Levy Act 2017</i> commences. However, the provisions do not commence at all if that Act does not commence.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

4 Definitions

- (1) In this instrument:

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

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

annual determination means the legislative instrument made for a financial year by ASIC under section 71.

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

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

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Part 1 Preliminary

Section 4

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

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

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

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

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

equity market products has the same meaning as in in the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011*.

large equity market means a licensed market on which more than 10 million transactions in equity market products have been entered into in a financial year.

large futures market means a licensed market on which more than 10 million derivative transactions have been entered into in a financial year.

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

over-the-counter, in relation to a financial product, means a financial product that is not able to be traded on a licensed market.

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

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

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

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

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

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

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

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

sub-sector regulatory costs, in relation to a sub-sector, for a financial year, means the Australian dollar amount specified by ASIC in a determination made

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Preliminary **Part 1**

Section 4

under subsection 10(2) of the Act to be the extent to which ASIC's regulatory costs for the financial year are attributable to the sub-sector.

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

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Part 2 General provisions

Division 1 Regulatory costs

Section 5

Part 2—General provisions

Division 1—Regulatory costs

5 Amounts not included in regulatory costs

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

- (a) the cost of operating the Superannuation Complaints Tribunal (as established under the *Superannuation (Resolution of Complaints) Act 1993*);
- (b) the cost of operating the Companies Auditors Disciplinary Board (as established under the *Australian Securities and Investments Commission Act 2001*);
- (c) the cost of providing a service that forms part of, or is related to, a chargeable matter;
- (d) the cost of operating and maintaining a public register kept by ASIC under the *Corporations Act 2001*;
- (e) the cost of regulating approved SMSF auditors (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

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Division 2—Amount of levy payable

6 Amount of levy

- (1) The amount of levy payable by a leviable entity for a financial year is the sum of each levy component the entity has for the financial year.
- (2) The amount of the levy under subsection (1) must be rounded down to the nearest cent.

7 Levy component

When an entity has a levy component

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

Amount of a levy component

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

Note: For the flat rate levy component, see section 9.

Rounding

- (3) If, but for this subsection, an amount ascertained in accordance with a formula in this instrument would include a fraction of a cent, the amount must be reduced by the amount of the fraction.

8 Pro-rata levy component

[A provision to pro-rate the levy component for some of the sub-sectors will be drafted after consultation is completed.]

9 Levy component for sub-sectors to which flat rate method applies

The **flat rate levy component** for a sub-sector for a financial year is the amount worked out using the formula:

$$\frac{\text{Sub-sector regulatory costs}}{\text{Sub-sector population}}$$

where:

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

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Part 2 General provisions

Division 2 Amount of levy payable

Section 10

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

10 Levy component for leviable entities that are deregistered

The amount of levy payable by a leviable entity for a financial year is nil if:

- (a) the entity is deregistered under Part 5A.1 of the *Corporations Act 2001* at any time before the return mentioned in section 11 of the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017* is required to be provided to ASIC for the financial year; and
- (b) the entity's registration has not been reinstated before the return is required to be provided to ASIC for the financial year.

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Sectors, sub-sectors and levy components **Part 3**

Corporate sector **Division 1**

Section 11

Part 3—Sectors, sub-sectors and levy components

Division 1—Corporate sector

Subdivision 1.1—General

11 Corporate sector

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

12 Flat rate levy component applies to sub-sectors in Subdivision 1.2

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

Note: For the flat rate levy component, see section 9.

Subdivision 1.2—Sub-sectors to which flat rate method applies

13 Large proprietary companies

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

14 Public companies (unlisted)

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

15 Registered company auditors

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

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Part 3 Sectors, sub-sectors and levy components

Division 1 Corporate sector

Section 16

Subdivision 1.3—Sub-sectors to which graduated rate method applies

16 Auditors

Criteria

- (1) A leviable entity forms part of the **auditors** sub-sector in a financial year if, at any time in the financial year, the entity has consented to be appointed, or is appointed, as an auditor of a disclosing entity.

Levy component

- (2) The amount of the levy component in respect of the sub-sector for the financial year is the amount worked out using the formula:

$$\text{Sub-sector regulatory costs} \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the total amount of fees paid or payable to the leviable entity in the financial year for the auditing and review of financial reports that relate to:

- (a) a disclosing entity with quoted securities; or
- (b) an entity controlled by an entity mentioned in paragraph (a).

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

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

- (3) However, if a component of the formula is nil, the amount of the levy component is nil.
- (4) For the purposes of the definition of **entity metric** in subsection (2), the question of whether a leviable entity controls an entity is to be decided in accordance with the accounting standard AASB 10 *Consolidated Financial Statements*.

17 Public companies (listed)

Criteria

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

Levy component

- (2) The amount of the levy component in respect of the sub-sector for the financial year is:

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- (a) if the entity's market capitalisation for the financial year (as worked out under subsection (5)) equal or falls short of the minimum levy threshold—the minimum levy component; or
- (b) if the entity's market capitalisation for the financial year (as worked out under subsection (5)) equals or exceeds the maximum levy threshold—the sum of:
 - (i) the minimum levy component; and
 - (ii) the maximum levy component; or
- (c) if the entity's market capitalisation for the financial year (as worked out under subsection (5)) exceeds the minimum levy threshold but falls short of the maximum levy threshold—the sum of:
 - (i) the minimum levy component; and
 - (ii) the graduated levy component worked out under subsection (3).

Graduated levy component

- (3) For the purposes of subparagraph (2)(c)(ii), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} - \text{Maximum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the difference between:

- (a) the entity's market capitalisation for the financial year (as worked out under subsection (5)); and
- (b) the minimum levy threshold.

maximum levy means the product of:

- (a) the maximum levy component; and
- (b) the number specified by ASIC in an annual determination to be the total number of entities that form part of the sub-sector for the financial year and have market capitalisation that equals or exceeds the maximum levy threshold.

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

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

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Part 3 Sectors, sub-sectors and levy components

Division 1 Corporate sector

Section 18

- (5) For the purposes of this section, to work out an entity's market capitalisation for a financial year:
- (a) work out the price for the entity's main class of quoted securities at:
 - (i) if the entity is listed on a financial market at the end of the financial year—the time the financial market closes on 30 June of the financial year; or
 - (ii) if the entity is not listed on a financial market at the end of the financial year—just before the entity stops being listed on the financial market; and
 - (b) multiply the price worked out under paragraph (a) by the number of securities in the class at that relevant time.
- (6) In this section:

maximum levy component means \$660,000.

maximum levy threshold means \$20,000,000,000.

minimum levy component means \$4,000.

minimum levy threshold means \$5,000,000.

18 Registered liquidators

Criteria

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

Levy component

- (2) The amount of the levy component in respect of the sub-sector for the financial year is the sum of:
- (a) the minimum levy component; and
 - (b) the graduated levy component worked out under subsection (3).

Graduated levy component

- (3) For the purposes of paragraph (2)(b), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the sum of:

- (a) the number of the following appointments accepted by the entity during the financial year:
 - (i) an appointment as a controller;
 - (ii) an appointment as a liquidator;
 - (iii) an appointment as a managing controller;

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- (iv) an appointment as a receiver;
 - (v) an appointment as a receiver and manager;
 - (vi) an appointment as a scheme manager;
 - (vii) an appointment as a voluntary administrator;
 - (viii) an appointment as an administrator of a deed of company arrangement; and
- (b) the number of appointments of the kind mentioned in subparagraph (a)(i) to (viii) that were accepted in an earlier financial year and are ongoing at the start of the financial year for which the levy component is to be calculated; and
- (c) the number of the following events that are published on the publication website maintained by ASIC under regulation 5.6.75 of the *Corporations Regulations 2001* for the entity during the financial year:
- (i) notice of meetings;
 - (ii) notice of disclaimer of property;
 - (iii) notice to submit particulars of debt or claims;
 - (iv) notice to creditors to submit formal proof;
 - (v) notice of intention to declare dividend; and
- (d) the number of the following documents lodged with ASIC by the entity during the financial year:
- (i) a notice of the outcome of a proposal to pass a resolution without a meeting (however, if more than one proposal to pass a resolution without a meeting in relation to the same administration is decided on the same day, count the proposals as a single lodgement);
 - (ii) an executed deed of company arrangement (however, if the deed involves more than one company under external administration, count the deed as a single lodgement).

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

- (4) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (5) In this section, ***minimum levy component*** means \$2,500.

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Part 3 Sectors, sub-sectors and levy components

Division 2 Deposit-taking and credit sector

Section 19

Division 2—Deposit-taking and credit sector

Subdivision 2.1—General

19 Deposit-taking and credit sector

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

20 Flat rate levy component applies to sub-sectors in Subdivision 2.2

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

Note: For the flat rate levy component, see section 9.

Subdivision 2.2—Sub-sectors to which flat rate method applies

21 Margin lenders

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

Subdivision 2.3—Sub-sectors to which graduated rate method applies

22 Credit intermediaries

Criteria

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

Levy component

- (2) The amount of the levy component in respect of the sub-sector for the financial year is the sum of:
 - (a) the minimum levy component; and
 - (b) the graduated levy component worked out under subsection (3).

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Sectors, sub-sectors and levy components **Part 3**

Deposit-taking and credit sector **Division 2**

Section 23

Graduated levy component

- (3) For the purposes of paragraph (2)(b), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the greatest number of credit representatives (within the meaning of the *National Consumer Credit Protection Act 2009*) the entity had at any time in the financial year.

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

- (4) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (5) In this section, **minimum levy component** means \$1,000.

23 Credit providers

Criteria

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

Levy component

- (2) The amount of the levy component in respect of the sub-sector for the financial year is:
- (a) if the gross amount of credit provided by the entity during the financial year under credit contracts (other than small amount credit contracts) equals or falls short of the minimum levy threshold—the minimum levy component; or
 - (b) if the gross amount of credit provided by the entity during the financial year under credit contracts (other than small amount credit contracts) exceeds the minimum levy threshold—the sum of:
 - (i) minimum levy component; and
 - (ii) the graduated levy component worked out under subsection (3).

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Part 3 Sectors, sub-sectors and levy components

Division 2 Deposit-taking and credit sector

Section 24

Graduated levy component

- (3) For the purposes of subparagraph (2)(b)(ii), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the difference between:

- (a) the gross amount of credit provided by the entity during the financial year under credit contracts (other than small amount credit contracts); and
- (b) the minimum levy threshold.

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

- (4) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (5) In this section:

minimum levy component means \$2,000.

minimum levy threshold means \$100,000,000.

24 Deposit product providers

Criteria

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

Levy component

- (2) The amount of the levy component in respect of the sub-sector for the financial year is:
- (a) if the total amount of deposits made in the financial year into deposit products issued by the entity equals or falls short of the minimum levy threshold—the minimum levy component; or

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Sectors, sub-sectors and levy components **Part 3**

Deposit-taking and credit sector **Division 2**

Section 25

(b) if the total amount of deposits made in the financial year into deposit products issued by the entity exceeds the minimum levy threshold—the sum of:

- (i) the minimum levy component; and
- (ii) the graduated levy component worked out under subsection (3).

Graduated levy component

(3) For the purposes of subparagraph (2)(b)(ii), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the difference between:

- (a) the total amount of deposits made in the financial year into deposit products issued by the entity; and
- (b) the minimum levy threshold.

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

(4) However, if a component of the formula is nil, the amount of the graduated levy component is nil.

(5) In this section:

minimum levy component means \$2,000.

minimum levy threshold means \$10,000,000.

25 Payment product providers

Criteria

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

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

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Part 3 Sectors, sub-sectors and levy components

Division 2 Deposit-taking and credit sector

Section 26

Levy component

- (2) The flat rate levy component applies in respect of the sub-sector for the 2017-18 financial year.

Note: For the flat rate levy component, see section 9.

- (3) The amount of levy component in respect of the sub-sector for the 2018-19 financial year and later financial years is the sum of:
- (a) the minimum levy component; and
 - (b) the graduated levy component worked out under subsection (4).

Graduated levy component

- (4) For the purposes of paragraph (3)(b), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the gross revenue received by the entity in the financial year from dealing in financial products on which non-cash payments can be made less expenses incurred during the financial year from dealing in non-cash payment facilities.

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

- (5) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (6) In this section, **minimum levy component** means \$2,000.

26 Small amount credit providers

Criteria

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

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Sectors, sub-sectors and levy components **Part 3**

Deposit-taking and credit sector **Division 2**

Section 26

Levy component

- (2) The amount of the levy component in respect of the sub-sector for the financial year is the amount worked out using the formula:

$$\text{Sub-sector regulatory costs} \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the gross amount of credit provided by the entity during the financial year under small amount credit contracts.

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

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

- (3) However, if a component of the formula is nil, the amount of the levy component is nil.

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Part 3 Sectors, sub-sectors and levy components

Division 3 Investment management, superannuation and related services sector

Section 27

Division 3—Investment management, superannuation and related services sector

Subdivision 3.1—General

27 Investment management, superannuation and related services sector

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

28 Flat rate levy component applies to sub-sectors in Subdivision 3.2

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

Note: For the flat rate levy component, see section 9.

Subdivision 3.2—Sub-sectors to which flat rate method applies

29 Custodians

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

30 Managed discretionary account providers

A leviable entity forms part of the *managed discretionary account providers* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial services licence that authorises the holder to deal in a financial product by issuing financial products in respect of:

- (a) interests in managed investment schemes limited to MDA services (within the meaning of the *ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968*); or
- (b) miscellaneous financial investment products limited to MDA services.

31 Traditional trustee company service providers

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

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Subdivision 3.3—Sub-sectors to which graduated rate method applies

32 Operators of investor directed portfolio services

Criteria

- (1) A leviable entity forms part of the ***operators of investor directed portfolio services*** sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial services licence that authorises the holder to operate an IDPS (within the meaning in section 21 of *ASIC Class Order [CO13/763]*).

Levy component

- (2) The amount of the levy component in respect of the sub-sector for a financial year is the sum of:
- the minimum levy component; and
 - the graduated levy component worked out under subsection (3).

Graduated levy component

- (3) For the purposes of paragraph (2)(b), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the amount of gross revenue received from IDPS activities undertaken in the financial year (see subsection (5)).

minimum levy means the product of:

- the minimum levy component; and
- the sub-sector population in relation to the sub-sector for the financial year.

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

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

- (4) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (5) For the purposes of this section, gross revenue from IDPS activities in a financial year includes:
- revenue received from IDPS activities undertaken under the entity's licence; and
 - any amount (to the extent that it is not covered under paragraph (a)) paid or payable from the IDPS for the performance of obligations imposed on an

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Part 3 Sectors, sub-sectors and levy components

Division 3 Investment management, superannuation and related services sector

Section 33

entity as an operator of an IDPS (even if those obligations are performed by another entity).

- (6) In this section, *minimum levy component* means \$10,000.

33 Responsible entities

Criteria

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

Levy component

- (2) The amount of the levy component in respect of the sub-sector for a financial year is:
- if the total amount of funds under management for the entity at the end of the financial year (as worked out under subsection (5)) equals or falls short of the minimum levy threshold—the minimum levy component; or
 - if the total amount of funds under management for the entity at the end of the financial year (as worked out under subsection (5)) exceeds the minimum levy threshold—the sum of:
 - the minimum levy component; and
 - the graduated levy component worked out under subsection (3).

Graduated levy component

- (3) For the purposes of subparagraph (2)(b)(ii), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the difference between:

- the total amount of funds under management for the entity at the end of the financial year (as worked out under subsection (5)); and
- the minimum levy threshold.

minimum levy means the product of:

- the minimum levy component; and
- the sub-sector population in relation to the sub-sector for the financial year.

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

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

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Sectors, sub-sectors and levy components **Part 3**
Investment management, superannuation and related services sector **Division 3**

Section 34

-
- (4) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (5) For the purposes of this section, the total amount of funds under management for an entity at the end of the financial year is the total amount of assets in all registered schemes operated by the entity at that time disregarding any assets that are an interest in another registered scheme operated by the entity.

- (6) In this section:

minimum levy component means \$7,000.

minimum levy threshold means \$10,000,000.

34 Superannuation trustees

Criteria

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

Levy component

- (2) The amount of the levy component in respect of the sub-sector for a financial year is:
- (a) if the total amount of funds under management for the entity at the end of the financial year (as worked out under subsection (5)) equals or falls short of the minimum levy threshold—the minimum levy component; or
- (b) if the total amount of funds under management for the entity at the end of the financial year (as worked out under subsection (5)) exceeds the minimum levy threshold—the sum of:
- (i) the minimum levy component; and
- (ii) the graduated levy component worked out under subsection (3).

Graduated levy component

- (3) For the purposes of subparagraph (2)(b)(ii), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the difference between:

- (a) the total amount of funds under management for the entity at the end of the financial year (as worked out under subsection (5));
- (b) the minimum levy threshold.

minimum levy means the product of:

- (a) the minimum levy component; and

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Part 3 Sectors, sub-sectors and levy components

Division 3 Investment management, superannuation and related services sector

Section 35

(b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

- (4) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (5) For the purposes of this section, the total amount of funds under management for a leviable entity at the end of the financial year is the total amount of assets in all registrable superannuation entities operated by the leviable entity at that time disregarding any assets that are an interest in another registrable superannuation entity operated by the leviable entity.

(6) In this section:

minimum levy component means \$18,000.

minimum levy threshold means \$250,000,000.

35 Wholesale trustees

Criteria

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

Levy component

- (2) The flat rate levy component applies in respect of the sub-sector for the 2017-18 financial year.

Note: For the flat rate levy component, see section 9.

- (3) The amount of the levy component in respect of the sub-sector for the 2018-19 financial year and later financial years is the sum of:
- (a) the minimum levy component; and
 - (b) the graduated levy component worked out under subsection (4).

Graduated levy component

- (4) For the purposes of paragraph (3)(b), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

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Investment management, superannuation and related services sector **Division 3**

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where:

entity metric means the total amount of assets at the end of the financial year in unregistered managed investment schemes issued by the entity (as worked out under subsection (6)).

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

- (5) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (6) For the purposes of this section, the total amount of assets at the end of the financial year in all unregistered managed investment schemes issued by the entity is the total amount of assets in those unregistered managed investment schemes at that time disregarding any assets that are an interest in another unregistered managed investment scheme issued by the entity.
- (7) In this section, **minimum levy component** means \$1,000.

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Part 3 Sectors, sub-sectors and levy components

Division 4 Financial advice sector

Section 36

Division 4—Financial advice sector

Subdivision 4.1—General

36 Financial advice sector

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

37 Flat rate levy component applies to sub-sectors in Subdivision 4.2

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

Note: For the flat rate levy component, see section 9.

Subdivision 4.2—Sub-sectors to which flat rate method applies

38 Licensees that provide general advice only to retail or wholesale clients

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

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

39 Licensees that provide personal advice only to wholesale clients

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

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

40 Licensees that provide personal advice to retail clients only on products that are not relevant financial products

A leviable entity forms part of the *licensees that provide personal advice to retail clients only on products that are not relevant financial products* sub-sector in a financial year if:

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Sectors, sub-sectors and levy components **Part 3**

Financial advice sector **Division 4**

Section 41

- (a) the entity holds, at any time in the financial year, an Australian financial services licence; and
- (b) the licence only authorises the holder to provide personal advice (including class of product advice) to retail clients on the following products:
 - (i) basic banking products;
 - (ii) general insurance products;
 - (iii) consumer credit insurance (within the meaning of section 910A of the *Corporations Act 2001*);
 - (iv) a combination of any of those products; and
- (c) the entity provides advice authorised under the licence in the financial year.

Subdivision 4.3—Sub-sectors to which graduated rate method applies

41 Licensees that provide personal advice on relevant financial products to retail clients

Criteria

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

Levy component

- (2) The amount of the levy component in respect of the sub-sector for a financial year is the sum of:
 - (a) the minimum levy component; and
 - (b) the graduated levy component worked out under subsection (3).

Graduated levy component

- (3) For the purposes of paragraph (2)(b), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the number of relevant providers (within the meaning of section 910A of the *Corporations Act 2001*) that:

- (a) are registered on the Register of Relevant Providers (within the meaning of section 910A of that Act) at the end of the financial year; and
- (b) are authorised to provide personal advice to retail clients on behalf of the entity; and

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Part 3 Sectors, sub-sectors and levy components

Division 4 Financial advice sector

Section 41

- (c) if the entity that authorised the relevant provider forms part of the cash equities participants sub-sector (see section 60), the futures participants sub-sector (see section 62) or the securities dealer sub-sector (see section 65)—provide personal advice to retail clients other than the following kinds of advice:
- (i) advice on financial products that are admitted to quotation;
 - (ii) advice on financial products that are traded on a prescribed foreign financial market (within the meaning of subregulation 7.7A.12D(2) of the *Corporations Regulations 2001*);
 - (iii) advice on basic banking products.

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

- (4) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (5) In this section, ***minimum levy component*** means \$1,500.

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Division 5—Market infrastructure and intermediaries sector

Subdivision 5.1—General

42 Market infrastructure and intermediaries sector

- (1) Each section in Subdivisions 5.2 and 5.3 specifies criteria for identifying one or more leviable entities that form part of the sub-sector mentioned in the section.
- (2) The sub-sectors for which criteria are specified in this Division are in the *market infrastructure and intermediaries sector*.
- (3) A leviable entity may form part of 2 or more sub-sectors in the market infrastructure and intermediaries sector unless otherwise specified in the criteria identifying the sub-sector.
- (4) If the entity would form part of the foreign market operators sub-sector (see section 48) and another sub-sector in the market infrastructure and intermediaries sector in a financial year, the entity is taken:
 - (a) to form part of the foreign market operators sub-sector; and
 - (b) not to form part of another sub-sector in the market infrastructure and intermediaries sector.

43 Flat rate levy component applies to sub-sectors in Subdivision 5.2

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

Note: For the flat rate levy component, see section 9.

Subdivision 5.2—Sub-sectors to which flat rate method applies

44 Australian derivative trade repository licensees

A leviable entity forms part of the *Australian derivative trade repository licensees* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian derivative trade repository licence.

45 Credit rating agencies

A leviable entity forms part of the *credit rating agencies* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian financial services licence that authorises the holder to provide general advice by issuing a credit rating.

46 Exempt CS facilities

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

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Part 3 Sectors, sub-sectors and levy components

Division 5 Market infrastructure and intermediaries sector

Section 47

47 Exempt markets

A leviable entity forms part of the *exempt markets* sub-sector in a financial year if, at any time in the financial year, the entity operates a financial market that is exempt from the operation of the whole of Part 7.2 of the *Corporations Act 2001* (other than because of an exemption under the *Corporations (Low Volume Financial Markets) Instrument 2016/888*).

48 Foreign market operators

A leviable entity forms part of the *foreign market operators* sub-sector in a financial year if the entity holds, at any time in the financial year, an Australian market licence that was granted under subsection 795B(2) of the *Corporations Act 2001*.

Note: A leviable entity that forms part of this sub-sector is taken not to be in any other sub-sectors in the market infrastructure and intermediaries sector: see subsection 42(4).

49 Large futures market operators

A leviable entity forms part of the *large futures market operators* sub-sector in a financial year if the entity operates a licensed market on which more than 10 million derivative transactions have been entered in the financial year.

50 Retail over-the-counter derivatives issuers

A leviable entity forms part of the *retail over-the-counter derivatives issuers* sub-sector in a financial year if:

- (a) the entity holds, at any time in the financial year, an Australian financial services licence that authorises the holder to provide one or more of the following financial services to retail clients:
 - (i) dealing in a financial product by issuing derivatives;
 - (ii) making a market for derivatives; and
- (b) the entity is not a body regulated by APRA or a participant in a financial market or a clearing and settlement facility; and
- (c) the entity does not form part of the wholesale electricity dealers sub-sector (see section 59).

51 Small derivatives market operators

A leviable entity forms part of the *small derivatives market operators* sub-sector in a financial year if the entity operates a licensed market on which less than 10 million derivative transactions (other than futures contracts) are entered into in the financial year.

52 Small equity market operators with self-listing function only

A leviable entity forms part of the *small equity market operators with self-listing function only* sub-sector in a financial year if the entity operates a licensed market on which:

- (a) only ordinary shares of the market operator can be traded; and

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Sectors, sub-sectors and levy components **Part 3**
Market infrastructure and intermediaries sector **Division 5**

Section 53

- (b) less than 10 million transactions in ordinary shares of the market operator are entered into in the financial year.

53 Small futures market operators

A leviable entity forms part of the *small futures market operators* sub-sector in a financial year if the entity operates a licensed market on which less than 10 million futures contracts are entered into in the financial year.

54 Small securities market operators

A leviable entity forms part of the *small securities market operators* sub-sector in a financial year if the entity operates a licensed market on which less than 10 million transactions in securities (other than transactions in derivatives and ordinary shares of the market operator) are entered into in the financial year.

55 Tier 1 clearing and settlement facilities

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

- (a) is systemically important in Australia; and
- (b) has strong connection to the Australian financial system.

56 Tier 2 clearing and settlement facilities

A leviable entity forms part of the *Tier 2 clearing and settlement facilities* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian CS facility licence that was granted under subsection 824B(2) of the *Corporations Act 2001* in relation to a clearing and settlement facility that:

- (a) is systemically important in Australia; and
- (b) has no strong connection to the Australian financial system.

57 Tier 3 clearing and settlement facilities

A leviable entity forms part of the *Tier 3 clearing and settlement facilities* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian CS facility licence that was granted in relation to a clearing and settlement facility that:

- (a) is not systemically important in Australia; and
- (b) has no strong connection to the Australian financial system.

58 Tier 4 clearing and settlement facilities

A leviable entity forms part of the *Tier 4 clearing and settlement facilities* sub-sector in a financial year if, at any time in the financial year, the entity holds an Australian CS facility licence that authorises the entity to operate a clearing and settlement facility for the sole purpose of clearing and settling trades in the entity's own shares.

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Part 3 Sectors, sub-sectors and levy components

Division 5 Market infrastructure and intermediaries sector

Section 59

59 Wholesale electricity dealers

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

- (a) the entity incurs liabilities as part of the ordinary business operations of the entity in dealing in, or making a market in, over-the-counter derivatives that relate to the wholesale price of electricity at any time in the financial year; and
- (b) the entity is not a body regulated by APRA or a participant in a financial market or a clearing and settlement facility.

Subdivision 5.3—Sub-sectors to which graduated rate method applies

60 Cash equities participants

Criteria

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

Levy component

- (2) The amount of the levy component in respect of the sub-sector for the financial year is the sum of:
 - (a) the minimum levy component; and
 - (b) the IT graduated levy component worked out under subsection (3); and
 - (c) the non-IT graduated levy component A worked out under subsection (5); and
 - (d) the non-IT graduated levy component B worked out under subsection (7).

IT graduated levy component

- (3) For the purposes of paragraph (2)(b), the IT graduated levy component is the amount worked out using the formula:

$$\left[\text{IT sub-sector regulatory costs} - \text{IT minimum levy} \right] \times \frac{\text{Entity metric (messages)}}{\text{Sub-sector metric (messages)}}$$

where:

entity metric (messages) means the number of messages that:

- (a) are made by the entity during the financial year to a large equity market; and
- (b) are reported by the operator of the large equity market to ASIC's Market Surveillance System; and
- (c) are recognised by ASIC's Market Surveillance System as orders or executed transactions.

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IT minimum levy means the minimum levy multiplied by the proportion worked out by dividing the IT sub-sector regulatory costs by the sub-sector regulatory costs in relation to the sub-sector for the financial year.

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

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

- (4) However, if a component of the formula is nil, the amount of the IT graduated levy component is nil.

Non-IT graduated levy component A

- (5) For the purposes of paragraph (2)(c), the non-IT graduated levy component A is the amount worked out using the formula:

$$90\% \times \left[\frac{\text{Non-IT sub-sector regulatory costs}}{\text{Non-IT minimum levy}} - \frac{\text{Non-IT minimum levy}}{\text{Non-IT minimum levy}} \right] \times \frac{\text{Entity metric (transactions)}}{\text{Sub-sector metric (transactions)}}$$

where:

entity metric (transactions) means the number of transactions that:

- (a) are executed on, or reported to, a large equity market by the entity during the financial year; and
- (b) are reported by the operator of the large equity market to ASIC's Market Surveillance System; and
- (c) are recognised by ASIC's Market Surveillance System as executed transactions.

non-IT minimum levy means the minimum levy multiplied by the proportion worked out by dividing the non-IT sub-sector regulatory costs by the sub-sector regulatory costs in relation to the sub-sector for the financial year.

non-IT sub-sector regulatory costs means so much of the sub-sector regulatory costs in relation to the sub-sector for the financial year as are not IT sub-sector regulatory costs under subsection (3).

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

- (6) However, if a component of the formula is nil, the amount of the non-IT graduated levy component A is nil.

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Part 3 Sectors, sub-sectors and levy components

Division 5 Market infrastructure and intermediaries sector

Section 61

Non-IT graduated levy component B

- (7) For the purposes of paragraph (2)(d), the non-IT graduated levy component B is the amount worked out using the formula:

$$10\% \times \left[\begin{array}{r} \text{Non-IT} \\ \text{sub-sector} \\ \text{regulatory costs} \end{array} - \begin{array}{r} \text{Non-IT} \\ \text{minimum} \\ \text{levy} \end{array} \right] \times \frac{\text{Entity metric} \\ \text{(messages)}}{\text{Sub-sector metric} \\ \text{(messages)}}$$

where:

entity metric (messages) has the same meaning as in subsection (3).

non-IT minimum levy has the same meaning as in subsection (5).

non-IT sub-sector regulatory costs has the same meaning as in subsection (5).

sub-sector metric (messages) has the same meaning as in subsection (3).

- (8) However, if a component of the formula is nil, the amount of the non-IT graduated levy component B is nil.

- (9) In this section:

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

minimum levy component means \$9,000.

61 Corporate advisors

Criteria

- (1) A leviable entity forms part of the *corporate advisors* sub-sector in a financial year if:
 - (a) the entity holds an Australian financial services licence for a financial service mentioned in subsection (2); or
 - (b) the entity is exempt under paragraph 911A(2)(1) of the *Corporations Act 2001* from the requirement to hold such a licence for the financial services mentioned in subsection (2).
- (2) For the purposes of paragraphs (1)(a) and (b), the financial services are:
 - (a) financial product advice given in Australia to a wholesale client in the course of advising on any of the following:
 - (i) takeover bids or merger proposals;
 - (ii) the structure, pricing, acquisition or disposal of assets or enterprises;
 - (iii) raising or reducing capital through the issue or acquisition of equity or debt; and
 - (b) dealing in a financial product in Australia by underwriting the issue, acquisition or sale of the product.

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Levy component

- (3) The amount of the levy component in respect of the sub-sector for the financial year is:
- (a) if the total gross revenue made under the entity's licence during the financial year for providing a financial service mentioned in subsection (2) equals or falls short of the minimum levy threshold—the minimum levy component; or
 - (b) if the total gross revenue made under the entity's licence during the financial year for providing a financial service mentioned in subsection (2) exceeds the minimum levy threshold—the sum of:
 - (i) the minimum levy component; and
 - (ii) the graduated levy component worked out under subsection (4).

Graduated levy component

- (4) For the purposes of subparagraph (3)(b)(ii), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the difference between:

- (a) the total gross revenue made under the entity's licence during the financial year for providing a financial service mentioned in subsection (2); and
- (b) the minimum levy threshold.

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

- (5) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (6) In this section:

minimum levy component means \$1,000.

minimum levy threshold means \$100,000.

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62 Futures participants

Criteria

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

Levy component

- (2) The amount of the levy component in respect of the sub-sector for the financial year is the sum of:
- (a) the minimum levy component; and
 - (b) the IT graduated levy component worked out under subsection (3); and
 - (c) the non-IT graduated levy component A worked out under subsection (5); and
 - (d) the non-IT graduated levy component B worked out under subsection (7).

IT graduated levy component

- (3) For the purposes of paragraph (2)(b), the IT graduated levy component is the amount worked out using the formula:

$$\left[\text{IT sub-sector regulatory costs} - \text{IT minimum levy} \right] \times \frac{\text{Entity metric (messages)}}{\text{Sub-sector metric (messages)}}$$

where:

entity metric (messages) means the number of messages that:

- (a) are made by the entity during the financial year to a large futures market; and
- (b) are reported by the operator of the large futures market to ASIC's Market Surveillance System; and
- (c) are recognised by ASIC's Market Surveillance System as orders or executed transactions.

IT minimum levy means the minimum levy multiplied by the proportion worked out by dividing the IT sub-sector regulatory costs by the sub-sector regulatory costs in relation to the sub-sector for the financial year.

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

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

- (4) However, if a component of the formula is nil, the amount of the IT graduated levy component is nil.

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Non-IT graduated levy component A

- (5) For the purposes of paragraph (2)(c), the non-IT graduated levy component A is the amount worked out using the formula:

$$90\% \times \left[\begin{array}{cc} \text{Non-IT} & \text{Non-IT} \\ \text{sub-sector} & \text{minimum} \\ \text{regulatory costs} & \text{levy} \end{array} \right] \times \frac{\text{Entity metric (transactions)}}{\text{Sub-sector metric (transactions)}}$$

where:

entity metric (transactions) means the number of transactions that:

- (a) are executed on, or reported to, a large futures market by the entity during the financial year; and
- (b) are reported by the operator of the large futures market to ASIC's Market Surveillance System; and
- (c) are recognised by ASIC's Market Surveillance System as executed transactions.

non-IT minimum levy means the minimum levy multiplied by the proportion worked out by dividing the non-IT sub-sector regulatory costs by the sub-sector regulatory costs in relation to the sub-sector for the financial year.

non-IT sub-sector regulatory costs means so much of the sub-sector regulatory costs in relation to the sub-sector for the financial year as are not IT sub-sector regulatory costs under subsection (3).

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

- (6) However, if a component of the formula is nil, the amount of the non-IT graduated levy component A is nil.

Non-IT graduated levy component B

- (7) For the purposes of paragraph (2)(d), the non-IT graduated levy component B is the amount worked out using the formula:

$$10\% \times \left[\begin{array}{cc} \text{Non-IT} & \text{Non-IT} \\ \text{sub-sector} & \text{minimum} \\ \text{regulatory costs} & \text{levy} \end{array} \right] \times \frac{\text{Entity metric (messages)}}{\text{Sub-sector metric (messages)}}$$

where:

entity metric (messages) has the same meaning as in subsection (3).

non-IT minimum levy has the same meaning as in subsection (5).

non-IT sub-sector regulatory costs has the same meaning as in subsection (5).

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sub-sector metric (messages) has the same meaning as in subsection (3).

- (8) However, if a component of the formula is nil, the amount of the non-IT graduated levy component B is nil.
- (9) In this section:

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

minimum levy component means \$9,000.

63 Large equity market operators

Criteria

- (1) A leviable entity forms part of the *large equity market operators* sub-sector in a financial year if the entity operates a licensed market on which more than 10 million transactions in equity market products have been entered into in the financial year.

Levy component

- (2) The amount of the levy component in respect of the sub-sector for the financial year is worked out using the formula:

$$\text{Sub-sector regulatory costs} \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the total value of transactions that are entered into on the market operated by the entity during the financial year and that are within the operating rules of the market.

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

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

- (3) However, if a component of the formula is nil, the amount of the levy component is nil.

64 Over-the-counter traders

Criteria

- (1) A leviable entity forms part of the *over-the-counter traders* sub-sector in a financial year if the entity:

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- (a) holds an Australian financial services licence or is exempt under paragraph 911A(2)(l) of the *Corporations Act 2001* from the requirement to hold such a licence; and
- (b) deals in, or holds out that it deals in, over-the-counter financial products by:
 - (i) acquiring over-the-counter financial products from professional investors; or
 - (ii) disposing of over-the-counter financial products to professional investors; or
 - (iii) issuing over-the-counter financial products to professional investors; and
- (c) either:
 - (i) forms part of the corporate advisors sub-sector (see section 61); or
 - (ii) is a related body corporate of an entity that forms part of the corporate advisors sub-sector; and
- (d) does not form part of any of the following sub-sectors:
 - (i) the responsible entities sub-sector (see section 33);
 - (ii) the superannuation trustees sub-sector (see section 34);
 - (iii) the wholesale trustees sub-sector (see section 35).

Levy component

- (2) The amount of the levy component in respect of the sub-sector for the financial year is the sum of:
 - (a) the minimum levy component; and
 - (b) the graduated levy component worked out under subsection (3).

Graduated levy component

- (3) For the purposes of paragraph (2)(b), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the total number of persons at the end of the financial year that:

- (a) are engaged in Australia as an employee of the entity or a related entity or authorised representative of the entity; and
- (b) have, at any time during the financial year, undertaken any of the following activities:
 - (i) determining the terms on which the entity is willing to deal in an over-the-counter financial product with a professional investor;
 - (ii) communicating the terms on which the entity is willing to deal in an over-the-counter financial product with a professional investor;
 - (iii) offering to deal in an over-the-counter financial product with a professional investor;

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- (iv) inviting a professional investor to offer to deal in an over-the-counter financial product;
- (v) agreeing to deal in an over-the-counter financial product with a professional investor;
- (vi) managing the financial risk arising from an over-the-counter financial product.

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

- (4) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (5) In this section, **minimum levy component** means \$1,000.

65 Securities dealers

Criteria

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

Levy component

- (2) The amount of the levy component in respect of the sub-sector for a financial year is the sum of:
 - (a) the minimum levy component; and
 - (b) the graduated levy component worked out under subsection (3).

Graduated levy component

- (3) For the purposes of paragraph (2)(b), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

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entity metric means the total value of transactions in securities (as measured by the buy price plus the sale price of securities) that:

- (a) are executed for the entity during the financial year on a large equity market; and
- (b) are reported by the operator of the large equity market to ASIC's Market Surveillance System; and
- (c) are recognised by ASIC's Market Surveillance System as executed transactions.

minimum levy means the product of:

- (a) the minimum levy component; and
- (b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

- (4) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (5) In this section, **minimum levy component** means \$1,000.

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Part 3 Sectors, sub-sectors and levy components

Division 6 Insurance sector

Section 66

Division 6—Insurance sector

Subdivision 6.1—General

66 Insurance sector

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

67 Flat rate levy component applies to sub-sectors in Subdivision 6.2

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

Note: For the flat rate levy component, see section 9.

Subdivision 6.2—Sub-sectors to which flat rate method applies

68 Insurance product distributors

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

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

69 Risk management product providers

A leviable entity forms part of the *risk management product providers* sub-sector in a financial year if, at any time in the financial year, the entity deals in a product for managing financial risk that is not a financial product specified in section 764A of the *Corporations Act 2001*.

Subdivision 6.3—Sub-sectors to which graduated rate method applies

70 Insurance product providers

Criteria

- (1) A leviable entity forms part of the *insurance product providers* sub-sector in a financial year if:

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-
- (a) the entity holds, at any time in the financial year, an Australian financial services licence that authorises the holder to deal in:
 - (i) a general insurance product; or
 - (ii) a life risk insurance product; or
 - (iii) an investment life insurance product; and
 - (b) any of the following applies:
 - (i) the entity is a body regulated by APRA;
 - (ii) the entity has an intermediary authorisation (within the meaning of paragraph 911A(2)(b) of the *Corporations Act 2001*) with a person who is authorised by APRA to carry on an insurance business under section 12 of the *Insurance Act 1973*;
 - (iii) the entity has an intermediary authorisation with a person (or a subsidiary of that person) who is authorised by APRA to be a non-operating holding company of a general insurer under section 18 of that Act;
 - (iv) the entity has an intermediary authorisation with a person (or a subsidiary of that person) who is registered as a life company or a non-operating holding company of a life company under the *Life Insurance Act 1995*.

Levy component

- (2) The amount of the levy component in respect of the sub-sector for a financial year is:
 - (a) if the entity's insurance product revenue for the financial year (as worked out under subsection (5)) equals or falls short of the minimum levy threshold—the minimum levy component; or
 - (b) if the entity's insurance product revenue for the financial year (as worked out under subsection (5)) exceeds the minimum levy threshold—the sum of:
 - (i) the minimum levy component; and
 - (ii) the graduated levy component worked out under subsection (3).

Graduate levy component

- (3) For the purposes of subparagraph (2)(b)(ii), the graduated levy component is the amount worked out using the formula:

$$\left[\text{Sub-sector regulatory costs} - \text{Minimum levy} \right] \times \frac{\text{Entity metric}}{\text{Sub-sector metric}}$$

where:

entity metric means the difference between:

- (a) the entity's insurance product revenue for the financial year (as worked out under subsection (5)); and
- (b) the minimum levy threshold.

minimum levy means the product of:

- (a) the minimum levy component; and

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Division 6 Insurance sector

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(b) the sub-sector population in relation to the sub-sector for the financial year.

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

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

- (4) However, if a component of the formula is nil, the amount of the graduated levy component is nil.
- (5) For the purposes of this section, an entity's insurance product revenue for a financial year is the sum of:
- (a) the gross amount of premiums that are received by the entity while carrying on a general insurance business in Australia during the financial year less any reinsurance expenses incurred in the financial year that relate to the financial year or previous financial years; and
 - (b) the net amount of revenue received by the entity while carrying on a life insurance business in Australia during the financial year from life insurance products issued by the entity less any reinsurance premiums paid during the financial year.
- (6) In this section:

minimum levy component means \$20,000.

minimum levy threshold means \$5,000,000.

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Miscellaneous **Part 4**
ASIC's annual legislative instrument **Division 1**

Section 71

Part 4—Miscellaneous

Division 1—ASIC's annual legislative instrument

71 Annual determination

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

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Schedule 1 List of sub-sectors

Schedule 1—List of sub-sectors

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

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2	Australian derivative trade repository licensees	section 44
3	Cash equities participants	section 60
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6	Credit providers	section 23
7	Credit rating agencies	section 45
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12	Foreign market operators	section 48
13	Futures participants	section 62
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19	Licensees that provide general advice only to retail or wholesale clients	section 38
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List of sub-sectors **Schedule 1**

List of sub-sectors		
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34	Risk management product providers	section 69
35	Securities dealers	section 65
36	Small amount credit providers	section 26
37	Small derivative market operators	section 51
38	Small equity market operators with self-listing function only	section 52
39	Small futures market operators	section 53
40	Small securities market operators	section 54
41	Superannuation trustees	section 34
42	Tier 1 clearing and settlement facilities	section 55
43	Tier 2 clearing and settlement facilities	section 56
44	Tier 3 clearing and settlement facilities	section 57
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46	Traditional trustee company service providers	section 31
47	Wholesale electricity dealers	section 59
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