Financial Services Reform Bill

Draft Legislation Provisions
The Government is seeking comments from interested parties on the detail of the proposals in this paper. The comments should be forwarded to the following address:

Financial Services Project Team
Markets Group
The Treasury
Parkes Place
PARKES ACT 2600

Fax: 02 6263 2770
Email: clerp@treasury.gov.au

The closing date for submissions is 12 May 2000.

Inquiries concerning the paper can be made to:

Ruth Smith 02 6263 3985
Sue Vroombout 02 6263 3048
Vicki Wilkinson 02 6263 3977

Copies of this paper are available from AusInfo bookshops and on the Treasury website (http://www.treasury.gov.au).

Confidentiality

It will be assumed that submissions are not confidential and may be made publicly available. If you want your submission, or any part of it, to be treated as ‘confidential’, please indicate this clearly. A request made under the Freedom of Information Act 1982 (Cth) for a submission marked confidential to be made available will be determined in accordance with that Act.
Contents

Chapter 7—Financial services and markets

Part 7.1—Preliminary

Division 1—Object of Chapter and outline of Chapter

760A Object of Chapter .......................................................... 17
760B Outline of Chapter ......................................................... 17

Division 2—Definitions

761A Definitions .................................................................. 18
761B Meaning of arrangement ............................................... 23
761C Meaning of carry on a financial services business .............. 23
761D Meaning of derivative ................................................... 23
761E Meaning of issue and issuer in relation to financial products ... 25
761F Meaning of person—generally includes a partnership ...... 25
761G Meaning of retail client and wholesale client .................. 26

Division 3—What is a financial product?

Subdivision A—Preliminary

762A Overview of approach to defining what a financial product is ... 28
762B Meaning of facility ....................................................... 29

Subdivision B—The general definition

763A General definition of financial product .............................. 30
763B When a person makes a financial investment ..................... 30
763C When a person manages financial risk .............................. 31
763D When a person makes non-cash payments ....................... 31

Subdivision C—Specific inclusions

764A Specific classes of things that are financial products (subject to Subdivision D) ....................................................... 33

Subdivision D—Specific exclusions

765A Specific classes of things that are not financial products ......... 35

Division 4—When does a person provide a financial service?

766A When does a person provide a financial service? ................ 36
766B Meaning of financial product advice ................................ 37
766C Meaning of dealing ....................................................... 38
766D Meaning of makes a market for a financial product .......... 38
766E Meaning of provide a custodial or depository service ......... 39

Division 5—What is a financial products market?

767A What is a financial products market? ................................. 39

Division 6—What is a clearing and settlement facility?

768A What is a clearing and settlement facility? ....................... 40
Part 7.2—Licensing of financial products markets

Division 1—Preliminary

- 790A Definitions ........................................................................................................... 41

Division 2—Requirement to be licensed

- 791A Need for a licence ................................................................................................. 41
- 791B Exemptions ........................................................................................................... 42
- 791C When a market is taken to be operated in this jurisdiction ................................... 43

Division 3—Regulation of market licensees

Subdivision A—Licensee’s obligations

- 792A General obligations .............................................................................................. 43
- 792B Obligation to notify ASIC of certain matters ....................................................... 44
- 792C Giving ASIC information about a listed disclosing entity .................................... 45
- 792D Obligation to assist ASIC .................................................................................. 45
- 792E Obligation to give ASIC access to market facilities .......................................... 46
- 792F Annual report ....................................................................................................... 46
- 792G Advice to participants if no clearing and settlement facility arrangements ............ 46
- 792H Adequate protection for participants acquiring or disposing of financial products as or for retail clients ........................................................ 47

Subdivision B—The market’s operating rules and procedures

- 793A Content of the operating rules and procedures .................................................... 47
- 793B Legal effect of operating rules ............................................................................. 47
- 793C Enforcement of operating rules ......................................................................... 48
- 793D Changing the operating rules ............................................................................. 49
- 793E Disallowance of changes to operating rules ....................................................... 49

Subdivision C—Powers of the Minister and ASIC

- 794A Minister’s power to give directions ..................................................................... 50
- 794B Minister’s power to require special report ........................................................... 50
- 794C Minister’s power to require audit of supervision arrangements .......................... 50
- 794D ASIC’s power to give directions ........................................................................ 51
- 794E Additional directions to clearing and settlement facilities ................................ 52

Division 4—The Australian market licence

Subdivision A—How to get a licence

- 795A How to apply for a licence .................................................................................. 52
- 795B When a licence may be granted .......................................................................... 52
- 795C Publication of notice of licence grant .................................................................. 54
- 795D More than one licence in the same document .................................................... 54

Subdivision B—The conditions on the licence

- 796A The conditions on the licence ............................................................................. 54

Subdivision C—When a licence can be varied, suspended or cancelled

- 797A Varying licences ................................................................................................. 55
- 797B Immediate suspension or cancellation ................................................................ 56
Division 5—Other matters

798A Matters to be taken into account by the Minister ........................................ 57
798B ASIC may give advice to Minister ............................................................. 59
798C Self-listing of markets ............................................................................. 59
798D Exemptions and modifications for self-listing licensees ............................ 60

Division 6—Limitations on holding shares in the Exchange

799A Unacceptable ownership situation .......................................................... 61
799B Causing an unacceptable ownership situation ......................................... 61
799C Exchange’s obligation to avoid unacceptable ownership situation ......... 61
799D Remedial orders ..................................................................................... 61
799E This Division extends to things outside Australia etc. ............................. 62

Part 7.3—Licensing of clearing and settlement facilities

Division 1—Requirement to be licensed

820A Need for a licence .................................................................................... 63
820B Exemptions generally .............................................................................. 63
820C Exemption involving regulation by Payments System Board ................. 64

Division 2—Regulation of CS facility licensees

Subdivision A—Licensee’s obligations

821A General obligations ............................................................................... 65
821B Obligation to notify ASIC of certain matters .......................................... 66
821C Obligation to assist ASIC ....................................................................... 66
821D Obligation to give ASIC access to the facility ......................................... 66
821E Annual report .......................................................................................... 67

Subdivision B—The facility’s operating rules and procedures

822A Content of the operating rules and procedures ....................................... 67
822B Legal effect of operating rules ................................................................ 68
822C Enforcement of operating rules ............................................................... 68
822D Changing the operating rules ................................................................. 68
822E Disallowance of changes to operating rules .............................................. 69

Subdivision C—Powers of the Minister and ASIC in relation to licensees

823A Minister’s power to give directions ......................................................... 69
823B Minister’s power to require special report .............................................. 70
823C ASIC’s power to give directions ............................................................... 70

Division 3—The Australian CS facility licence

Subdivision A—How to get a licence

824A How to apply for a licence ...................................................................... 72
### Subdivision A—Approval of compensation arrangements

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>852A</td>
<td>How to get compensation arrangements approved with grant of licence</td>
</tr>
<tr>
<td>852B</td>
<td>How to get compensation arrangements approved after licence granted</td>
</tr>
<tr>
<td>852C</td>
<td>Revocation of approval</td>
</tr>
</tbody>
</table>

### Subdivision B—Effect of compensation rules forming part of Division 3 arrangements

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>853A</td>
<td>Legal effect of compensation rules</td>
</tr>
</tbody>
</table>
Subdivision C—Changing Division 3 arrangements 86
854A Division 3 arrangements must generally only be changed in accordance with this Subdivision 86
854B Changing Division 3 arrangements—matters required to be dealt with in the compensation rules 87
854C Changing Division 3 arrangements—matters not required to be dealt with in the compensation rules 87

Subdivision D—Are compensation arrangements adequate? 88
855A Purpose of this Subdivision 88
855B Requirements to be complied with for arrangements to be adequate 89
855C The losses to be covered 90
855D Certain losses that are not Division 3 losses 91
855E The amount of compensation 92
855F Method of payment of compensation 92
855G Making and determination of claims 93
855H The source of funds—general 93
855I Administration and monitoring 93
855J The losses to be covered—other matters to be taken into account 94
855K Risk assessment reports for purpose of considering adequacy of arrangements 94

Subdivision E—Other provisions about Division 3 arrangements 95
856A Only one claim in respect of the same loss 95
856B Regulations relating to fidelity funds 95

Division 4—NGF Compensation regime 95
Subdivision A—Application of Division 95
857A Markets and facilities to which this Division applies 95

Subdivision B—Claims for and payment of compensation 96
858A The situations in which compensation may be claimed 96
858B Kinds of compensation available 96
858C Amount of compensation payable 96
858D Payment of compensation 97
858E Making and determination of claims 97
858F Power of SEGC to allow and settle claims 98
858G Allowing a claim does not constitute an admission of any other liability 98
858H Claimant may apply to Court if claim disallowed 98
858I Non-NGF property of SEGC not available to meet claims 98
858J SEGC may enter into contracts of insurance or indemnity 99
858K NGF may be used to acquire financial products to be transferred as compensation 99

Subdivision C—The NGF 99
859A Compensation to be provided out of the NGF 99
859B SEGC to keep the NGF 99
859C What the NGF consists of ............................................................. 100
859D Power to borrow etc. for purposes of the NGF ............................ 100
859E Money borrowed and paid to SEGC ........................................... 101
859F Money borrowed and not paid to SEGC ..................................... 101
859G Payments out of the NGF .......................................................... 101
859H Interest and profits from investment of the NGF ......................... 102
859I Minimum amount of the NGF .................................................... 103
859J Regulations may specify situations in which levy is payable
if NGF is below the minimum amount ......................................... 103
859K Regulations may permit operator to impose levy on
participants to meet liability under section 859J ........................... 103
859L Levy not payable unless imposed by an Act ................................. 104

Subdivision D—The SEGC

860A The SEGC is to administer arrangements .................................. 104
860B Functions and powers of the SEGC ......................................... 104
860C Management subcommittee of the SEGC ................................. 104
860D Sub-delegation by management subcommittee of the SEGC ....... 105
860E Operating rules of the SEGC ................................................... 106
860F Legal effect of SEGC’s operating rules .................................... 106
860G Enforcement of SEGC’s operating rules ................................. 106
860H Changing the SEGC’s operating rules .................................... 107
860I Disallowance of changes to SEGC’s operating rules ................. 107

Subdivision E—Other provisions relating to compensation under
this Division

861A Payment out of NGF to prescribed body with arrangements
covering clearing and settlement facility support ........................ 107
861B Markets and clearing and settlement facilities operated by
persons who become members of the SEGC—regulations
may deal with transitional provisions and other matters .......... 108
861C Regulations may make different provision in respect of
different markets or facilities etc .............................................. 108

Division 5—Provisions common to both kinds of compensation
arrangements

862A Interpretation ........................................................................... 109
862B How regulated funds are to be kept ....................................... 109
862C Investment of money in regulated funds ................................ 110
862D Powers of relevant authority to require production or
delivery of financial products, documents or statements .......... 110
862E Power to require assistance for purpose of dealing with a
claim .......................................................................................... 111
862F Relevant authority’s right of subrogation if compensation is
paid ........................................................................................... 111
862G Excess money in compensation funds .................................... 111
862H Accounting and reporting in relation to regulated funds ......... 112
862I Division 3 arrangements—reporting in situations where
compensation does not come out of a regulated fund ............ 112
Part 7.5—Licensing of providers of financial services

Division 1—Preliminary

Division 2—Requirement to be licensed or authorised

Subdivision A—The rules

Subdivision B—Declared professional bodies

Division 3—Obligations of financial services licensees

Division 4—Provisions about Australian financial services licences
Division 5—Provisions about authorised representatives

887A How representatives are authorised .............................................. 127
887B No sub-authorisations .................................................................. 127
887C Cross-endorsement of authorised representative......................... 127
887D Licensees cannot authorise other licensees ................................... 128
887E Licensees acting under a binder .................................................... 128
887F Obligation to notify ASIC about authorised representatives........... 128
887G ASIC may give licensee information about representatives.......... 129

Division 6—Liability of financial services licensees for representatives

888A Application of Division ................................................................. 130
888B Responsibility if representative of only one licensee .................... 131
888C Representives of multiple licensees ............................................. 131
888D Responsibility extends to loss or damaged suffered by client....... 133
888E Effect of Division ......................................................................... 133

Division 7—Banning or disqualification of persons from providing financial services

Subdivision A—Banning orders

889A ASIC’s power to make a banning order ...................................... 133
889B What is a banning order?.............................................................. 134
889C Effect of banning orders .............................................................. 134
889D Variation or cancellation of banning orders ................................. 134
889E Date of effect and publication of banning order, variation or cancellation ......................................................... 135

Subdivision B—Disqualification by the court

890A Disqualification by the Court ........................................................ 135

Division 8—Register/s relating to financial services

891A Register/s relating to financial services .......................................... 136
891B Inspection of Register/s ................................................................. 136

Division 9—Restrictions on use of terminology

892A Restriction on use of certain words or expressions ...................... 136
892B Restriction on use of certain words or expressions unless authorised in licence conditions ............................................................. 138

Division 10—Agreements with unlicensed persons relating to the provision of financial services

Subdivision A—Agreements affected

893A Agreements with unlicensed persons .......................................... 140

Subdivision B—Effect on agreements

894A Client may give notice of rescission ............................................. 140
894B Effect of notice under section 894A .............................................. 141
Part 7.6—Disclosure requirements for financial services licensees, authorised representatives and certain persons not required to be licensed

Division 1—Preliminary

910A When is a financial service provided by a financial services licensee? ........................................ 144

910B What if a financial services licensee is acting as authorised representative? ........................................ 144

Division 2—Person provided with financial service as retail client to be given a Financial Services Guide

Subdivision A—Requirement for a Financial Services Guide to be given

911A Obligation on financial services licensee to give a Financial Services Guide if financial service provided to person as a retail client ........................................ 144

911B Obligation on authorised representative to give a Financial Services Guide if financial service provided to person as a retail client ........................................ 145

911C Situations in which a Financial Services Guide is not required ................................................................ 145

911D Timing of giving Financial Services Guide ....................................................................................... 146

911E Information must be up to date ............................................................................................................. 147

911F Obligation to provide updated Financial Services Guide ................................................................. 147

911G How Financial Services Guide is to be provided .................................................................................. 147

Subdivision B—Content of Financial Services Guide

912A Title of Financial Services Guide ...................................................................................................... 148

912B Financial Services Guide given by financial services licensee—main requirements ........................................ 148

912C Financial Services Guide given by authorised representative—main requirements ................................. 150

912D Financial Services Guide may consist of 2 or more separate documents ............................................. 152

Division 3—Additional requirements for personal advice provided to a retail client

Subdivision A—When this Division applies

913A Situation in which Division applies .................................................................................................... 152
### Subdivision B—Requirements relating to basis of advice

914A Requirement to have a reasonable basis for the advice ........................................ 152
914B Obligation to warn client if advice based on incomplete or inaccurate information ................................................................. 153

### Subdivision C—Requirement for a Statement of Advice to be given

915A Obligation to give client a Statement of Advice ........................................ 153
915B Statement of Advice not required for execution-related telephone advice ................................................................. 153
915C Timing of giving Statement of Advice ........................................ 154
915D How the Statement of Advice is to be provided ........................................ 155

### Subdivision D—Content of Statement of Advice

916A Title of Statement of Advice .......................................................... 156
916B Statement of Advice given by financial services licensee—main requirements ................................................................. 156
916C Statement of Advice given by authorised representative—main requirements ................................................................. 157
916D Additional requirements when advice recommends replacement of one product with another ................................................................. 159

### Subdivision E—Other matters

917A Qualified privilege if providing entity complies with this Division ................................................................. 160

### Division 4—Other disclosure requirements

918A General advice provided to retail client—obligation to warn client that advice does not take account of client’s objectives, financial situation and needs ................................................................. 160
918B Regulations may impose disclosure requirements in certain situations ................................................................. 161

### Division 5—Miscellaneous

919A Part cannot be contracted out of .......................................................... 161

### Part 7.7—Other conduct requirements for financial services licensees

### Division 1—Interpretation

940A When money or other property is paid or given to a financial services licensee ................................................................. 162

### Division 2—Dealing with clients’ money

#### Subdivision A—Money other than loans

941A Money to which Subdivision applies .......................................................... 162
941B Obligation to pay money into an account .......................................................... 163
941C Regulations may deal with various matters relating to accounts maintained for the purposes of section 941B .......................................................... 164
941D Money related to derivatives may be used for general margining etc purposes ................................................................. 164
941E Protection of money from attachment etc .......................................................... 164
941F Regulations may deal with how money to be dealt with if licensee ceases to be licensed etc .................................................. 165
941G Australian ADI not liable merely because of licensee’s contravention ........................................................................ 165

Subdivision B—Loan money .................................................. 166
942A Money to which this Subdivision applies ................................ 166
942B Obligation to pay money into an account ................................ 166
942C Licensee to give client statement setting out terms of loan etc ................................................................................ 166
942D Permitted use of loan ...................................................... 166

Subdivision C—Powers of Court .................................................. 167
943A Court may freeze certain accounts ................................................ 167
943B Interim order freezing accounts ................................................ 168
943C Duty of person to whom order directed to make full disclosure ................................................................................ 168
943D Further orders and directions .................................................. 168
943E Power of Court to make order relating to payment of money ...... 168

Division 3—Dealing with other property of clients 169
944A Property to which Division applies ............................................... 169
944B How property to which this Division applies is to be dealt with ........................................................................ 170

Division 4—Special provisions relating to insurance 170
945A Interpretation ........................................................................ 170
945B Status of amounts paid to financial services licensees in respect of contracts of insurance ................................................ 171
945C Regulations may impose other requirements etc if financial services licensee is not the insurer ................................................ 172

Division 5—Obligations to report 172
946A Reporting in relation to money to which Subdivision A or B of Division 2 applies or property to which Division 3 applies ...... 172
946B Reporting in relation to dealings in derivatives ................................ 172

Division 6—Financial records, statements and audit 173
Subdivision A—Preliminary .................................................. 173
947A Application of Division .................................................. 173

Subdivision B—Financial records of financial services licensees 173
948A Obligation to keep financial records ................................................ 173
948B Records to be kept so that profit and loss statements and balance sheet can be prepared and audited ................................................ 173
948C Language of records ................................................................ 174
948D Location of records .................................................................... 174
948E Particular categories of information to be shown in records ...... 174
948F Regulations may impose additional requirements ......................... 175
948G Records taken to be made with licensee’s authority ..................... 175

Subdivision C—Financial statements of financial services licensees 175
949A Meaning of financial year .................................................. 175
Financial Services Reform Exposure Draft

949B Financial services licensee to prepare and lodge annual profit
and loss statement and balance sheet ............................................ 176

949C Requirements as to contents and applicable accounting
principles ...................................................................................... 176

949D Time of lodgment ..................................................................... 176

Subdivision D—Appointment etc. of auditors

950A Certain provisions of this Subdivision do not apply to a body
corporate (other than proprietary company) to which section
327 applies .................................................................................... 177

950B Appointment of auditor by licensee ........................................ 177

950C When a person or firm is ineligible to act as auditor ................. 178

950D Ineligible person or firm must not consent to act or
disqualify themselves etc. ............................................................ 178

950E Duration of appointment of auditors ........................................ 179

950F Removal of auditors ................................................................ 179

950G Resignation of auditors—requirements for resignation .......... 179

950H Resignation of auditors—when resignation takes effect ........ 180

950I Auditor’s right of access to records, information etc. ............... 180

950J Auditor’s fees and expenses .................................................. 181

950K Auditor to report to ASIC on certain matters ......................... 181

950L Qualified privilege for auditor etc. ............................................. 182

Division 7—Other rules about conduct

951A Financial services licensee not to engage in unconscionable
conduct ....................................................................................... 182

951B Financial services licensee to give priority to clients’ orders .... 182

951C Regulations may deal with various matters relating to
instructions to deal through licensed markets ............................... 183

951D Regulations may require records to be kept in relation to
instructions to deal on licensed markets and foreign markets ...... 183

951E Obligations of financial services licensee in relation to
dealings with non-licensees .......................................................... 184

951F Dealings involving employees of financial services licensees ....... 185

Part 7.8—Financial product disclosure and other provisions
relating to issue and sale of financial products

Division 1—Preliminary

980A Part generally does not apply to securities .............................. 186

980B Part does not apply to financial products not issued in the
course of a business ................................................................. 186

980C Special provisions about meaning of sale and offer .................. 187

Division 2—Product Disclosure Statements

Subdivision A—Preliminary

981A Division only applies to recommendations received in this
jurisdiction .................................................................................... 187

981B Definitions ............................................................................ 187

981C Treatment of offers of options over financial products .......... 188
Subdivision B—Requirement for a Product Disclosure Statement to be given

982A Obligation to give person a Product Disclosure Statement—recommendations related to acquisition of financial products ....... 188
982B Obligation to give person a Product Disclosure Statement—offers related to issue of financial products .......................... 189
982C Obligation to give person a Product Disclosure Statement—offers related to sale of financial products ........................... 190
982D Situations in which Product Disclosure Statement is not required ......................................................................................... 192
982E Product Disclosure Statement may sometimes be provided later if cooling-off period applies ............................... 194
982F Information must be up to date ................................................. 195

Subdivision C—Preparation and content of Product Disclosure Statements

983A Who must prepare Product Disclosure Statement ................................................. 195
983B Title of Product Disclosure Statement ................................................. 196
983C Product Disclosure Statement content—main requirements ....... 196
983D General obligation to include other information that might influence a decision to acquire ...................................................... 197
983E General limitations on extent to which information is required to be included ........................................................................ 198
983F Product Disclosure Statement must be dated ................................................. 199
983G Requirements if Product Disclosure Statement states or implies that financial product will be able to be traded .......... 199
983H Requirements if Statement has been lodged with ASIC .......... 199
983I Requirements relating to consents to certain statements .......... 199

Subdivision D—Supplementary Product Disclosure Statements 200

984A What a Supplementary Product Disclosure Statement is ............... 200
984B Title of Supplementary Product Disclosure Statement .................. 200
984C Form of Supplementary Product Disclosure Statement .................. 200
984D Effect of giving person a Supplementary Product Disclosure Statement ........................................................................ 201
984E Situation in which only a Supplementary Product Disclosure Statement need be given ...................................................... 201
984F Application of other provisions in relation to Supplementary Product Disclosure Statements ................................................. 201

Subdivision E—Other requirements relating to Product Disclosure Statements and Supplementary Product Disclosure Statements

985A Subdivision applies to Product Disclosure Statements and Supplementary Product Disclosure Statements .......... 202
985B Some Statements must be lodged with ASIC ...................................... 202
985C How a Statement is to be provided ..................................................... 202
985D Copy of Statement to be kept for 7 years and to be made available on request ..................................................... 203
Subdivision F—Other rights and obligations related to Product Disclosure Statements

986A Issuer or seller to be satisfied that person has received Product Disclosure Statement containing all required information .......................................................... 203
986B Issuer or seller not to issue or transfer certain financial products except pursuant to application form included in or provided with a Product Disclosure Statement ........................................... 204
986C If Statement lodged with ASIC, financial product is not to be issued or sold before specified period ................................................................. 204
986D Minimum subscription condition must be fulfilled before issue or sale .......................................................................................... 205
986E Condition about ability to trade on a market must be fulfilled before issue or sale ........................................................................ 205
986F Choices open to person making the offer if disclosure condition not met or Product Disclosure Statement defective ...... 205
986G Remedies for people acquiring financial products .................................................................................................................. 207

Division 3—Other disclosure obligations of the issuer of a financial product

987A Obligation to give additional information on request ....................... 208
987B Ongoing disclosure of material changes and significant events .......................................................... 210
987C Periodic statements for retail clients for financial products that have an investment component .................................................. 211

Division 4—Other obligations of issuer of financial product

988A Dealing with money received for financial product before the product is issued .......................................................................................... 212
988B Confirming transactions .................................................................................................................. 213
988C Alternative dispute resolution ........................................................................................................... 216

Division 5—Advertising for financial products to refer to Product Disclosure Statement

989A Advertising or other promotional material for financial product must refer to Product Disclosure Statement .................................................... 216

Division 6—Cooling-off periods

990A Situations in which this Division applies .......................................................... 219
990B Cooling-off period for return of financial product ........................................................................ 220

Division 7—Miscellaneous

991A Offers etc. of managed investment interests not to be made in certain circumstances .................................................................................. 221
991B Short selling of securities or managed investment interests ...................................................................................................... 222
991C ASIC’s power to prohibit short selling in certain cases .................................................................................. 224
991D Part cannot be contracted out of ........................................................................................................... 225
991E Stop orders by ASIC .......................................................................................................................... 225
991F Exemptions and modifications by ASIC .......................................................................................... 227
991G Exemptions and modifications by regulations .................................................................................. 227
Part 7.9—Title and transfer

Division 1—Title to certain securities

1010A Nature of shares and other membership interests in a company .................................................. 228
1010B Numbering shares ......................................................................................................................... 229
1010C Share certificate to be evidence of title ......................................................................................... 230
1010D Loss or destruction of title documents for certain securities ....................................................... 230

Division 2—Transfer of certain securities

Subdivision A—General provisions

1011A Division applies to certain securities of companies ............................................................ 232
1011B Instrument of transfer ............................................................................................................... 232
1011C Occupation need not appear in transfer document, register etc. ................................................. 234
1011D Registration of transfer at request of transferor ............................................................................. 234
1011E Notice of refusal to register transfer ......................................................................................... 235
1011F Remedy for refusal to register transfer or transmission ............................................................ 235
1011G Certification of transfers ......................................................................................................... 236
1011H Duties of company with respect to issue of certificates ............................................................ 237

Subdivision B—Special provisions for shares

1012A Transmission of shares on death (replaceable rule—see section 135) ............................................. 239
1012B Transmission of shares on bankruptcy (replaceable rule—see section 135) ................................. 240
1012C Rights of trustee of estate of bankrupt shareholder ..................................................................... 240
1012D Transmission of shares on mental incapacity (replaceable rule—see section 135) ......................... 242
1012E Trustee etc. may be registered as owner of shares ...................................................................... 243
1012F Registration of transfers (replaceable rule—see section 135) ..................................................... 245
1012G Additional general discretion for directors of proprietary companies to refuse to register transfers (replaceable rule—see section 135) ................................................................................................. 245
1012H Notices relating to non-beneficial and beneficial ownership of shares ........................................ 245

Division 3—Transfer of certain securities effected otherwise than through a prescribed CS facility

1013A Application of Division to certain bodies as if they were companies ............................................ 248
1013B Regulations may govern transfer of certain securities ............................................................... 249
1013C ASIC may extend regulations to securities not otherwise covered ............................................ 251

Division 4—Transfer of financial products effected through prescribed CS facility

1014A Prescribed CS facility .................................................................................................................. 252
1014B Operating rules of prescribed CS facility may deal with transfer of title ........................................ 252
1014C Valid and effective transfer if operating rules complied with ..................................................... 252

Financial Services Reform Exposure Draft
Division 5—Operation of Divisions 3 and 4 and regulations made for the purposes of those Divisions

1015A Operation of Divisions 3 and 4 and regulations made for the purposes of those Divisions .......................................................... 256

1015B Regulations may provide for offences .......................................... 257

1015C Regulations may deal with civil liability for breaches of operating rules .......................................................... 258

Division 6—Exemptions and modifications

1016A ASIC’s power to exempt and modify............................................. 258

Part 7.10—Miscellaneous

Division 1—Qualified privilege

1040A Qualified privilege for information given to ASIC ....................... 259

1040B Qualified privilege for the conduct of market licensees and CS facility licensees .......................................................... 260

1040C Qualified privilege for information given to market licensees and CS facility licensees etc .......................................................... 261

1040D Extension of protections given by this Division ........................... 261

Division 2—Other matters

1041A Approved codes of conduct .......................................................... 262

1041B Contravention of Chapter does not generally affect validity of transactions etc .......................................................... 262

1041C Gaming and wagering laws do not affect validity of transactions relating to financial products .......................................................... 263

1041D Delegation .......................................................... 263
Chapter 7—Financial services and markets

Part 7.1—Preliminary

Division 1—Object of Chapter and outline of Chapter

760A  Object of Chapter

The main object of this Chapter is to promote:

(a) confident and informed decision making by consumers of financial products and services while facilitating efficiency, flexibility and innovation in the provision of those products and services; and

(b) fairness, honesty and professionalism by those who provide financial services; and

(c) fair, orderly and transparent markets for financial products; and

(d) the reduction of systemic risk and the provision of fair and effective services by clearing and settlement facilities.

760B  Outline of Chapter

An outline of this Chapter is set out in the table below.

<table>
<thead>
<tr>
<th>Part-by-Part outline of Chapter 7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part... covers...</td>
</tr>
<tr>
<td>1 7.1 definitions of key concepts and of commonly occurring expressions</td>
</tr>
<tr>
<td>2 7.2 licensing of financial products markets other matters relating to financial products markets</td>
</tr>
<tr>
<td>3 7.3 licensing of clearing and settlement facilities other matters relating to clearing and settlement facilities</td>
</tr>
<tr>
<td>4 7.4 compensation regimes for financial products markets and clearing and settlement facilities</td>
</tr>
<tr>
<td>5 7.5 licensing of providers of financial services other related matters (eg restrictions on use of terminology; agreements with unlicensed persons relating to provision of financial services)</td>
</tr>
</tbody>
</table>

Financial Services Reform Exposure Draft
**Part-by-Part outline of Chapter 7**

<table>
<thead>
<tr>
<th>Part...</th>
<th>covers...</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>7.6</td>
</tr>
<tr>
<td>7</td>
<td>7.7</td>
</tr>
<tr>
<td>8</td>
<td>7.8</td>
</tr>
<tr>
<td>9</td>
<td>7.9</td>
</tr>
<tr>
<td>10</td>
<td>7.10</td>
</tr>
</tbody>
</table>

**Division 2—Definitions**

**761A Definitions**

In this Chapter:

*able to be traded on a market* includes (but is not limited to) admitted to quotation on the market.

*acquire*, in relation to a financial product, includes enter into the legal relationship that constitutes the financial product.

*arrangement* means, subject to section 761B, a contract, agreement, understanding, scheme or other arrangement (as existing from time to time):

(a) whether formal or informal, or partly formal and partly informal; and
(b) whether written or oral, or partly written and partly oral; and
(c) whether or not enforceable, or intended to be enforceable, by legal proceedings and whether or not based on legal or equitable rights.

*Australian CS facility licence* means a licence under Part 7.3 that authorises a person to operate a clearing and settlement facility.
Australian financial services licence means a licence under Part 7.5 that authorises a person who carries on a financial services business to provide financial services.

Australian market licence means a licence under Part 7.2 that authorises a person to operate a financial products market.

authorised representative of a financial services licensee means a person authorised by the licensee, in accordance with section 887A, to provide a financial service or financial services on behalf of the licensee.

binder means an authorisation given to a person by a financial services licensee who is an insurer to do either or both of the following:

(a) enter into contracts that are risk insurance products on behalf of the insurer as insurer; or

(b) deal with and settle, on behalf of the insurer, claims relating to risk insurance products against the insurer as insurer;

but does not include an authorisation of a kind referred to in paragraph (a) that is limited to effecting contracts of insurance by way of interim cover unless there is also in existence an authority given by the insurer to the person to enter into, on behalf of the insurer and otherwise than by way of interim cover, contracts of insurance.

body regulated by APRA has the meaning given by subsection 3(2) of the Australian Prudential Regulation Authority Act 1998.

certificate cancellation provisions, in relation to a prescribed CS facility, means the provisions of the facility’s operating rules that deal with:

(a) the cancellation of documents of title to financial products transferred through the facility; and

(b) matters incidental to the cancellation of those documents.

clearing and settlement facility has the meaning given by Division 6.

CS facility licensee means a person who holds an Australian CS facility licence.

custodial or depository service that a person provides has the meaning given by section 766E.
dealing in a financial product has the meaning given by section 766C.

derivative has the meaning given by section 761D.

dispose, in relation to a financial product, includes terminate or close out the legal relationship that constitutes the financial product.

financial product has the meaning given by Division 3.

financial product advice has the meaning given by section 766B.

financial products market has the meaning given by Division 5.

financial service has the meaning given by Division 4.

financial services business means a business of providing financial services.

Note: The meaning of carry on a financial services business is affected by section 761C.

financial services licensee means a person who holds an Australian financial services licence.

funeral benefit means a benefit that consists of:

(a) the provision of funeral, burial or cremation services, with or without the supply of goods connected with such services; or

(b) the payment of money, on the death of a person, for the purpose of meeting the whole or a part of the expenses of and incidental to the funeral, burial or cremation of the person.

general advice has the meaning given by section 766B.

general insurance product means a financial product described in paragraph 764A(1)(d).

investment life insurance product means a financial product described in paragraph 764A(1)(f).

issue, in relation to a financial product, has a meaning affected by section 761E.

issuer, in relation to a financial product, has a meaning affected by section 761E.
licensed CS facility means a clearing and settlement facility the operation of which is authorised by an Australian CS facility licence.

licensed market means a financial products market the operation of which is authorised by an Australian market licence.

life risk insurance product means a financial product described in paragraph 764A(1)(e).

listing rules of a financial products market, or proposed financial products market, means any rules (however described) that are made by the operator of the market, or contained in the operator’s constitution, and that deal with:

(a) admitting entities to, or removing entities from, the market’s official list, whether for the purpose of enabling financial products of those entities to be traded on the market or for other purposes; or

(b) the activities or conduct of entities that are included on that list.

makes a market for a financial product has the meaning given by section 766D.

managed investment product means a financial product described in paragraph 764A(1)(b).

market licensee means a person who holds an Australian market licence.

operating rules of a clearing and settlement facility, or proposed clearing and settlement facility, means any rules (however described) made by the operator of the facility, or contained in the operator’s constitution, that deal with:

(a) the activities or conduct of the facility; or

(b) the activities or conduct of persons in relation to the facility; but does not include:

(c) any such rules that deal with matters in respect of which licensed CS facilities must have written procedures under subsection 822A(2); and

(d) compensation rules within the meaning of Part 7.4.

operating rules of a financial products market, or proposed financial products market, means any rules (however described),
including the market’s listing rules (if any), that are made by the
operator of the market, or contained in the operator’s constitution,
and that deal with:

(a) the activities or conduct of the market; or
(b) the activities or conduct of persons in relation to the market;
but does not include:
(c) any such rules that deal with matters in respect of which
licensed markets must have written procedures under
subsection 793A(2); and
(d) compensation rules within the meaning of Part 7.4.

participant means:
(a) in relation to a clearing and settlement facility—a person
who is allowed to directly participate in the facility under the
facility’s operating rules; and
(b) in relation to a financial products market—a person who is
allowed to directly participate in the market under the
market’s operating rules.

person has a meaning affected by section 761F (which deals with
partnerships).

personal advice has the meaning given by section 766B.

prescribed CS facility has the meaning given by section 1014A.

retail client has the meaning given by section 761G.

risk insurance product means a financial product described in
paragraph 764A(1)(d) or (e).

RSA product means a financial product described in paragraph
764A(1)(h).

security means:
(a) a share in a body; or
(b) a debenture of a body; or
(c) a legal or equitable right or interest in a security covered by
paragraph (a) or (b); or
(d) an option to acquire, by way of issue, a security covered by
paragraph (a), (b) or (c);
but does not include an excluded security.
superannuation product means a financial product described in paragraph 764A(1)(g).

title document for a financial product means a certificate or other document evidencing ownership of the financial product.

transfer of a financial product means:
(а) a transfer of legal title to, or an equitable interest in, the financial product; or
(б) a change in the ownership of the financial product; or
(в) the transmission of ownership of the financial product; or
(г) if the financial product is a right—the renunciation and transfer of the right.

transfer document for the transfer of a financial product means a document, or electronic message or other electronic communication, by which the financial product is transferred.

wholesale client has the meaning given by section 761G.

761B Meaning of arrangement

For the purposes of this Chapter, 2 or more arrangements are taken to constitute a single arrangement if it is reasonable to assume that the parties to the arrangements regard the arrangements as constituting a single scheme.

761C Meaning of carry on a financial services business

In working out whether someone carries on a financial services business, Division 3 of Part 1.2 needs to be taken into account. However paragraph 21(3)(e) does not apply for the purposes of this Chapter.

761D Meaning of derivative

(1) For the purposes of this Chapter, subject to subsections (2), (3) and (4), a derivative is an arrangement in relation to which the following conditions are satisfied:
(a) under the arrangement a party to the arrangement must, or may be required to, provide at some future time consideration of a particular kind to someone; and
(b) the amount or value of that consideration is ultimately determined, derived from or varies by reference to (wholly or
in part) the value or amount of something else (of any nature whatsoever and whether or not deliverable), including, for example, one or more of the following:

(i) an asset
(ii) a rate (including an interest rate or exchange rate)
(iii) an index
(iv) a commodity.

(2) Without limiting subsection (1), anything declared by the regulations to be a derivative for the purposes of this section is a derivative for the purposes of this Chapter. A thing so declared is a derivative despite anything in subsections (3) and (4).

(3) Subject to subsection (2), the following are not derivatives for the purposes of this Chapter even if they are covered by the definition in subsection (1):

(a) an arrangement that satisfies subparagraphs (i) and (ii), but only to the extent it satisfies those subparagraphs:
   (i) one party has an obligation to buy, and the other has an obligation to sell, tangible property (other than Australian or foreign currency) at a price and on a date in the future; and
   (ii) the arrangement does not permit the seller’s obligations to be settled by cash (including by a cash adjustment between the parties) rather than by delivery of the property
(b) a loan, or some other kind of credit transaction specified in the regulations for the purposes of this paragraph
(c) a contract for the future provision of services
(d) anything that is covered by a paragraph of subsection 764A(1), other than paragraph (c) of that subsection
(e) anything declared by the regulations not to be a derivative for the purposes of this section.

(4) Subject to subsection (2), an arrangement under which one party has an obligation to buy, and the other has an obligation to sell, property is not a derivative for the purposes of this Chapter merely because the arrangement provides for the consideration to be varied by reference to an inflation index such as the Consumer Price Index.
761E Meaning of issue and issuer in relation to financial products

The regulations may make provision determining either or both of the following for the purposes of this Chapter:

(a) the meaning of issue in relation to a class of financial products
(b) the meaning of issuer in relation to a class of financial products.

761F Meaning of person—generally includes a partnership

(1) This Chapter applies to a partnership as if the partnership were a person, but it applies with the following changes:

(a) obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners
(b) any offence against a provision of this Chapter, or a provision of this Law that relates to a requirement in a provision of this Chapter, that would otherwise be committed by the partnership is taken to have been committed by each partner who:
   (i) aided, abetted, counselled or procured the relevant act or omission; or
   (ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

(2) For the purposes of this Chapter, a change in the composition of a partnership does not affect the continuity of the partnership.

(3) Subsections (1) and (2) have effect subject to:

(a) an express or implied contrary intention in a provision or provisions of this Chapter; and
(b) the regulations, which may exclude or modify the effect of those subsections in relation to specified provisions.
Providing a financial product or financial service to a person as a retail client

(1) For the purposes of this Chapter, a financial product or a financial service is provided to a person as a retail client unless subsection (5) or (6) provides otherwise.

Note: The references in this section to providing a financial product to a person are not to be taken to imply that the provision of a financial product is not also the provision of a financial service (see the meaning of “dealing” in section 766C).

Acquiring a financial product or financial service as a retail client

(2) For the purposes of this Chapter, a person to whom a financial product or financial service is provided as a retail client is taken to acquire the product or service as a retail client.

Disposing of a financial product as a retail client

(3) If a financial product is provided to a person as a retail client, any subsequent disposal of all or part of that product by the person is, for the purposes of this Chapter, a disposal by the person as a retail client.

Wholesale clients

(4) For the purposes of this Chapter, a financial product or a financial service is provided to, or acquired by, a person as a wholesale client if it is not provided to, or acquired by, the person as a retail client.

General insurance products

(5) For the purposes of this Chapter, if a financial product, or a financial service provided to a person, is or relates to a general insurance product, the product or service is provided to the person as a retail client if the general insurance product is:

(a) a product of one of the following kinds as defined in the regulations:

(i) a motor vehicle insurance product
(ii) a home building insurance product
(iii) a home contents insurance product
(iv) a sickness and accident insurance product
(v) a consumer credit insurance product
(vi) a travel insurance product
(vii) a personal and domestic property insurance product; or
(b) a kind of general insurance product prescribed by the regulations for the purposes of this paragraph.

The provision to a person of a financial product, or a financial service, that is or relates to some other kind of general insurance product does not, in any circumstances, constitute the provision of a financial product or financial service to the person as a retail client.

**Other kinds of financial product**

(6) For the purposes of this Chapter, if a financial product, or a financial service provided to a person, is not, or does not relate to, a general insurance product, the product or service is provided to the person as a retail client unless:

(a) either:
   (i) in the case of the provision of a financial product—the price for the provision of the financial product; or
   (ii) in the case of the provision of a financial service—the value of the financial product to which the service relates;

   equals or exceeds the amount specified in the regulations as being applicable in the circumstances; or

(b) the financial product, or the financial service, is provided for use in connection with a business employing at least:
   (i) if the business is or includes the manufacture of goods—100 people; or
   (ii) otherwise—20 people; or

(c) the financial product, or the financial service, is not provided for use in connection with a business, and the person who acquires the product or service gives the provider of the product or service, before the provision of the product or service, a copy of a certificate given within the preceding 6 months by a qualified accountant that states that the person:
   (i) has net assets of at least $2.5 million; or
   (ii) has a gross income for each of the last 2 financial years of at least $250,000 a year.

Note: Section 9 defines *qualified accountant*.
Regulations about calculation of price or value

(7) The regulations may deal with how a price or value referred to in subparagraph (6)(a)(i) or (ii) is to be calculated, either generally or in relation to a specified class of financial products.

Products other than general insurance products—presumption of retail client unless contrary established

(8) If:

(a) it is alleged in a proceeding under this Chapter, or in any other proceeding in respect of a matter arising under this Chapter, that a particular financial product or financial service was provided to a person as a retail client; and

(b) the product or the service is not, or does not relate to, a general insurance product;

it is presumed that the product or service was provided to the person as a retail client unless the contrary is established.

Definition

(9) In this section:

provide, in relation to a financial product, includes issue, sell or otherwise transfer.

Division 3—What is a financial product?

Subdivision A—Preliminary

762A Overview of approach to defining what a financial product is

General definition

(1) Subdivision B sets out a general definition of financial product. Subject to subsections (2) and (3), a facility is a financial product if it falls within that definition.

Specific inclusions

(2) Subdivision C identifies, or provides for the identification of, classes of facilities that, subject to subsection (3), are financial products (whether or not they are within the general definition).
Overriding exclusions

(3) Subdivision D identifies, or provides for the identification of, classes of facilities that are not financial products. These facilities are not financial products:
   (a) even if they are within the general definition; and
   (b) even if they are within a class of facilities identified as mentioned in subsection (2).

762B Meaning of facility

In this Division:

facility includes:
   (a) intangible property; or
   (b) an arrangement or a term of an arrangement (including a term that is implied by law or that is required by law to be included); or
   (c) a combination of intangible property and an arrangement or term of an arrangement.

Subdivision B—The general definition

763A General definition of financial product

(1) For the purposes of this Chapter, a financial product is a facility through which, or through the acquisition of which, a person does one or more of the following:
   (a) makes a financial investment (see section 763B);
   (b) manages financial risk (see section 763C);
   (c) makes non-cash payments (see section 763D).

(2) For the purposes of this Chapter, a particular facility that is of a kind through which people commonly make financial investments, manage financial risks or make non-cash payments is a financial product even if that facility is acquired by a particular person for some other purpose.

(3) For the purposes of this Chapter, if:
   (a) a term of an arrangement (including a term that is implied by law or that is required by law to be included) might be regarded as a facility by which a person manages financial risk; and
(b) the person’s dominant purpose in entering into the
   arrangement is something other than managing a financial
   risk; and

c (c) the arrangement (disregarding that term) is not a facility of a
   kind through which people commonly manage financial risk; and

(d) the person has not paid, and is not required to pay, an
   identified or identifiable amount of consideration in respect
   of that term;

that term is not a financial product, and its presence in the
arrangement does not make the arrangement a financial product.

Note: For example, a warranty or guarantee that is a term of a contract for
the sale of goods will not generally be a financial product.

763B When a person makes a financial investment

(1) For the purposes of this Chapter, a person (the investor) makes a
   financial investment if:

(a) the investor gives money or money’s worth (the
    contribution) to another person and any of the following
    apply:

   (i) the other person uses the contribution to generate a
       financial return or other benefit for the investor

   (ii) the investor intends that the other person will use the
        contribution to generate a financial return or other
        benefit for the investor (even if no return or benefit is in
        fact generated)

   (iii) the other person intends that the contribution will be
         used to generate a financial return or other benefit for
         the investor; and

(b) the investor has no day to day control over the use of the
    contribution to generate the return or benefit.

Note 1: Examples of actions that constitute making a financial investment
under this subsection are:

(a) a person paying money to a company for the issue to the person
    of shares in the company (the company uses the money to
    generate dividends for the person and the person, as a
    shareholder, does not have control over the day to day affairs of
    the company); or

(b) a person contributing money to acquire interests in a registered
    managed investment scheme from the responsible entity of the
    scheme (the scheme uses the money to generate financial or other
    benefits for the person and the person, as a member of the
scheme, does not have day to day control over the operation of the scheme).

Note 2: Examples of actions that do not constitute making a financial investment under this subsection are:

(a) a person purchasing real property or bullion (while the property or bullion may generate a return for the person, it is not a return generated by the use of the purchase money by another person); or

(b) a person giving money to a financial services licensee who is to use it to purchase shares for the person (while the purchase of the shares will be a financial investment made by the person, the mere act of giving the money to the provider will not of itself constitute making a financial investment).

(2) For the purposes of this Chapter, a person also makes a financial investment if the person acquires a financial investment that was made as mentioned in subsection (1) by someone else, whether the acquisition is from the person who made the investment or a person to whom the investment was transferred.

763C When a person manages financial risk

For the purposes of this Chapter, a person manages financial risk if they:

(a) manage the financial consequences to them of particular circumstances happening; or

(b) avoid or limit the financial consequences of fluctuations in, or in the value of, receipts or costs (including prices and interest rates).

Note 1: Examples of actions that constitute managing a financial risk are:

(a) taking out insurance; or

(b) hedging a liability by acquiring a futures contract or entering into a currency swap.

Note 2: An example of an action that does not constitute managing a financial risk is employing a security firm (while that is a way of managing the risk that thefts will happen, it is not a way of managing the financial consequences if thefts do occur).

763D When a person makes non-cash payments

(1) For the purposes of this Chapter, a person makes non-cash payments if they make payments, or cause payments to be made, otherwise than by the physical delivery of Australian or foreign currency.

Note: Examples of actions that constitute making non-cash payments are:
(a) making payments by means of direct debit arrangements; or
(b) making payments by means of cheque or bill of exchange; or
(c) making payments by means of a purchased payment facility
   within the meaning of the Payment Systems (Regulation) Act
   1998, such as a smart card; or
(d) making payments by means of traveller’s cheque (whether
denominated in Australian or foreign currency).

(2) For the purposes of this Chapter, the following are not \textit{making}
\textit{non-cash payments}, even if they might otherwise be covered by
subsection (1):

(a) making payments by means of a credit facility within the
meaning of the regulations
(b) making payments by means of a facility in relation to which
one of the following applies:
   (i) there is only one person to whom payments can be made
      by means of the facility
   (ii) the facility is specified in the regulations as being a
      facility that is not to be covered by this section because
      of restrictions relating to the number of people to whom
      payments can be made by means of the facility, or
      relating to the number of persons who can use the
      facility to make payments
(c) making payments by means of:
   (i) a letter of credit from a financial institution; or
   (ii) a cheque drawn by a financial institution on itself; or
   (iii) a guarantee given by a financial institution
(d) a provider of a facility for the making of non-cash payments
   making payments in respect of obligations incurred by use of
   that facility by means of another facility in which that
   provider, and other such providers, are participants.

\textit{Note:} The incurring of obligations by the users of the first facility referred to
in paragraph (d) still constitutes making non-cash payments by those
persons even if, because of that paragraph, the payments made by the
provider of that facility in respect of those obligations do not
constitute making non-cash payments.
Subdivision C—Specific Inclusions

764A Specific classes of things that are financial products (subject to Subdivision D)

(1) Subject to Subdivision D, the following are financial products for the purposes of this Chapter:

(a) a security

(b) any of the following in relation to a registered scheme:

(i) an interest in the scheme

(ii) a legal or equitable right or interest in an interest covered by subparagraph (i)

(iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii);

but not including an excluded security

(c) a derivative

(d) a contract of insurance that is not a life policy, or a sinking fund policy, within the meaning of the Life Insurance Act 1995, but not including such a contract of insurance:

(i) to the extent that it provides for a benefit to be provided by an association of employees that is an organisation within the meaning of the Workplace Relations Act 1996 for a member of the organisation or a dependant of a member; or

(ii) to the extent that it provides for benefits, pensions or payments described in paragraph 11(3)(c) of the Life Insurance Act 1995; or

(iii) to the extent that it provides for the provision of a funeral benefit; or

(iv) issued by an employer to an employee of the employer

(e) a life policy, or a sinking fund policy, within the meaning of the Life Insurance Act 1995, that is a contract of insurance, but not including such a policy:

(i) to the extent that it provides for a benefit to be provided by an association of employees that is an organisation within the meaning of the Workplace Relations Act 1996 for a member of the organisation or a dependant of a member; or

(ii) to the extent that it provides for benefits, pensions or payments described in paragraph 11(3)(c) of the Life Insurance Act 1995; or
(iii) to the extent that it provides for the provision of a funeral benefit; or

(iv) issued by an employer to an employee of the employer

(f) a life policy, or a sinking fund policy, within the meaning of the Life Insurance Act 1995, that is not a contract of insurance, but not including such a policy:

(i) to the extent that it provides for a benefit to be provided by an association of employees that is an organisation within the meaning of the Workplace Relations Act 1996 for a member of the organisation or a dependant of a member; or

(ii) to the extent that it provides for benefits, pensions or payments described in paragraph 11(3)(c) of the Life Insurance Act 1995; or

(iii) to the extent that it provides for the provision of a funeral benefit; or

(iv) issued by an employer to an employee of the employer

(g) a superannuation interest within the meaning of the Superannuation Industry (Supervision) Act 1993

(h) an RSA (retirement savings account) within the meaning of the Retirement Savings Accounts Act 1997

(i) any deposit-taking facility made available by an ADI within the meaning of the Banking Act 1959 in the course of its banking business within the meaning of that Act, other than an RSA (RSAs are covered by paragraph (h))

(j) a debenture, stock or bond issued or proposed to be issued by a government

(k) something declared by the regulations to be a financial product for the purposes of this section.

Note: Even though something is expressly excluded from one of these paragraphs, it may still be a financial product (subject to Subdivision D) either because:

(a) it is covered by another of these paragraphs; or

(b) it is covered by the general definition in Subdivision B.

(2) For the purpose of paragraphs (1)(d), (e) and (f), contract of insurance includes:

(a) a contract that would ordinarily be regarded as a contract of insurance even if some of its provisions are not by way of insurance; and
Subdivision D—Specific exclusions

765A  Specific classes of things that are not financial products

(1) Despite anything in Subdivision B or Subdivision C, the following are not financial products for the purposes of this Chapter:

(a) an excluded security

(b) an undertaking by a body corporate to pay money to a related body corporate

(c) health insurance provided as part of a health insurance business (as defined in subsection 67(4) of the National Health Act 1953)

(d) insurance provided by the Commonwealth

(e) State insurance or Northern Territory insurance, including insurance entered into by:

(i) a State or the Northern Territory; and

(ii) some other insurer;

as joint insurers

(f) insurance entered into by the Export Finance and Insurance Corporation, other than a short-term insurance contract within the meaning of the Export Finance and Insurance Corporation Act 1991

(g) insurance entered into in the course of workers compensation insurance business carried on by a corporation that is:

(i) licensed under Division 3 of Part 7 of the Workers Compensation Act 1987 of New South Wales; and

(ii) required under that Act to establish and maintain statutory funds

(h) insurance to or in relation to which the Marine Insurance Act 1909 applies

(i) a facility that is a payment system that is an approved RTGS system for the purposes of the Payment Systems and Netting Act 1998

(j) a facility that is a designated payment system for the purposes of the Payment Systems (Regulation) Act 1998

(k) a facility that is a payment system operated as part of a licensed CS facility
(l) a foreign exchange contract that is not a derivative

(m) so much of an arrangement as is not a derivative because of paragraph 761D(3)(a)

(n) an arrangement that is not a derivative because of paragraph 761D(3)(c)

(o) an arrangement that is not a derivative because of subsection 761D(4)

(p) an interest in a superannuation fund of a kind prescribed by the regulations for the purposes of this paragraph

(q) an interest in something that is not a managed investment scheme because of paragraph (c), (e), (f), (k), (l) or (m) of the definition of managed investment scheme in section 9

(r) an interest in a managed investment scheme that does not have to be registered

(s) a deposit-taking facility that is used for State banking

(t) a benefit provided by an association of employees that is an organisation within the meaning of the Workplace Relations Act 1996 for a member of the organisation or a dependant of a member

(u) a benefit, pension or payment described in paragraph 11(3)(c) of the Life Insurance Act 1995

(v) a funeral benefit

(w) a facility, interest or other thing declared by the regulations not to be a financial product

(x) a facility, interest or other thing declared by ASIC under subsection (2) not to be a financial product.

(2) ASIC may declare that a specified facility, interest or other thing is not a financial product for the purposes of this Chapter. The declaration must be in writing and ASIC must publish notice of it in the Gazette.

Division 4—When does a person provide a financial service?

766A When does a person provide a financial service?

(1) For the purposes of this Chapter, subject to paragraph (2)(b), a person provides a financial service if they:

(a) provide financial product advice (see section 766B); or

(b) deal in a financial product (see section 766C); or
(c) make a market for a financial product (see section 766D); or
(d) operate a registered scheme; or
(e) provide a custodial or depository service (see section 766E).

(2) The regulations may set out, for the purposes of this Chapter:
(a) the circumstances in which persons facilitating the provision
   of a financial service (for example, by publishing
   information) are taken also to provide that service; or
(b) the circumstances in which persons are taken to provide, or
   are taken not to provide, a financial service.

(3) For the purposes of this section, a person is not operating a
registered scheme merely because:
(a) they are acting as an agent or employee of another person; or
(b) they are taking steps to wind up the scheme.

766B Meaning of financial product advice

(1) For the purposes of this Chapter, financial product advice means a
recommendation, a statement of opinion or an interpretation of
information, or a report of any of those things, that:
(a) is intended to influence a person or persons in making a
decision in relation to a particular financial product or class
of financial products, or an interest in a particular financial
product or class of financial products; or
(b) could reasonably be regarded as being intended to have such
an influence;
but does not include anything in an exempt document.

(2) There are two types of financial product advice: personal advice
and general advice.

(3) For the purposes of this Chapter, personal advice is financial
product advice that is given or directed to a person (including by
electronic means) in circumstances where:
(a) the provider of the advice has considered the objectives,
financial situation and needs of the person; or
(b) the person might reasonably expect the provider to have
considered those matters.

(4) For the purposes of this Chapter, general advice is financial
product advice that is not personal advice.
(5) In this section:

*exempt document* means a document prepared in accordance with requirements of this Chapter, other than a document prescribed by the regulations for the purposes of this definition.

### 766C Meaning of dealing

(1) For the purposes of this Chapter, the following conduct constitutes *dealing* in a financial product:

(a) applying for or acquiring a financial product

(b) issuing a financial product

(c) in relation to securities or managed investment interests—underwriting the securities or interests

(d) varying a financial product

(e) disposing of a financial product

(f) acting as an authorised representative, or acting under a binder, in dealing with, or settling, an insurance claim.

(2) For the purposes of this Chapter, inducing, or attempting to induce, a person to engage in conduct referred to in subsection (1) also constitutes *dealing* in a financial product, unless the actions concerned amount to providing financial product advice.

(3) For the purposes of this Chapter, a person is taken not to *deal* in a financial product if the person deals in the product on their own behalf, unless:

(a) the person is an issuer of financial products; and

(b) the dealing is in relation to one or more of those products.

### 766D Meaning of makes a market for a financial product

For the purposes of this Chapter, a person *makes a market* for a financial product if:

(a) either through a facility, at a place or otherwise, the person regularly states the prices at which they propose to acquire or dispose of financial products on their own behalf; and

(b) other persons have a reasonable expectation that they will be able to regularly effect transactions at the stated prices; and

(c) the actions of the person do not, or would not if they happened through a facility or at a place, constitute operating a financial products market because of the effect of subsection 767A(3).
766E  Meaning of provide a custodial or depository service

(1) For the purposes of this Chapter, a person provides a custodial or depository service if:

(a) under an arrangement with a person (the client), they have possession or control of assets of the client in connection with the person providing a financial product to the client; and

(b) they carry out one or more of the following functions:

(i) settling a transaction relating to the assets

(ii) collecting or distributing dividends or other pecuniary benefits derived from the assets

(iii) paying tax or other costs associated with the assets

(iv) exercising rights (for example, voting rights) attached to or derived from the assets

(v) any other function necessary or incidental to the safeguard or administration of the assets.

(2) For the purposes of this Chapter, a person also provides a custodial or depository service if they agree, or undertake, to provide a custodial or depository service as mentioned in subsection (1).

(3) However, the following conduct does not constitute providing a custodial or depository service for the purposes of this Chapter:

(a) the operation of a clearing and settlement facility

(b) the provision of services to a related body corporate

(c) any other conduct prescribed by the regulations.

Division 5—What is a financial products market?

767A  What is a financial products market?

(1) For the purposes of this Chapter, a financial products market is a facility through which, or a place at which:

(a) offers to acquire or dispose of financial products are regularly made or accepted; or

(b) offers or invitations are regularly made to acquire or dispose of financial products that are intended to result or may reasonably be expected to result, directly or indirectly, in:

(i) the making of offers to acquire or dispose of financial products; or

(ii) the acceptance of such offers; or

__________________________________________

Financial Services Reform Exposure Draft 39
(c) information is regularly provided that:
   (i) identifies people who propose to acquire or dispose of
       financial products; and
   (ii) states the prices at which those people propose to
       acquire or dispose of those products.

(2) In the case of paragraph (1)(c), persons using the facility or place
    must have a reasonable expectation that they will regularly be able
    to effect transactions at the stated prices.

(3) However, a facility or place is not a financial products market for
    the purposes of this Chapter if:
    (a) only one person, in using the facility or place, regularly makes
        offers, or proposes, to acquire or dispose of financial products;
        or
    (b) only one person, in using the facility or place, regularly
        accepts offers to acquire or dispose of financial products.

(4) The following conduct does not constitute operating a financial
    products market for the purposes of this Chapter:
    (a) the making or acceptance of offers or invitations to acquire or
        dispose of financial products, other than through a facility, in
        circumstances that involve direct negotiation between the
        parties who each accept the counterparty risk
    (b) conducting treasury operations between related bodies
        corporate
    (c) conducting an auction of forfeited shares.

Division 6—What is a clearing and settlement facility?

768A What is a clearing and settlement facility?

(1) For the purposes of this Chapter, a clearing and settlement facility
    is a facility that:
    (a) is operated as a business; and
    (b) provides a mechanism for all the parties to transactions
        relating to financial products to meet obligations to each
        other that:
        (i) arise from entering into the transactions; and
        (ii) are of a kind prescribed by the regulations for the
            purposes of this section.
(2) However, the following conduct does not constitute operating a clearing and settlement facility for the purposes of this Chapter:

   (a) an ADI acting in the ordinary course of its banking business

   (b) a person who provides financial services to another person dealing with the other person’s accounts in the ordinary course of the first person’s business activities

   (c) the actions of a participant in a clearing and settlement facility who has taken on the delivery or payment obligations, in relation to a particular financial product, of another person who is a party to a transaction relating to a financial product

   (d) any other conduct prescribed by the regulations.

Part 7.2—Licensing of financial products markets

Division 1—Preliminary

790A Definitions

In this Part:

clearing and settlement facility arrangements, for transactions effected through a financial products market, means arrangements with the operator of a clearing and settlement facility for the operator to provide its services for those transactions. It does not matter whether the facility is operated by the market licensee or someone else.

Division 2—Requirement to be licensed

791A Need for a licence

(1) A person must not operate, or hold out that the person operates, a financial products market in this jurisdiction unless:

   (a) the person has an Australian market licence that authorises the person to operate the market in this jurisdiction; or

   (b) the market is exempt from the operation of this Part.

(2) A person must not assist in the operation in this jurisdiction of a financial products market unless the market is:

   (a) a licensed market; or

   (b) exempt from the operation of this Part.
(3) A person must not hold out that:

(a) the person has an Australian market licence; or

(b) a financial products market is exempt from the operation of this Part;

unless the person has such a licence or the market is so exempt.

Note: A market licensee may also provide financial services incidental to the operation of the market (see Part 7.5).

791B Exemptions

(1) The Minister may, by publishing a notice in the Gazette, exempt from the operation of this Part a particular financial products market or type of financial products market.

(2) The Minister may, at any time, by publishing a notice in the Gazette:

(a) impose conditions, or additional conditions, on an exemption; or

(b) vary or revoke the conditions on an exemption; or

(c) 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 products market known to the Minister to be covered by the exemption; and

(b) if the exemption covers a type of financial products market:

(i) doing what is required by paragraph (a); and

(ii) causing a notice to be published in a newspaper or newspapers circulating generally in each jurisdiction allowing a reasonable time within which the operator of each financial products market covered by the exemption may make submissions on the proposed action.

This subsection does not apply to the Minister imposing conditions when an exemption is made.
791C  When a market is taken to be operated in this jurisdiction

(1) For the purposes of this Chapter, a financial products market is taken to be operated in this jurisdiction if it is operated by a body corporate that is incorporated in this jurisdiction.

(2) For the purposes of this Chapter, a financial products market is taken to be operated in this jurisdiction if:
   (a) the operator is not a body corporate incorporated in this jurisdiction or any of the other jurisdictions; and
   (b) the operator is not registered under Division 2 of Part 5B.2 or a corresponding law; and
   (c) the market may be accessed electronically in this jurisdiction; and
   (d) the operator engages in conduct that is:
       (i) intended to induce people in this jurisdiction to use the market; or
       (ii) likely to have that effect;
       whether or not the conduct is intended, or likely, to have that effect in other places as well.

(3) However, subsection (2) does not apply if, when people in this jurisdiction use the market, they can access information that contains a true statement to the effect that the market is subject to the law of a specified foreign country or other jurisdiction.

(4) Nothing in this section limits the circumstances in which a financial products market is operated in this jurisdiction for the purposes of this Chapter.

Division 3—Regulation of market licensees

Subdivision A—Licensee’s obligations

792A  General obligations

A market licensee must:
   (a) to the extent that it is reasonably practicable to do so, do all things necessary to ensure the market operates in a fair, orderly and transparent way; and
   (b) comply with the conditions on the licence; and
   (c) have adequate arrangements (whether they involve a self-regulatory structure or the appointment of an...
independent person or related entity) for supervising the
market, including arrangements for:
(i) handling conflicts between the interests of the licensee
and the interests of particular participants in the market
or listed corporations; and
(ii) monitoring the conduct of participants in relation to the
market; and
(iii) enforcing compliance with the market’s operating rules;
and
(d) have sufficient resources (including financial, technological
and human resources) to properly operate the market and
carry out supervisory arrangements; and
(e) have adequate clearing and settlement facility arrangements
for transactions effected through the market, if the Minister
considers that the licensee should have such arrangements;
and
(f) if section 851A requires there to be compensation
arrangements in relation to the market that are approved in
accordance with Division 3 of Part 7.4—ensure that there are
such approved compensation arrangements in relation to the
market; and
(g) if the licensee is authorised to operate a financial products
market in the foreign country in which its head office is
located—be registered under Division 2 of Part 5B.2 or a
corresponding law.

792B  Obligation to notify ASIC of certain matters

(1) A market licensee must immediately give written notice to ASIC if
it becomes aware that:
(a) it may no longer be able to meet, or has breached, an
obligation under section 792A; or
(b) it has breached a condition of the licence.

If ASIC considers it appropriate to do so, ASIC may give the
Minister advice about the matter.

(2) A market licensee must give written notice to ASIC, as soon as
practicable, as required by the following paragraphs:
(a) if the licensee provides a new class of financial service
incidental to the operation of the market, the licensee must
give notice that includes details of the new class

Financial Services Reform Exposure Draft
44
(b) if the licensee takes any kind of disciplinary action against a participant in the market, the licensee must give notice that includes:
   (i) the participant’s name; and
   (ii) the reason for and nature of the action taken
(c) if the licensee believes a person has committed, is committing, or is about to commit a serious contravention of the market’s operating rules or this Law, the licensee must give notice that includes:
   (i) the person’s name; and
   (ii) details of the contravention or impending contravention; and
   (iii) the licensee’s reasons for that belief.

(3) If a market licensee becomes aware of:
   (a) a matter that the licensee considers has adversely affected, is adversely affecting, or may adversely affect the ability of a participant in the market, who is a financial services licensee, to meet the participant’s obligations as such a licensee; or
   (b) a matter, concerning a participant in the market who is a financial services licensee, that is prescribed by the regulations;
the licensee must give a written report to ASIC on the matter and send a copy of it to the participant.

792C Giving ASIC information about a listed disclosing entity

(1) If a market licensee makes information about a listed disclosing entity available to participants in the market, the licensee must give ASIC the same information as soon as practicable.

(2) However, the licensee is not required to give ASIC any information of a kind that is excluded by the regulations.

(3) ASIC may require the information to be given in a particular form.

792D Obligation to assist ASIC

A market licensee must give such assistance to ASIC, or a person authorised by ASIC, as ASIC reasonably requires to perform its functions.
792E  Obligation to give ASIC access to market facilities

A market licensee must give a person authorised by ASIC reasonable access to the market’s facilities for any of the purposes of this Chapter.

792F  Annual report

(1) A market licensee must, within 3 months after the end of its financial year, give ASIC an annual report on the extent to which the licensee complied with its obligations under this Part.

(2) The annual report must be accompanied by:
   (a) any other information and statements prescribed by the regulations; and
   (b) any audit report that the Minister requires under subsection (3).

(3) The Minister may require a market licensee to obtain an audit report on the annual report and on any information or statements accompanying it. The Minister must nominate to prepare the audit report:
   (a) ASIC; or
   (b) a specified person or body that is suitably qualified.

(4) ASIC must give the annual report and accompanying material to the Minister.

792G  Advice to participants if no clearing and settlement facility arrangements

(1) A market licensee that does not have clearing and settlement facility arrangements for transactions effected through the market must advise a person, before the person becomes a participant in the market, that:
   (a) the licensee does not have those arrangements; and
   (b) it is the responsibility of the parties to those transactions to make their own arrangements for clearing and settlement.

(2) Within a reasonable time before a market licensee ceases to have clearing and settlement facility arrangements for transactions effected through the market, the licensee must advise participants in the market that:
   (a) the licensee will no longer have those arrangements; and
(b) it will be the responsibility of the parties to those transactions to make their own arrangements for clearing and settlement.

792H Adequate protection for participants acquiring or disposing of financial products as or for retail clients

(1) If any of the participants in a licensed market acquire or dispose of financial products through the market as retail clients, the licensee must have adequate arrangements for the protection of those participants.

(2) If any of the participants in a licensed market, in effecting transactions through the market, provide financial services to persons as retail clients, the licensee must have adequate arrangements for the protection of those clients.

Note: Subsection (2) has effect in addition to the requirements of Part 7.4 (relating to compensation regimes).

Subdivision B—The market’s operating rules and procedures

793A Content of the operating rules and procedures

(1) The operating rules of a licensed market must deal with the matters prescribed by the regulations.

(2) The regulations may also prescribe matters in respect of which a licensed market must have written procedures.

(3) However, subsections (1) and (2) do not apply if the licensee is also authorised to operate the market in the foreign country in which its head office is located and the licence was granted under subsection 795B(2). Instead:

(a) the rules (however described) to which the operation of the market in that country is subject are taken to be the licensed market’s operating rules; and

(b) ASIC may determine, by giving written notice to the licensee, matters in respect of which the licensed market must have written procedures.

793B Legal effect of operating rules

The operating rules (other than listing rules) of a licensed market have effect as a contract under seal:

(a) between the licensee and each participant in the market; and
between a participant and each other participant; under which each of those persons agrees to observe the operating rules to the extent that they apply to the person and to engage in conduct that the person is required by the operating rules to engage in.

793C Enforcement of operating rules

(1) If a person who is under an obligation to comply with or enforce any of a licensed market’s operating rules fails to meet that obligation, an application to the Court may be made by:
   (a) ASIC; or
   (b) the licensee; or
   (c) a person aggrieved by the failure.

(2) After giving an opportunity to be heard to the applicant and the person against whom the order is sought, the Court may make an order giving directions to:
   (a) the person against whom the order is sought; or
   (b) if that person is a body corporate—the directors of the body corporate;

   about compliance with, or enforcement of, the operating rules.

(3) For the purposes of this section, a body corporate that is, with its agreement, consent or acquiescence, included in the official list of a licensed market, or an associate of such a body corporate, is taken to be under an obligation to comply with the operating rules of that market to the extent to which those rules purport to apply to the body corporate or associate.

(4) For the purposes of this section, if a disclosing entity that is an undertaking to which interests in a registered scheme relate is, with the responsible entity’s agreement, consent or acquiescence, included in the official list of a licensed market, the responsible entity, or an associate of the responsible entity, is taken to be under an obligation to comply with the operating rules of that market to the extent to which those rules purport to apply to the responsible entity or associate.

(5) For the purposes of this section, if a body corporate fails to comply with or enforce provisions of the operating rules of a licensed market, a person who holds financial products of the body
corporate that are able to be traded on the market is taken to be a person aggrieved by the failure.

(6) There may be other circumstances in which a person may be aggrieved by a failure for the purposes of this section.

793D Changing the operating rules

(1) As soon as practicable after a change is made to the operating rules of a licensed market, the licensee must lodge with ASIC written notice of the change.

(2) The notice must:
   (a) set out the text of the change; and
   (b) specify the date on which the change was made; and
   (c) contain an explanation of the purpose of the change.

(3) If no notice is lodged with ASIC within 21 days after the change is made:
   (a) the change ceases to have effect; or
   (b) in the case of a licence granted under subsection 795B(2) (overseas markets)—the change is taken to have ceased to have effect for the purposes of this Part.

793E Disallowance of changes to operating rules

(1) This section does not apply in respect of an Australian market licence granted under subsection 795B(2).

(2) As soon as practicable after receiving a notice under section 793D from a market licensee, ASIC must send a copy to the Minister.

(3) Within 28 days after receiving the copy of the notice, the Minister may disallow all or a specified part of the change to the operating rules.

(4) In deciding whether to do so, the Minister must have regard to the consistency of the change with the licensee’s obligations under this Part (including the obligation to ensure a fair, orderly and transparent market).

   Note: The Minister must also have regard to the matters in section 798A.

(5) As soon as practicable after all or a part of a change is disallowed, ASIC must give notice of the disallowance to the licensee. The
change ceases to have effect, to the extent of the disallowance, when the licensee receives the notice.

Subdivision C—Powers of the Minister and ASIC

794A Minister’s power to give directions

(1) If the Minister considers that a market licensee is not complying with its obligations under this Part, the Minister may give to the licensee a written direction to do specified things that the Minister believes will promote compliance by the licensee with those obligations.

(2) The licensee must comply with the direction.

(3) If the licensee fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the licensee comply with the direction.

(4) The Minister may vary or revoke a direction at any time by giving written notice to the licensee.

794B Minister’s power to require special report

(1) The Minister may require a market licensee to give ASIC a special report on specified matters. ASIC must give the report to the Minister.

(2) The Minister may also require the licensee to give ASIC an audit report on the special report. The Minister must nominate to prepare the audit report:

   (a) ASIC; or

   (b) a specified person or body that is suitably qualified.

(3) The licensee must give the special report, and audit report (if any), to ASIC within the time required by the Minister.

794C Minister’s power to require audit of supervision arrangements

The Minister may require ASIC, or a specified person who is suitably qualified, to audit the effectiveness of supervision arrangements for a licensed market.
794D ASIC’s power to give directions

(1) If ASIC is of the opinion that it is necessary, or in the public interest, to protect people dealing in a financial product or class of financial products by:
(a) giving a direction to a market licensee to suspend dealings in the financial product or class of financial products; or
(b) giving some other direction in relation to those dealings;
ASIC may give written advice to the licensee of that opinion and the reasons for it.

(2) If, after receiving ASIC’s advice and reasons, the licensee does not take:
(a) in the case of a proposed direction to suspend dealings in the financial products—action to prevent such dealings; or
(b) in any other case—such other action as in ASIC’s view is adequate to address the situation raised in the advice;
and ASIC still considers that it is appropriate to give the direction to the licensee, ASIC may give the licensee the written direction with a statement setting out its reasons for making the direction.

(3) The direction has effect for the period specified in it (which may be up to 21 days). During that period, the licensee must comply with the direction and must not allow any dealings to take place contrary to it.

(4) As soon as practicable after making the direction, ASIC must:
(a) give a copy of the direction to the operator of each clearing and settlement facility with which the market licensee has clearing and settlement facility arrangements for transactions effected through the market; and
(b) give a written report to the Minister setting out ASIC’s reasons for giving the direction; and
(c) give a copy of the report to the licensee.

(5) If, at any time after the licensee receives ASIC’s advice under subsection (1), the licensee requests in writing that ASIC refer the matter to the Minister, ASIC must do so immediately. In that event, the Minister may, if he or she considers it appropriate, require ASIC not to make, or to revoke, the direction. If ASIC is required to revoke the direction, it must do so immediately.
(6) ASIC may vary or revoke a direction by giving written notice to
the licensee.

794E  Additional directions to clearing and settlement facilities

(1) If ASIC gives a direction under section 794D, it may also give a
written direction to the operator of each clearing and settlement
facility with which the market licensee has clearing and settlement
arrangements for transactions effected through the market:
(a) prohibiting the operator from acting in a manner inconsistent
with the section 794D direction; and
(b) requiring the operator to do all that the operator is reasonably
capable of doing to give effect to the section 794D direction.

(2) The operator must comply with the direction given to it under this
section.

Division 4—The Australian market licence

Subdivision A—How to get a licence

795A  How to apply for a licence

(1) A body corporate may apply for an Australian market licence by
lodging with ASIC an application that:
(a) includes the prescribed information; and
(b) is accompanied by the prescribed documents (if any); and
(c) is accompanied by the prescribed fee (if any); and
(d) complies with the requirements of section 851B (relating to
compensation arrangements).

Note: Part 9.10 deals with fees.

(2) ASIC must, within a reasonable time, give the application to the
Minister with advice about the application.

795B  When a licence may be granted

General

(1) The Minister may grant an applicant an Australian market licence
if the Minister is satisfied that:
(a) the application was made in accordance with section 795A; and

Financial Services Reform Exposure Draft
(b) the applicant will comply with the obligations that will apply if the licence is granted; and

(c) the applicant has adequate operating rules, and procedures, (see Subdivision B of Division 3) for the market to ensure, as far as is reasonably practicable, that transactions are effected through the market in a fair, orderly and transparent way; and

(d) the applicant has adequate clearing and settlement facility arrangements for transactions effected through the market if the Minister considers that the applicant should have such arrangements; and

(e) neither subsection 851D(2) nor 852A(2) (relating to compensation arrangements) requires the Minister to reject the application.

This subsection has effect subject to subsection (3).

Alternative criteria for granting licence to overseas market

(2) If an applicant is authorised to operate a financial products market in the foreign country in which its head office is located, the Minister may grant the applicant an Australian market licence authorising the applicant to operate the same market in this jurisdiction if the Minister is satisfied that:

(a) the application was made in accordance with section 795A; and

(b) the applicant will comply with the obligations that will apply if the licence is granted; and

(c) the operation of the market in that country is subject to legislative requirements and supervision that are at least equivalent to the legislative requirements and supervision to which financial products markets are subject in this jurisdiction; and

(d) the applicant undertakes to cooperate with ASIC by sharing information and in other appropriate ways; and

(e) any other requirements that are prescribed by the regulations for the purposes of this subsection are satisfied.

This subsection has effect subject to subsection (3).

Overseas markets: additional requirement for grant

(3) If the applicant is authorised to operate a financial products market in the foreign country in which its head office is located, the Minister:
(a) must not grant the applicant a licence to operate the market unless the applicant is registered under Division 2 of Part 5B.2 or a corresponding law; and
(b) may grant the licence under either subsection (1) or (2) (subject to the relevant criteria being satisfied).

Note: The Minister must also take into account the matters in section 798A in deciding whether to grant a licence.

795C Publication of notice of licence grant

If the Minister grants an Australian market licence, the Minister must publish a notice in the Gazette stating:
(a) the name of the licensee; and
(b) when the licence was granted; and
(c) the conditions on the licence.

795D More than one licence in the same document

If the Minister, or ASIC, grants a person 2 or more of the following:
(a) an Australian market licence
(b) an Australian CS facility licence
(c) an Australian financial services licence
they may be included in the same document.

Subdivision B—The conditions on the licence

796A The conditions on the licence

(1) The Minister may, at any time:
(a) impose conditions, or additional conditions, on an Australian market licence; or
(b) vary or revoke conditions imposed on such a licence; by giving written notice to the licensee. The Minister must also publish a notice in the Gazette with details of the action and when it took effect.

(2) The Minister may do so:
(a) on his or her own initiative, subject to subsection (3); or
(b) if the licensee lodges with ASIC an application for the Minister to do so, which is accompanied by the prescribed documents, and prescribed fee, if any.
Note: Part 9.10 deals with fees.

(3) The Minister may only impose conditions or additional conditions, or vary the conditions, on the licence on his or her own initiative if:

(a) he or she considers it appropriate to do so having regard to:
   (i) the licensee’s obligations under this Part; and
   (ii) any change in market operations or the conditions in which the market is operating; and
(b) the Minister gives the licensee written notice of the proposed action and an opportunity to make a submission before it takes effect.

This subsection does not apply to the Minister imposing conditions when a licence is granted.

(4) The Minister must ensure that each Australian market licence is subject to conditions that specify:

(a) the particular market that the licensee is authorised to operate; and
(b) the class or classes of financial products that can be dealt with on the market; and
(c) if the Minister considers that the licensee should have clearing and settlement facility arrangements for transactions effected through the market—the type of clearing and settlement facility arrangements that are adequate.

(5) If there are compensation arrangements in relation to the market that are approved under Division 3 of Part 7.4, the Minister must ensure, in the conditions, that the minimum amount of cover required in relation to the compensation arrangements is dealt with in a manner that the Minister thinks appropriate.

(6) ASIC must give to the Minister any application and documents lodged under subsection (2).

Subdivision C—When a licence can be varied, suspended or cancelled

797A Varying licences

(1) The Minister may vary an Australian market licence to take account of a change in the licensee’s name if the licensee lodges with ASIC an application for the variation, accompanied by the prescribed documents, and prescribed fee, if any.
Note 1: The conditions on the licence can be varied under section 796A.
Note 2: Part 9.10 deals with fees.

(2) The Minister must give written notice of the variation to the licensee.

(3) ASIC must give to the Minister any application and documents lodged under subsection (1).

797B Immediate suspension or cancellation

The Minister may, by giving written notice to a market licensee, suspend the licence for a specified period, or cancel it, if the licensee:

(a) ceases to carry on the business of operating the market; or
(b) becomes an externally-administered body corporate; or
(c) asks the Minister to do so.

797C Suspension or cancellation following hearing and report

(1) If a market licensee breaches one or more of its obligations under this Part, the Minister may give the licensee a written notice that requires the licensee to show cause, at a hearing before a specified person, why the licence should not be suspended or cancelled.

(2) The notice must specify:

(a) the grounds on which it is proposed to suspend or cancel the licence; and
(b) a reasonable time and place at which the hearing is to be held.

However, if the licensee consents, the person conducting the hearing may fix a different time or place.

(3) The person conducting the hearing must:

(a) give the licensee an opportunity to be heard at the hearing; and
(b) give the Minister:

(i) a report about the hearing; and
(ii) a recommendation about the grounds in the notice on which it is proposed to suspend or cancel the licence.

(4) After considering the report and recommendation, the Minister may:
(a) decide to take no further action in relation to the matter and
give written advice of that decision to the licensee; or
(b) suspend the licence for a specified period, or cancel the
licence, by giving written notice to the licensee.

Note: The Minister must also have regard to the matters in section 798A.

797D Effect of suspension

(1) A person whose Australian market licence is suspended is taken
not to hold that licence while it is suspended.

(2) However, the Minister may specify in the written notice to the
licensee that subsection (1) does not apply for the purposes of
specified provisions.

797E Variation or revocation of suspension

The Minister may at any time vary or revoke a suspension of an
Australian market licence by giving written notice to the licensee.

797F Publication of notice of licence suspension or cancellation

(1) If the Minister:
(a) suspends, or varies or revokes a suspension of, an Australian
market licence; or
(b) cancels an Australian market licence;
the Minister must publish a notice in the Gazette to that effect.

(2) The notice must state when the action took effect.

797G Suspension and cancellation only under this Subdivision

An Australian market licence cannot be varied, suspended or
cancelled otherwise than under this Subdivision.

Note: The conditions on the licence can be varied under section 796A.

Division 5—Other matters

798A Matters to be taken into account by the Minister

(1) The Minister must have regard to certain matters in deciding
whether to:
(a) grant an applicant an Australian market licence; or
(b) impose, vary or revoke conditions on such a licence under section 796A; or
(c) disallow a change to the operating rules of a licensed market under section 793D; or
(d) suspend or cancel such a licence under section 797C.

(2) These are the matters the Minister must have regard to:
(a) the structure, or proposed structure, of the market; and
(b) the nature of the activities conducted, or proposed to be conducted, on the market; and
(c) the size, or proposed size, of the market; and
(d) the nature of the financial products dealt with, or proposed to be dealt with, on the market; and
(e) the participants, or proposed participants, in the market and whether:
   (i) those participants, in effecting transactions through the market, are, or will be, providing financial services to other persons; or
   (ii) those participants acquire or dispose, or will acquire or dispose, of financial products through the market as retail clients or as wholesale clients; and
(f) the technology used, or proposed to be used, in the operation of the market; and
(g) whether it would be in the public interest to take the action referred to in subsection (1); and
(h) any relevant advice received from ASIC.

The Minister may also have regard to any other matter that the Minister considers relevant.

(3) If the Minister is deciding whether to take the action referred to in paragraph (1)(b) in respect of an Australian market licence granted under subsection 795B(2) (overseas markets), the Minister must also have regard to:
(a) the criteria that the licensee or applicant satisfied to obtain an authorisation to operate the same market in the foreign country in which their head office is located; and
(b) the obligations they must continue to satisfy to keep the authorisation; and
(c) the level of supervision to which the operation of the market in that country is subject; and
(d) whether adequate arrangements exist for cooperation between ASIC and the authority that is responsible for that supervision.

798B ASIC may give advice to Minister

ASIC may give advice to the Minister in relation to:

(a) any matter in respect of which the Minister has a discretion under this Part; or

(b) any other matter concerning financial products markets.

Note: There are some circumstances in which the Minister is required to have regard to advice received from ASIC: see subsection 798A(2).

798C Self-listing of markets

(1) A market licensee may be included in the market’s official list.

Note: There are certain matters that must be included in the market’s listing rules before the licensee is included in the official list: see subsection (4).

(2) The financial products of a market licensee, who is included in the market’s official list, may be traded on the market if the licensee has entered into such arrangements as ASIC requires:

(a) for dealing with possible conflicts of interest that might arise from the licensee’s financial products being able to be traded on the market; and

(b) for the purposes of ensuring the integrity of trading in the licensee’s financial products.

The licensee must comply with the arrangements.

(3) An arrangement under subsection (2) may provide for the licensee to pay fees for services provided by ASIC under the arrangement, or otherwise provided under or for the purposes of this section. The fees may be recovered as a debt due to the Commonwealth.

(4) Before the licensee is included in the market’s official list, the market’s listing rules must provide for ASIC, instead of the licensee, to make decisions and to take action (or require the licensee to take action on ASIC’s behalf) in relation to these matters:

(a) the admission of the licensee to the market’s official list

(b) the removal of the licensee from that list
(c) allowing, stopping or suspending the trading on the market of
the licensee’s financial products.

(5) ASIC has the powers and functions that are provided for it in any
listing rules or arrangements made for the purposes of this section.

(6) This section does not apply if the licence concerned was granted
under subsection 795B(2). Instead, the law of the country in which
the market licensee’s head office is located applies for all purposes
connected with the inclusion of the licensee in the market’s official
list.

798D Exemptions and modifications for self-listing licensees

(1) ASIC may:
   (a) exempt a market licensee whose financial products are able
to be traded on the market from a modifiable provision; or
   (b) declare that a modifiable provision applies to a market
licensee whose financial products are able to be traded on the
market as if specified provisions were omitted, modified or
varied as specified in the declaration.

(2) An exemption or declaration must be in writing and ASIC must
publish notice of it in the Gazette.

(3) An exemption may apply unconditionally or subject to specified
conditions.

(4) If an exemption is granted subject to specified conditions:
   (a) the market licensee must comply with those conditions; and
   (b) the Court may, on ASIC’s application, order the licensee to
comply with one or more of those conditions in a specified
way.

(5) In this section:

modifiable provision means:
   (a) section 205G and any of provisions of Chapters 6, 6A, 6B,
   6C or 7; or
   (b) regulations made for the purposes of section 205G or any of
those provisions.
Division 6—Limitations on holding shares in the Exchange

799A Unacceptable ownership situation

For the purposes of this Division, an unacceptable ownership situation exists if any one person’s voting power in the Exchange exceeds 5%.

799B Causing an unacceptable ownership situation

A person or persons (the *acquirers*) are guilty of an offence if:

(a) the acquirers acquire any shares in the Exchange, or enter into a relevant agreement to acquire shares in the Exchange; and

(b) the acquisition has the result that:

(i) a person whose voting power in the Exchange previously did not exceed 5% comes to have more than 5% voting power in the Exchange; or

(ii) a person whose voting power in the Exchange previously exceeded 5% comes to have a greater percentage of voting power in the Exchange; and

(c) the acquirers knew the acquisition would have that result, or were reckless as to whether the acquisition would have that result.

799C Exchange’s obligation to avoid unacceptable ownership situation

(1) The Exchange must take all reasonable steps to ensure that an unacceptable ownership situation does not exist in relation to the Exchange.

(2) If the Exchange knowingly or recklessly contravenes subsection (1), the Exchange is guilty of an offence.

799D Remedial orders

(1) If an unacceptable ownership situation exists in relation to the Exchange, the Court may, on application by an eligible applicant, make such orders as the Court considers appropriate for the purpose of ensuring that the unacceptable ownership situation ceases to exist. For this purpose, *eligible applicant* means:

(a) the Minister; or
(b) ASIC; or
(c) the Exchange; or
(d) a shareholder of the Exchange.

(2) The Court’s orders may include:
(a) an order directing the disposal of shares; or
(b) an order restraining the exercise of any rights attached to
    shares; or
(c) an order prohibiting or deferring the payment of any sums
    due to a person in respect of shares held by the person; or
(d) an order that any exercise of rights attached to shares be
    disregarded; or
(e) an order directing any person to do or refrain from doing a
    specified act, for the purpose of securing compliance with
    any other order made under this section; or
(f) an order containing such ancillary or consequential
    provisions as the Court thinks just.

(3) Subsection (2) does not, by implication, limit subsection (1).

(4) Before making an order under this section, the Court may direct
    that notice of the application be given to such persons as the Court
    thinks fit or be published in such manner as the Court thinks fit, or
    both.

(5) The Court may, by order:
(a) rescind, vary or discharge an order made by the Court under
    this section; or
(b) suspend the operation of such an order.

799E  This Division extends to things outside Australia etc.

This Division applies, according to its tenor, in relation to:
(a) natural persons, whether resident in this jurisdiction or in
    Australia or not and whether Australian citizens or not; and
(b) all bodies corporate and unincorporated bodies, whether
    formed or carrying on business in this jurisdiction or in
    Australia or not; and
(c) acts and omissions outside this jurisdiction, whether in
    Australia or not.
Part 7.3—Licensing of clearing and settlement facilities

Division 1—Requirement to be licensed

820A  Need for a licence

(1) A person must not operate, or hold out that the person operates, a clearing and settlement facility in this jurisdiction unless:
(a) the person has an Australian CS facility licence that authorises the person to operate the facility in this jurisdiction; or
(b) the facility is exempt from the operation of this Part.

(2) A person must not assist in the operation in this jurisdiction of a clearing and settlement facility unless the facility is:
(a) a licensed CS facility; or
(b) exempt from the operation of this Part.

(3) A person must not hold out that:
(a) the person has an Australian CS facility licence; or
(b) a clearing and settlement facility is exempt from the operation of this Part;
unless the person has such a licence or the facility is so exempt.

(4) For the purposes of this Chapter, a clearing and settlement facility is taken to be operated in this jurisdiction if it is operated by a body corporate that is incorporated in this jurisdiction. This subsection does not limit the circumstances in which a clearing and settlement facility is operated in this jurisdiction for the purposes of this Chapter.

Note: A CS facility licensee may also provide financial services incidental to the operation of the facility (see Part 7.5).

820B  Exemptions generally

(1) The Minister may, by publishing a notice in the Gazette, exempt from the operation of this Part a particular clearing and settlement facility or type of clearing and settlement facility.

(2) The Minister may, at any time, by publishing a notice in the Gazette:
(a) impose conditions, or additional conditions, on an
exemption; or
(b) vary or revoke the conditions on an exemption; or
(c) 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 clearing and
settlement facility known to the Minister to be covered by the
exemption; and
(b) if the exemption covers a type of clearing and settlement
facility:
   (i) doing what is required by paragraph (a); and
   (ii) causing a notice to be published in a newspaper or
newspapers circulating generally in each jurisdiction
allowing a reasonable time within which the operator of
each facility covered by the exemption may make
submissions on the proposed action.

This subsection does not apply to the Minister imposing conditions
when an exemption is made.

820C Exemption involving regulation by Payments System Board

(1) The Minister may, by publishing a notice in the Gazette, exempt a
particular clearing and settlement facility or facilities from the
operation of all or some of this Part if the Minister considers that:
   (a) the operation of the facility or facilities is particularly
significant to the stability and integrity of the payments
system; and
   (b) it is in the public interest to do so.

(2) In granting the exemption, the Minister must:
   (a) specify the matters in respect of which the exemption is
granted; and
   (b) request the Payments System Board to regulate the facility or
facilities in respect of those matters.

(3) The Minister may, at any time, by publishing a notice in the
Gazette:
   (a) impose conditions, or additional conditions, on an
exemption; or
(b) vary or revoke the conditions on an exemption; or
(c) revoke an exemption.

(4) The Minister may only grant an exemption under this section, or take action under subsection (3), after:
(a) giving notice, and an opportunity to make submissions on the matter, to the operator of the facility or facilities concerned; and
(b) giving notice, and an opportunity to advise the Minister on the matter, to ASIC and the Reserve Bank of Australia; and
(c) taking into account those submissions and advice (if any).

(5) In this section:
Payments System Board means the Payments System Board established by section 10A of the Reserve Bank Act 1959.

Division 2—Regulation of CS facility licensees

Subdivision A—Licensee’s obligations

821A General obligations

A clearing and settlement facility licensee must:
(a) to the extent that it is reasonably practicable to do so, do all things necessary to reduce systemic risk and to ensure the facility’s services are provided in a fair and effective way; and
(b) comply with the conditions on the licence; and
(c) have adequate arrangements (whether they involve a self-regulatory structure or the appointment of an independent person or related entity) for supervising the facility, including arrangements for:
(i) handling conflicts between the interests of the licensee and the interests of particular participants in the facility or issuers of financial products; and
(ii) enforcing compliance with the facility’s operating rules; and
(d) have sufficient resources (including financial, technological and human resources) to properly operate the facility and carry out the supervisory arrangements; and
(e) if section 851A requires there to be compensation arrangements in relation to the facility that are approved in accordance with Division 3 of Part 7.4—ensure that there are such approved compensation arrangements in relation to the facility; and

(f) if the licensee is authorised to operate a clearing and settlement facility in the foreign country in which its head office is located—be registered under Division 2 of Part 5B.2 or a corresponding law.

821B Obligation to notify ASIC of certain matters

(1) A CS facility licensee must immediately give written notice to ASIC if it becomes aware that:

(a) it may no longer be able to meet, or has breached, an obligation under section 821A; or

(b) it has breached a condition of the licence.

If ASIC considers it appropriate to do so, ASIC may give the Minister advice about the matter.

(2) A CS facility licensee must give written notice to ASIC, as soon as practicable, as required by the following paragraphs:

(a) if the licensee provides a new class of financial service incidental to the operation of the facility, the licensee must give notice that includes details of the new class

(b) if the licensee takes any kind of disciplinary action against a participant in the facility, the licensee must give notice that includes:

(i) the participant’s name; and

(ii) the reason for and nature of the action taken.

821C Obligation to assist ASIC

A CS facility licensee must give such assistance to ASIC, or a person authorised by ASIC, as ASIC reasonably requires to perform its functions.

821D Obligation to give ASIC access to the facility

A CS facility licensee must give a person authorised by ASIC reasonable access to the facility for any of the purposes of this Chapter.
**821E Annual report**

(1) A CS facility licensee must, within 3 months after the end of its financial year, give ASIC an annual report on the extent to which the licensee complied with its obligations under this Part.

(2) The annual report must be accompanied by:
   
   (a) any other information and statements prescribed by the regulations; and
   
   (b) any audit report that the Minister requires under subsection (3).

(3) The Minister may require a CS facility licensee to obtain an audit report on the annual report and on any information or statements accompanying it. The Minister must nominate to prepare the audit report:
   
   (a) ASIC; or
   
   (b) a specified person or body that is suitably qualified.

(4) ASIC must give the annual report and accompanying material to the Minister.

**Subdivision B—The facility’s operating rules and procedures**

**822A Content of the operating rules and procedures**

(1) The operating rules of a licensed CS facility must deal with the matters prescribed by the regulations.

(2) The regulations may also prescribe matters in respect of which a licensed CS facility must have written procedures.

(3) However, subsections (1) and (2) do not apply if the licensee is also authorised to operate the facility in the foreign country in which its head office is located and the licence was granted under subsection 824B(2). Instead:
   
   (a) the rules (however described) to which the operation of the facility in that country is subject are taken to be the licensed CS facility’s operating rules; and
   
   (b) ASIC may determine, by giving written notice to the licensee, matters in respect of which the licensed CS facility must have written procedures.
822B Legal effect of operating rules

The operating rules of a licensed CS facility have effect as a contract under seal:

(a) between the licensee and each issuer of a financial product in respect of which the facility provides its services; and
(b) between the licensee and each participant in the facility; and
(c) between each issuer of a financial product in respect of which the facility provides its services and each participant in the facility; and
(d) between a participant in the facility and each other participant in the facility;

under which each of those persons agrees to observe the operating rules to the extent that they apply to the person and to engage in conduct that the person is required by the operating rules to engage in.

822C Enforcement of operating rules

(1) If a person who is under an obligation to comply with or enforce any of a licensed CS facility’s operating rules fails to meet that obligation, an application to the Court may be made by:

(a) ASIC; or
(b) the licensee; or
(c) a person aggrieved by the failure.

(2) After giving an opportunity to be heard to the applicant and the person against whom the order is sought, the Court may make an order giving directions to:

(a) the person against whom the order is sought; or
(b) if that person is a body corporate—the directors of the body corporate;

about compliance with, or enforcement of, the operating rules.

822D Changing the operating rules

(1) As soon as practicable after a change is made to the operating rules of a licensed CS facility, the licensee must lodge with ASIC written notice of the change.

(2) The notice must:

(a) set out the text of the change; and
specify the date on which the change was made; and
contain an explanation of the purpose of the change.

(3) If no notice is lodged with ASIC within 21 days after the change is made:
(a) the change ceases to have effect; or
(b) in the case of a licence granted under subsection 824B(2)
(overseas clearing and settlement facilities)—the change is
taken to have ceased to have effect for the purposes of this
Chapter.

822E Disallowance of changes to operating rules

(1) This section does not apply in respect of an Australian CS facility licence granted under subsection 824B(2).

(2) As soon as practicable after receiving a notice under section 822D from a CS facility licensee, ASIC must send a copy to the Minister.

(3) Within 28 days after receiving the copy of the notice, the Minister may disallow all or a specified part of the change to the operating rules.

(4) In deciding whether to do so, the Minister must have regard to the consistency of the change with the licensee’s obligations under this Part (including the obligation to reduce systemic risk and to ensure the facility’s services are provided in a fair and effective way).

Note: The Minister must also have regard to the matters in section 827A.

(5) As soon as practicable after all or a part of a change is disallowed, ASIC must give notice of the disallowance to the licensee. The change ceases to have effect, to the extent of the disallowance, when the licensee receives the notice.

Subdivision C—Powers of the Minister and ASIC in relation to licensees

823A Minister’s power to give directions

(1) If the Minister considers that a CS facility licensee is not complying with its obligations under this Part, the Minister may give to the licensee a written direction to do specified things that the Minister believes will promote compliance by the licensee with those obligations.
(2) The licensee must comply with the direction.

(3) If the licensee fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the licensee comply with the direction.

(4) The Minister may vary or revoke a direction at any time by giving written notice to the licensee.

823B Minister’s power to require special report

(1) The Minister may require a CS facility licensee to give ASIC a special report on specified matters. ASIC must give the report to the Minister.

(2) The Minister may also require the licensee to give ASIC an audit report on the special report. The Minister must nominate to prepare the report:

(a) ASIC; or

(b) a specified person or body that is suitably qualified.

(3) The licensee must give the special report, and audit report (if any), to ASIC within the time required by the Minister.

823C ASIC’s power to give directions

(1) If ASIC considers that a CS facility licensee has not done all things reasonably practicable:

(a) to reduce systemic risk in the provision of its services; or

(b) to ensure the facility’s services are provided in a fair and effective way;

ASIC may give the licensee written advice that it intends to give the licensee a specified direction under this section. The advice must include the reasons for ASIC’s intention to give the direction.

(2) As soon as practicable after giving the advice to the licensee, ASIC must give notice of the advice to the operator of each financial products market with which the facility has arrangements to provide services for transactions effected through the market.

(3) ASIC may give the following directions to the licensee under this section:

(a) a direction not to provide the licensee’s services in relation to any transactions, of which the licensee receives notice after
the direction takes effect, that relate to a specified financial
product or class of financial products
(b) any other direction concerning dealings with transactions that
relate to a specified financial product or class of financial
products.

(4) If, after receiving ASIC’s advice and reasons:
   (a) the licensee does not take steps that in ASIC’s view are
       adequate to address the situation; and
   (b) ASIC still considers that it is appropriate to give the direction
to the licensee;
       ASIC may give the licensee the direction, in writing, with a
statement setting out the reasons for giving the direction.

(5) The direction has effect for the period specified in it (which may be
up to 21 days). During that period, the licensee must comply with
the direction and must not provide any services contrary to it.

(6) As soon as practicable after making the direction, ASIC must:
   (a) give a copy of the direction to:
       (i) if the direction relates to a specified financial product—
           the issuer of that product; and
       (ii) each of the operators mentioned in subsection (2); and
   (b) give a written report to the Minister setting out ASIC’s
       reasons for giving the direction; and
   (c) give a copy of the report to the licensee.

(7) If, at any time after the licensee receives ASIC’s advice under
subsection (1), the licensee requests in writing that ASIC refer the
matter to the Minister, ASIC must do so immediately. In that event,
the Minister may, if he or she considers it appropriate, require
ASIC not to make, or to revoke, the direction. If ASIC is required
to revoke the direction, it must do so immediately.

(8) ASIC may vary or revoke a direction by giving written notice to
the licensee. ASIC must also give written notice of the variation or
revocation to each of the operators mentioned in subsection (2).
Division 3—The Australian CS facility licence

Subdivision A—How to get a licence

824A How to apply for a licence

(1) A body corporate may apply for an Australian CS facility licence by lodging with ASIC an application that:
   (a) includes the prescribed information; and
   (b) is accompanied by the prescribed documents (if any); and
   (c) is accompanied by the prescribed fee (if any); and
   (d) complies with the requirements of section 851B (relating to compensation arrangements).

Note: Part 9.10 deals with fees.

(2) ASIC must, within a reasonable time, give the application to the Minister with advice about the application.

824B When a licence may be granted

General

(1) The Minister may grant an applicant an Australian CS facility licence if the Minister is satisfied that:
   (a) the application was made in accordance with section 824A; and
   (b) the applicant will comply with the obligations that will apply if the licence is granted; and
   (c) the applicant has adequate operating rules, and procedures, (see Subdivision B of Division 2) for the facility to ensure, as far as is reasonably practicable, that systemic risk is reduced and the facility is operated in a fair and effective way; and
   (d) neither subsection 851D(2) nor 852A(2) (relating to compensation arrangements) requires the Minister to reject the application.

This subsection has effect subject to subsection (3).

Alternative criteria for granting licence to overseas clearing and settlement facility

(2) If an applicant is authorised to operate a clearing and settlement facility in the foreign country in which its head office is located,
the Minister may grant the applicant an Australian CS facility
licence authorising the applicant to operate the same facility in this
jurisdiction if the Minister is satisfied that:

(a) the application was made in accordance with section 824A;
and
(b) the applicant will comply with the obligations that will apply
if the licence is granted; and
(c) the operation of the facility in that country is subject to
legislative requirements and supervision that are at least
equivalent to the legislative requirements and supervision to
which clearing and settlement facilities are subject in this
jurisdiction; and
(d) the applicant undertakes to cooperate with ASIC by sharing
information and in other ways; and
(e) any other requirements that are prescribed by the regulations
for the purposes of this subsection are satisfied.

This subsection has effect subject to subsection (3).

Overseas facilities: additional requirement for grant

(3) If the applicant is authorised to operate a clearing and settlement
facility in the foreign country in which its head office is located,
the Minister:

(a) must not grant the applicant a licence to operate the facility
unless the applicant is registered under Division 2 of Part
5B.2 or a corresponding law; and
(b) may grant the licence under either subsection (1) or (2)
(subject to the relevant criteria being satisfied).

Note: The Minister must also take into account the matters in section 827A
in deciding whether to grant a licence.

824C Publication of notice of licence grant

If the Minister grants an Australian CS facility licence, the
Minister must publish a notice in the Gazette stating:

(a) the name of the licensee; and
(b) the date on which the licence was granted; and
(c) the conditions on the licence.
824D More than one licence in the same document

If the Minister, or ASIC, grants a person 2 or more of the following:
(a) an Australian CS facility licence
(b) an Australian market licence
(c) an Australian financial services licence
they may be included in the same document.

Subdivision B—The conditions on the licence

825A The conditions on the licence

(1) The Minister may, at any time:
(a) impose conditions, or additional conditions, on an Australian CS facility licence; or
(b) vary or revoke conditions imposed on such a licence; by giving written notice to the licensee. The Minister must also publish a notice in the Gazette with details of the action and when it took effect.

(2) The Minister may do so:
(a) on the Minister’s own initiative, subject to subsection (3); or
(b) if the licensee lodges with ASIC an application for the Minister to do so, which is accompanied by the prescribed documents, and prescribed fee, if any.

Note: Part 9.10 deals with fees.

(3) The Minister may only impose conditions or additional conditions, or vary the conditions, on the licence on his or her own initiative if:
(a) he or she considers it appropriate to do so having regard to:
   (i) the licensee’s obligations under this Part; and
   (ii) any change in the facility’s operations or the conditions in which the facility is operating; and
(b) the Minister gives the licensee written notice of the proposed action and an opportunity to make a submission before it takes effect.

This subsection does not apply to the Minister imposing conditions when a licence is granted.

(4) The Minister must ensure that each Australian CS facility licence is subject to conditions that specify:
(a) the particular facility that the licensee is authorised to
   operate; and

(b) the class or classes of financial products in respect of which
   the facility can provide services.

(5) If there are compensation arrangements in relation to the facility
    that are approved under Division 3 of Part 7.4, the Minister must
    ensure, in the conditions, that the minimum amount of cover
    required in relation to the compensation arrangements is dealt with
    in a manner that the Minister thinks appropriate.

(6) ASIC must give to the Minister any application and documents
    lodged under subsection (2).

Subdivision C—When a licence can be varied, suspended or
cancelled

826A Varying licences

(1) The Minister may vary an Australian CS facility licence to take
    account of a change in the licensee’s name if the licensee lodges
    with ASIC an application for the variation, accompanied by the
    prescribed documents, and prescribed fee, if any.

    Note 1: The conditions on the licence can be varied under section 825A.
    Note 2: Part 9.10 deals with fees.

(2) The Minister must give written notice of the variation to the
    licensee.

(3) ASIC must give to the Minister any application and documents
    lodged under subsection (1).

826B Immediate suspension or cancellation

The Minister may, by giving written notice to a CS facility
licensee, suspend the licence for a specified period, or cancel it, if
the licensee:

(a) ceases to carry on the business of operating the facility; or
(b) becomes an externally-administered body corporate; or
(c) asks the Minister to do so.
826C Suspension or cancellation following hearing and report

(1) If a CS facility licensee breaches one or more of its obligations under this Part, the Minister may give the licensee a written notice that requires the licensee to show cause, at a hearing before a specified person, why the licence should not be suspended or cancelled.

(2) The notice must specify:
   (a) the grounds on which it is proposed to suspend or cancel the licence; and
   (b) a reasonable time and place at which the hearing is to be held.

However, if the licensee consents, the person conducting the hearing may fix a different time or place.

(3) The person conducting the hearing must:
   (a) give the licensee an opportunity to be heard at the hearing; and
   (b) give the Minister:
      (i) a report about the hearing; and
      (ii) a recommendation about the grounds in the notice on which it is proposed to suspend or cancel the licence.

(4) After considering the report and recommendation, the Minister may:
   (a) decide to take no further action in relation to the matter and give written advice of that decision to the licensee; or
   (b) suspend the licence for a specified period, or cancel the licence, by giving written notice to the licensee.

826D Effect of suspension

(1) A person whose Australian CS facility licence is suspended is taken not to hold that licence while it is suspended.

(2) However, the Minister may specify in the written notice to the licensee that subsection (1) does not apply for the purposes of specified provisions.
826E Variation or revocation of suspension

The Minister may at any time vary or revoke, in writing, a suspension of an Australian CS facility licence by giving written notice to the licensee.

826F Publication of notice of licence suspension or cancellation

(1) If the Minister:

(a) suspends, or varies or revokes a suspension of, an Australian CS facility licence; or

(b) cancels an Australian CS facility licence;

the Minister must publish a notice in the Gazette to that effect.

(2) The notice must state when the action took effect.

826G Suspension and cancellation only under this Subdivision

An Australian CS facility licence cannot be varied, suspended or cancelled otherwise than under this Subdivision.

Note: The conditions on the licence can be varied under section 825A.

Division 4—Other matters

827A Matters to be taken into account by the Minister

(1) The Minister must have regard to certain matters in deciding whether to:

(a) grant an applicant an Australian CS facility licence; or

(b) impose, vary or revoke conditions on such a licence under section 825A; or

(c) disallow a change to the operating rules of a licensed CS facility under section 822D; or

(d) suspend or cancel such a licence under section 826C.

(2) These are the matters the Minister must have regard to:

(a) the structure, or proposed structure, of the facility; and

(b) the nature of the services provided, or proposed to be provided, by the facility; and

(c) the size, or proposed size, of the facility; and

(d) the nature of the financial products in respect of which the facility provides services or proposes to provide services; and
(e) the participants, or proposed participants, in the facility and
whether those participants:
   (i) in using the facility’s services, are, or will be, providing
financial services to other persons; or
   (ii) use, or will use, the facility’s services in respect of
financial products they acquire or dispose of as a retail
client or as a wholesale client; or
   (iii) are, or will be, participants in a financial products
market, or other clearing and settlement facilities, as
well; and

(f) the technology used, or proposed to be used, in the operation
of the facility; and

(g) whether it would be in the public interest to take the action
referred to in subsection (1); and

(h) any relevant advice received from ASIC.

The Minister may also have regard to any other matter that the
Minister considers relevant.

(3) If the Minister is deciding whether to take the action referred to in
paragraph (1)(b) in respect of an Australian CS facility licence
granted under subsection 824B(2) (overseas clearing and
settlement facilities), the Minister must also have regard to:
   (a) the criteria that the licensee or applicant satisfied to obtain an
authorisation to operate the same facility in the foreign
country in which their head office is located; and
   (b) the obligations they must continue to satisfy to keep the
authorisation; and
   (c) the level of supervision to which the facility is subject in that
country; and
   (d) whether adequate arrangements exist for cooperation
between ASIC and the authority that is responsible for that
supervision.

827B ASIC may give advice to Minister

ASIC may give advice to the Minister in relation to:
   (a) any matter in respect of which the Minister has a discretion
under this Part; or
   (b) any other matter concerning clearing and settlement facilities.
Note: There are some circumstances in which the Minister is required to have regard to advice received from ASIC: see subsections 820C(4) and 827A(2).

Part 7.4—Compensation regimes for financial products markets and clearing and settlement facilities

Division 1—Preliminary

850A Part does not apply to markets or facilities licensed under special provisions about overseas markets and facilities

Nothing in this Part applies in relation to:
- (a) a market the operation of which is licensed under subsection 759B(2); or
- (b) a facility the operation of which is licensed under subsection 824B(2); or
- (c) an application for the grant of a licence under either of those subsections.

850B Definitions

(1) In this Part:

- *adequate* has a meaning affected by subsection (2).

- *approved risk allocation statement* means a statement approved under subsection 850D(1) or (2).

- *borrowing* includes obtaining credit.

- *compensation arrangements* are arrangements that consist of:
  - (a) a set of rules about compensation; and
  - (b) a source of funds from which compensation is payable; and
  - (c) associated administrative and monitoring arrangements.

- *compensation rules* means rules referred to in paragraph (a) of the definition of *compensation arrangements*.

- *Division 3 arrangements* means compensation arrangements approved under Division 3.
**Division 3 loss** means a loss described in section 855C, other than a loss that section 855D provides is to be taken not to be a Division 3 loss.

**Division 4 arrangements** means the arrangements constituted by Division 4.

**facility** means a clearing and settlement facility.

**fidelity fund**, in relation to a market or facility, means a fund consisting principally of contributions made by:

(a) participants and past participants in the market or facility; or

(b) participants and past participants in:

(i) the market or facility; and

(ii) one or more other markets and/or facilities;

the purpose, or the main purpose, of which is to provide a source of funds for the payment of compensation to clients of participants. Any investments made using money in the fund are taken to form part of the fund.

**market** means a financial products market.

**NGF** means the National Guarantee Fund established under section 69 of the *Corporations Act 1989*.

**operating rules**, in relation to the SEGC, means the rules referred to in section 860E.

**Part 7.4 arrangements** means Division 3 arrangements or Division 4 arrangements.

**SEGC** means a body corporate in relation to which a nomination as the Securities Exchange Guarantee Corporation is in force under subsection 67(1) of the *Corporations Act 1989* or is taken because of subsection 67(5) of that Act to be so in force.

(2) For the purposes of this Part, the question whether proposed compensation arrangements, compensation arrangements as proposed to be changed, or compensation arrangements that have been approved, are adequate is to be determined in accordance with Subdivision D of Division 3.

(3) A reference in this Part to this Part, or to a Division, Subdivision or provision of this Part, includes a reference to regulations in force.
for the purposes of this Part, that Division, that Subdivision or that
provision, as the case requires.

850C What happens if losses are covered by Part 7.4 arrangements
for a market and for a facility

(1) This section applies if, apart from this item, a loss suffered by a
person (the client) would be covered by Part 7.4 arrangements for a
market, and by Part 7.4 arrangements for a facility.

(2) If there is an approved risk allocation statement in relation to the
market and the facility that allocates the loss to the market, or to
the facility, the loss is taken to be covered only by the Part 7.4
arrangements for whichever of the market and the facility is so
allocated the loss.

(3) If subsection (2) does not apply, then:

(a) if the loss relates to money or other property, or authority
over property, that was, when the loss was suffered, held by a
person for the purpose of conducting a transaction using the
services provided by the market—the loss is taken to be
covered only by the Part 7.4 arrangements for the market; or

(b) if the loss relates to money or other property, or authority
over property, that was, when the loss was suffered, held by a
person for the purpose of clearing or settling a transaction
using the services provided by the facility—the loss is taken
to be covered only by the Part 7.4 arrangements for the
facility.

(4) The regulations may make provision relating to which Part 7.4
arrangements the loss is covered by if neither subsection (2) nor
subsection (3) applies.

850D Approval of risk allocation statements

(1) The Minister may, for the purposes of subsection 850C(2), approve
a written statement agreed on between the operator of a market and
the operator of a facility if the Minister is satisfied that the
allocation of risk provided for by the statement is appropriate.

(2) The Minister may, for the purposes of subsection 850C(2), approve
a written statement by a person who operates both a market and a
facility if the Minister is satisfied that the allocation of risk
provided for by the statement is appropriate.
(3) An approval by the Minister must be in writing.

Division 2—When there must be a compensation regime

851A Licensed markets and CS facilities through which participants provide services for retail clients must generally have a compensation regime

(1) If:

(a) either:
   (i) in relation to a licensed market—any of the participants in the market, in effecting transactions through the market, provide financial services for persons as retail clients; or
   (ii) in relation to a licensed CS facility—any of the participants in the facility, in clearing or settling transactions using services provided by the facility, provide financial services for persons as retail clients; and
   (b) in connection with the provision of those financial services, those persons will or may give money or other property, or authority over property, to those participants; and
   (c) the market or facility is not a market or facility to which Division 4 applies;

there must be compensation arrangements in relation to the market or facility that are approved in accordance with Division 3.

(2) The compensation regime applicable in relation to markets and facilities to which Division 4 applies is as constituted by that Division.

851B Additional requirements for the licence application

(1) A person who is applying for an Australian market licence, or an Australian CS facility licence, must state in their application:

(a) either:
   (i) if the application is for an Australian market licence—whether any of the participants in the market, in effecting transactions through the market, will provide financial services for persons as retail clients; or
   (ii) if the application is for an Australian CS facility licence—whether any of the participants in the facility,
in clearing or settling transactions using services provided by the facility, will provide financial services for persons as retail clients; and

(b) if any participants will so provide financial services to persons as retail clients whether, in connection with the provision of those financial services, those persons will or may give money or other property, or authority over property, to those participants.

(2) If:

(a) participants in the market or facility will provide financial services to persons as retail clients as mentioned in paragraph (1)(a); and

(b) in connection with the provision of those financial services, those persons will or may give money or property, or authority over property, to those participants;

the application must:

(c) contain the prescribed information in relation to the proposed compensation arrangements and be accompanied by a copy of the proposed compensation rules; or

(d) state that the market or facility is or will be covered by Division 4, and set out evidence, in accordance with the requirements (if any) of the regulations, in support of that statement.

851C  What happens if licence application contains information in accordance with paragraph 851B(2)(c)

If a licence application contains information in relation to proposed compensation arrangements as required by paragraph 851B(2)(c), the Minister must deal with the application in accordance with section 852A.

851D  What happens if licence application contains a statement in accordance with paragraph 851B(2)(d)

(1) If a licence application contains a statement in accordance with paragraph 851B(2)(d), the Minister must consider if he or she is satisfied that the market or facility will be covered by Division 4.

(2) If the Minister is not so satisfied, the application for the licence must be rejected.
(3) If the Minister is so satisfied, the Minister may (subject to the other provisions about granting licences) grant the licence.

Note: The other provisions about granting licences are:

(a) for markets—Subdivision A of Division 4 of Part 7.2; and
(b) for facilities—Subdivision A of Division 4 of Part 7.3.

Division 3—Approved compensation arrangements

Subdivision A—Approval of compensation arrangements

852A How to get compensation arrangements approved with grant of licence

(1) If an application for an Australian market licence, or an Australian CS facility licence, contains information in relation to proposed compensation arrangements in accordance with paragraph 851B(2)(c), the Minister must treat the application as also being an application for approval of the compensation arrangements and, for that purpose, must consider whether the proposed arrangements are adequate.

(2) If the Minister does not consider that the proposed compensation arrangements are adequate, the application for the licence must be rejected.

(3) If the Minister considers that the proposed compensation arrangements are adequate, the Minister may (subject to the other provisions about granting licences) grant the licence. On the granting of the licence, the Minister is taken to have approved the compensation arrangements.

Note: The other provisions about granting licences are:

(a) for markets—Subdivision A of Division 4 of Part 7.2; and
(b) for facilities—Subdivision A of Division 4 of Part 7.3.

(4) In the conditions of the licence, the Minister must deal with the minimum amount of cover required in relation to the compensation arrangements in such manner as the Minister thinks appropriate.

852B How to get compensation arrangements approved after licence granted

(1) If the operator of a licensed market or a licensed CS facility wants to have compensation arrangements for the market or facility...
approved after the licence has been granted, the operator must apply for approval in accordance with this section.

(2) The application must:
(a) contain the prescribed information in relation to the proposed compensation arrangements and be accompanied by a copy of the proposed compensation rules; and
(b) be made to the Minister by lodging the application with ASIC.

(3) If the Minister does not consider that the proposed compensation arrangements are adequate, the application for approval must be rejected.

(4) If the Minister considers that the proposed compensation arrangements are adequate, the Minister must:
(a) approve the compensation arrangements in writing; and
(b) in the conditions of the operator’s licence, deal with the minimum amount of cover required in relation to the compensation arrangements in such manner as the Minister thinks appropriate.

852C Revocation of approval

The Minister may at any time revoke an approval of compensation arrangements if the Minister considers that the arrangements are not adequate.

Subdivision B—Effect of compensation rules forming part of Division 3 arrangements

853A Legal effect of compensation rules

Compensation rules forming part of Division 3 arrangements for a market or facility have effect as a contract under seal between the operator of the market or facility and each participant in the market or facility under which each of those persons agrees to observe the rules to the extent that they apply to the person and engage in conduct that the person is required by the rules to engage in.

853B Enforcement of compensation rules

(1) If a person who is under an obligation to comply with or enforce any of the compensation rules forming part of Division 3
arrangements for a market or facility fails to meet that obligation, an application to the Court may be made by:

(a) ASIC; or
(b) the operator of the market or facility; or
(c) a person aggrieved by the failure.

(2) After giving an opportunity to be heard to the applicant and the person against whom the order is sought, the Court may make an order giving directions to:

(a) the person against whom the order is sought; or
(b) if that person is a body corporate—the directors of the body corporate;

about compliance with, or enforcement of, the compensation rules.

(3) For the purposes of this section, if the operator of the market or facility fails to comply with or enforce provisions of the compensation rules, a person who is, under the rules, entitled to make a claim for compensation is (whether or not they have actually made a claim) taken to be a person aggrieved by the failure.

(4) There may be other circumstances in which a person may be aggrieved by a failure for the purposes of this section.

**Subdivision C—Changing Division 3 arrangements**

**854A Division 3 arrangements must generally only be changed in accordance with this Subdivision**

(1) The operator of a market or facility in relation to which there are Division 3 arrangements must not change those arrangements except in accordance with this Subdivision.

(2) However, a change may be made to Division 3 arrangements otherwise than in accordance with this Subdivision if:

(a) the change is not to a matter required by section 855B to be dealt with in the compensation rules; and
(b) the change is merely a minor administrative change.
854B Changing Division 3 arrangements—matters required to be dealt with in the compensation rules

(1) If the proposed change is to a matter required by section 855B to be dealt with in the compensation rules, the change may be made by changing the rules.

(2) As soon as practicable after the change is made, the operator must lodge with ASIC written notice of the change.

(3) The notice must:
   (a) set out the text of the change; and
   (b) specify the date on which the change was made; and
   (c) contain an explanation of the purpose of the change.

(4) If no notice is lodged with ASIC within 21 days after the change is made, the change ceases to have effect.

(5) As soon as practicable after receiving a notice under subsection (2), ASIC must send a copy to the Minister.

(6) Within 28 days after receiving the copy of the notice, the Minister may disallow all or a specified part of the change to the compensation rules.

(7) The Minister must not disallow all or part of the change unless the Minister considers that, because of the change, or that part of the change, the compensation arrangements are not adequate.

(8) As soon as practicable after all or part of a change is disallowed, ASIC must give notice of the disallowance to the operator of the market or facility concerned. The change ceases to have effect, to the extent of the disallowance, when the operator receives the notice.

854C Changing Division 3 arrangements—matters not required to be dealt with in the compensation rules

(1) If:
   (a) the proposed change is to a matter that is not required by section 855B to be dealt with in the compensation rules (including a matter that is dealt with in the compensation rules even though it is not required to be dealt with in those rules); and
   (b) the change is not merely a minor administrative change;
the operator must not make the change unless:

(c) the operator has applied for approval of the change; and

(d) the change has been approved by the Minister.

(2) The application for approval must:

(a) contain the prescribed information in relation to the proposed change; and

(b) be made to the Minister by lodging the application with ASIC.

(3) If the Minister does not consider that the compensation arrangements as proposed to be changed are adequate, the application for approval must be rejected.

(4) If the Minister considers that the compensation arrangements as proposed to be changed are adequate, the Minister must approve the change.

(5) If:

(a) the proposed change is to a matter that is dealt with in the compensation rules even though it is not required to be dealt with in those rules; and

(b) the change is approved;

the operator may make any change to the compensation rules that is necessary to give effect to the change that has been approved or that is incidental to giving effect to that change.

(6) If a change to the compensation rules is made as permitted by subsection (5), the operator must, as soon as practicable after the change is made, give ASIC written notice of the change.

(7) A notice required by subsection (6) must:

(a) set out the text of the change; and

(b) specify the date on which it was made; and

(c) contain an explanation of why it is a change that is permitted to be made by subsection (5).

Subdivision D—Are compensation arrangements adequate?

855A Purpose of this Subdivision

(1) This Subdivision applies for the purpose of determining, for the purposes of a provision of this Division:
(a) whether:
   (i) proposed compensation arrangements are adequate; or
   (ii) compensation arrangements as proposed to be changed
        are adequate; or
   (b) whether compensation arrangements that have been approved
        are adequate.

(2) A reference in this Subdivision to the arrangements is a reference
    to the proposed arrangements, the arrangements as proposed to be
    changed, or the arrangements that have been approved, as the case
    requires.

(3) A reference in this Subdivision to the compensation rules is a
    reference to the compensation rules, or the proposed compensation
    rules, forming part of the arrangements under consideration.

855B Requirements to be complied with for arrangements to be
adequate

(1) The arrangements are adequate if, and only if, the Minister is
    satisfied that:
    (a) the compensation rules provide adequate coverage for
        Division 3 losses (see sections 855C and 855D); and
    (b) the compensation rules provide for adequate compensation to
        be paid in respect of Division 3 losses (see section 855E); and
    (c) the compensation rules deal adequately with how
        compensation in respect of Division 3 losses is to be paid
        (see section 855F); and
    (d) the compensation rules deal adequately with the making and
        determination of claims in respect of Division 3 losses, and
        with the notification of the outcome of such claims (see
        section 855G); and
    (e) the arrangements provide for an adequate source of funds for
        the payment of compensation in respect of Division 3 losses
        and in respect of any other losses covered by the
        arrangements (see section 855H); and
    (f) the arrangements include adequate arrangements for
        administration and monitoring (see section 855I); and
    (g) under the arrangements, potential claimants have reasonable
        and timely access to the compensation regime.
(2) In considering the matters mentioned in subsection (1), the Minister must also have regard to the matters mentioned in section 855J.

(3) The matters that may be dealt with in compensation rules are not limited to matters mentioned in this section.

**855C The losses to be covered**

(1) Subject to section 855D, the compensation rules must cover losses of a kind described in the following paragraphs:

(a) a person (the *client*) gave money or other property, or authority over property, to a person (the *participant*):

(i) who was a participant in the market or facility at that time; or

(ii) who the client reasonably believed to be a participant in the market or facility at that time and who was a participant in the market or facility at some earlier time; and

(b) the money or other property, or the authority, was given to the participant in connection with:

(i) in the case of a market—effecting a transaction, or proposed transaction, covered by provisions of the operating rules of the market relating to on-market transactions; or

(ii) in the case of a facility—clearing or settling a transaction covered by the operating rules of the facility; and

(c) the effecting of the transaction, or the clearing or settling of the transaction, through the market or facility constitutes or would constitute the provision of a financial service to the client as a retail client; and

(d) the client suffers a loss because of:

(i) if the client gave the participant money or other property—the defalcation or fraudulent misuse of the money or other property by the participant, or the effect of the insolvency of the participant on the money or other property; or

(ii) if the client gave the participant authority over property—the fraudulent misuse of that authority.

(2) For this purpose:
(a) money or other property, or authority over property, given to an employee, agent or nominee of a person is taken to have been given to the person; and

(b) actions of an employee, agent or nominee of a person are taken to be actions of the person.

(3) The compensation rules must provide that a claim relating to an alleged loss caused by defalcation or fraudulent misuse may be allowed even if:

(a) the person against whom the defalcation or misuse is alleged has not been convicted or prosecuted; and

(b) the evidence on which the claim is allowed would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse.

(4) The compensation rules may exclude losses of a kind described above that occur in specified situations (however the compensation arrangements will not be adequate unless the Minister is satisfied that those exclusions are appropriate).

855D Certain losses that are not Division 3 losses

(1) If, in relation to a loss suffered by a person:

(a) the requirements of subsection 855C(1) are satisfied in relation to a participant and 2 or more markets, or 2 or more facilities; and

(b) the person did not (expressly or impliedly) instruct the participant to use a particular one of those markets or facilities; and

(c) it is not reasonably apparent from the usual business practice of the participant which of those markets or facilities the participant would use when acting for the person;

the loss is taken not to be a Division 3 loss.

(2) If, in relation to a loss suffered by a person:

(a) the transaction referred to in subparagraph 855C(1)(b)(i) could have been entered into off-market; and

(b) the person did not (expressly or impliedly) instruct the participant concerned to enter into the transaction on-market; and

(c) it is not reasonably apparent from the usual business practice of the participant that the transaction would be entered into on-market;
the loss is taken not to be a Division 3 loss.

**855E The amount of compensation**

(1) Subject to subsections (2), (3) and (4), the compensation rules must provide that the amount of compensation to be paid in respect of a Division 3 loss is to be not less than the sum of:

(a) the actual pecuniary loss suffered by the claimant, calculated as at the date on which the loss was suffered; and

(b) the claimant’s reasonable costs of, and disbursements incidental to, the making and proof of the claim.

(2) The compensation rules may provide for the amount of compensation payable in respect of a Division 3 loss to be reduced by reference to a right of set-off exercised by the claimant.

(3) The compensation rules must also provide for the payment to the person of interest at the rate applicable under the regulations on the amount of the actual pecuniary loss, or so much of that loss as from time to time has not been compensated by an instalment or instalments of compensation, in respect of the period starting on the day when the loss was suffered and ending on the day when the compensation, or the last instalment of compensation, is paid.

(4) The compensation rules may provide for what is to happen if there are insufficient funds to meet claims in respect of Division 3 losses and in respect of any other losses covered by the arrangements. For example, they may provide for the prioritisation of claims, or the apportionment of available funds between claims.

(5) In other provisions of this Division a reference to compensation in respect of a Division 3 loss includes (unless a contrary intention appears) a reference to interest referred to in subsection (3).

**855F Method of payment of compensation**

(1) The compensation rules must deal with how compensation in respect of Division 3 losses is to be paid.

(2) Without limiting subsection (1), the compensation rules may provide for compensation to be paid in a lump sum or by instalments.
855G Making and determination of claims

(1) The compensation rules must provide for how claims in respect of Division 3 losses are to be made and determined, and for how claimants are notified of the outcome of their claims.

(2) Without limiting subsection (1), the compensation rules may:
   (a) require a person making a claim to pay money, or transfer other property, in support of a claim; and
   (b) provide for claims to be disallowed unless persons exercise rights of set-off; and
   (c) set time limits for the making of claims; and
   (d) provide for claims to be partially allowed (including, for example, in a case where the operator considers that the claimant’s conduct contributed to the loss).

855H The source of funds—general

There must be an adequate source of funds available to cover claims made under the compensation arrangements in respect of Division 3 losses and in respect of any other losses covered by the arrangements.

Note 1: For example, the source of funds may consist of:
   (a) a fidelity fund; or
   (b) insurance arrangements; or
   (c) an irrevocable letter of credit.

Note 2: The source of funds does not have to consist of a single thing. It may consist of a combination of different things.

855I Administration and monitoring

(1) The arrangements must include arrangements for:
   (a) the administration of the compensation arrangements; and
   (b) monitoring compliance with the compensation arrangements and reporting breaches of the arrangements to the board of the operator of the market or facility; and
   (c) monitoring the adequacy of the arrangements and reporting to the board of the operator of the market or facility on the need for, or desirability of, changes to the compensation arrangements.
(2) Without limiting subsection (1), the arrangements may give responsibilities to:
   (a) the operator of the market or the facility, or a related company, or a director or employee of the operator or a related company; or
   (b) a committee; or
   (c) another person acting under an arrangement with the operator.

(3) The people who may be members of a committee referred to in paragraph (2)(c) include, but are not limited to:
   (a) participants in the market or facility, or representatives of such participants; and
   (b) members of the board of the operator of the market or facility.

**855J** The losses to be covered—other matters to be taken into account

(1) In considering whether the arrangements are adequate, the Minister must also have regard to:
   (a) the services provided by the market or facility and by the participants in the market or facility; and
   (b) any risk assessment report in relation to the market or facility given to the Minister under section 855K.

(2) The Minister may take into account such other matters as the Minister thinks appropriate.

**855K** Risk assessment reports for purpose of considering adequacy of arrangements

(1) For the purpose of considering whether the arrangements are adequate, the Minister may, by notice in writing to the operator of the market or facility, require the operator:
   (a) to cause a risk assessment report to be prepared in relation to the market or facility in accordance with the requirements specified in the notice; and
   (b) to give that report to the Minister by the time specified in the notice.

(2) The operator must comply with the notice.
Subdivision E—Other provisions about Division 3 arrangements

856A  Only one claim in respect of the same loss

If:
   (a) a claim by a person for compensation in respect of a particular Division 3 loss suffered by the person has been allowed under Division 3 arrangements; and
   (b) the person makes or has made another claim under those Division 3 arrangements, or under other Division 3 arrangements, in respect of the same loss;
   that other claim must not be allowed.

856B  Regulations relating to fidelity funds

The regulations may include provisions relating to how a fidelity fund, or part of a fidelity fund, is to be dealt with if:
   (a) the operator of a market or a facility becomes insolvent, within the meaning of the regulations; or
   (b) a market or a facility merges with another market or facility; or
   (c) a market or a facility ceases to operate (otherwise than because of a merger), or ceases to be required by subsection 851A(1) to have approved compensation arrangements.

Division 4—NGF Compensation regime

Subdivision A—Application of Division

857A  Markets and facilities to which this Division applies

This Division applies to a market, or a facility, that is operated by:
   (a) a body corporate that is a member of the SEGC; or
   (b) a body corporate that is a subsidiary of such a member;
   other than any such market or facility that the regulations state is not covered by this Division.
Subdivision B—Claims for and payment of compensation

858A The situations in which compensation may be claimed

(1) The situations in which compensation may be claimed in respect of a loss that is connected with a market, or a facility, to which this Division applies are as specified in the regulations.

(2) Without limiting subsection (1), a loss is connected with a market or facility if it is caused by a participant, or past participant, in the market or facility.

858B Kinds of compensation available

The regulations may provide that compensation under this Division is to take the form of a payment of money or some other form (for example, a transfer of financial products).

858C Amount of compensation payable

(1) The amount of compensation (including the value of any non-monetary compensation) to which a person is entitled in respect of a claim that is allowed is to be as determined in accordance with the regulations.

(2) Without limiting subsection (1), the regulations may do all or any of the following:
   (a) provide for the amount of compensation to be determined by agreement with the claimant, or by arbitration if agreement cannot be reached; and
   (b) provide for the payment of interest on the amount of the claimant’s loss; and
   (c) provide for the amount of compensation to be reduced by reference to a right of set-off exercised by the claimant; and
   (d) impose an upper limit on the amount of compensation to which a person is entitled in respect of a claim in particular circumstances, or an upper limit on the total amount of compensation to which persons are entitled in respect of claims referable to a particular event or circumstance.

(3) An upper limit referred to in paragraph (2)(d) may be specified in the regulations or determined by a method specified in the regulations.
(4) The regulations may also provide for a claimant to be paid an amount in respect of the claimant’s reasonable costs of, and disbursements incidental to, the making and proof of the claim (whether or not the claim is allowed in whole or in part).

(5) The regulations may also provide for a claimant to be paid an amount in respect of the claimant’s reasonable costs of, and disbursements incidental to, attempting to recover the loss (whether or not the claim is allowed in whole or in part).

858D Payment of compensation

(1) The regulations may provide for the compensation to be paid in a lump sum or by instalments.

(2) The regulations may make other provisions in relation to how compensation is paid.

858E Making and determination of claims

(1) Claims are to be made and determined in accordance with:
  (a) the regulations; and
  (b) any relevant provisions of the SEGC’s operating rules.

(2) Without limiting subsection (1), the regulations, or the SEGC’s operating rules, may do all or any of the following:
  (a) require a person making a claim to pay money, or transfer other property, to the SEGC in support of a claim
  (b) provide for claims to be disallowed unless persons exercise rights of set-off
  (c) set time limits for the making of claims
  (d) provide for claims to be partially allowed (including, for example, in a case where the SEGC considers that the claimant’s conduct contributed to the loss).

(3) The regulations, or the SEGC’s operating rules, may impose other requirements to be complied with by the SEGC in relation to claims (including, for example, requirements to notify claimants whether their claims have been allowed).

(4) If a provision of the SEGC’s operating rules is wholly or partly inconsistent with regulations made for the purposes of this section, the provision of the SEGC’s operating rules is, to the extent of the inconsistency, of no effect.
858F  Power of SEGC to allow and settle claims

The SEGC has power to allow and settle claims in accordance with this Division.

858G  Allowing a claim does not constitute an admission of any other liability

If the SEGC allows a claim, that does not constitute an admission (by anyone) of any liability, other than the liability to provide compensation in respect of the claim in accordance with this Division.

858H  Claimant may apply to Court if claim disallowed

(1) If the SEGC has disallowed a claim, the claimant may bring proceedings in the Court to establish the claim. The proceedings must be brought within 3 months of notice of the disallowance of the claim.

(2) If the SEGC has neither allowed nor disallowed a claim within a reasonable period after it was made, the claimant may bring proceedings in the Court to establish the claim.

(3) If, on proceedings under subsection (1) or (2), the Court is satisfied that the claim should be allowed, the Court:
   (a) must, by order, make a declaration accordingly and direct the SEGC to allow the claim and deal with it in accordance with this Division; and
   (b) may, at any time after the order is made, on application made (whether before or after the order is made) by the claimant or the SEGC, give such directions relating to the claim as the Court thinks just and reasonable.

(4) In proceedings to establish a claim, all questions of costs are in the discretion of the Court.

858I  Non-NGF property of SEGC not available to meet claims

Money or other property of the SEGC that is not part of the NGF is not available to be applied in respect of a claim that has been allowed by the SEGC, whether or not under an order of the Court.
858J  **SEGC may enter into contracts of insurance or indemnity**

(1) The SEGC may enter into a contract with a person (the *insurer*) carrying on fidelity insurance business under which the SEGC will be insured or indemnified against liability in respect of claims to the extent and in the manner provided by the contract.

(2) The contract may relate to all claims or only to certain claims as specified in the contract. The contract may, for example, exclude claims relating to the conduct of a particular financial services licensee.

(3) The SEGC, any body corporate that is a member of the SEGC, and any employee of the SEGC or such a member, each have qualified privilege in respect of the publication of a statement that the contract does not apply with respect to claims relating to the conduct of a particular financial services licensee.

(4) A person who has made a claim does not have a right of action against the insurer in respect of the contract or a right or claim in respect of money paid by the insurer in accordance with the contract.

858K  **NGF may be used to acquire financial products to be transferred as compensation**

The SEGC may pay money out of the NGF to acquire financial products for the purpose of providing compensation (in accordance with the regulations) that takes the form of a transfer of financial products.

**Subdivision C—The NGF**

859A  **Compensation to be provided out of the NGF**

Compensation payable under this Division is to be provided out of the NGF.

859B  **SEGC to keep the NGF**

The SEGC must keep the NGF, and the board of the SEGC must administer it on the SEGC’s behalf.

*Financial Services Reform Exposure Draft*
859C What the NGF consists of

The NGF consists of:

(a) money and other property constituting the NGF before the commencement of this Chapter; and

(b) money paid into the NGF in accordance with regulations referred to in section 859J; and

(c) money paid to the SEGC in accordance with regulations referred to in section 858E in support of a claim; and

(d) money paid to the SEGC under a contract of insurance or indemnity referred to in section 858J; and

(e) money paid into the NGF under subsection 859E(2); and

(f) the interest and profits from time to time accruing from the investment of the NGF and paid into the NGF under subsection 859H(2); and

(g) money recovered by or on behalf of the SEGC in the exercise of a right of action that the SEGC has by virtue of a provision of this Part or of regulations made for the purposes of such a provision; and

(h) money and other property paid or transferred to the SEGC for inclusion in the NGF in accordance with regulations referred to in section 861B; and

(i) all other money and other property lawfully paid into, or forming part of, the NGF.

859D Power to borrow etc. for purposes of the NGF

(1) If the board of the SEGC considers that, in the interests of the sound financial management of the NGF, money should be borrowed for the purpose of meeting a payment due out of the NGF, the SEGC may borrow money for that purpose on such terms and conditions as the board of the SEGC thinks appropriate.

(2) The SEGC may give security, including over the assets of the NGF, in respect of the SEGC’s obligations in relation to a borrowing under subsection (1).

(3) If:

(a) money borrowed under subsection (1) is a loan from a body corporate that is a member of the SEGC; and

(b) the body corporate borrowed money for the purpose of making the loan to the SEGC;
the SEGC may give security, including over the assets of the NGF,
in relation to the body corporate’s obligations in respect of the
borrowing referred to in paragraph (b).

859E Money borrowed and paid to SEGC

(1) This section applies if money borrowed by the SEGC under
subsection 859D(1) is paid to the SEGC.

(2) The SEGC must pay the money into the NGF.

(3) If:
   (a) the money was borrowed for the purpose of meeting a
       payment due out of the NGF; and
   (b) the borrowed money has been paid into the NGF; and
   (c) the payment due out of the NGF has not yet been made;
then, for the purposes of section 859J and regulations for the
purposes of that section, the amount in the NGF is taken to be
reduced by the amount of the borrowed money.

859F Money borrowed and not paid to SEGC

(1) This section applies if money borrowed by the SEGC under
subsection 859D(1) is not paid to the SEGC but is payable to other
persons at the direction of the SEGC.

(2) The SEGC must not direct that any of the money be paid to a
person unless the payment is of a kind that can, under section
859G, be made out of the NGF.

859G Payments out of the NGF

Subject to regulations for the purposes of this section, the
following are to be paid out of the NGF, in such order as the board
of the SEGC considers appropriate:
   (a) amounts, including costs, disbursements and interest, that any
       provision of this Part requires to be paid in connection with
       claims
   (b) all legal and other expenses incurred:
       (i) in investigating or defending claims; or
       (ii) in relation to the NGF; or
(iii) in the exercise by the SEGC or the board of the SEGC of the rights and powers vested in it by any provision of this Part in relation to the NGF

(c) money payable out of the NGF under regulations referred to in subsection 862G(2)

(d) amounts to be paid to acquire financial products as mentioned in section 858K

(e) to the extent that the money referred to in section 859H is insufficient for the purpose, premiums payable in respect of contracts of insurance or indemnity entered into by the SEGC under section 858J

(f) to the extent that the money referred to in section 859H is insufficient for the purpose, payments of principal, interest and other amounts payable by the SEGC in respect of money borrowed, and security given, under section 859D

(g) to the extent that the money referred to in section 859H is insufficient for the purpose, the expenses incurred in the administration of the NGF, including the salaries and wages of persons employed by the SEGC or the board of the SEGC in relation to the NGF

(h) amounts to be paid to the SCH in accordance with a determination of the Minister under section 861A

(i) any other money payable out of the NGF in accordance with a provision of this Part.

859H Interest and profits from investment of the NGF

(1) The interest and profits from time to time accruing from the investment of the NGF (see section 862C) are to be applied by the SEGC to pay:

(a) premiums payable in respect of contracts of insurance or indemnity entered into by the SEGC under section 858J; and

(b) principal, interest and other amounts payable by the SEGC in respect of money borrowed, and security given, under section 859D; and

(c) the expenses incurred in the administration of the NGF, including the salaries and wages of persons employed by the SEGC or the board of the SEGC in relation to the NGF.

(2) An amount of interest or profit that accrues from the investment of the NGF and is not immediately required for the purposes referred to in subsection (1) is to be paid into the NGF.
859I Minimum amount of the NGF

(1) The minimum amount in relation to the NGF is:
   (a) unless paragraph (b) applies—$80,000,000; or
   (b) if a determination is in force under subsection (2)—the
       amount specified in the determination.

(2) The SEGC may, with the written approval of the Minister,
    determine an amount (whether greater than, or less than,
    $80,000,000) to be the minimum amount in relation to the NGF.
    The determination comes into force when it is approved by the
    Minister.

(3) The SEGC must publish notice of a determination under subsection
    (2) in the Gazette. The notice must specify the date when the
    determination came into force.

859J Regulations may specify situations in which levy is payable if
    NGF is below the minimum amount

(1) The regulations may specify situations in which, if the amount in
    the NGF is less than the minimum amount applicable under section
    859I, a levy is payable by:
       (a) the operator of a market or a facility to which this Division
           applies; or
       (b) a participant in such a market or facility.

(2) The regulations may deal with:
       (a) the amount or rate of the levy that is payable; and
       (b) the time by which an amount of levy must be paid; and
       (c) to whom the levy must be paid;
       (d) the method by which the levy must be paid;
       (e) other matters related to the levy.

(3) The regulations must provide for amounts of levy that have been
    paid, or amounts equal to those amounts, to be paid into the NGF.

859K Regulations may permit operator to impose levy on
    participants to meet liability under section 859J

(1) The regulations may permit the operator of a market or facility to
    which this Division applies to impose a levy on participants in the
    market or facility for the purpose of meeting a liability (the
(2) The regulations may permit the operator to determine:

(a) the circumstances (in addition to the circumstance mentioned in subsection (1)) in which levy is payable; and

(b) the amount or rate of the levy that is payable; and

(c) the time by which an amount of levy must be paid; and

(d) to whom the levy must be paid;

(e) the method by which the levy must be paid; and

(f) other matters related to the levy.

(3) The regulations must provide for amounts of levy that have been paid, or amounts equal to those amounts, to be applied in meeting the primary levy liability.

859L Levy not payable unless imposed by an Act

A person need not pay a levy under section 859J or 859K unless the levy is imposed by a provision of an Act of this jurisdiction.

Subdivision D—The SEGC

860A The SEGC is to administer arrangements

The SEGC is to administer the arrangements constituted by this Division.

860B Functions and powers of the SEGC

The SEGC is to perform the functions, and may exercise the powers, that are conferred on it by or under this Division.

860C Management subcommittee of the SEGC

(1) The board of the SEGC may, by resolution, appoint a management subcommittee of not fewer than 3 nor more than 5 persons, at least one of whom is a member of the board.

(2) The board may, by resolution, delegate to a subcommittee appointed by it under this section all or any of its functions or powers under a provision of this Division, other than a provision of the regulations giving the board power to accept a claim despite the
(3) A function or power delegated under subsection (2) may be performed or exercised by members forming a majority of the subcommittee as if that function or power had been conferred by the relevant provision on a majority of the members of the subcommittee.

(4) A delegation by the board under this section may, at any time, by resolution of the board, be varied or revoked.

(5) The board may at any time, by resolution, remove a member of a subcommittee appointed by it under this section and may, by resolution, fill a vacancy arising in the membership of the subcommittee.

(6) A delegation under this section continues in force even if there is a change in the membership of the board or of the subcommittee.

(7) A function or power performed or exercised under this section by, or by a majority of, a subcommittee is to be taken to have been performed or exercised by the board.

(8) Any remuneration or expenses paid to a member of a subcommittee appointed under this section are to be taken to be expenses incurred in the administration of the NGF.

(9) Section 109ZE has effect in relation to a delegation subject to this section.

860D Sub-delegation by management subcommittee of the SEGC

(1) A management subcommittee appointed under section 860C may delegate to:
   (a) a member of the board of the SEGC; or
   (b) a member of the sub-committee; or
   (c) an officer of the SEGC;
   all or any of the functions or powers that have been delegated under subsection 860C(2) to the subcommittee.

(2) A delegation must be in writing signed by a majority of the members of the subcommittee.
(3) A delegation may be varied or revoked at any time by writing
signed by a majority of the members of the subcommittee.

(4) A delegation continues in force even if there is a change in the
membership of the subcommittee.

(5) A function or power exercised by a person under a delegation is
taken to have been performed or exercised by the board.

(6) A delegation of a function or power does not prevent the
performance or exercise of the function or power by the board or
by the subcommittee that made the delegation.

(7) Section 109ZE has effect in relation to a delegation subject to this
section.

860E Operating rules of the SEGC

The SEGC may make rules (operating rules) relating to the
performance or exercise of its powers or duties under this Part, or
relating to matters permitted by this Part to be dealt with in its
operating rules.

860F Legal effect of SEGC’s operating rules

The SEGC’s operating rules have effect as a contract under seal
between the SEGC and each member of the SEGC under which
each of those persons agrees to observe the operating rules to the
extent that they apply to the person and engage in conduct that the
person is required by the operating rules to engage in.

860G Enforcement of SEGC’s operating rules

(1) If a person who is under an obligation to comply with or enforce
any of the SEGC’s operating rules fails to meet that obligation, an
application to the Court may be made by:
(a) ASIC; or
(b) the SEGC; or
(c) a member of the SEGC; or
(d) a person aggrieved by the failure.

(2) After giving an opportunity to be heard to the applicant and the
person against whom the order is sought, the Court may make an
order giving directions to:
(a) the person against whom the order is sought; or
(b) if that person is a body corporate—the directors of the body
corporate;
about compliance with, or enforcement of, the operating rules.

860H Changing the SEGC’s operating rules

(1) As soon as practicable after a change is made to the SEGC’s
operating rules, the SEGC must lodge with ASIC written notice of
the change.

(2) The notice must:
   (a) set out the text of the change; and
   (b) specify the date on which the change was made; and
   (c) contain an explanation of the purpose of the change.

(3) If no notice is lodged with ASIC within 21 days after the change is
made, the change ceases to have effect.

860I Disallowance of changes to SEGC’s operating rules

(1) As soon as practicable after receiving a notice under section 860H,
ASIC must send a copy to the Minister.

(2) Within 28 days after the receiving the copy of the notice, the
Minister may disallow all or a specified part of the change to the
SEGC’s operating rules.

(3) As soon as practicable after all or part of a change is disallowed,
ASIC must give notice of the disallowance to the SEGC. The
change ceases to have effect, to the extent of the disallowance,
when the SEGC receives the notice.

Subdivision E—Other provisions relating to compensation
under this Division

861A Payment out of NGF to prescribed body with arrangements
covering clearing and settlement facility support

(1) If the Minister is satisfied that a body corporate specified in
regulations for the purposes of this provision has made adequate
arrangements covering all or part of the clearing and settlement
system support that is provided for by this Division, the Minister
may, in writing, determine that an amount is to be paid to that body
corporate out of the NGF.

(2) The Minister may, in writing, impose conditions to be complied
with by the body corporate in relation to the payment.

861B Markets and clearing and settlement facilities operated by
persons who become members of the SEGC—regulations
may deal with transitional provisions and other matters

(1) In this section:

joining market or facility means a market or facility that:
(a) is operated by a person who becomes a member of the SEGC
after the commencement of this Division; and
(b) is a market or facility to which this Division applies.

(2) The regulations may make provisions of a transitional or saving
nature dealing with the transition, in relation to a joining market or
facility, from the compensation regime previously applicable in
relation to the market or facility to the arrangements constituted by
this Division.

(3) Without limiting subsection (2), the regulations may require money
or other property (including money or other property in a fidelity
fund) to be paid or transferred to the SEGC for inclusion in the
NGF.

(4) The regulations may also provide for the allocation of part of the
NGF as being for use for the purposes of claims arising in
connection with the joining facility.

(5) The regulations may make modifications of provisions of this
Division and Division 5 that are necessary or convenient to take
account of allocations of a kind referred to in subsection (4).

861C Regulations may make different provision in respect of
different markets or facilities etc

Regulations for the purposes of a provision of this Division may
make different provision in respect of different markets or facilities
to which this Division applies and in respect of different
circumstances.

Financial Services Reform Exposure Draft
Division 5—Provisions common to both kinds of compensation arrangements

862A Interpretation

In this Division:

regulated fund means:

(a) a fidelity fund that is the source, or a source, of funds under Division 3 arrangements; or
(b) the NGF; or
(c) an account kept as required by subsection 862B(3).

relevant authority, in relation to Part 7.4 arrangements, means:

(a) if the arrangements are Division 3 arrangements of a market or facility—the operator of the market or facility; or
(b) if the arrangements are Division 4 arrangements—the SEGC.

862B How regulated funds are to be kept

(1) Money in:

(a) a fidelity fund that is the source, or a source, of funds under Division 3 arrangements; or
(b) the NGF;

must, until applied in paying claims, or invested in accordance with section 862C, be kept in an account or accounts with an Australian ADI, separate from any account or accounts in which other money is kept.

(2) The regulations may impose additional requirements to be complied with in relation to a regulated fund that covers 2 or more markets and/or facilities.

(3) If:

(a) a source of funds under Division 3 arrangements for a market or a facility is something other than a fidelity fund; and
(b) the operator of the market or facility, or a person involved in the administration of the arrangements, receives money from that source of funds;

the money received must, until applied in paying the claims, or invested in accordance with section 862C, be kept in an account or
accounts with an Australian ADI, separate from any account or accounts in which other money is kept.

862C  Investment of money in regulated funds

Money in a regulated fund that is not immediately required for the purposes of meeting claims may be invested in any way in which trustees are for the time being authorised by law in force in a State or Territory to invest trust funds.

862D  Powers of relevant authority to require production or delivery of financial products, documents or statements

(1) The relevant authority in relation to Part 7.4 arrangements may require a person:
   (a) to deliver to the relevant authority documents or copies of documents, including documents of, or evidencing, title to financial products; or
   (b) to make out and deliver to the relevant authority a statement of evidence;
   that the relevant authority considers will assist it in determining a claim for compensation that has been made.

(2) The requirement is to be made by notice in writing given to the person. The notice must:
   (a) so far as it requires documents or copies referred to in paragraph (1)(a)—identify or describe the documents or copies that are required; and
   (b) so far as it requires a statement referred to in paragraph (1)(b)—describe the matters in relation to which the person’s evidence is required, and set out any requirements to be complied with in relation to how the statement is made out.

(2) If the person fails, without reasonable excuse, to comply with the requirement as specified in the notice, the relevant authority may disallow a claim made by the person.

(3) The relevant authority may, in writing, delegate the power given by this section to a person involved in the administration of the Part 7.4 arrangements.

(4) The relevant authority must return any documents or copies of documents provided to it under this section as soon as practicable after the claim referred to in subsection (1) has been determined.
and any proceedings relating to the determination of the claim have been completed. This does not apply if another law prohibits or prevents the return of the documents or copies, or the documents or copies are no longer in the custody of the relevant authority.

862E Power to require assistance for purpose of dealing with a claim

(1) If Division 3 arrangements give responsibilities (as mentioned in paragraph 855I(2)(c)) to a person acting under an arrangement with the operator of the market or facility concerned, the person may require the operator to provide such assistance as the person requires for the purpose of fulfilling the person’s responsibilities under the arrangement.

(2) The SEGC may require a member of the SEGC, or a subsidiary of a member of the SEGC, to provide such assistance as the SEGC requires for the purpose of:

(a) dealing with a claim; or

(b) the assessment of risks to the NGF.

(3) A requirement for assistance under subsection (1) or (2) must be reasonable.

862F Relevant authority’s right of subrogation if compensation is paid

If compensation in respect of a claim is paid under Part 7.4 arrangements, the relevant authority in relation to the arrangements is subrogated, to the extent of that payment, to all the claimant’s rights and remedies in relation to the loss to which the claim relates.

862G Excess money in compensation funds

(2) The regulations may determine, or provide a method for determining, when there is excess money in a regulated fund.

(2) The regulations may make provision in relation to how excess money in a regulated fund may be, or is to be, dealt with. The regulations may make different provision in relation to different funds.
862H Accounting and reporting in relation to regulated funds

(1) The relevant authority in relation to Part 7.4 arrangements must, in relation to each regulated fund established in connection with the arrangements:

(a) cause proper accounts of the regulated fund to be established and kept; and

(b) within 2 months after the end of each financial year of the relevant authority, cause a balance sheet in respect of those accounts to be made out as at the end of that financial year.

(2) The relevant authority must appoint a registered company auditor to audit the accounts of the regulated fund. If there is more than one relevant authority for the fund, the appointment must be by one or more of those authorities, and any of those authorities that does not make the appointment must consent to the appointment.

(3) The auditor must audit the accounts of the regulated fund and each balance sheet and must give a report on the balance sheet to the relevant authority or each of the relevant authorities.

(4) The relevant authority for the regulated fund must, within 14 days after receiving the report, give ASIC a copy of the report and a copy of the balance sheet. If there is more than one relevant authority for the regulated fund, the copy must be given to ASIC by one or more of those authorities.

(5) If the regulated fund is the NGF, the relevant authority (being the SEGC) must cause a copy of the report, and a copy of the balance sheet to which it relates, to be laid before the annual general meeting of each member of the SEGC.

(6) If the regulated fund is not the NGF, the relevant authority, or each of the relevant authorities, must cause a copy of the report, and a copy of the balance sheet, to be laid before its own annual general meeting.

862I Division 3 arrangements—reporting in situations where compensation does not come out of a regulated fund

The regulations may impose reporting requirements to be complied with by the relevant authority in relation to Division 3 arrangements in relation to situations in which compensation under the arrangements is provided otherwise than out of a regulated fund.
862J Making information about compensation arrangements available to the public
The relevant authority in relation to Part 7.4 arrangements must take reasonable steps to ensure that information about the arrangements is available to the public free of charge.

862K Regulations may provide for qualified privilege in respect of certain matters
The regulations may provide for qualified privilege in respect of specified things done:
(a) under compensation rules forming part of Division 3 arrangements; or
(b) under regulations for the purposes of a provision or provisions of Subdivision B of Division 4.

Part 7.5—Licensing of providers of financial services

Division 1—Preliminary

880A Definitions
In this Part:
representative of a financial services licensee means:
(a) an employee or director of the licensee; and
(b) an authorised representative of the licensee; and
(c) any other person acting on behalf of the licensee.

Division 2—Requirement to be licensed or authorised

Subdivision A—The rules

881A Need for an Australian financial services licence
(1) Subject to this section, a person who carries on a financial services business in this jurisdiction must hold an Australian financial services licence covering the provision of the financial services.
(2) However, a person is exempt from the requirement to hold an Australian financial services licence for a financial service they provide in any of the following circumstances:

(a) the service is provided by the person as representative of a second person who:
   (i) carries on a financial services business; and
   (ii) holds an Australian financial services licence that covers the provision of the service

(b) the service is the issue of a financial product by the person and the following conditions are satisfied:
   (i) a second person offered to arrange for the issue of the product
   (ii) that offer was covered by an Australian financial services licence held by the second person
   (iii) the product was issued to a third person in accordance with such an arrangement

(c) the service is provided incidental to the operation of a licensed market, or a licensed CS facility, operated by the person

(d) the service is provided by the person as a member of a declared professional body and is the provision of financial product advice that is covered by the declaration (see section 882A)

(e) the service is provided by the person while performing functions, or exercising powers, in any of the following capacities or circumstances:
   (i) as an official receiver or trustee within the meaning of the Bankruptcy Act 1966
   (ii) as a receiver, receiver and manager, or liquidator (whether appointed by a court or otherwise)
   (iii) as a person appointed by a court to carry on a financial services business
   (iv) as the Public Trustee acting under a prescribed law of a State or Territory
   (v) as an administrator of a body corporate
   (vi) as an administrator of a deed of company arrangement executed by a body corporate
   (vii) as a trustee or person administering a compromise or arrangement between a body corporate and another person or persons
(viii) subject to subsection (3), as a personal representative of a deceased financial services licensee
(ix) in the administration of a bankrupt estate or in the winding up of a body corporate or partnership
(f) the person is a body regulated by APRA that only provides financial services to persons as wholesale clients
(g) the provision of the service is covered by an exemption prescribed in the regulations.

(3) Subparagraph (e)(viii) only applies until whichever of these happens first:
(a) the end of 6 months after the death of the licensee
(b) the removal or discharge of the personal representative
(c) the final distribution of the licensee’s estate.

881B Providing financial services on behalf of a person who carries on a financial services business

A person (the representative) must not provide a financial service in this jurisdiction, on behalf of another person (the principal), who carries on a financial services business unless:
(a) these conditions are satisfied:
   (i) the principal holds an Australian financial services licence covering the provision of the service; and
   (ii) the representative is an employee or director of the principal; or
(b) these conditions are satisfied:
   (i) the principal holds an Australian financial services licence covering the provision of the service; and
   (ii) the representative is an authorised representative of the principal; and
   (iii) the authorisation covers the provision of the service by the representative; or
(c) if the principal (rather than the representative) provided the service, the principal would not need an Australian financial services licence because the provision of the service would be exempt under subsection 881A(2).

Note: A person must not provide a financial service on behalf of another person contrary to a banning order or disqualification order under Division 7.
881C Prohibition on holding out

A person must not hold out:

(a) that the person has an Australian financial services licence unless the person has such a licence; or

(b) that a financial service provided by the person or by someone else is exempt from the requirement to hold an Australian financial services licence unless the service is so exempt; or

(c) that, in providing a financial service, the person acts on behalf of another person unless that is the case.

881D When a financial services business is taken to be carried on in this jurisdiction

(1) For the purposes of this Chapter, a financial services business is taken to be carried on in this jurisdiction by a person if, in the course of the person carrying on the business, the person engages in conduct that is:

(a) intended to induce people in this jurisdiction to use the financial services the person provides; or

(b) is likely to have that effect;

whether or not the conduct is intended, or likely, to have that effect in other places as well.

(2) This section does not limit the circumstances in which a financial services business is operated in this jurisdiction for the purposes of this Chapter.

Subdivision B—Declared professional bodies

882A Declared professional bodies

(1) A declared professional body is a professional body declared in writing by ASIC for the purposes of this definition.

(2) ASIC must specify in the declaration the kind of financial product advice that members of the body may provide in accordance with the declaration.

(3) ASIC may only declare a professional body if ASIC is satisfied that:
(a) the body will ensure that its members are adequately trained
to provide, and supervised in the provision of, the relevant
kind of financial product advice; and
(b) adequate arrangements have been made for compensating
clients for losses suffered because of such advice; and
(c) adequate internal and external dispute resolution procedures
are available to clients in respect of such advice; and
(d) adequate conduct and disclosure requirements apply to
members of the body; and
(e) the body has adequate powers to discipline or remove
members.

(4) If ASIC makes a declaration, it must give written notice to the
professional body concerned. The notice must include the date on
which the declaration was made, and may include such other
matters as ASIC thinks fit. ASIC must also publish a notice in the
Gazette to the same effect.

882B Application for declaration

(1) A professional body may lodge with ASIC an application for a
declaration to be made under section 882A.

(2) The application must:
   (a) include the prescribed information; and
   (b) be accompanied by the prescribed documents (if any); and
   (c) be accompanied by the prescribed fee (if any).

Note: Part 9.10 deals with fees.

(3) ASIC cannot decide the application unless it has given the
applicant an opportunity to make submissions on the matter.

882C Variation and revocation of declaration

(1) ASIC may, in writing, vary a declaration made under section 882A
in respect of a professional body if:
   (a) there is a change in the name of the body; or
   (b) ASIC considers it appropriate to vary the kind of advice that
members of the body may provide in accordance with the
declaration.

(2) ASIC may, in writing, revoke a declaration made under section
882A in respect of a professional body if:
(a) the body asks ASIC to do so; or
(b) the body ceases to function or becomes insolvent; or
(c) a material particular in the application for the declaration was false, or such a particular was omitted from the application, or the application was otherwise materially misleading; or
(d) a member or members of the body contravene a provision of this Chapter; or
(e) ASIC is no longer satisfied as mentioned in subsection 882A(3).

(3) ASIC may vary or revoke a declaration in respect of a professional body only after giving the body an opportunity:
(a) to be represented at a hearing before ASIC that takes place in private; and
(b) to make submissions and give evidence to ASIC on the matter.

(4) If ASIC varies or revokes a declaration, it must give written notice to the professional body concerned. The notice must include the date on which the variation or revocation took effect, and may include such other matters as ASIC thinks fit. ASIC must also publish a notice in the Gazette to the same effect.

Division 3—Obligations of financial services licensees

883A General obligations

A financial services licensee must:
(a) to the extent that it is reasonably practicable to do so, do all things necessary to ensure that the financial services covered by the licence are provided in an efficient, fair and honest way; and
(b) comply with the conditions on the licence; and
(c) monitor and supervise the activities of its representatives to ensure compliance with the requirements of this Law (including any obligations under Parts 7.6, 7.7 and 7.8); and
(d) have sufficient resources (including financial, technological and human resources) to properly provide the financial services covered by the licence and carry out supervisory arrangements; and
(e) maintain the relevant competence, skills and experience to provide those financial services; and
(f) ensure that its representatives are adequately trained, and are competent, to provide those financial services; and

(g) if those financial services are provided to persons as retail clients—have internal and external resolution procedures, that are approved by ASIC in accordance with the regulations, to resolve complaints from those persons; and

(h) either:
   (i) be a body regulated by APRA; or
   (ii) have adequate risk management systems; and
   (i) comply with the requirements (if any) that apply to the licensee relating to handling of client funds and assets, and the keeping and lodgment of financial records, set out in Part 7.7; and
   (j) comply with any other obligations prescribed in the regulations.

Note: Licensees may have additional obligations under this Chapter (for example, under Parts 7.6 and 7.7).

883B Adequate compensation arrangements if financial services provided to persons as retail clients

(1) If a financial services licensee provides a financial service to persons as retail clients, the licensee must have adequate arrangements for compensating those persons for pecuniary losses suffered because of a failure by the licensee or its representatives to adequately provide financial services under the licence.

(2) An arrangement is adequate if:
   (a) it is an arrangement of a kind prescribed by the regulations; or
   (b) ASIC determines, by giving written notice to the licensee, that the arrangement is adequate.

(3) Before determining that an arrangement is adequate, ASIC must have regard to:
   (a) the financial services covered by the licence; and
   (b) whether the arrangements will continue to cover persons after the licensee ceases carrying on the business of providing financial services, and the length of time for which that cover will continue.
(3) The regulations may prescribe additional matters that ASIC must consider in deciding whether arrangements are adequate for the purposes of this section.

883C Direction to provide information or statements

(1) ASIC may, by giving written notice to a financial services licensee, direct the licensee to give to ASIC written information or statements in relation to:
   (a) the financial services provided by the licensee or its representatives; or
   (b) the financial services business carried on by the licensee.

(2) ASIC may also, by giving written notice to the licensee, direct the licensee to obtain an audit report, prepared by a suitably qualified person, on such a statement before the statement is given to ASIC.

(3) The licensee must comply with directions given under this section:
   (a) within the time specified in the direction if that is a reasonable time; or
   (b) in any other case—within a reasonable time.

ASIC may extend the time within which the licensee must comply with a direction by giving written notice to the licensee.

883D Obligation to notify ASIC of certain matters

(1) As soon as practicable after a financial services licensee becomes aware that:
   (a) it may no longer be able to meet, or has breached, an obligation under this Division; or
   (b) it has breached a condition of the licence;
the licensee must give a written report to ASIC on the matter.

(2) A financial services licensee must give written notice to ASIC, as soon as practicable, if the licensee becomes a participant in a licensed market or a licensed CS facility. The notice must identify the market or facility and state when the licensee became a participant.
883E  Obligation to assist ASIC

A financial services licensee and its representatives must give such assistance to ASIC, or a person authorised by ASIC, as ASIC reasonably requires to perform its functions.

883F  Surveillance checks by ASIC

(1) ASIC may, from time to time, check whether a financial services licensee and its representatives are complying with this Law.

(2) The licensee, and its representatives, must take all reasonable steps to assist ASIC in carrying out the check.

883G  Obligation to include licence number in documents

Whenever a financial services licensee identifies itself in a document in connection with providing financial services under the licence, or otherwise in connection with the licence, the licensee must include the licence number given under section 884C when the licence was granted.

Division 4—Provisions about Australian financial services licences

Subdivision A—How to get a licence

884A  How to apply for a licence

A person may apply for an Australian financial services licence by lodging an application with ASIC that:

(a) includes the prescribed information; and

(b) is accompanied by the prescribed documents (if any); and

(c) is accompanied by the prescribed fee (if any).

Note: Part 9.10 deals with fees.

884B  When a licence may be granted

(1) ASIC must grant an applicant an Australian financial services licence if ASIC is satisfied that:

(a) the application was made in accordance with section 884A; and
(b) the applicant will comply with the obligations that will apply if the licence is granted; and
(c) the applicant meets the requirement in whichever of subsection (2) or (3) applies; and
(d) the applicant meets the other requirements (if any) that are prescribed by the regulations.

Note: ASIC must not grant an Australian financial services licence to a person contrary to a banning order or disqualification order (see Division 7).

(2) If the applicant is a natural person, ASIC must be satisfied that there is no reason to believe that the applicant is not of good fame or character.

(3) If the applicant is not a natural person, ASIC must be satisfied:
(a) that there is no reason to believe that any of the applicant’s employees, officers, directors or partners are not of good fame or character; or
(b) if ASIC is not satisfied of the matter in paragraph (a)—that the applicant’s ability to provide the financial services covered by the licence nevertheless would not be significantly impaired.

(4) In considering whether there is reason to believe that a person is not of good fame or character, ASIC must have regard to:
(a) any conviction of the person, within 10 years before the application was made, for serious fraud; and
(b) whether the person has held an Australian financial services licence that was suspended or cancelled; and
(c) whether a banning order or disqualification order under Division 7 has previously been made against the person; and
(d) any other matter ASIC considers relevant.

884C Licence numbers

ASIC must give each Australian financial services licence a unique licence number when it is granted, and must notify the licensee of that number.

884D More than one licence in the same document

If the Minister, or ASIC, grants a person 2 or more of the following:
Subdivision B—The conditions on the licence

885A The conditions on the licence

(1) ASIC may, at any time, by giving written notice to a financial services licensee:

(a) impose conditions, or additional conditions, on the licence; and

(b) vary or revoke conditions imposed on the licence.

Note: Subsection 892B(3) restricts the circumstances in which ASIC can impose a condition authorising a person to assume or use a restricted word or expression under that section.

(2) ASIC may do so:

(a) on its own initiative; or

(b) if the licensee lodges with ASIC an application for ASIC to do so, which is accompanied by the prescribed documents, and prescribed fee, if any.

Note: Part 9.10 deals with fees.

(3) However, ASIC may only impose conditions or additional conditions, or vary the conditions, on the licence after giving the licensee an opportunity:

(a) to appear at a hearing before ASIC that takes place in private; and

(b) to make submissions and give evidence to ASIC in relation to the matter.

This subsection does not apply to ASIC imposing conditions when the licence is granted.

(4) ASIC must ensure that the licence is subject to a condition that specifies the particular financial services or class of financial services that the licensee is authorised to provide.

(5) The financial services or class of financial services may be specified by reference to particular financial products, or classes of financial products.
(6) The licence is subject to such other conditions as are prescribed by
the regulations. However, ASIC cannot vary or revoke those
conditions.

Subdivision C—When a licence can be varied, suspended or
cancelled

886A Varying licences

(1) ASIC may vary an Australian financial services licence to take
account of a change in the licensee’s name if the licensee lodges
with ASIC an application for the variation, accompanied by the
prescribed documents, and prescribed fee, if any.

Note 1: The conditions on the licence can be varied under section 885A.
Note 2: Part 9.10 deals with fees.

(2) ASIC must give written notice of the variation to the licensee.

886B Immediate suspension or cancellation

Licence held by a natural person

(1) ASIC may suspend or cancel an Australian financial services
licence held by a natural person, by giving written notice to the
person, if they:
(a) become an insolvent under administration; or
(b) are convicted of serious fraud; or
(c) become incapable of managing their affairs because of
mental or physical incapacity; or
(d) ask ASIC to suspend or cancel the licence.

Licence held by a partnership

(2) ASIC may suspend or cancel an Australian financial services
licence held by a partnership, by giving written notice to the
partnership, if:
(a) the partnership ceases to carry on business; or
(b) a creditor’s petition or a debtor’s petition is presented under
Division 2 or 3 of Part IV of the Bankruptcy Act 1966 against
the partnership; or
(c) one or more of the partners is convicted of serious fraud; or
(d) the partnership asks ASIC to suspend or cancel the licence.
Licence held by a body corporate

(3) ASIC may suspend or cancel an Australian financial services licence held by a body corporate, by giving written notice to the body, if the body:

(a) ceases to carry on business; or
(b) becomes an externally-administered body corporate; or
(c) is a responsible entity of a registered scheme whose members have suffered, or are likely to suffer, loss or damage because the body has contravened this Law; or
(d) asks ASIC to suspend or cancel the licence.

However, if the body, or a related body corporate, is a body regulated by APRA, ASIC must consult with APRA before suspending or cancelling the licence.

886C Suspension or cancellation after offering a hearing

(1) ASIC may suspend or cancel an Australian financial services licence (subject to complying with subsection (4)) in any of the following cases:

(a) the licensee contravenes a provision of this Chapter or a provision of this Law prescribed by the regulations
(b) ASIC is no longer satisfied of the matter in whichever of subsection 884B(2) or (3) applied at the time the licence was granted (about whether the licensee, or the licensee’s representatives, are of good fame or character)
(c) a banning order or disqualification order under Division 7 is made against the licensee
(d) a banning order or disqualification order under Division 7 is made against a representative of the licensee and ASIC considers that the representative’s involvement in the provision of the licensee’s financial services will significantly impair the licensee’s ability to meet its obligations under this Chapter or under regulations made for the purposes of this Chapter.

(2) ASIC may also cancel an Australian financial services licence (subject to complying with subsection (4)) if:

(a) the application for the licence was false in a material particular or materially misleading; or
(b) there was an omission of a material matter from the application.
(3) An Australian financial services licence is suspended or cancelled by ASIC giving written notice to the licensee.

(4) Before ASIC suspends or cancels an Australian financial services licence under this section, ASIC must give the licensee an opportunity:
   (a) to appear at a hearing before ASIC that takes place in private; and
   (b) to make submissions and give evidence to ASIC on the matter.

886D Effect of suspension

   (1) A person whose Australian financial services licence is suspended is taken not to hold that licence while it is suspended.

   (2) However, ASIC may specify in the written notice to the licensee that subsection (1) does not apply for the purposes of specified provisions of this Law.

886E Variation or revocation of suspension

   ASIC may at any time vary or revoke a suspension of an Australian financial services licence by giving written notice to the licensee.

886F Date of effect and publication of cancellation or suspension

   (1) A suspension, variation or revocation of a suspension, or cancellation, of an Australian financial services licence takes effect when the written notice of that action is given to the licensee.

   (2) As soon as practicable after the notice is given to the licensee, ASIC must also publish a notice of the action in the Gazette. The notice must state when the action took effect.

886G Variation, suspension and cancellation only under this Subdivision

   An Australian financial services licence cannot be varied, suspended or cancelled otherwise than under this Subdivision.

   Note: The conditions on the licence can be varied under section 885A.
Division 5—Provisions about authorised representatives

887A How representatives are authorised

(1) A financial services licensee may authorise a person (the \textit{authorised representative}), by giving the person written notice, to provide a financial service or financial services on behalf of the licensee. The authorisation must specify what the person is authorised to do on behalf of the licensee.

(2) An authorisation by a financial services licensee is void to the extent that it purports to authorise a person to provide a financial service:
   (a) that is not covered by the licence; or
   (b) contrary to a banning order or disqualification order under Division 7 against the person.

Note: There may also be other circumstances in which an authorisation is void.

(3) An authorisation may be revoked at any time by the licensee giving written notice to the authorised representative.

887B No sub-authorisations

(1) An authorised representative of a financial services licensee cannot, in that capacity, authorise a person to act as their representative or as a representative of the licensee.

(2) A purported authorisation contrary to subsection (1) is void for the purposes of this Chapter.

887C Cross-endorsement of authorised representative

(1) One person can be the authorised representative of 2 or more financial services licensees, but only if each of those licensees has consented to the person also being the representative of each of the other licensees.

(2) A purported authorisation given in contravention of this requirement is void.

(3) As well, an authorisation that starts to contravene this requirement, because another financial services licensee purports to authorise the same person, is void.
887D Licensees cannot authorise other licensees

(1) A financial services licensee cannot be the authorised representative of another financial services licensee.

Note: There is an exception to this rule in section 887E.

(2) A purported authorisation given in contravention of this requirement is void.

(3) As well, an authorisation that starts to contravene this requirement, because the person authorised is subsequently granted an Australian financial services licence, is void.

887E Licensees acting under a binder

(1) Despite section 887D, a financial services licensee (the authorised licensee) may be the authorised representative of another financial services licensee who is an insurer, if the authorised licensee acts under a binder given by the insurer.

(2) For all purposes connected with contracts that are risk insurance products, or with claims against the insurer, in respect of which the authorised licensee acts under the binder:

(a) the authorised licensee is taken to act on behalf of the insurer and not the insured; and

(b) if the insured in fact relied in good faith on the conduct of the authorised licensee, the authorised licensee is taken to act on behalf of the insurer regardless of the fact that the authorised licensee did not act within the scope of the binder.

887F Obligation to notify ASIC about authorised representatives

(1) A financial services licensee must give ASIC written notice, within 2 business days, if the licensee authorises a representative to provide a financial service on behalf of the licensee.

(2) The notice must include the following details:

(a) the name and business address of the representative

(b) details of the authorisation, including the date on which it was made and what the representative is authorised to do on behalf of the licensee

(c) details of each other financial services licensee on behalf of whom the representative is also authorised to act as a representative.
(3) The financial services licensee must notify ASIC, within 2 business days, if the authorisation is revoked or there is a change in any of those details.

887G ASIC may give licensee information about representatives

(1) If ASIC considers it appropriate to do so, it may give information to a financial services licensee about a person who ASIC believes is, or will be, a representative of the licensee. However, ASIC may only do so if it believes, on reasonable grounds, that the information is true.

(2) A financial services licensee to whom the information is given may only make use of, make a record of, or give to another person, the information for a purpose connected with:
   (a) the licensee making a decision about what action (if any) to take in relation to the representative, as a consequence of receiving the information; or
   (b) the licensee taking action pursuant to such a decision.

(3) A person to whom information has been given for a purpose or purposes under subsection (2) or this subsection, may only make use of, make a record of, or give to another person, that information for that purpose or any of those purposes.

(4) Subsection 8(3) does not apply, in relation to a reference in subsection (2) or (3) of this section, to a provision of this section.

(5) A person has qualified privilege in respect of an act done by the person under subsection (2) or (3).

(6) A person to whom information is given in accordance with this section must not give any of the information to a court, or produce in a court a document that sets out some or all of the information, except:
   (a) for a purpose connected with:
      (i) a financial services licensee making a decision about what action (if any) to take in relation to the representative, as a consequence of receiving some or all of the information; or
      (ii) a financial services licensee taking action pursuant to that decision; or
      (iii) proving in a proceeding in that court that particular action taken by a financial services licensee in relation
to the representative was taken pursuant to that decision; or

(b) in a proceeding in that court, in so far as the proceeding relates to an alleged contravention of this section; or

(c) in a proceeding in respect of an ancillary offence relating to an offence against this section; or

(d) in a proceeding about giving to a court false information some, at least, of which was the information given under this section.

(7) A reference in this section to a financial services licensee taking action in relation to a representative is a reference to the licensee:

(a) taking action by way of making, terminating or varying the terms and conditions of an agreement; or

(b) otherwise taking action in relation to an agreement;

to the extent that the agreement relates to the representative acting on behalf of the licensee.

(8) Subsection (6) also has the effect it would have if:

(a) the reference in it to information given under this section were a reference to information given under section 887G of the Corporations Law of this jurisdiction; and

(b) a reference in it to a court were a reference to a court of an external Territory or of a country outside Australia and the external Territories; and

(c) paragraphs (6)(b) and (c) were omitted.

Division 6—Liability of financial services licensees for representatives

888A Application of Division

(1) This Division applies to any conduct of a representative of a financial services licensee:

(a) that relates to the provision of a financial service; and

(b) on which a third person (the client) could reasonably be expected to rely; and

(c) on which the client in fact relied in good faith.

(2) In this Division, a reference to a representative’s conduct being within authority in relation to a particular financial services licensee is, subject to subsection (3), a reference to:

Financial Services Reform Exposure Draft

130
(a) if the representative is an employee of the licensee—conduct being within the scope of the employee’s employment; or
(b) if the representative is a director of the licensee—conduct being within the scope of the director’s duties as director; or
(c) in any other case—conduct being within the scope of the authority given by the licensee.

(3) If:
(a) a person is the representative of more than one financial services licensee in respect of a particular class of financial service; and
(b) the person engages in conduct relating to that class of service; and
(c) any one or more of the licensees issues or transfers a financial product as a result of the conduct;
then, for the purposes of this section:
(d) the person is taken, in respect of the conduct, to have acted within the authority given by the licensee or each licensee who issued or transferred a financial product as a result of the conduct; and
(e) the person is, in respect of the conduct, taken not to have acted within the authority given by any licensee who did not issue or transfer a financial product as a result of the conduct.

888B Responsibility if representative of only one licensee
If the representative is the representative of only one financial services licensee, the licensee is responsible, as between the licensee and the client, for the conduct of the representative, whether or not the representative’s conduct was within authority.

888C Representatives of multiple licensees
(1) This section applies if the representative is the representative of more than one financial services licensee.

Financial service covered by only one authority
(2) If:
(a) the representative is the representative of one of the licensees only in respect of a particular class of financial service; and
(b) the conduct relates to that class of service;
that licensee is responsible for the conduct, as between that
licensee and the client, whether or not the conduct is within
authority.

Financial service covered by multiple authorities: conduct within
the scope of only one of them

(3) If:

(a) the representative is the representative of more than one of
the licensees in respect of a particular class of financial
service; and
(b) the conduct relates to that class of service; and
(c) the conduct is within authority in relation to one only of
those licensees;
that licensee is responsible for the conduct, as between that
licensee and the client.

Financial service covered by multiple authorities: conduct within
the scope of 2 or more of them

(4) If:

(a) the representative is the representative of more than one of
the licensees in respect of a particular class of financial
service; and
(b) the conduct relates to that class of service; and
(c) the conduct is within authority in relation to 2 or more of
those licensees;
the licensees referred to in paragraph (c) are jointly and severally
responsible for the conduct, as between themselves and the client.

Financial service not covered by any authority

(5) If the conduct is not within authority in relation to any of the
licensees, the licensees are jointly and severally responsible for the
conduct, as between themselves and the client. This has effect even
if the class of financial service to which the conduct relates is not a
class of service for which the representative is a representative of
any of the licensees.
888D Responsibility extends to loss or damaged suffered by client

The responsibility of a financial services licensee under this Division extends so as to make the licensee liable to the client in respect of any loss or damage suffered by the client as a result of the representative’s conduct.

888E Effect of Division

(1) This Division does not relieve a representative of a financial services licensee of any liability they have to the client.

(2) An agreement is void in so far as it purports to alter or restrict the operation of section 888B, 888C or 888D.

(3) However, subsection (2) does not apply to the extent that the agreement:
   (a) provides for a representative of a financial services licensee to indemnify the licensee for a liability of the licensee in respect of the representative; or
   (b) provides for a financial services licensee, for whom a representative acts, to indemnify another financial services licensee for a liability in respect of the representative.

(4) A financial services licensee must not make, or offer to make, an agreement that is, or would be, void under subsection (2).

Division 7—Banning or disqualification of persons from providing financial services

Subdivision A—Banning orders

889A ASIC’s power to make a banning order

ASIC may make a banning order against a person, by giving written notice to the person, if:
   (a) ASIC suspends or cancels an Australian financial services licence held by the person; or
   (b) ASIC has reason to believe that the person has not complied, or will not comply, with its obligations under this Chapter or under regulations made for the purposes of this Chapter; or
   (c) the person is convicted of serious fraud.
**889B What is a banning order?**

1. A **banning order** is a written order that prohibits a person from providing any financial services or specified financial services in specified circumstances or capacities.

2. The order may prohibit the person against whom it is made from providing a financial service:
   - (a) permanently; or
   - (b) for a specified period, unless ASIC has reason to believe that the person is not of good fame or character.

3. A banning order may include a provision allowing the person against whom it was made, subject to any specified conditions:
   - (a) to do specified acts; or
   - (b) to do specified acts in specified circumstances;
   that the order would otherwise prohibit them from doing.

**889C Effect of banning orders**

A person against whom a banning order is made:

- (a) cannot be granted an Australian financial services licence contrary to the banning order; and
- (b) must not contravene the banning order.

**889D Variation or cancellation of banning orders**

1. ASIC may vary or cancel a banning order, by giving written notice to the person against whom the order was made, if ASIC is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which ASIC made the order.

2. ASIC may do so:
   - (a) on its own initiative; or
   - (b) if the person against whom the order was made lodges with ASIC an application for ASIC to do so, which is accompanied by the prescribed documents, and prescribed fee, if any.

Note: Part 9.10 deals with fees.

3. If ASIC proposes not to vary or cancel a banning order in accordance with an application lodged by a person under paragraph (2)(b), ASIC must give the person an opportunity:
(a) to appear at a hearing before ASIC that takes place in private; and
(b) to make submissions and give evidence to ASIC on the matter.

889E Date of effect and publication of banning order, variation or cancellation

(1) A banning order, or variation or cancellation of a banning order, takes effect when it is given to the person against whom the order is or was made.

(2) ASIC must publish a notice in the Gazette as soon as practicable after making, varying or cancelling a banning order. The notice must state when the action took effect and:
   (a) in the case of the making of a banning order—set out a copy of the banning order; or
   (b) in the case of the variation of a banning order—set out a copy of the banning order as varied.

(3) However, if the banning order contains a provision of the kind referred to in subsection 889B(3) and ASIC considers that the Gazette notice would be unreasonably long if that provision were included, the notice may instead set out a summary of the provision’s effect.

Subdivision B—Disqualification by the court

890A Disqualification by the Court

(1) ASIC may apply to the Court for an order or orders under this section in relation to a person if ASIC:
   (a) cancels an Australian financial services licence held by the person; or
   (b) makes a banning order against the person that is to operate permanently.

(2) The Court may make:
   (a) an order disqualifying the person, permanently or for a specified period, from providing any financial services, or specified financial services, in specified circumstances or capacities; or
   (b) any other order the Court considers appropriate.
(3) The Court may revoke or vary an order made under subsection (2).

(4) A person against whom such an order is made:
(a) cannot be granted an Australian financial services licence contrary to the order; and
(b) must not contravene the order.

Division 8—Register/s relating to financial services

891A Register/s relating to financial services
(1) ASIC must establish and maintain one or more registers relating to financial services.
(2) The regulations may prescribe the way in which the register or registers must be established or maintained, including the details that ASIC must enter in the register or registers in respect of the following persons or bodies:
(a) financial services licensees
(b) authorised representatives of financial services licensees
(c) persons against whom a banning order or disqualification order under Division 7 is made
(d) declared professional bodies
(e) any other person or body prescribed by the regulations.

891B Inspection of Register/s
(1) A person may inspect the register or registers relating to financial services established under this Division and may make copies of, or take extracts from, the register or registers.
(2) Any disclosure necessary for the purposes of this section is authorised by this section.

Division 9—Restrictions on use of terminology

892A Restriction on use of certain words or expressions
(1) A person is guilty of an offence if:
(a) the person carries on a financial services business or provides a financial service (whether or not as on behalf of another person); and
(b) the person assumes or uses, in this jurisdiction, a restricted
word or expression in relation to that business or service; and
(c) subsection (2) does not allow that assumption or use of that
word or expression.

Note: For the meanings of restricted word or expression and assume or use,
see subsection (5).

(2) It is not an offence against subsection (1) for a person to assume or
use a restricted word or expression if:
(a) the person does not receive any of the following:
   (i) commissions
   (ii) forms of remuneration calculated on the basis of the
        volume of business placed by the person with an issuer
        of a financial product
   (iii) other gifts or benefits from an issuer of a financial
        product which may reasonably be expected to influence
        the person; and
(b) none of the following persons receive any of the things
    referred to in paragraph (a):
       (i) the person’s employer (if any)
       (ii) the person’s associates (if any); and
(c) in carrying on a financial services business, or providing
    financial services, the person operates free from direct or
    indirect restrictions relating to the financial products in
    respect of which they provide financial services; and
(d) in carrying on that business, or providing those services, the
    person operates without any conflicts of interest that might:
       (i) arise from their associations or relationships with
           issuers of financial products; and
       (ii) reasonably be expected to influence the person in
           carrying on the business or providing the services.

(3) The reference in paragraph (2)(c) to direct or indirect restrictions
does not include a reference to restrictions imposed on a person by:
   (a) the conditions on an Australian financial services licence; or
   (b) this Chapter or regulations made for the purposes of this
       Chapter.

(4) If a person assumes or uses a word or expression in circumstances
that give rise to the person committing an offence against
subsection (1), the person is guilty of an offence against that
subsection in respect of:
(a) the first day on which the offence is committed; and
(b) each subsequent day (if any) on which the circumstances that
gave rise to the person committing the offence continue
(including the day of conviction for any such offence or any
later day).

(5) In this section:
(a) a reference to a restricted word or expression is a reference
to:
(i) the word independent, impartial or unbiased; or
(ii) any other word or expression specified in the
    regulations as a restricted word or expression for the
    purposes of this section; or
(iii) any other word or expression (whether or not in
    English) that is of like import to a word or expression
    covered by any of the previous subparagraphs; and
(b) a reference to a word or expression being assumed or used
    includes a reference to the word or expression being assumed
    or used:
    (i) as part of another word or expression; or
    (ii) in combination with other words, letters or other
        symbols.

892B  Restriction on use of certain words or expressions unless
authorised in licence conditions

(1) A person is guilty of an offence if:
(a) the person carries on a financial services business or provides
    a financial service (whether or not on behalf of another
    person); and
(b) the person assumes or uses, in this jurisdiction, a restricted
    word or expression in relation to that business or service; and
(c) the person is not authorised, by the conditions on an
    Australian financial services licence held by the person, to
    assume or use that word or expression (see subsection (3)).

Note: For the meanings of restricted word or expression and assume or use,
see subsection (4).

(2) If a person assumes or uses a word or expression in circumstances
that give rise to the person committing an offence against
subsection (1), the person is guilty of an offence against that
subsection in respect of:
(a) the first day on which the offence is committed; and
(b) each subsequent day (if any) on which the circumstances that
gave rise to the person committing the offence continue
(including the day of conviction for any such offence or any
later day).

(3) ASIC can only impose a condition on an Australian financial
services licence authorising a person to assume or use a restricted
word or expression in these circumstances:

(a) in the case of a word or expression covered by subparagraph
(4)(a)(i)—if the person:
(i) can, under the licence, provide a financial service
relating to contracts of insurance (whether or not the
person can provide other financial services under the
licence as well); and
(ii) in providing that service, acts on behalf of intending
insureds

(b) in the case of a word or expression covered by subparagraph
(4)(a)(ii)—in the circumstances (if any) prescribed by the
regulations, or after ASIC has considered the matters (if any)
prescribed the regulations.

(4) In this section:

(a) a reference to a restricted word or expression is a reference
to:
(i) the expression general insurance broker, insurance
broker, insurance broking or life insurance broker, or
any other word or expression (whether or not in
English) that is of like import to that expression; or
(ii) any other expression or word specified in the
regulations as a restricted word or expression for the
purposes of this section, or any other word or expression
(whether or not in English) that is of like import to such
a word or expression; and

(b) a reference to a word or expression being assumed or used
includes a reference to the word or expression being assumed
or used:
(i) as part of another word or expression; or
(ii) in combination with other words, letters or other
symbols; and

(c) contract of insurance and insured have the same meanings
as in Division 4 of Part 7.7.
Division 10——Agreements with unlicensed persons
relating to the provision of financial services

Subdivision A—Agreements affected

893A Agreements with unlicensed persons

(1) Subdivision B applies if, during a period when a person (in this section and Subdivision B called the non-licensee) is not a financial services licensee, the non-licensee and a person (the client) other than a financial services licensee enter into an agreement that constitutes, or relates to, the provision of a financial service.

Note: It does not matter whether the financial service is provided to the client as a wholesale client or as a retail client.

(2) Subdivision B applies to the agreement whether or not anyone else is a party to the agreement.

Subdivision B—Effect on agreements

894A Client may give notice of rescission

(1) Subject to this section, the client may, whether before or after completion of the agreement, give to the non-licensee a written notice stating that the client wishes to rescind the agreement.

(2) The client may only give a notice under this section within a reasonable period after becoming aware of the facts entitling the client to give the notice.

(3) The client is not entitled to give a notice under this section if the client engages in conduct by engaging in which the client would, if the entitlement so to give a notice were a right to rescind the agreement for misrepresentation by the non-licensee, be taken to have affirmed the agreement.

(4) The client is not entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the non-licensee informed the client (whether or not in writing) that the non-licensee did not hold an Australian financial services licence.
(5) If, at a time when an Australian financial services licence held by the non-licensee was suspended, the non-licensee informed the client that the licence was suspended, the non-licensee is to be taken for the purposes of subsection (4) to have informed the client at that time that the non-licensee did not hold the licence.

(6) None of subsections (2), (3) and (4) limits the generality of either of the others.

(7) Subject to this section, the client may give a notice under this section whether or not:

(a) the notice will result under section 894B in rescission of the agreement; or

(b) the Court will, if the notice so results, be empowered to make a particular order, or any order at all, under section 894D.

894B Effect of notice under section 894A

A notice given under section 894A rescinds the agreement unless rescission of the agreement would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

894C Client may apply to Court for partial rescission

(1) If the client gives a notice under section 894A but the notice does not rescind the agreement because rescission of it would prejudice a right or estate of the kind referred to in section 894B, the client may, within a reasonable period after giving the notice, apply to the Court for an order under subsection (4) of this section.

(2) The Court may extend the period for making an application under subsection (1).

(3) If an application is made under subsection (1), the Court may make such orders expressed to have effect until the determination of the application as it would have power to make if the notice had rescinded the agreement under section 894B and the application were for orders under section 894D.

(4) On an application under subsection (1), the Court may make an order:

(a) varying the agreement in such a way as to put the client in the same position, as nearly as can be done without
prejudicing such a right or estate acquired before the order is made, as if the agreement had not been entered into; and
(b) declaring the agreement to have had effect as so varied at and after the time when it was originally made.

(5) If the Court makes an order under subsection (4), the agreement is to be taken for the purposes of section 894D to have been rescinded under section 894B.

(6) An order under subsection (4) does not affect the application of section 894F or 894H in relation to the agreement as originally made or as varied by the order.

894D Court may make consequential orders

(1) Subject to subsection (2), on rescission of the agreement under section 894B, the Court, on the application of the client or the non-licensee, may make such orders as it would have power to make if the client had duly rescinded the agreement for misrepresentation by the non-licensee.

(2) The Court is not empowered to make a particular order under subsection (1) if the order would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

894E Agreement unenforceable against client

(1) This section:

(a) applies while both of the following are the case:

(i) the client is entitled to give a notice under section 894A;
(ii) a notice so given will result under section 894B in rescission of the agreement; and
(b) applies after the agreement is rescinded under section 894B; but does not otherwise apply.

(2) The non-licensee is not entitled, as against the client:

(a) to enforce the agreement, whether directly or indirectly; or
(b) to rely on the agreement, whether directly or indirectly and whether by way of defence or otherwise.
894F Non-licensee not entitled to recover commission

(1) Without limiting the generality of section 894E, this section:
   (a) applies while the client is entitled to give a notice under section 894A; and
   (b) applies after the client so gives a notice, even if the notice does not result under section 894B in rescission of the agreement;
   but does not otherwise apply.

(2) The non-licensee is not entitled to recover by any means (including, for example, set-off or a claim on a quantum meruit) any brokerage, commission or other fee for which the client would, but for this section, have been liable to the non-licensee under or in connection with the agreement.

894G Onus of establishing non-application of section 894E or 894F

For the purposes of determining, in a proceeding in a court, whether or not the non-licensee is, or was at a particular time, entitled as mentioned in subsection 894E(2) or 894F(2), it is to be presumed, unless the contrary is proved, that section 894E or 894F, as the case may be, applies, or applied at that time, as the case may be.

894H Client may recover commission paid to non-licensee

(1) Without limiting the generality of section 894D, if the client gives a notice under section 894A, the client may, even if the notice does not result under section 894B in rescission of the agreement, recover from the non-licensee as a debt the amount of any brokerage, commission or other fee that the client has paid to the non-licensee under or in connection with the agreement.

(2) The Commission may, if it considers that it is in the public interest to do so, bring an action under subsection (1) in the name of, and for the benefit of, the client.

894I Remedies under this Division additional to other remedies

The client’s rights and remedies under this Division are additional to, and do not prejudice, any other right or remedy of the client.
Part 7.6—Disclosure requirements for financial services licensees, authorised representatives and certain persons not required to be licensed

Division 1—Preliminary

910A When is a financial service provided by a financial services licensee?

For the purposes of this Part, a financial service is provided by a financial services licensee if it is provided by the licensee personally, or is provided by an employee or director (but not an authorised representative) of the licensee.

Note: This Part also deals with the provision of financial services by authorised representatives.

910B What if a financial services licensee is acting as authorised representative?

If a financial services licensee is, in providing a financial service, acting as the authorised representative of another financial services licensee, this Part applies to the first-mentioned licensee, in relation to the service, in the capacity of authorised representative (rather than the capacity of licensee).

Division 2—Person provided with financial service as retail client to be given a Financial Services Guide

Subdivision A—Requirement for a Financial Services Guide to be given

911A Obligation on financial services licensee to give a Financial Services Guide if financial service provided to person as a retail client

(1) A financial services licensee (the providing entity) must give a person a Financial Services Guide in accordance with this Division if the providing entity provides a financial service to the person (the client) as a retail client.
(2) This section has effect subject to section 911C.

911B  Obligation on authorised representative to give a Financial Services Guide if financial service provided to person as a retail client

(1) An authorised representative (the providing entity) of a financial services licensee (the authorising licensee), or of 2 or more financial services licensees (the authorising licensees), must give a person a Financial Services Guide in accordance with this Division if the providing entity, as a representative of the authorising licensee, or one or more of the authorising licensees, provides a financial service to the person (the client) as a retail client.

(2) This section has effect subject to section 911C.

911C  Situations in which a Financial Services Guide is not required

Client has already received the information

(1) The providing entity does not have to give the client a Financial Services Guide (the new FSG) if:
   (a) the client has already received (after the commencement of this Chapter) a Financial Services Guide that contains all of the information that the new FSG is required to contain; or
   (b) the client has, before the commencement of this Chapter, been given all of the information, in written form, that the new FSG is required to contain.

Providing entity is product issuer dealing in own products

(2) The providing entity does not have to give the client a Financial Services Guide if:
   (a) the providing entity is an issuer of financial products; and
   (b) the financial service is a dealing in financial products, other than derivatives, issued by the providing entity, and does not also relate to financial products issued by someone else.

Note: The issuer will however have to comply with the Product Disclosure Statement requirements (see Division 2 of Part 7.8).
Providing entity is merely operating a registered managed investment scheme

(3) The providing entity does not have to give the client a Financial Services Guide if:
(a) the providing entity is the responsible entity of a registered managed investment scheme; and
(b) the financial service consists only of the operation of that scheme by the providing entity.

Financial product advice given in a public forum

(4) The providing entity does not have to give the client a Financial Services Guide if the financial service is general advice provided in a public forum.

(5) However, if subsection (4) applies and the client is not given a Financial Services Guide before the advice is provided, the client must instead, before the advice is provided, be given the information that would be required to be in the Financial Services Guide by paragraphs 912B(2)(a) and (e), or paragraphs 912C(2)(a), (b) and (f), as the case requires.

Regulations may specify other exemptions

(6) A Financial Services Guide does not have to be given to the client in circumstances specified in the regulations for the purposes of this subsection.

911D Timing of giving Financial Services Guide

General rule

(1) Subject to this section, the Financial Services Guide must be given to the client as soon as practicable after it becomes apparent to the providing entity that the financial service will be, or is likely to be, provided to the client, and must in any event be given to the client before the financial service is provided.

Time critical cases

(2) If:
(a) the client expressly instructs that they require the financial service to be provided immediately, or by a specified time; and
(b) it is not reasonably practicable to give the Financial Services Guide to the client before the service is provided as so instructed;

the providing entity must instead give the client an oral statement that complies with subsection (3) before the service is provided.

(3) The oral statement must contain:

(a) the information that would be required to be in the Financial Services Guide by paragraphs 912B(2)(d) and (e), or paragraphs 912C(2)(e) and (f), as the case requires; and

(b) such other information as would be required to be in the Financial Services Guide as is particularly relevant to the financial service to be provided.

(4) The client must then be given the Financial Services Guide within 3 days after being given the oral statement, or sooner if practicable.

911E Information must be up to date

The information in the Financial Services Guide must be up to date as at the time when it is given to the client.

911F Obligation to provide updated Financial Services Guide

If:

(a) the Financial Services Guide is given to the client before the financial service is provided; and

(b) because of a change in circumstances, the information in the Financial Services Guide ceases to be accurate, in some material respect, before the service is provided;

the providing entity must give the client another Financial Services Guide that contains the up to date information before the service is provided.

911G How Financial Services Guide is to be provided

The Financial Services Guide:

(a) must be given to the client personally, or be sent to an address (including an electronic address) or fax number nominated by the client; and

(b) may be printed or be in electronic form.
Subdivision B—Content of Financial Services Guide

912A Title of Financial Services Guide

(1) A Financial Services Guide may also be referred to as a Financial Services Document 1.

(2) Both titles must be used on the cover of the document, or at or near the front of the document. For this purpose, either title may be abbreviated as follows:
   (a) Financial Services Guide may be abbreviated to FSG
   (b) Financial Services Document 1 may be abbreviated to FSD 1.

912B Financial Services Guide given by financial services licensee—main requirements

(1) This item applies if the providing entity is a financial services licensee.

(2) Subject to subsection (3) and to the regulations (see subsection (4)), the Financial Services Guide must include the following statements, and the following information:
   (a) a statement setting out the name and contact details of the providing entity, and any special instructions about how the client may provide instructions to the providing entity; and
   (b) information about the kinds of financial services that the providing entity is authorised by its licence to provide, and the kinds of financial products to which those services relate; and
   (c) information about who the providing entity acts for when providing those services; and
   (d) information about the remuneration or other benefits that the providing entity, or any of the directors or employees of the providing entity, is to receive in respect of, or that is attributable to, the provision of those services; and
   (e) information about any associations or relationships between the providing entity and the issuers of any financial products, being associations or relationships that might reasonably be expected to be capable of influencing the providing entity in providing those services; and
   (f) if the providing entity provides execution-related telephone advice (see section 915B) and does not usually provide
clients with a record of that advice unless requested—a statement that the client may request a record of such advice and of how the client may make such a request; and

(g) information about the internal and external dispute resolution procedures that are available to deal with complaints by clients of the providing entity and about how those procedures may be accessed; and

(h) if the providing entity acts under a binder in providing any of those services—a statement that:
   (i) identifies the services provided under the binder; and
   (ii) states that they are provided under a binder; and
   (iii) explains the significance of the services being provided under a binder; and
   (i) if the providing entity is a participant in a licensed market or a licensed CS facility—a statement that the providing entity is a participant in that market or facility; and
   (j) any other information required by the regulations.

(3) Where information is required to be included in the Financial Services Guide, the level of detail of the information that is required is such as a person would reasonably require for the purpose of making a decision whether to acquire financial services from the providing entity as a retail client.

(4) The regulations may:
   (a) provide that a provision of subsection (2) does not apply in a particular situation; or
   (b) provide that particular information is not required by a provision of subsection (2), either in a particular situation or generally; or
   (c) provide a more detailed statement of the information that is required by a provision of subsection (2), either in a particular situation or generally; or
   (d) provide that certain supplementary information must be given or made available to the client in some other way.

(5) The Financial Services Guide may also contain other information.
912C  Financial Services Guide given by authorised representative—
main requirements

(1) This item applies if the providing entity is an authorised
representative.

(2) Subject to subsection (3) and to the regulations (see subsection
(4)), the Financial Services Guide must include the following
statements information:

(a) a statement setting out the name and contact details of the
providing entity, and any special instructions about how the
client may provide instructions to the providing entity; and

(b) a statement setting out the name and contact details of the
authorising licensee, or of each of the authorising licensees,
and a statement that the providing entity is the authorised
representative of that licensee or those licensees; and

(c) information, in relation to the authorising licensee or each of
the authorising licensees, about the kinds of financial
services that the providing entity is authorised to provide as
representative of the authorising licensee, and the kinds of
financial products to which those services relate; and

(d) information about who the authorising licensee, or each of
the authorising licensees, acts for when providing those
services; and

(e) information about the remuneration or other benefits that:
   (i) the providing entity, or any employer of the providing
   entity, receives or is to receive in respect of the
   provision of those services; and

   (ii) the authorising licensee, or any of the authorising
   licensees, or any of the directors or employees of the
   authorising licensee or any of the authorising licensees,
   receives or is to receive in respect of the provision of
   those services; and

(f) information about any associations or relationships between:
   (i) the providing entity, or any employer of the providing
   entity, and the issuers of any financial products; or

   (ii) the authorising licensee, or any of the authorising
   licensees, and the issuers of any financial products;

being associations or relationships that might reasonably be
expected to be capable of influencing the providing entity in
providing those services; and
(g) if the providing entity, or the authorising licensee or any of
the authorising licensees, provides execution-related
telephone advice (see section 915B) and does not usually
provide clients with a record of that advice unless
requested—a statement that the client may request a record
of such advice and of how the client may make such a
request; and
(h) information about the internal and external dispute resolution
procedures that are available to deal with complaints by
clients of the authorising licensee or authorising licensees
and about how those procedures may be accessed; and
(i) if the providing entity acts under a binder in providing any of
those services—a statement that:
   (i) identifies the services provided under the binder, and
   (ii) states that they are provided under a binder; and
   (iii) explains the significance of the services being provided
        under a binder; and
(j) if the providing entity, or the authorising licensee or any of
the authorising licensees, is a participant in a licensed market
or a licensed CS facility—a statement that the providing
entity or authorising licensee is a participant in that market or
facility; and
(k) any other information required by the regulations.

(3) Where information is required to be included in the Financial
Services Guide, the level of detail of the information that is
required is such as a person would reasonably require for the
purpose of making a decision whether to acquire financial services
from the providing entity as a retail client.

(4) The regulations may:
   (a) provide that a provision of subsection (2) does not apply in a
       particular situation; or
   (b) provide that particular information is not required by a
       provision of subsection (2), either in a particular situation or
       generally; or
   (c) provide a more detailed statement of the information that is
       required by a provision of subsection (2), either in a
       particular situation or generally; or
   (d) provide that certain supplementary information must be
       given or made available to the client in some other way.
(5) The Financial Services Guide may also contain other information.

912D Financial Services Guide may consist of 2 or more separate documents

(1) A Financial Services Guide may be made up of 2 or more separate documents that, when taken together, contain all the required information.

(2) The regulations may impose additional requirements to be complied with if a Financial Services Guide is made up of 2 or more documents.

Division 3—Additional requirements for personal advice provided to a retail client

Subdivision A—When this Division applies

913A Situation in which Division applies

This Division applies in relation to the provision of personal advice in the following circumstances:

(a) the advice is provided:
   (i) by a financial services licensee (the providing entity); or
   (ii) by a person (the providing entity) in their capacity as authorised representative of a financial services licensee (the authorising licensee), or of 2 or more financial services licensees (the authorising licensees); and

(b) the advice is provided to a person (the client) as a retail client.

Subdivision B—Requirements relating to basis of advice

914A Requirement to have a reasonable basis for the advice

The providing entity must not provide the advice to the client unless:

(a) having regard to the client’s objectives, financial situation and needs, the providing entity has given such consideration to, and conducted such investigation of, the subject matter of the advice as is reasonable in all the circumstances; and

(b) the advice is based on that consideration and investigation.
914B  Obligation to warn client if advice based on incomplete or inaccurate information

(1) If the advice is based on information relating to the client that the providing entity knows or suspects, or ought reasonably to know or suspect, is incomplete or inaccurate, the providing entity must warn the client that:
   (a) the advice is or may be based on incomplete or inaccurate information relating to the client’s objectives, financial situation and needs; and
   (b) because of that, the client should, before acting on the advice, consider the appropriateness of the advice, having regard to the client’s objectives, financial, situation and needs.

(2) The warning must be given to the client at the same time as the advice is provided and, subject to subsection (3), by the same means as the advice is provided.

(3) If the Statement of Advice (see Subdivision C) is the means by which the advice is provided, or is given to the client at the same time as the advice is provided, the warning may be given by including it in the Statement of Advice.

Note: The Statement of Advice must at least contain a record of the warning—see paragraphs 916B(2)(e) and 916C(2)(f).

Subdivision C—Requirement for a Statement of Advice to be given

915A  Obligation to give client a Statement of Advice

(1) The providing entity must give the client a Statement of Advice in accordance with this Subdivision and Subdivision D.

(2) The Statement of Advice may be:
   (a) the means by which the advice is provided; or
   (b) a separate record of the advice.

(3) This section has effect subject to section 915B.

915B  Statement of Advice not required for execution-related telephone advice

(1) This section applies to advice (execution-related telephone advice) in relation to which the following conditions are satisfied:
Financial Services Reform Exposure Draft

(a) the advice is given by telephone; and

(b) the advice:
   (i) relates to financial products that are able to be traded on a licensed market; and
   (ii) is given by the providing entity as an integral part of the execution of a transfer of, or order for, those financial products; and
   (iii) is advice for which no fee is charged in addition to the commission for the execution of the transfer or order; and

(c) the advice does not also contain any other kind of financial product advice.

(2) The providing entity does not have to give the client a Statement of Advice if, before the advice is provided:
   (a) the client agrees to a Statement of Advice not being provided in respect of the advice, or advice of that kind; and
   (b) unless subsection 911D(2) applies, the providing entity gives the client a Financial Services Guide that contains a statement that the client may request a record of the advice, or advice of that kind, and of how the client may make such a request; and
   (c) the providing entity keeps a record of the advice in accordance with the requirements (if any) of the regulations.

(3) However, at the same time as the advice is provided to the client, the client must be given the information that would, if a Statement of Advice were to be given, be required to be in the Statement by paragraph 916B(2)(d) or 916C(2)(e).

(4) The providing entity must comply with any request made by a person in accordance with a statement of a kind referred to in paragraph (2)(b) that was contained in a Financial Services Guide given to the person (including in a situation where the Financial Services Guide was not given to the person until after the advice was provided).

915C  Timing of giving Statement of Advice

   General rule

(1) Subject to this section, if the Statement of Advice is not the means by which the advice is provided, the Statement of Advice must be
given to the client when, or as soon as practicable after, the advice is provided and, in any event, before the providing entity provides the client with any further financial service that arises out of or is connected with that advice.

Oral statement of certain information if Statement of Advice not given when advice provided

(2) If the Statement of Advice is not given to the client when the advice is provided, the providing entity must, when the advice is provided, give the client an oral statement that contains the information that would be required to be in a Statement of Advice by paragraph 916B(2)(d) or 916C(2)(e) and by section 916D, if applicable.

Time critical cases

(3) If:

(a) the client expressly instructs that they require a further financial service that arises out of or is connected with the advice to be provided immediately, or by a specified time; and

(b) it is not reasonably practicable to give the Statement of Advice to the client before that further service is provided as so instructed;

the providing entity must give the client the Statement of Advice:

(c) unless paragraph (d) applies—within 3 days after providing that further service, or sooner if practicable; or

(d) if that further service is the provision to the person of a financial product and section 990B will apply to the acquisition of the product by the person—before the start of the period applicable under subsection 990B(4), or sooner if practicable.

915D How the Statement of Advice is to be provided

The Statement of Advice:

(a) must be given to the client personally, or be sent to an address (including an electronic address) or fax number nominated by the client; and

(b) may be printed or in electronic form.
Subdivision D—Content of Statement of Advice

916A Title of Statement of Advice

(1) The Statement of Advice may also be referred to as a Financial Services Document 2.

(2) Both titles must be used on the cover of the document, or at or near the front of the document. For this purpose, either title may be abbreviated as follows:

(a) Statement of Advice may be abbreviated to SOA

(b) Financial Services Document 2 may be abbreviated to FSD 2.

916B Statement of Advice given by financial services licensee—main requirements

(1) This item applies if the providing entity is a financial services licensee.

(2) Subject to subsection (3) and to the regulations (see subsection (4)), the Statement of Advice must include the following statements and information:

(a) a statement setting out the advice; and

(b) information about the basis on which the advice is or was given; and

(c) a statement setting out the name and contact details of the providing entity; and

(d) information about:

(i) any commission, fee, benefit or advantage, whether pecuniary or not, that the providing entity or an associate of the providing entity has received, or will or may receive, in connection with the advice or in connection with the client acting on the advice; and

(ii) any other interests, whether pecuniary or not and whether direct or indirect, of the providing entity or of any associate of the providing entity; and

(iii) any associations or relationships between the providing entity or any associate of the providing entity and the issuers of any financial products; that might reasonably be expected to be or have been capable of influencing the providing entity in providing the advice;
(e) if section 914B requires a warning to be given to the client in relation to the advice—a statement setting out the warning required by that section; and

(f) any other information required by the regulations.

(3) Where information is required to be included in the Statement of Advice, the level of detail of the information that is required is such as a person would reasonably require for the purpose of deciding whether to act on the advice as a retail client.

(4) The regulations may:

(a) provide that a provision of subsection (2) does not apply in a particular situation; or

(b) provide that particular information is not required by a provision of subsection (2), either in a particular situation or generally; or

(c) provide a more detailed statement of the information that is required by a provision of subsection (2), either in a particular situation or generally.

(5) The Statement of Advice:

(a) must also include any information required by section 916D, if applicable; and

(b) may also include other information.

916C Statement of Advice given by authorised representative—main requirements

(1) This item applies if the providing entity is an authorised representative.

(2) Subject to subsection (3) and to the regulations (see subsection (4)), the Statement of Advice must include the following statements and information:

(a) a statement setting out the advice; and

(b) information about the basis on which the advice is or was given; and

(c) a statement setting out the name and contact details of the providing entity; and

(d) a statement setting out the name and contact details of the authorising licensee, or of each of the authorising licensees, and a statement that the providing entity is the authorised representative of that licensee or those licensees; and
(e) information about:

(i) any commission, fee, benefit or advantage, whether pecuniary or not, that the providing entity, any employer of the providing entity, the authorising licensee or any of the authorising licensees, or an associate of any of those persons, has received, or will or may receive, in connection with the advice or in connection with the client acting on the advice; and

(ii) any other interests, whether pecuniary or not and whether direct or indirect, of the providing entity, of any employer of the providing entity, of the authorising licensee or any of the authorising licensees, or of any associate of any of those persons; and

(iii) any associations or relationships between the providing entity, any employer of the providing entity, the authorising licensee or any of the authorising licensees, or any associate of any of those persons, and the issuers of any financial products; that might reasonably be expected to be or have been capable of influencing the providing entity in providing the advice;

(f) if section 914B requires a warning to be given to the client in relation to the advice—a statement setting out the warning required by that section; and

(g) any other information required by the regulations.

(3) Where information is required to be included in the Statement of Advice, the level of detail of the information that is required is such as a person would reasonably require for the purpose of deciding whether to act on the advice as a retail client.

(4) The regulations may:

(a) provide that a provision of subsection (2) does not apply in a particular situation; or

(b) provide that particular information is not required by a provision of subsection (2), either in a particular situation or generally; or

(c) provide a more detailed statement of the information that is required by a provision of subsection (2), either in a particular situation or generally.

(5) The Statement of Advice:
(a) must also include any information required by the section 916D, if applicable; and
(b) may also include other information.

916D Additional requirements when advice recommends replacement of one product with another

(1) This section applies if the advice is or includes a recommendation that the client dispose of, or reduce the client’s interest in, all or part of a particular financial product and instead acquire all or part of, or increase the client’s interest in, another financial product.

(2) The following additional information must be included in the Statement of Advice, to the extent that the information is known to, or could reasonably be found out by, the providing entity:

(a) any charges the client will or may incur in respect of the disposal or reduction; and
(b) any charges the client will or may incur in respect of the acquisition or increase; and
(c) any pecuniary or other benefits that the client will or may lose (temporarily or otherwise) as a result of taking the recommended action; and
(d) any other significant consequences for the client of taking the recommended action that are reasonably foreseeable.

(3) If:

(a) the providing entity knows or suspects that:
(i) the client will or may incur charges as mentioned in paragraph (2)(a) or (b); or
(ii) the client will or may lose benefits as mentioned in paragraph (2)(c); or
(iii) there will or may be consequences for the client as mentioned in paragraph (2)(d); but

(b) the providing entity does not know, and cannot reasonably find out, what those charges, losses or consequences are or will be;

the Statement of Advice must include a statement to the effect that there will or may be such charges, losses or consequences but the providing entity does not know what they are.
Subdivision E—Other matters

917A Qualified privilege if providing entity complies with this Division

The providing entity has qualified privilege in respect of a statement made to the client, whether orally or in writing, in the course of, or in connection with, providing the advice if the providing entity has complied with the requirements of this Division in relation to the advice.

Division 4—Other disclosure requirements

918A General advice provided to retail client—obligation to warn client that advice does not take account of client’s objectives, financial situation and needs

(1) This section applies in relation to the provision of general advice in the following circumstances:

(a) the advice is provided:
   (i) by a financial services licensee (the providing entity); or
   (ii) by an authorised representative (the providing entity) of a financial services licensee, or of 2 or more financial services licensees; and

(b) the advice is provided to a person (the client) as a retail client.

(2) The providing entity must warn the client that:

(a) the advice has been prepared without taking account of the client’s objectives, financial situation and needs; and

(b) because of that, the client should, before acting on the advice, consider the appropriateness of the advice, having regard to the client’s objectives, financial, situation and needs.

(3) The warning must be given to the client at the same time as the advice is provided and by the same means as the advice is provided.
918B Regulations may impose disclosure requirements in certain situations

The regulations may impose disclosure requirements, or additional disclosure requirements, to be complied with in any of the following situations:

(a) a financial service related to a risk insurance product or an investment life insurance product is provided to a person as a retail client by a financial services licensee, or an authorised representative of a financial services licensee, acting under a binder

(b) a financial services licensee, or an authorised representative of a financial services licensee, arranges for a person’s instructions to be carried out through a financial products market or a clearing and settlement facility (whether inside or outside Australia) that is not licensed under Part 7.2 or Part 7.3

(c) a financial service is provided by a person who is a member of a professional body in relation to which a declaration under section 882A is in force

(d) a financial service is provided by a person who does not need an Australian financial services licence because the person is covered by an exemption in regulations for the purposes of paragraph 881A(2)(g)

(e) a financial service is provided to a person as a wholesale client.

Division 5—Miscellaneous

919A Part cannot be contracted out of

A condition of a contract for the acquisition of a financial product, or for the provision of a financial service, is void if it provides that a party to the contract is:

(a) required or bound to waive compliance with any requirement of this Part or regulations for the purposes of this Part; or

(b) taken to have notice of any contract, document or matter not specifically referred to in a Financial Services Guide, Statement of Advice or other document given to the party.
Part 7.7—Other conduct requirements for financial services licensees

Division 1—Interpretation

940A  When money or other property is paid or given to a financial services licensee
For the purpose of this Part, money or other property is paid or given to a financial services licensee if it is paid or given:
(a) to the licensee personally; or
(b) to a director, employee, authorised representative or other agent of the licensee.

Division 2—Dealing with clients’ money

Subdivision A—Money other than loans

941A  Money to which Subdivision applies
(1) This Subdivision applies (subject to subsection (2)) to money paid to a financial services licensee (the licensee) in the following circumstances:
(a) the money is paid in connection with:
   (i) a financial service that has been provided, or that will or may be provided, to a person (the client); or
   (ii) a financial product held by a person (the client); and
(b) the money is paid:
   (i) by the client; or
   (ii) by a person acting on behalf of the client or
   (iii) for the benefit of the client.
(2) This Subdivision does not apply to money paid as mentioned in subsection (1) to the extent that:
(a) the money is paid by way of remuneration payable to the licensee, or the licensee is entitled to deduct such remuneration from the money; or
(b) the money is paid:
   (i) to reimburse the licensee for payments made to acquire, or acquire an increased interest in, a financial product; or

Financial Services Reform Exposure Draft
(ii) to discharge a liability incurred by the licensee in
respect of the acquisition of a financial product or an
increased interest in a financial product, or to indemnify
the licensee in respect of such a liability; or
(c) the money is paid to acquire, or acquire an increased interest
in, a financial product issued by the licensee; or
(d) Subdivision B (loan money) applies to the money.

941B Obligation to pay money into an account

(1) The licensee must ensure that money to which this Subdivision
applies is paid into an account that satisfies the following
requirements:
   (a) the account is with an Australian ADI and is designated as an
       account for the purposes of this section of the Corporations
       Law; and
   (b) the only money paid into the account is:
       (i) money to which this Subdivision applies (which may be
           money paid by, on behalf or, or for the benefit of,
           several different clients); or
       (ii) interest on the amount from time to time standing to the
           credit of the account; or
       (iii) interest, or other similar payments on, an investment
           made in accordance with regulations referred to in
           section 941C, or the proceeds of the realisation of such
           an investment; or
       (iv) other money permitted to be paid into the account by the
           regulations; and
   (c) if regulations for the purposes of this paragraph impose
       additional requirements—the requirements so imposed by the
       regulations; and
   (d) if the licence conditions of the licensee’s licence impose
       additional requirements—the requirements so imposed by the
       licence conditions.

(2) The money must be paid into such an account on the day it is
received by the licensee, or on the next business day.

(3) The licensee may, for the purposes of this section, maintain a
single account or 2 or more accounts.
941C Regulations may deal with various matters relating to accounts maintained for the purposes of section 941B

(1) The regulations may deal with all or any of the following in relation to accounts, or a class of accounts, maintained for the purposes of section 941B:

(a) the circumstances in which payments may be made out of an account (including the circumstances in which money may be withdrawn and invested, and the kinds of investment that may be made)

(b) the minimum balance to be maintained in an account

(c) how interest on account is to be dealt with

(d) how interest or other earnings on an investment of money withdrawn from an account, or the proceeds of the realisation of such an investment, are to be dealt with.

(2) The licensee must take all reasonable steps to ensure that those regulations are complied with.

941D Money related to derivatives may be used for general margining etc purposes

Despite anything in regulations for the purposes of section 941C, if:

(a) the financial service referred to in subparagraph 941A(1)(a)(i) is a dealing in a derivative; or

(b) the financial product referred to in subparagraph 941A(1)(a)(ii) is a derivative;

the money referred to in that section may also be used for the purpose of meeting obligations incurred by the licensee in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives by the licensee (including dealings on behalf of people other than the client).

941E Protection of money from attachment etc

(1) This section applies to:

(a) money to which this Subdivision applies that has been paid to the licensee, both while it is in an account maintained for the purposes of section 941B and before and after it is paid into such an account; and
(b) other money in such an account as permitted by paragraph 941B(1)(b); and
(c) investments made in accordance with regulations for the purposes of section 941C.

(2) Money and investments to which this section applies are not capable:
   (a) of being attached or otherwise taken in execution; or
   (b) of being made subject to a set-off, charge or charging order or to any process of a similar nature;
   except at the suit of a person who is otherwise entitled to the money or investment.

941F Regulations may deal with how money to be dealt with if licensee ceases to be licensed etc

The regulations may include provisions dealing with how money in an account maintained for the purposes of section 941B, or an investment of such money, is to be dealt with if:
   (a) the licensee ceases to be a financial services licensee; or
   (b) the licensee becomes insolvent, within the meaning of the regulations; or
   (c) the licensee merges with another financial services licensee; or
   (d) the licensee ceases to carry on some or all of the activities authorised by their licence.

941G Australian ADI not liable merely because of licensee’s contravention

Nothing in this Subdivision, or in regulations for the purposes of this Subdivision, makes an Australian ADI (not being the licensee) subject to any liability merely because of a failure by the licensee to comply with any of the provisions of this Subdivision or those regulations.
Subdivision B—Loan money

942A  Money to which this Subdivision applies

This Subdivision applies to money paid to a financial services licensee (the licensee) by way of a loan from a person (the client) in connection with activities authorised by the licensee’s licence.

942B  Obligation to pay money into an account

(1) The licensee must ensure that money to which this Subdivision applies is paid into an account that satisfies the following requirements:

(a) the account is with an Australian ADI and is designated as an account for the purposes of this section of the Corporations Law; and

(b) the only money paid into the account is:

(i) money to which this Subdivision applies (which may be money lent by several different persons); or

(ii) interest on the amount from time to time standing to the credit of the account.

(2) The money must be paid into such an account on the day it is received by the licensee, or on the next business day.

(3) The licensee may, for the purposes of this section, maintain a single account or 2 or more accounts.

942C  Licensee to give client statement setting out terms of loan etc.

(1) The licensee must, in accordance with the regulations, give the client a statement setting out:

(a) the terms and conditions on which the loan is made and accepted; and

(b) the purpose for which, and the manner in which, the licensee is to use the money.

(2) The licensee must keep the money in the account until the client gives the dealer a written acknowledgment that the client has received the statement.

942D  Permitted use of loan

The licensee must not use the money except:
(a) for the purpose, and in the manner, set out in the statement
given under section 942C; or
(b) for any other purpose, or in any other manner, agreed on in
writing by the licensee and the client after the licensee gave
the client the statement.

Subdivision C—Powers of Court

943A Court may freeze certain accounts

(1) The Court may by order restrain dealings in respect of specified
accounts with financial institutions that a person holds or maintains
(whether in Australia or elsewhere), subject to such terms and
conditions as the Court imposes, if subsection (1) or (2) applies in
relation to the person.

(2) This subsection applies to a person if, on application by ASIC, the
Court is satisfied that the person holds, or has at any time held, an
Australian financial services licence and that:
   (a) there are reasonable grounds for believing that there is a
deficiency in an account maintained by the person for the
purposes of section 941B or 942B, whether the account is
maintained in this jurisdiction or elsewhere; or
   (b) there has been undue delay, or unreasonable refusal, on the
person’s part in paying, applying or accounting for money as
provided for by this Division, by a condition of the licence,
or by the operating rules of a licensed market or a licensed
CS facility in which the person is or has been a participant; or
   (c) without limiting the generality of paragraph (a) or (b), the
person has contravened section 941B or 942B.

(3) This subsection applies to a person if, on application by ASIC, the
Court is satisfied that the person holds, or has at any time held, an
Australian financial services licence and that:
   (a) the licence has been revoked or suspended; or
   (b) the person is incapable, through mental or physical
incapacity, of managing his or her affairs; or
   (c) the person no longer carries on a financial services business;
or
   (d) the person has died.
943B  Interim order freezing accounts

(1) Before considering an application under section 943A, the Court may, if it considers it desirable to do so, grant an interim order that is an order of the kind applied for and is expressed to apply until the application is determined.

(2) The Court must not require ASIC or any other person, as a condition of granting an order under subsection (1), to give an undertaking as to damages.

943C  Duty of person to whom order directed to make full disclosure

If an order made under section 943A is directed to a financial institution, the institution must:

(a) disclose to ASIC every account kept at the institution in the name of the person to whom the order relates, and any account that the institution reasonably suspects is held or kept at the institution for the benefit of that person; and

(b) permit ASIC to make a copy of, or to take an extract from, any account of the person to whom the order relates or any of the institution’s books relating to that person.

943D  Further orders and directions

(1) If an order is made under section 943A or 943B, the Court may, on application by ASIC or a person whom the order affects, make a further order that does one or more of the following:

(a) deals with such ancillary matters as the Court thinks necessary or desirable

(b) directs that specified amounts in an account affected by the first-mentioned order be paid to ASIC or a person nominated by ASIC

(c) varies or discharges the first-mentioned order or an order under this section.

(2) An order under this section may be made subject to such terms and conditions as the Court imposes.

943E  Power of Court to make order relating to payment of money

(1) An order made under section 943D may include directions to a person to whom money is ordered to be paid directing that the person:
**Division 3—Dealing with other property of clients**

**944A Property to which Division applies**

This Division applies to property other than money (for example, share certificates) given to a financial services licensee (the *licensee*) in the following circumstances:

(a) the property is given in connection with:
   (i) a financial service that has been provided, or that will or may be provided, to a person (the *client*); or
   (ii) a financial product held by a person (the *client*); and

(b) the property is given:
   (i) by the client; or
   (ii) by a person acting on behalf of the client; or
   (iii) for the benefit of the client; and

(c) the licensee is accountable for the property.
944B  How property to which this Division applies is to be dealt with

1  (1) Subject to subsection (2), the licensee must ensure that property to
2  which this Division applies is not dealt with except in accordance
3  with:
4  (a) the requirements (if any) specified in regulations for the
5  purposes of this paragraph; and
6  (b) subject to those requirements:
7  (i) the terms and conditions on which the property was
8  given to the licensee; and
9  (ii) any subsequent instructions given by the client.

10  (2) If:
11  (a) the financial service referred to in subparagraph 944A(a)(i) is
12  a dealing in a derivative; or
13  (b) the financial product referred to in subparagraph 944A(a)(ii)
14  is a derivative;
15  the property may also be used for the purpose of meeting
16  obligations incurred by the licensee in connection with margining,
17  guaranteeing, securing, transferring, adjusting or settling dealings
18  in derivatives by the licensee (including dealings on behalf of
19  people other than the client).

Division 4—Special provisions relating to insurance

945A  Interpretation

1  (1) In this Division:

contract of insurance includes a contract of life insurance.

Note:  Contract of life insurance has a meaning affected by subsection (2).

insured, in relation to a contract of life insurance, means a person
(other than the insurer) who is entitled to a benefit under the
contract, whether that person is the life insured or some other
person.

Note:  Intending insured has a corresponding meaning.

(2) For the purposes of this Division, if:

(a) a life policy (within the meaning of the Life Insurance Act
1995) would not ordinarily be regarded as a contract of life
insurance; and
(b) liability under the policy is borne by a company registered
under that Act; and
(c) the policy was entered into after the commencement of
section 9D of the Insurance (Agents and Brokers) Act 1984
as in force before the commencement of this Chapter;
the policy is taken to be a contract of life insurance.

945B Status of amounts paid to financial services licensees in respect
of contracts of insurance

(1) If:
   (a) a contract of insurance is arranged or effected by a financial
       services licensee; and
   (b) the licensee is not the insurer;
       payment to the licensee of money payable (whether in respect of a
       premium or otherwise) by the insured under or in relation to the
       contract is a discharge, as between the insured and the insurer, of
       the liability of the insured to the insurer in respect of that money.

(2) Payment to a financial services licensee by or on behalf of an
    intending insured of money (whether in respect of a premium or
    otherwise) in respect of a contract of insurance to be arranged or
    effected by the licensee with an insurer (not being the licensee) is a
    discharge, as between the insured and the insurer, of any liability
    of the insured under or in respect of the contract, to the extent of
    the amount of the payment.

(3) Payment by an insurer to a financial services licensee of money
    payable to an insured, whether in respect of a claim, return of
    premiums or otherwise, under or in relation to a contract of
    insurance, does not discharge any liability of the insurer to the
    insured in respect of that money.

(4) An agreement, so far as it purports to alter or restrict the operation
    of subsection (1), (2) or (3), is void.

(5) Subsection (4) does not make void an agreement between a
    financial services licensee and an insured in so far as the agreement
    allows the licensee to set off against money payable to the insured
    money payable by the insured to the licensee in respect of
    premiums.
945C  Regulations may impose other requirements etc if financial services licensee is not the insurer

(1) The regulations may impose requirements to be complied with by a financial services licensee in relation to, or make other provision dealing with, a situation specified in subsection (2) that arises in relation to a contract or proposed contract of insurance under which the licensee is not the insurer.

(2) The situations are as follows:
   (a) the licensee receives an amount as a premium or instalment of premium
   (b) the licensee does not receive an amount as a premium or instalment of premium by a particular time
   (c) the licensee is not aware of the amount of a premium or instalment of premium that is to be paid
   (d) the licensee receives money from the insured or intending insured but the risk or part of the risk has not been accepted by a particular time
   (e) the licensee receives money from the insurer for payment to or on behalf of the insured.

Division 5—Obligations to report

946A  Reporting in relation to money to which Subdivision A or B of Division 2 applies or property to which Division 3 applies

The regulations may impose reporting requirements to be complied with by a financial services licensee in relation to money to which Subdivision A or B of Division 2 applies or property to which Division 3 applies.

946B  Reporting in relation to dealings in derivatives

The regulations may impose reporting requirements to be complied with by a financial services licensee in relation to dealings in derivatives on behalf of other people.
Division 6—Financial records, statements and audit

Subdivision A—Preliminary

947A Application of Division

(1) This Division applies in relation to a financial services licensee and a financial services business carried on by the licensee, whether that business is carried on in this jurisdiction or elsewhere.

(2) This Division does not affect, and is to be taken never to have affected, the operation of Chapter 2M in relation to a company that is a financial services licensee or in relation to a financial services business that is carried on by such a company.

Subdivision B—Financial records of financial services licensees

948A Obligation to keep financial records

(1) A financial services licensee must:
   (a) keep financial records that correctly record and explain the transactions and financial position of the financial services business carried on by the licensee; and
   (b) keep those records in accordance with the requirements of this Subdivision.

(2) The licensee does not contravene a requirement of this Subdivision merely because some or all of the records are kept as a part of, or in conjunction with, the records relating to any other business that is carried on by the licensee.

948B Records to be kept so that profit and loss statements and balance sheet can be prepared and audited

The records must be kept in a way that:
   (a) enables true and fair profit and loss statements, and balance sheets, of the financial services business of the licensee to be prepared from time to time; and
   (b) allows those statements and balance sheets to be conveniently and properly audited.
948C  Language of records

(1) The records must be kept in writing in the English language, or in a manner that enables them to be readily accessible and readily converted into writing in the English language.

(2) If any of the records are not kept in writing in the English language, the licensee must, if required to convert the records concerned into writing in the English language by a person who is entitled to examine the records concerned, comply with the requirement within a reasonable time.

948D  Location of records

If any of the records are kept outside Australia, the licensee must:

(a) cause to be sent to and kept at a place in Australia such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss statements and balance sheets to be prepared; and

(b) if required by ASIC to produce those records at a place in Australia, comply with the requirement not later than 28 days after the requirement is made.

948E  Particular categories of information to be shown in records

The records must be kept in sufficient detail to show particulars of:

(a) all money received or paid by the licensee, including money paid to, or disbursed from, an account maintained for the purposes of section 941B or 942B; and

(b) all acquisitions and disposals of financial products made by the licensee, the charges and credits arising from them, and the names of the person acquiring or disposing of each of those products; and

(c) all income received from commissions, interest, and other sources, and all expenses, commissions, and interest paid, by the licensee; and

(d) all the assets and liabilities (including contingent liabilities) of the licensee; and

(e) all securities or managed investment products that are the property of the licensee, showing by whom the securities or products, or the documents of title to the securities or products, are held and, if they are held by some other person,
whether or not they are held as security against loans or
advances; and
(f) all securities or managed investment products that are not the
property of the licensee and for which the licensee or a
nominee controlled by the licensee is accountable, showing:
(i) by whom, and for whom, the securities or products, or
the documents of title to the securities or products, are
held; and
(ii) the extent to which they are either held for safe custody
or deposited with a third party as security for loans or
advances made to the licensee; and
(g) such other matters (if any) as are specified in the regulations
for the purposes of this paragraph.

948F Regulations may impose additional requirements

The regulations may impose additional requirements to be
complied with in relation to the records including, for example,
requirements for things to be contained in the records, and
requirements relating to the level of detail to be shown in the
records.

948G Records taken to be made with licensee’s authority

An entry in the records is, unless the contrary is proved, to be taken
to have been made by, or with the authority of, the licensee.

Subdivision C—Financial statements of financial services
licensees

949A Meaning of financial year

In this Subdivision:

financial year, in relation to a financial services licensee, means:
(a) if the licensee is not a body corporate—a year ending on 30
June; and
(b) if the licensee is a body corporate—a financial year of the
body corporate.
949B  Financial services licensee to prepare and lodge annual profit and loss statement and balance sheet

(1) A financial services licensee must, in respect of each financial year, prepare a true and fair profit and loss statement and balance sheet in accordance with this Subdivision.

(2) The licensee must lodge the statement and balance sheet in accordance with this Subdivision.

(3) The licensee must, with the statement and balance sheet, lodge an auditor’s report containing the information and matters required by the regulations.

949C  Requirements as to contents and applicable accounting principles

The profit and loss statement and the balance sheet must:

(a) contain the information that is required by the regulations;

and

(b) be prepared in accordance with any requirements in the regulations as to the accounting principles to be used.

949D  Time of lodgment

(1) Unless an extension is granted under subsection (3), the profit and loss statement and the balance sheet must be lodged before:

(a) if the licensee is not a body corporate—the day that is 2 months after the end of that financial year; or

(b) if the licensee is a body corporate—the day that is 3 months after the end of that financial year.

(2) If an extension is granted under subsection (3), the profit and loss statement and the balance sheet must be lodged before the end of the extended period.

(3) ASIC may, on application made:

(a) by a financial services licensee and the licensee’s auditor; and

(b) before the end of the period that would otherwise apply;

approve an extension of the period for lodging the profit and loss statement and balance sheet. The extension may be of the period originally applicable or the period applicable under a previous extension.
(4) An approval under subsection (3) may be given subject to such conditions (if any) as ASIC imposes.

(5) If an approval under subsection (3) is given subject to conditions, the licensee must comply with those conditions.

Subdivision D—Appointment etc. of auditors

950A Certain provisions of this Subdivision do not apply to a body corporate (other than proprietary company) to which section 327 applies

If:

(a) a financial services licensee is a body corporate to which section 327 applies; and

(b) the licensee is not a proprietary company;

nothing in sections 950B to 950H applies to the licensee.

950B Appointment of auditor by licensee

(1) A financial services licensee must, within 1 month after beginning to hold the licence, appoint as auditor or auditors to audit the licensee’s financial statements:

(a) a person or persons; or

(b) a firm or firms; or

(c) a person or persons and a firm or firms.

(2) Within 14 days after a vacancy occurs in the office of an auditor of the licensee, if there is no surviving or continuing auditor of the licensee, the licensee must appoint:

(a) a person or persons; or

(b) a firm or firms; or

(c) a person or persons and a firm or firms;

to fill the vacancy.

(3) While a vacancy in the office of an auditor of the licensee continues, the surviving or continuing auditor or auditors (if any) may act.

(4) The licensee must not appoint as auditor a person who, or firm that, is ineligible by virtue of regulations for the purposes of section 950C to act as auditor of the licensee.
(5) The licensee must not appoint a person or firm as auditor of the licensee unless that person or firm has, before the appointment, consented by written notice given to the licensee to act as auditor and has not withdrawn the consent by written notice given to the licensee.

(6) The licensee must, within 14 days after an appointment of a person or firm as auditor, lodge a written notice stating that the licensee has made the appointment and specifying the name of the person or firm.

(7) The regulations may include provisions dealing with matters related to the appointment of a firm as auditor, including, for example:
   (a) taking certain members of the firm to have been appointed as auditors; and
   (b) the effect of a dissolution and reconstitution of the firm; and
   (c) requiring a member of the firm who retires or withdraws to continue to act as auditor in certain circumstances; and
   (d) how a report, notice or other document is to be made or given.

(8) Regulations for the purposes of subsection (7) may also include provisions modifying the effect of provisions of this Subdivision in relation to matters dealt with in those regulations.

950C When a person or firm is ineligible to act as auditor

A person or firm is ineligible to act as auditor of the licensee if regulations for the purposes of this section provide that the person or firm is ineligible so to act.

950D Ineligible person or firm must not consent to act or disqualify themselves etc.

(1) A person or firm, while ineligible to act as auditor of the licensee, must not:
   (a) consent to be appointed as auditor of the licensee; or
   (b) act as auditor of the licensee; or
   (c) prepare a report that an auditor of the licensee is to prepare under this Part.

(2) A person must not:
(a) if the person has been appointed auditor of the licensee—
   knowingly disqualify himself or herself, while the
   appointment continues, from acting as auditor of the licensee;
   or

(b) if the person is a member of a firm that has been appointed
   auditor of the licensee—knowingly disqualify the firm while
   the appointment continues from acting as auditor of the
   licensee.

950E  Duration of appointment of auditors

An auditor of the licensee holds office until:

(a) death; or
(b) removal in accordance with section 950F; or
(c) resignation in accordance with sections 950G and 950H; or
(d) becoming prohibited by subsection 950D(1) from acting as
   auditor of the licensee;

whichever occurs first.

950F  Removal of auditors

The licensee:

(a) must remove an auditor of the licensee from office if the
    auditor becomes ineligible to act as auditor of the licensee;
    and

(b) may, with ASIC’s consent, remove an auditor of the licensee
    from office.

950G  Resignation of auditors—requirements for resignation

(1) An auditor of the licensee may, by written notice given to the
    licensee, resign as auditor of the licensee if:
    (a) the auditor has, by written notice given to ASIC, applied for
        consent to the resignation and, at or about the same time as
        the auditor gave notice to ASIC, gave written notice of the
        application to the licensee; and
    (b) ASIC has consented and the auditor has received notice of
        ASIC’s consent.

(2) ASIC must, as soon as practicable after receiving an application
    from an auditor under subsection (1), notify the auditor and the
    licensee whether it consents to the resignation.
(3) A statement by an auditor in an application under subsection (1), or in answer to an inquiry by ASIC relating to the reasons for the application:

(a) is not admissible in evidence in any civil or criminal proceedings in a court of this jurisdiction against the auditor other than proceedings for a contravention of section 1308; and

(b) may not be made the ground of a prosecution (other than a prosecution for a contravention of section 1308), action or suit against the auditor.

(4) A certificate by ASIC that a statement was made in an application under subsection (1), or in answer to an inquiry by ASIC relating to the reasons for such an application, is conclusive evidence that the statement was so made.

950H Resignation of auditors—when resignation takes effect

The resignation of an auditor of the licensee takes effect on:

(a) if the notice of resignation specifies a date as the date the resignation is to take effect—the date so specified; or

(b) the date on which ASIC gives its consent to the resignation; or

(c) if ASIC has fixed a date as the date the resignation is to take effect—the date so fixed;

whichever last occurs.

950I Auditor’s right of access to records, information etc.

(1) An auditor of the licensee has a right of access at all reasonable times to the financial records or other records (including any register) of the licensee.

(2) An auditor of the licensee is entitled to require:

(a) from the licensee; or

(b) if the licensee is a body corporate—from any executive officer of the licensee;

such assistance and explanations as the auditor desires for the purposes of audit.

(3) The licensee, or an executive officer of the licensee if it is a body corporate, must not, without lawful excuse:
(a) refuse or fail to allow an auditor of the licensee access, in accordance with subsection (1), to financial records or other records of the licensee; or

(b) refuse or fail to give information, or an explanation, to an auditor of the licensee as and when required under subsection (2); or

(c) otherwise hinder, obstruct or delay an auditor of the licensee in the performance or exercise of the auditor’s duties or powers.

950J Auditor’s fees and expenses

The reasonable fees and expenses of an auditor of the licensee are payable by the licensee.

950K Auditor to report to ASIC on certain matters

(1) If an auditor, in the performance of duties as auditor of the licensee, becomes aware of a prescribed matter, the auditor must, within 7 days after becoming aware of the matter, lodge a written report on the matter and send a copy of the report to the licensee, and to each licensed market (if any) and each licensed CS facility (if any) in which the licensee is a participant.

(2) In this section:

prescribed matter means a matter that, in the opinion of the auditor:

(a) has adversely affected, is adversely affecting or may adversely affect the ability of the licensee to meet the licensee’s obligations as a licensee; or

(b) constitutes or may constitute a contravention of:

(i) a provision of Subdivision A or B of Division 2, or a provision of regulations for the purposes of such a provision; or

(ii) a provision of Division 3, or a provision of regulations for the purposes of such a provision; or

(iii) a provision of Subdivision B of this Division, or a provision of regulations for the purposes of such a provision; or

(iv) a condition of the licensee’s licence.
950L  Qualified privilege for auditor etc.

(1) An auditor of the licensee has qualified privilege in respect of:
   (a) a statement that the auditor makes, orally or in writing, in the
       course of the auditor’s duties as auditor; or
   (b) the lodging of a report, or the sending of a report to the
       licensee, or to a licensed market or a licensed CS facility,
       under subsection 950K(1).

(2) A person has qualified privilege:
   (a) in respect of the publishing of a document:
       (i) prepared by an auditor of the licensee in the course of
           the auditor’s duties as auditor; or
       (ii) required by or under this Chapter to be lodged, whether
           or not the document has been lodged; or
   (b) in respect of the publishing of a statement made by an auditor
       of the licensee as mentioned in subsection (1).

Division 7—Other rules about conduct

951A  Financial services licensee not to engage in unconscionable
       conduct

A financial services licensee must not, in or in relation to the
provision of a financial service, engage in conduct that is, in all the
circumstances, unconscionable.

951B  Financial services licensee to give priority to clients’ orders

(1) This section applies if:
   (a) a person (the client) has instructed a financial services
       licensee to buy or sell financial products of a particular class
       that are able to be traded on a licensed market; and
   (b) the licensee has not complied with the instruction; and
   (c) the client is not an associate of the licensee; and
   (d) regulations for the purposes of this paragraph do not exclude
       those financial products from this section.

(2) The financial services licensee must not, except as permitted by
     subsection (3):
(a) enter into a transaction of purchase or sale of financial products of that class either on their own behalf or on behalf of an associate of the licensee; or
(b) instruct another person to enter into a transaction of purchase or sale of financial products of that class on behalf of the licensee or an associate of the licensee.

(3) Subsection (2) does not apply in relation to the entering into of a transaction, or the giving of an instruction, by the licensee if:
(a) the client’s instructions required the purchase or sale to be effected only on specified conditions relating to price and the licensee has been unable to comply with the instructions because of those conditions; or
(b) the transaction, or the giving of the instruction, is permitted by regulations for the purposes of this paragraph.

951C Regulations may deal with various matters relating to instructions to deal through licensed markets

The regulations may do all or any of the following in relation to instructions received by financial services licensees to deal in financial products through licensed markets:
(a) impose requirements relating to the order in which instructions are to be transmitted to a licensed market or to another financial services licensee who is a participant in a licensed market
(b) impose requirements relating to the order in which instructions are to be executed on a licensed market
(c) impose requirements relating to the order in which dealings that have been effected on a licensed market are to be allocated to instructions
(d) prohibit the disclosure of instructions in specified circumstances.

951D Regulations may require records to be kept in relation to instructions to deal on licensed markets and foreign markets

The regulations may impose requirements for the keeping of records relating to all or any of the following:
(a) instructions received by financial services licensees to deal in financial products through licensed markets or through other
financial products markets (whether inside or outside Australia) (b) the execution of such instructions (c) the transmission of such instructions.

951E Obligations of financial services licensee in relation to dealings with non-licensees

Obligation to disclose if acting on own behalf

(1) Except as permitted by the regulations, a financial services licensee must not, either personally or through an authorised representative, knowingly enter into a financial product transaction on their own behalf:
(a) that relates to a financial product that is able to be traded on a licensed market; and
(b) that is with a person (the non-licensee) who is not a financial services licensee or an authorised representative;
unless:
(c) the licensee has disclosed to the non-licensee the fact that the licensee will be acting on their own behalf in the proposed dealing; and
(d) the non-licensee has consented to the licensee so acting in the proposed dealing.
If the licensee is acting through an authorised representative, the disclosure referred to in paragraph (c) may instead be given by the representative.

(2) The regulations may deal with either or both of the following:
(a) how a disclosure referred to in paragraph (1)(a) is to be made;
(b) how a consent referred to in paragraph (1)(b) is to be given.

Obligation not to charge fee

(3) If a financial services licensee, either personally or through an authorised representative, enters into a transaction of sale or purchase of financial products on their own behalf:
(a) that relates to a financial product that is able to be traded on a licensed market; and
(b) that is with a person (the non-licensee) who is not a financial services licensee or an authorised representative;
the licensee must not, except as permitted by the regulations,
charge the non-licensee any brokerage, commission or other fee in
respect of the transaction.

Person may rescind contract if section contravened

(4) If subsection (1) or (3) is contravened in relation to a transaction,
the non-licensee may, subject to subsection (5), rescind the
contract effecting the transaction, unless the contract was for the
purchase of financial products by the non-licensee and the
non-licensee has disposed of those products.

(5) The right under subsection (4) to rescind the contract:
   (a) can only be exercised during the period of 14 days starting
       on:
       (i) unless subparagraph (ii) applies—the day on which the
           contract was entered into; or
       (ii) if regulations for the purposes of this subparagraph
           specify a later day—that later day; and
       (c) is to be exercised by notice in writing to the licensee.

(6) Nothing in subsections (4) and (5) affects any other right that a
person has.

Regulations may require records to be kept in relation to
transactions entered into by licensee on own behalf

(7) The regulations may impose requirements for the keeping of
records relating to financial products transactions entered into by a
financial services licensee on their own behalf.

951F Dealings involving employees of financial services licensees

(1) Subject to the regulations, a financial services licensee and an
employee of the licensee must not, on their own behalves, jointly
acquire a financial product.

(2) Subject to the regulations, a financial services licensee must not
give credit to an employee of the licensee, or to a person who they
know is an associate of an employee of the licensee, if:
   (a) the credit is given for the purpose of enabling the person to
       whom the credit is given to acquire a financial product; or
(b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of acquiring a financial product.

(3) Subject to the regulations a person:
   (a) who is an employee of a financial services licensee that is a participant in a licensed market; and
   (b) who is so employed in connection with a business of dealing in financial products;
   must not, on their own behalf, acquire or agree to acquire a financial product of a kind that is able to be traded on that market unless the licensee acts as the agent of the person in respect of the acquisition.

(4) In this section, a reference to an employee of a financial services licensee includes, for a licensee that is a body corporate, a reference to an officer of the body.

Part 7.8—Financial product disclosure and other provisions relating to issue and sale of financial products

Division 1—Preliminary

980A Part generally does not apply to securities

Apart from section 988B, and sections 991F and 991G as they apply in relation to that section, nothing in this Part applies in relation to securities.

Note: Chapter 6D provides for disclosure in relation to securities.

980B Part does not apply to financial products not issued in the course of a business

(1) Nothing in this Part applies in relation to a financial product that is or was not issued, or that will not be issued, in the course of a business of issuing financial products.

(2) For this purpose, the issue of an interest in a managed investment scheme is taken to occur in the course of a business of issuing financial products.
980C  Special provisions about meaning of sale and offer

(1) For the purposes of this Part, a reference to a sale or purchase of a financial product is a reference to a sale of the product by, or a purchase of the product from, a person who has (whether by issue or otherwise) acquired the product. The issue of a financial product is not a sale of the financial product.

(2) For the purposes of this Part:
(a) a reference to offering to issue a financial product includes a reference to inviting an application for the issue of the financial product; and
(b) a reference to offering to sell a financial product includes a reference to inviting an offer to purchase the financial product.

Division 2—Product Disclosure Statements

Subdivision A—Preliminary

981A  Division only applies to recommendations received in this jurisdiction

This Division only applies in relation to offers or recommendations that are received in this jurisdiction.

981B  Definitions

In this Division:

issue Statement has the meaning given by subsection 983A(1).

offer has a meaning affected by sections 980C and 981C.

regulated person means:
(a) an issuer of financial products; or
(b) a financial services licensee; or
(c) an authorised representative of a financial services licensee; or
(d) a person who is a member of a professional body in relation to which a declaration under section 882A is in force; or
(e) a person who is not required to hold an Australian financial services licence because the person is covered by an
exemption in regulations for the purposes of paragraph 881A(2)(g); or (f) a person who is required to hold an Australian financial services licence but who does not hold such a licence; or (g) an employee, director or other representative of a person referred to in paragraph (a), (b), (c), (d), (e) or (f).

**responsible person**, in relation to a Product Disclosure Statement, has the meaning given by subsection 983A(3).

**sale** has a meaning affected by section 980C.

**sale Statement** has the meaning given by subsection 983A(2).

### 981C Treatment of offers of options over financial products

For the purposes of this Division:

(a) an offer of an option over a financial product is not to be taken to be an offer of the underlying financial product; and

(b) the grant of an option without an offer of the option is taken to be an offer of the option; and

(c) an offer to grant an option is taken to be an offer to issue the financial product constituted by the option.

#### Subdivision B—Requirement for a Product Disclosure Statement to be given

### 982A Obligation to give person a Product Disclosure Statement—recommendations related to acquisition of financial products

Section sets out recommendation situation in which Product Disclosure Statement required

(1) This section sets out the situation (a **recommendation situation**) in which a recommendation (the **relevant conduct**) relating to the acquisition (whether by way of issue or sale) of a financial product gives rise to an obligation on a regulated person to give another person (the **client**) a Product Disclosure Statement in accordance with this Division.
Recommending a particular financial product to a retail client

(2) At or before the time when a regulated person, provides financial product advice to a person as a retail client that consists of, or includes, a recommendation that the client acquire a particular financial product, the regulated person must give the client a Product Disclosure Statement in accordance with this Division.

This section has effect subject to other provisions

(3) This section has effect subject to sections 982D, 982E and 984E.

982B Obligation to give person a Product Disclosure Statement—offers related to issue of financial products

Section sets out issue situations in which Product Disclosure Statement required

(1) This section sets out situations (each of which is an issue situation) in which an offer (the relevant conduct) relating to the issue of a financial product gives rise to an obligation on a regulated person to give another person (the client) a Product Disclosure Statement in accordance with this Division.

Offering to retail client to issue, or arrange for issue, of a particular financial product

(2) At or before the time when a regulated person makes an offer to issue, or arrange for the issue, to a person as a retail client a particular financial product, the regulated person must give the client a Product Disclosure Statement in accordance with this Division.

Retail client offers to acquire financial product

(3) If a person, as a retail client, makes an offer to a regulated person to acquire a particular financial product, the regulated person must, before the client becomes bound by a legal obligation to acquire the financial product pursuant to that offer, give the client a Product Disclosure Statement in accordance with this Division.

This section has effect subject to other provisions

(4) This section has effect subject to sections 982D, 982E and 984E.

Financial Services Reform Exposure Draft
982C Obligation to give person a Product Disclosure Statement—
offers related to sale of financial products

Section sets out sale situations in which Product Disclosure
Statement required

(1) This section sets out situations (each of which is a sale situations)
in which an offer (the relevant conduct) relating to the sale of a
financial product gives rise to an obligation on a person (the seller)
to give another person (the client) a Product Disclosure Statement
in accordance with this Division.

Sale offers to retail clients that require a Product Disclosure
Statement

(2) At or before the time when the seller makes an offer to a person as
a retail client to sell a particular financial product to the client in
circumstances described in subsection (3), (4) or (6), the seller
must give the client a Product Disclosure Statement in accordance
with this Division.

Off-market sale by controller

(3) The seller must give the client a Product Disclosure Statement if:
(a) the seller controls the issuer of the financial product; and
(b) either:
   (i) the product is not able to be traded on any licensed
       market; or
   (ii) although the product is able to be traded on a licensed
        market, the offer is not made in the ordinary course of
        trading on a licensed market.

Note: See section 50AA for when a person controls a body.

Sale amounting to indirect issue

(4) The seller must give the client a Product Disclosure Statement if
the offer is made within 12 months after the issue of the financial
product, and the financial product was issued:
(a) without a Product Disclosure Statement being prepared
    before the issue of the product; and
(b) with the purpose of the person to whom it was issued:
   (i) selling or transferring it; or
(ii) granting, issuing or transferring interests in, or options
or warrants over, the product.

Evidence of intention—indirect issue

(5) Unless the contrary is proved, a person is taken to issue a financial
product with the purpose referred to in paragraph (4)(b) if the
financial product, or any financial product of the same kind that
was issued at the same time, is subsequently sold, or offered for
sale, within 12 months after issue.

Sale amounting to indirect off-market sale by controller

(6) The seller must give the client a Product Disclosure Statement if
the offer is made within 12 months after the sale of the financial
product by a person (the controller) who controlled the issuer of
the product at the time of the sale and:

(a) either:
   (i) at the time of the sale by the controller, the product was
       not able to be traded on any licensed market; or
   (ii) although the product was able to be traded on a licensed
       market at that time, the sale by the controller did not
       occur in the ordinary course of trading on a licensed
       market; and

(b) a Product Disclosure Statement was not prepared by, or on
    behalf of, the controller before the sale of the product by the
    controller; and

(c) the controller sold the product with the purpose of the person
    to whom it was sold:
       (i) selling or transferring it; or
       (ii) granting, issuing or transferring interests in, or options
            or warrants over, it.

Note: See section 50AA for when a person controls a body.

Evidence of intention—indirect sale by controller

(7) Unless the contrary is proved, a person who controls an issuer of
financial products is taken to sell a financial product with the
purpose referred to in paragraph (6)(c) if the financial product, or
any financial product of the same kind that was issued at the same
time, is subsequently sold, or offered for sale, within 12 months
after its sale by the controller.
This section has effect subject to other provisions

(8) This section has effect subject to sections 982D and 984E.

982D Situations in which Product Disclosure Statement is not required

Recommendation, issue or sale situation—client has already received an up to date Product Disclosure Statement

(1) In a recommendation situation, an issue situation or a sale situation, the regulated person, or the seller, as the case requires, does not have to give the client a Product Disclosure Statement if:

(a) the client has already received a Product Disclosure Statement that contains all of the information that the first-mentioned Product Disclosure Statement would be required to contain; or

(b) the regulated person, or the seller, as the case requires, believes on reasonable grounds that paragraph (a) applies.

Recommendation or issue situation—certain offers to present holders

(2) In a recommendation situation or an issue situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) the client already holds a financial product of the same kind; and

(b) either:

(i) in a recommendation situation—the recommendation that constitutes the relevant conduct relates to an offer made under a distribution reinvestment plan or switching facility; or

(ii) in an issue situation—the offer that constitutes the relevant conduct is made under a distribution reinvestment plan or switching facility.

Recommendation, issue or sale situation—no consideration to be provided

(3) In a recommendation situation, an issue situation or a sale situation, the regulated person, or the seller, as the case requires, does not have to give the client a Product Disclosure Statement if:
(a) no consideration is to be provided for the issue or sale of the financial product; and
(b) the financial product is not an option.

(4) In a recommendation situation, an issue situation or a sale situation, the regulated person, or the seller, as the case requires, does not have to give the client a Product Disclosure Statement if:
   (a) the financial product is an option; and
   (b) no consideration is to be provided for the issue or sale of the financial product; and
   (c) no consideration is to be provided for the underlying financial product on the exercise of the option.

**Issue or sale situation—takeovers**

(5) In an issue situation or a sale situation, the regulated person, or the seller, as the case requires, does not have to give the client a Product Disclosure Statement if the offer that constitutes the relevant conduct is:
   (a) made as consideration for an offer to acquire a managed investment interest under a takeover bid under Chapter 6; and
   (b) accompanied by a bidder’s statement.

Note: Although a Product Disclosure Statement is not needed, disclosures must be made in the bidder’s document under section 636.

**Recommendation, issue or sale situation—responsible entity an exempt body**

(6) In a recommendation situation, an issue situation or a sale situation, the regulated person, or the seller, as the case requires, does not have to give the client a Product Disclosure Statement if:
   (a) the financial product is a managed investment interest; and
   (b) the responsible entity of the managed investment scheme is an exempt body of this jurisdiction; and
   (c) in the case of a recommendation situation or an issue situation—either:
      (i) the recommendation that constitutes the relevant conduct relates to an offer made by the responsible entity of the scheme; or
      (ii) the offer that constitutes the relevant conduct is made by or to the responsible entity of the scheme.

Note 1: Section 66A defines exempt body.
Note 2: In the case of a sale situation, there is no additional requirement equivalent to paragraph (c).

Recommendation or issue situation—interim contracts of insurance

(7) In a recommendation situation or an issue situation, the regulated person does not have to give the client a Product Disclosure Statement if the financial product is an interim contract of insurance (as defined in subsection 11(2) of the *Insurance Contracts Act 1984*).

Note: This does not detract from the obligation to give a Product Disclosure Statement relating to any contract of insurance that replaces or supersedes the interim contract.

982E Product Disclosure Statement may sometimes be provided later if cooling-off period applies

(1) In a recommendation situation or an issue situation in which:

(a) the financial product is not a product of a kind referred to in paragraph 985B(1)(a), (b), (c) or (d); and

(b) section 990B will apply if the client enters into a legal obligation to acquire the product pursuant to the recommendation or offer that constitutes the relevant conduct; and

(c) the client expressly instructs the regulated person that they require:

(i) in a recommendation situation—the advice constituting the recommendation; or

(ii) in an issue situation—the financial product;

(to be provided or issued immediately, or by a specified time; and

(d) it is not reasonably practicable, while complying with the client’s instructions, to give the client the Product Disclosure Statement at or before the time when it would otherwise be required to be given;

the regulated person must instead comply with subsection (2).

(2) The regulated person must:

(a) at or before the time referred to in paragraph (1)(d), give the client an oral statement that contains:

(i) information about the essential features of the financial product; and
(ii) the information that would be required to be in a
Product Disclosure Statement for the product by
paragraphs 983C(1)(c), (d) and (i); and
(b) give the client the Product Disclosure Statement as soon as
practicable after that time, and in any event not later than the
start of the period applicable under subsection 990B(4).

982F Information must be up to date

The information in a Product Disclosure Statement must be up to
date as at the time when it is given to the client.

Note: A Supplementary Product Disclosure Statement containing updated
information may be given with a Product Disclosure Statement that
has become out of date. The updated information is taken to be
included in the Product Disclosure Statement (see section 984D).

Subdivision C—Preparation and content of Product Disclosure
Statements

983A Who must prepare Product Disclosure Statement

(1) Subject to subsection (4), a Product Disclosure Statement that is
required to be given to a person by section 982A or 982B must be a
document that has been prepared by, or on behalf of, the issuer of
the financial product. A Product Disclosure Statement of this kind
is in this Division referred to as an issue Statement

(2) Subject to subsection (4), a Product Disclosure Statement that is
required to be given to a person by section 982C must be a
document that has been prepared by, or on behalf of, the person
making the offer to sell the financial product. A Product Disclosure
Statement of this kind is in this Division referred to as a sale
Statement

(3) The person who, or on whose behalf, a Product Disclosure
Statement is required to be prepared is, in this Division, referred to
as the responsible person.

(4) The responsible person may authorise another person to include
information in the Product Disclosure Statement, however that
other information must not include anything that might create the
impression that the other person is the issuer or seller of the
financial product.
983B Title of Product Disclosure Statement

(1) A Product Disclosure Statement may also be referred to as a Financial Services Document 3.

(2) Both titles must be used on the cover of the document, or at or near the front of the document. For this purpose, either title may be abbreviated as follows:

(a) Product Disclosure Statement may be abbreviated to PDS;

(b) Financial Services Document 3 may be abbreviated to FSD 3.

983C Product Disclosure Statement content—main requirements

(1) Subject to subsection (2) and to section 983E, a Product Disclosure Statement must include the following statements, and such of the following information as a person would reasonably require for the purpose of making a decision whether to acquire the financial product as a retail client:

(a) a statement setting out the name and contact details of:
   (i) the issuer of the financial product; and
   (ii) if the Statement is a sale Statement—the seller; and

(b) information about any significant benefits to which a holder of the product will or may become entitled, the circumstances in which and times at which those benefits will or may be provided, and the way in which those benefits will or may be provided; and

(c) information about any significant risks associated with holding the product; and

(d) information about:
   (i) the cost of the product; and
   (ii) any amounts a holder of the product will or may have to pay in respect of the product after its acquisition, and the times at which those amounts will or may be payable, and

(e) if the product will or may generate a return to a holder of the product—information about any commission, or other similar payments, that will or may impact on the amount of such a return; and

(f) information about any other significant characteristics or features of the product or of the rights, terms, conditions and obligations attaching to the product; and
(g) information about the internal and external dispute resolution
procedures that are available to deal with complaints by
holders of the product and about how those procedures may
be accessed; and

(h) information about any significant taxation implications of the
product that are specific to the product; and

(i) information about any cooling-off regime that applies in
respect of acquisitions of the product (whether the regime is
provided for by a law or otherwise); and

(j) if the product issuer (in the case of an issue Statement) or the
seller (in the case of a sale Statement) makes other
information relating to the product available to holders or
prospective holders of the product, or to people more
generally—a statement of how that information may be
accessed.

(2) The regulations may:

(a) provide that a provision of subsection (1) does not apply in a
particular situation; or

(b) provide that particular information is not required by a
provision of subsection (1), either in a particular situation or
generally; or

(c) provide a more detailed statement of the information that is
required by a provision of subsection (1), either in a
particular situation or generally.

(3) The Statement:

(a) must also include the information required by the other
provisions of this Subdivision; and

(b) may also include other information.

Note: A Supplementary Product Disclosure Statement containing additional
information may be given with a Product Disclosure Statement that
does not contain all the required information. The additional
information is taken to be included in the Product Disclosure
Statement (see section 984D).

983D General obligation to include other information that might
influence a decision to acquire

(1) Subject to section 983E, a Product Disclosure Statement must also
contain any other information that is actually known to a person
referred to in subsection (2) and that might reasonably be expected
to have a material influence on the decision of a reasonable person whether to acquire the product as a retail client.

(2) The people whose knowledge is relevant are:

(a) the responsible person; and

(b) in the case of a sale Statement—the issuer of the financial product; and

(c) any person named in the Statement as an underwriter of the issue or sale of the financial product; and

(d) any person:

(i) named in the Statement as a financial services licensee providing services in relation to the issue or sale of the financial product; and

(ii) who participated in any way in the preparation of the Statement; and

(e) any person who has given a consent referred to in section 983I in relation to a statement included in the Statement; and

(f) any person named in the Statement with their consent as having performed a particular professional or advisory function; and

(g) if any of the above persons is a body corporate—any director of that body corporate.

983E General limitations on extent to which information is required to be included

(1) Despite anything in section 983C or 983D, information is not required to be included in a Product Disclosure Statement if it would not be reasonable for a person considering whether to acquire the product as a retail client to expect to find the information in the Statement.

(2) In considering whether it would not be reasonable for a person considering whether to acquire the product as a retail client to expect to find particular information in the Statement, the matters that may be taken into account include, but are not limited to:

(a) the risk profile of the product; and

(b) the extent to which the product is well understood by the kinds of person who commonly acquire products of that kind as retail clients; and

(c) the kinds of things such persons may reasonably be expected to know; and
(d) any other matters specified in the regulations.

983F Product Disclosure Statement must be dated

A Product Disclosure Statement must be dated. The date must be:

(a) if a copy of the Product Disclosure Statement has been
    lodged with ASIC (see section 985B)—the date on which it
    was so lodged; or
(b) in any other case—the date on which the Product Disclosure
    Statement was prepared or its preparation was completed.

983G Requirements if Product Disclosure Statement states or
implies that financial product will be able to be traded

If a Product Disclosure Statement states or implies that the
financial product will be able to be traded on a financial products
market (whether in Australia or elsewhere), the Statement must
state that:

(a) the product is able to be traded on that market; or
(b) an application has been made to the operator of that market
    for the taking of such action as is necessary to enable the
    product to be traded on that market; or
(c) an application of a kind referred to in paragraph (b) will be
    made to the operator of that market within 7 days after the
    date of the Statement.

983H Requirements if Statement has been lodged with ASIC

A Product Disclosure Statement a copy of which has been lodged
with ASIC (see section 985B) must include a statement that:

(a) a copy of the document has been lodged with ASIC; and
(b) ASIC takes no responsibility for the content of the document.

983I Requirements relating to consents to certain statements

A Product Disclosure Statement may only include a statement
made by a person, or a statement said in the Product Disclosure
Statement to be based on a statement made by a person, if:

(a) the person has consented to the statement being included in
    the Product Disclosure Statement in the form and context in
    which it is included; and
(b) the Product Disclosure Statement states that the person has
given this consent; and
(c) the person has not withdrawn this consent before the date
specified in the Product Disclosure Statement in accordance
with section 983F.

Subdivision D—Supplementary Product Disclosure Statements

984A What a Supplementary Product Disclosure Statement is

A Supplementary Product Disclosure Statement is a document by
which a person who has prepared a Product Disclosure Statement
(the PDS) can:
(a) correct a misleading or deceptive statement in the PDS; or
(b) correct an omission from the PDS of information it is
required to contain; or
(c) update the information contained in the PDS; or
(d) change a statement of a kind referred to in paragraph
986F(1)(a) or (b).

984B Title of Supplementary Product Disclosure Statement

(1) A Supplementary Product Disclosure Statement may also be
referred to as a Financial Services Document 3 (Supplementary).
(2) Both titles must be used on the cover of the document, or at or near
the front of the document. For this purpose, either title may be
abbreviated as follows:
(a) Supplementary Product Disclosure Statement may be
abbreviated to PDS (Supplementary)
(b) Financial Services Document 3 (Supplementary) may be
abbreviated to FSD 3 (Supplementary).

984C Form of Supplementary Product Disclosure Statement

At the beginning of a Supplementary Product Disclosure Statement
there must be:
(a) a statement that it is a Supplementary Product Disclosure
Statement; and
(b) an identification of the Product Disclosure Statement that it
supplements; and
(c) a statement that it is to be read together with that Product Disclosure Statement and any other specified Supplementary Disclosure Statements.

984D Effect of giving person a Supplementary Product Disclosure Statement

If:

(a) a person is given a Product Disclosure Statement (the \textit{PDS}); and

(b) at the same time, or later, they are given a Supplementary Product Disclosure Statement (the \textit{SPDS}) that supplements the PDS;

the PDS is taken, from when the SPDS is given to the person, to include the information and statements contained in the SPDS.

984E Situation in which only a Supplementary Product Disclosure Statement need be given

If:

(a) apart from this section, a person would be required to give another person a Product Disclosure Statement (the \textit{new PDS}) relating to a financial product; and

(b) the client has, because of some previous conduct, already received a Product Disclosure Statement (the \textit{earlier PDS}) relating to the financial product; and

(c) the earlier PDS contains some, but not all, of the information that the new PDS is required to contain;

the person may, instead of giving the person the new PDS, give the person a Supplementary Product Disclosure Statement that contains the additional information.

984F Application of other provisions in relation to Supplementary Product Disclosure Statements

Sections 983A, 983F, 983G, 983H and 983I apply in relation to a Supplementary Product Disclosure Statement in the same way as they apply to a Product Disclosure Statement.
Subdivision E—Other requirements relating to Product Disclosure Statements and Supplementary Product Disclosure Statements

985A Subdivision applies to Product Disclosure Statements and Supplementary Product Disclosure Statements

This Subdivision applies to Product Disclosure Statements and to Supplementary Product Disclosure Statements. Both kinds of document are referred to in this Subdivision as a Statement.

985B Some Statements must be lodged with ASIC

(1) A copy of a Statement must have been lodged with ASIC before the Statement is given to a person for the purposes of a provision of this Part if the financial product is:

(a) a managed investment product; or
(b) a superannuation product; or
(c) an investment life insurance product; or
(d) a financial product of a kind specified in regulations for the purposes of this paragraph.

(2) The lodgement of a Statement with ASIC requires the consent of:

(a) whether it is an issue Statement or a sale Statement:
   (i) if the responsible person is a body corporate—every director of the responsible person; or
   (ii) otherwise—the responsible person; and
(b) if it is a sale Statement:
   (i) if the issuer of the financial product concerned is a body corporate—every director of the responsible person; or
   (ii) otherwise—the issuer of the financial product concerned.

985C How a Statement is to be provided

A Statement:

(a) must be given to a person personally, or be sent to an address (including an electronic address) or fax number nominated by the person; and
(b) may be printed or be in electronic form.
985D  Copy of Statement to be kept for 7 years and to be made available on request

(1) This section applies to a Statement if section 985B does not require a copy of the Statement to be lodged with ASIC.

(2) The responsible person in relation to the Statement must keep a copy of the Statement for the period of 7 years after the date of the Statement.

(3) During that period the responsible person:
   (a) must make a copy of the Statement available to ASIC if asked to do so by ASIC; and
   (b) must comply with any reasonable request from any other person for a copy of the Statement.

Subdivision F—Other rights and obligations related to Product Disclosure Statements

986A  Issuer or seller to be satisfied that person has received Product Disclosure Statement containing all required information

(1) This section applies to an offer:
   (a) that is of a kind referred to in subsection 982B(2) or (3) or 982C(2); and
   (b) that is not made in a situation to which a subsection, other than subsection (1), of section 982D applies; and
   (c) that is not covered by section 982E.

(2) A person (the issuer or seller) must not issue or sell a financial product to another person pursuant to an offer to which this section applies unless the issuer or seller knows, or has reasonable grounds to believe, that the other person has received a Product Disclosure Statement containing all the information that would have been required to be contained in a Product Disclosure Statement given at the time of the offer.

Note: Information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements (see section 984D).
986B Issuer or seller not to issue or transfer certain financial products except pursuant to application form included in or provided with a Product Disclosure Statement

(1) This section applies to an offer:

(a) that is of a kind referred to in subsection 982B(2) or (3) or 982C(2); and

(b) that is not made in a situation to which a subsection, other than subsection (1), of section 982D applies; and

(c) that relates to a financial product of a kind referred to in paragraph 985B(1)(a), (b), (c) or (d).

(2) A person (the issuer or seller) must not issue or sell a financial product to another person pursuant to an offer to which this section applies unless:

(a) the other person has applied for the product using an application form; and

(b) the issuer or seller knows, or has reasonable grounds to believe, that the application form was included in, or accompanied, a Product Disclosure Statement given to the other person that contained all the information that would have been required to be contained in a Product Disclosure Statement given at the time of the offer.

Note: Information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements (see section 984D).

986C If Statement lodged with ASIC, financial product is not to be issued or sold before specified period

(1) If:

(a) a copy of a Product Disclosure Statement or a Supplementary Product Disclosure Statement (the Statement) has been lodged with ASIC; and

(b) the financial product to which the Statement relates is not able to be traded on any financial products market (whether in Australia or elsewhere);

the responsible person must not issue or sell a financial product to which the Statement applies until the period of 7 days after lodgment of the Statement has ended.
(2) ASIC may extend the period by notice in writing to the responsible person. The period as extended must end no more than 14 days after lodgment.

986D Minimum subscription condition must be fulfilled before issue or sale

If a Product Disclosure Statement states that a financial product of that kind will not be issued or sold unless:

(a) applications for a minimum number of financial products of that kind are received; or

(b) a minimum amount is raised;

the responsible person must not issue or sell a financial product of that kind until that condition is satisfied. For the purpose of working out whether the condition has been satisfied, a person who has agreed to take a financial product as underwriter is taken to have applied for that product.

Note: Statements in a Supplementary Product Disclosure Statement are taken to be contained in the Product Disclosure Statement it supplements (see section 984D).

986E Condition about ability to trade on a market must be fulfilled before issue or sale

If a Product Disclosure Statement states or implies that a financial product will be able to be traded on a financial products market (whether in Australia or elsewhere), the responsible person must not issue or sell a financial product of that kind until the product is able to be traded on that market.

Note: Statements in a Supplementary Product Disclosure Statement are taken to be contained in the Product Disclosure Statement it supplements (see section 984D).

986F Choices open to person making the offer if disclosure condition not met or Product Disclosure Statement defective

(1) If:

(a) a Product Disclosure Statement states that a financial product will not be issued or sold unless:

(i) applications for a minimum number of financial products of that kind are received; or

(ii) a minimum amount is raised;
and that condition is not satisfied within 4 months after the relevant date (see subsection (3)); or

(b) a Product Disclosure Statement states or implies that a financial product will be able to be traded on a financial products market (whether in Australia or elsewhere) and:
   (i) an application has not, within 7 days after the relevant date (see subsection (3)), been made to the operator of that market for the taking of such action as is necessary to enable the product to be traded on that market; or
   (ii) at the end of the period of 3 months starting on the relevant date, the product is not able to be traded on that market; or

(c) in relation to a Product Disclosure Statement, the responsible person becomes aware that:
   (i) the Statement contains a misleading or deceptive statement; or
   (ii) there is an omission from the Statement of information it was required to contain;

   that is materially adverse from the point of view of a reasonable person deciding whether to acquire the financial product as a retail client; or

(d) in relation to a Product Disclosure Statement, the responsible person becomes aware of a new circumstance that:
   (i) has arisen since a Product Disclosure Statement was prepared; and
   (ii) would have been required to be included in the Product Disclosure Statement if it had arisen before the Statement was prepared; and
   (iii) is materially adverse from the point of view of a reasonable person deciding whether to acquire the financial product as a retail client;

the responsible person must deal under subsection (2) with any applications for a financial product of that kind made in response to that Product Disclosure Statement that have not resulted in an issue or sale of a financial product of that kind. For the purpose of working out whether the condition referred to in paragraph (a) has been satisfied, a person who has agreed to take a financial product as an underwriter is taken to have applied for that financial product.
Note: Information and statements in a Supplementary Product Disclosure Statement are taken to be contained in the Product Disclosure Statement it supplements (see section 984D).

(2) The responsible person must either:

(a) repay the money received by the responsible person from applicants; or

(b) give the applicants:

(i) a Supplementary Product Disclosure Statement that changes the statement referred to in paragraph (1)(a) or (b), or that corrects the deficiency referred to in paragraph (1)(c) or (d); and

(ii) a reasonable opportunity to withdraw their applications; or

(c) issue or sell the financial products to the applicants and give them:

(i) a Supplementary Product Disclosure Statement that changes the statement referred to in paragraph (1)(a) or (b), or that corrects the deficiency referred to in paragraph (1)(c) or (d); and

(ii) a reasonable opportunity to return the financial products and be repaid.

(3) For the purposes of this section, the relevant date in relation to an express or implied statement is:

(a) if the statement is express or implied in a Product Disclosure Statement, disregarding the effect of section 984D—the date of the Product Disclosure Statement; or

(b) if the statement is express or implied in a Supplementary Product Disclosure Statement—the date of the Supplementary Product Disclosure Statement.

986G Remedies for people acquiring financial products

(1) Subject to this section, if a financial product is issued or sold to a person (the client) in contravention of section 986F, the client has the right to return the product and to have the money they paid to acquire the product repaid. This is so even if the responsible person is being wound up.

(2) If the responsible person:

(a) is a body corporate; and

(b) does not repay the money as required by subsection (1);
the directors of the responsible person are personally liable to repay the money.

(3) The right to return the product must be exercised by notifying the responsible person in one of the following ways:
   (a) in writing; or
   (b) electronically; or
   (c) in any other way specified in the regulations.

Also, if the regulations require the client to comply with other requirements in order to exercise the right to return the product, those other requirements must be complied with.

(4) The right to return the product can only be exercised during the period of 1 month starting on the date of the issue or sale of the product to the client.

(5) On the exercise of the right to return the product:
   (a) if the product is constituted by a legal relationship between the client and the issuer of the product—that relationship is, by force of this section, terminated with effect from that time without penalty to the client; and
   (b) any contract for the acquisition of the product by the client is, by force of this section, terminated with effect from that time without penalty to the client.

(6) The regulations may provide for consequences and obligations (in addition to those provided for by subsection (5)) to apply if the right to return a financial product is exercised.

Division 3—Other disclosure obligations of the issuer of a financial product

987A Obligation to give additional information on request

Obligation to give information

(1) A person who has been given, or who has obtained, a Product Disclosure Statement for a financial product may request the person who is the responsible person for the Statement under Division 3 of Part 7.8 to provide further information about the product.

(2) The responsible person must give the person the information if:
(a) the responsible person has previously made the information generally available to the public; and
(b) the information might reasonably influence the decision that a person who would acquire the product as a retail client would make whether to acquire the financial product; and
(c) it is reasonably practicable for the responsible person to give the person the information; and
(d) the person pays any fee payable under subsection (5).

The responsible person does not need to give information that is contained in the Product Disclosure Statement.

Note: Paragraph (a)—This requirement means that the responsible person does not have to disclose material that is confidential because it is:

(a) an internal working document; or
(b) personal information about another person; or
(c) a trade secrets or other information that has a commercial value that would be reduced or destroyed by the disclosure; or
(d) material that the responsible person owes another a person a duty of not to disclose.

(3) The responsible person must comply with subsection (2) as soon as practicable and, in any event, must make reasonable efforts to comply with the subsection within 1 month after receiving the request.

Manner of giving information

(4) The responsible person may give the person making the request the information:

(a) by making a document containing the information available for inspection by the person:

(i) at a suitable place (having adequate facilities for the person to inspect and photocopy the document); and

(ii) during normal business hours; or

(b) in some other way that is agreed between the responsible person and the person making the request.

Issuer or seller may charge for giving information

(5) The responsible person may require the person making the request to pay a charge for obtaining the information.
(6) The amount of the charge must not exceed the reasonable costs that
the responsible person incurs that are reasonably related to giving
the information.

Note: This would include the costs of searching for, obtaining and collating
the information.

987B Ongoing disclosure of material changes and significant events

Responsible person must notify holders

(1) If the holder of a financial product:
   (a) acquired the product as a retail client; and
   (b) was given, or obtained, a Product Disclosure Statement for
       the product;
    the person who is the responsible person for the Statement under
Division 3 of Part 7.8 must notify the holder if:
   (c) there is a material change to; or
   (d) a significant event occurs that affects;
    any of the matters specified in the Statement.

(2) The responsible person does not need to give the notice if the
    financial product is a managed investment product.

Note: The continuous disclosure provisions in sections 1001A to 1001D
    apply to managed investment products.

(3) The responsible person must notify the holder in one of the
    following ways:
    (a) in writing; or
    (b) electronically; or
    (c) in the way specified in the regulations.

(4) The notice must give the holder the information that is reasonably
    necessary for the holder to understand the nature and effect of the
    change or event.

Time for notifying holders

(5) The time within which the responsible person must give the notice
    is set out in the following table:
### Time for giving notice of change or event

<table>
<thead>
<tr>
<th>Nature of change or event</th>
<th>Time for giving notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Change or event does not relate to fees or charges</td>
<td>Before the change or event occurs or as soon as practicable after the change or event occurs. In any case, within 3 months after the change or event occurs.</td>
</tr>
<tr>
<td>2 Change to fees or charges in relation to:</td>
<td></td>
</tr>
<tr>
<td>(a) a superannuation product; or</td>
<td></td>
</tr>
<tr>
<td>(b) an investment life insurance product</td>
<td>3 months before the change takes effect</td>
</tr>
<tr>
<td>3 Change to fees or charges in relation to other financial products</td>
<td>30 days before the change takes effect</td>
</tr>
</tbody>
</table>

(6) If the change or event does not relate to fees or charges, the notice may be given more than 3 months after the change or event occurs if:

(a) the responsible person reasonably believes that the event is not adverse to the holder’s interests and accordingly the holder would not be expected to be concerned about the delay in receiving the information; and

(b) the notice is given no later than 12 months after the change or event occurs.

---

### 987C Periodic statements for retail clients for financial products that have an investment component

(1) If:

(a) the holder of a financial product acquires the financial product as a retail client; and

(b) the product is (either wholly or to some extent) one through which, or through the acquisition of, which the holder makes a financial investment;

the issuer of the financial product must give the holder a periodic statement for each reporting period for the product.

(2) Each reporting period must not exceed 1 year. The first reporting period starts when the product is issued to the holder. Each
subsequent reporting period starts at the end of the preceding reporting period.

(3) The periodic statement must be given as soon as practicable after, and in any event within 6 months after, the end of the reporting period to which it relates.

(4) The periodic statement must give the holder the information that the issuer reasonably believes the holder needs to understand his or her investment in the financial product.

(5) The periodic statement must include the following if they are relevant to the financial product:
   (a) opening and closing balances for the reporting period;
   (b) the termination value of the investment at the end of the reporting period;
   (c) a summary of all transactions in relation to the product during the reporting period, indicating the nature and purpose of those transactions;
   (d) any increases in contributions in relation to the financial product by the holder or another person during the reporting period;
   (e) return on investment during the reporting period;
   (f) details of any change in circumstances affecting the investment that has not been notified since the previous periodic statement;
   (g) details prescribed by the regulations.

**Division 4—Other obligations of issuer of financial product**

988A Dealing with money received for financial product before the product is issued

(1) This section imposes obligation on:
   (a) the issuer of a financial product; or
   (b) a seller of a financial product if the seller prepares a Product Disclosure Statement in relation to the product.

(2) The issuer or seller must hold:
   (a) all money received from an applicant for the financial product; and
(b) all other money paid by the applicant on account of the financial product before it is issued or transferred; in trust under this section for the applicant until:

(c) the financial product is issued or transferred; or

(d) the money is returned to the applicant.

This is so whether the applicant applies to acquire the product as a retail client or not.

(3) This section applies if:

(a) the financial product was offered in this jurisdiction; or

(b) the holder applied for the financial product in this jurisdiction; or

(c) the money is received in this jurisdiction.

(4) If the money needs to be returned to an applicant, the issuer or seller must return the money as soon as practicable.

988B Confirming transactions

Obligation to confirm transactions

(1) If the holder of a financial product acquired the product as a retail client:

(a) the issuer of the product must either:

(i) confirm any transaction (other than a disposal of the product by the holder) in relation to the product as soon as is reasonably practicable after the transaction occurs; or

(ii) establish and maintain a facility by which the retail client can confirm for himself or herself any transaction (other than a disposal of the product by the holder) into in relation to the product as soon as is reasonably practicable after the transaction occurs;

unless the transaction is one that is covered by paragraph (b); and

(b) if the seller of the financial product prepares, or should have prepared, a Product Disclosure Statement in relation to the product—the seller must either:

(i) confirm the sale of the product to the holder as soon as is reasonably practicable after the sale occurs; or
(ii) establish and maintain a facility by which the holder can
confirm the sale for himself or herself as soon as is
reasonably practicable after the sale occurs; and

(c) the person prescribed by the regulations must either:
   (i) confirm a disposal of the product by the holder as soon
       as practicable after the disposal occurs; or
   (ii) establish and maintain a facility by which the retail
        client can confirm for himself or herself a disposal of
        the product by the holder as soon as practicable after the
        disposal occurs.

Note: This section extends to financial products that are securities (see section 980A).

(2) This section applies if:
   (a) the financial product was offered or acquired in this
       jurisdiction; or
   (b) the transaction in relation to the financial product takes place
       in this jurisdiction.

Transactions covered

(3) The transactions in relation to a financial product covered by this
section include:
   (a) issuing, selling or transferring the product to the holder;
   (b) varying the terms of the product held by the holder
       (otherwise than by varying the terms of all financial products
       in the class to which the product held by the holder belongs);
       and
   (c) the disposal of the product by the holder; and
   (d) the redemption or surrender of the product.

(4) Confirmation is not required for a transaction if:
   (a) the transaction consists solely of an additional contribution
       towards a financial product the timing and amount, or
       method of calculating the amount, of the contribution were
       agreed on when the product was acquired; or
   (b) the transaction consists solely of a variation of the rights
       attaching to a security.

Note: Paragraph (a)—Confirmation is not required, for example, for regular
monthly contributions to a superannuation fund.
Manner of confirming transaction

(5) The confirmation of the transaction may be provided:
   (a) in writing; or
   (b) electronically;
   and may be provided directly by the issuer or through another
   person (such as a financial service licensee).

Content of confirmation

(6) The confirmation must give the client the information that the
    client requires (having regard to the information he or she has
    received before the transaction) to understand the nature of the
    transaction.

(7) Without limiting subsection (6), the confirmation must:
   (a) identify the issuer and the holder; and
   (b) if given by the seller—identify the seller; and
   (c) give details of the transaction, including:
       (i) the date of the transaction; and
       (ii) a description of the transaction; and
       (iii) any amount payable by the holder in relation to the
            transaction; and
       (iv) any taxes and stamp duties payable in relation to the
            transaction; and
   (d) give any other details prescribed by the regulations.

(8) The regulations may:
   (a) impose the obligation under paragraph (1)(a) or (b) to
       confirm a transaction in relation to a financial product on a
       person other than the issuer or seller of the product and
       relieve the issuer or seller of that obligation; and
   (b) specify the way in which the confirmation of a transaction in
       relation to a financial product must be provided in particular
       circumstances; and
   (c) specify information that must be included in the confirmation
       of a transaction in relation to a financial product in particular
       circumstances; and
   (d) specify the circumstances in which a client may waive the
       right to receive confirmation of a transaction in relation to a
       financial product; and
   (e) specify transactions that do not need to be confirmed.
988C Alternative dispute resolution

(1) This section imposes obligations on the issuer of a financial product if:

(a) a person who acquires the financial product as a retail client:
   (i) is given or obtains; or
   (ii) should have been given;

   a Product Disclosure Statement for the financial product; and

(b) the issuer of the product is not a financial service licensee.

(2) The issuer must:

(a) establish before the product is issued; and

(b) maintain while the financial product continues to exist;

internal and external dispute resolution procedures to resolve complaints from people who acquire financial products from the issuer as retail clients.

(3) The dispute resolution procedures must be ones that are approved by ASIC in accordance with the regulations.

Division 5—Advertising for financial products to refer to Product Disclosure Statement

989A Advertising or other promotional material for financial product must refer to Product Disclosure Statement

Advertisements and promotional material must identify issuer and refer to Product Disclosure Statement

(1) If a person has acquired a financial product as a retail client, a person must not:

(a) advertise the product; or

(b) publish a statement that is reasonably likely to induce people to acquire the product;

unless the advertisement or statement:

(c) identifies the issuer of the product; and

(d) states that the Product Disclosure Statement is available and where it can be obtained; and

(e) states that a person should consider the Product Disclosure Statement before making any decision about whether to acquire the product.
(2) If subsection (1) is not satisfied but it is reasonably likely that a financial product will be made available to people who will acquire the product as retail clients, a person must not:

(a) advertise the product; or

(b) publish a statement that is reasonably likely to induce people to acquire the product;

unless the advertisement or statement:

(c) identifies the issuer of the product; and

(d) states that a Product Disclosure Statement for the product will be made available when the product is released; and

(e) states when and where it is expected to be made available; and

(f) states that a person should consider the Product Disclosure Statement before making any decision about whether to acquire the product.

Image advertising

(3) In deciding whether a statement is reasonably likely to induce people to acquire a financial product, have regard to whether the statement:

(a) forms part of the normal advertising of the issuer’s products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; and

(b) communicates information that materially deals with the affairs of the issuer; and

(c) is likely to encourage acquisition decisions being made on the basis of the statement rather than on the basis of information contained in a Product Disclosure Statement.

Dissemination of disclosure document

(4) A person may disseminate a Product Disclosure Statement without contravening subsection (1) or (2). This does not apply if an order under section 991E is in force in relation to the product.

General exceptions

(5) An advertisement or publication does not contravene subsection (1) or (2) if it:
(a) relates to a financial product that is able to be traded on a market and consists of a notice or report by the issuer of the product, or one of its officers, about its affairs to the financial products market operator; or

(b) consists solely of a notice or report of a general meeting of the issuer; or

(c) consists solely of a report about the issuer that is published by the issuer and:
   (i) does not contain information that materially affects affairs of the issuer other than information previously made available in a Product Disclosure Statement or disclosure document that has been lodged, an annual report or a report referred to in paragraph (a) or (b); and
   (ii) does not refer (whether directly or indirectly) to the offer of the financial product; or

(d) is a news report, or is genuine comment, in the media relating to:
   (i) a Product Disclosure Statement that has been distributed or disclosure document that has been lodged; or
   (ii) information contained in such a Statement or document; or
   (iii) a notice or report covered by paragraph (a), (b) or (c); or

(e) is a report about the financial products of the issuer published by someone who is not:
   (i) the issuer; or
   (ii) acting at the instigation of, or by arrangement with, the issuer; or
   (iii) a director of the issuer; or
   (iv) a person who has an interest in the success of the issue or sale of the financial product.

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

**Liability of publishers**

(6) A person does not contravene subsection (1) or (2) by publishing an advertisement or statement if the person:

(a) publishes it in the ordinary course of a media business; and

(b) did not know, and had no reason to suspect, that its publication would amount to a contravention of a provision of this section.
(7) For the purposes of this section, the media consist of:

(a) newspapers and magazines; and
(b) radio and television broadcasting services; and
(c) electronic services (including services provided through the Internet) that:
   (i) are operated on a commercial basis; and
   (ii) are similar to newspapers, magazines or radio or television broadcasts.

Division 6—Cooling-off periods

990A Situations in which this Division applies

(1) Subject to subsection (2), this Division applies if:
(a) one of the following financial products is provided in this jurisdiction to a person as a retail client after the commencement of this Chapter:
   (i) a risk insurance product
   (ii) an investment life insurance product
   (iii) a managed investment product
   (iv) a superannuation product of a kind prescribed by the regulations for the purposes of this subparagraph
   (v) an RSA product; and
(b) the product is provided to the person:
   (i) by way of issue; or
   (ii) by way of sale pursuant to an offer to which subsection 982C(2) applies.

(2) The regulations may do any or all of the following:
(a) provide that a specified subclass of financial products that would otherwise be covered by a subparagraph of paragraph (1)(a) are excluded from that subparagraph
(b) provide additional requirements to be satisfied before this Division applies in relation to a class or subclass of financial products
(c) provide that this Division does not apply in relation to the provision of a financial product in specified circumstances.
(3) In this Division:
   (a) the person referred to in paragraph (1)(a) is the client; and
   (b) the person who issues or sells the product to the client is the responsible person.

990B  Cooling-off period for return of financial product

(1) Subject to this section, the client has the right to return the financial product to the responsible person and to have the money they paid to acquire the product repaid. This is so even if the responsible person is being wound up.

(2) If the responsible person:
   (a) is a body corporate; and
   (b) does not repay the money as required by subsection (1);
   the directors of the responsible person are personally liable to repay the money.

(3) The right to return the product must be exercised by notifying the responsible person in one of the following ways:
   (a) in writing; or
   (b) electronically; or
   (c) in any other way specified in the regulations.
   Also, if the regulations require the client to comply with other requirements in order to exercise the right to return the product, those other requirements must be complied with.

(4) The right to return the product can only be exercised during the period of 14 days starting on the earlier of:
   (a) the time when the confirmation requirement (if applicable) is complied with; or
   (b) the end of the 5th day after the day on which the product was issued or sold to the client.

(5) For the purposes of subsection (4), the confirmation requirement is complied with when:
   (a) the client receives confirmation, as mentioned in subparagraph 988B(1)(a)(i), of the transaction by which they acquired the product; or
   (b) confirmation of that transaction is available to the client by a facility as mentioned in subparagraph 988B(1)(a)(ii).

(6) On the exercise of the right to return the product
(a) if the product is constituted by a legal relationship between
the client and the issuer of the product—that relationship is,
by force of this section, terminated with effect from that time
without penalty to the client; and
(b) any contract for the acquisition of the product by the client is,
by force of this section, terminated with effect from that time
without penalty to the client.

(7) The regulations may provide for consequences and obligations (in
addition to those provided for by subsection (6)) to apply if the
right to return a financial product is exercised.

(8) The regulations may provided that, in specified circumstances, the
amount to be repaid on exercise of the right to return a financial
product is to be reduced in accordance with the regulations.

Division 7—Miscellaneous

991A Offers etc. of managed investment interests not to be made in
certain circumstances

(1) A person must not engage in conduct of a kind described in
subsection (2) in relation to a managed investment interest if the
managed investment scheme concerned needs to be, or will need to
be registered and has not been registered. This is so even if it is
proposed to register the scheme.

(2) The kinds of conduct that must not be engaged in in relation to
such a managed investment interest are as follows:
(a) making a recommendation, as described in subsection
982A(2), that is received in this jurisdiction, other than a
recommendation made in a situation to which a subsection,
other than subsection (1), of section 982D applies
(b) making an offer, as described in subsection 982B(2) or
982C(2), that is received in this jurisdiction, other than an
offer made in a situation to which a subsection, other than
subsection (1), of section 982D applies
(c) accepting an offer, made as described in subsection 982B(3)
that was received in this jurisdiction, other than an offer
made in a situation to which a subsection, other than
subsection (1), of section 982D applies.
991B Short selling of securities or managed investment interests

(1) Subject to this section and the regulations, a person must not, in this jurisdiction, sell securities or managed investment interests to a buyer unless, at the time of the sale:

(a) the person has or, if the person is selling on behalf of another person, that other person has; or

(b) the person believes on reasonable grounds that the person has, or if the person is selling on behalf of another person, that other person has;

a presently exercisable and unconditional right to vest the securities or interests in the buyer.

(2) For the purposes of subsection (1):

(a) a person who, at a particular time, has a presently exercisable and unconditional right to have securities or managed investment interests vested in the person, or in accordance with the directions of the person, has at that time a presently exercisable and unconditional right to vest the securities or interests in another person; and

(b) a right of a person to vest securities or managed investment interests in another person is not conditional merely because the securities or interests are charged or pledged in favour of another person to secure the repayment of money.

(3) Subsection (1) does not apply in relation to:

(a) a sale of securities or managed investment interests by a financial services licensee who is a participant in a licensed market and specialises in transactions relating to odd lots of securities or managed investment interests, being a sale made by the licensee on their own behalf solely for the purpose of:

(i) accepting an offer to buy an odd lot of securities or managed investment interests; or

(ii) disposing of a parcel of securities or managed investment interests that is less than one marketable parcel of securities or managed investment interests by means of a sale of one marketable parcel of those securities or interests; or

(b) a sale of securities or managed investment interests as part of an arbitrage transaction; or

(c) a sale of securities or managed investment interests by a person who, before the time of sale, has entered into a
contract to buy those securities or interests and who has a right to have those securities or interests vested in the person that is conditional only upon all or any of the following:

(i) payment of the consideration in respect of the purchase
(ii) the receipt by the person of a proper instrument of transfer in respect of the securities or interests
(iii) the receipt by the person of the documents that are, or are documents of title to, the securities or interests; or

(d) a sale of securities or managed investment interests in the following circumstances:

(i) the person who sold the securities or interests is not an associate of the body corporate that issued the securities or interests; and

(ii) arrangements are made before the time of the sale that will enable delivery of securities or interests of the class sold to be made to the buyer within 3 business days after the date of the transaction effecting the sale; and

(iii) if the sale is made on a licensed market:

(A) the price per unit in respect of the sale is not below the price at which the immediately preceding ordinary sale was effected; and

(B) the price per unit is above the price at which the immediately preceding ordinary sale was made, unless the price at which the immediately preceding ordinary sale was made was higher than the next preceding different price at which an ordinary sale had been made;

and the operator of the market is informed as soon as practicable that the sale has been made short in accordance with this subparagraph; or

(e) a sale of securities or managed investment interests in the following circumstances:

(i) the securities or interests are included in a class of securities or interests in relation to which there is in force a declaration, made by the operator of a licensed market as provided by the operating rules of the market, to the effect that the class is a class of securities or managed investment interests to which this paragraph applies; and

(ii) the sale is made as provided by the operating rules of the market; and
(iii) at the time of the sale, neither the person who sold the
securities or interests, nor any person on behalf of
whom the first-mentioned person sold the securities or
interests, was an associate, in relation to the sale, of the
body corporate that issued the securities or interests.

(4) A person who requests a financial services licensee to make a sale
of securities or managed investment interests that would
contravene subsection (1) but for paragraph (3)(b), (d) or (e) must,
when making the request, inform the licensee that the sale is a
short sale.

(5) If:

(a) a person who, through a licensed market, makes a sale of
securities or managed investment interests (whether or not on
the person’s own behalf); and
(b) the sale would contravene subsection (1) but for paragraph
(3)(d);
the person must endorse a statement that the sale was a short sale
on any document evidencing the sale that is given to the person
who buys the securities or interests (whether or not on that
person’s own behalf).

(6) For the purposes of this section, a person who:

(a) purports to sell securities or managed investment interests; or
(b) offers to sell securities or managed investment interests; or
(c) holds himself, herself or itself out as entitled to sell securities
or managed investment interests; or
(d) instructs a financial services licensee to sell securities or
managed investment interests;
is taken to sell the securities or interests.

991C  ASIC’s power to prohibit short selling in certain cases

(1) If ASIC forms the opinion that it is necessary to prohibit securities
or managed investment interests, or a particular class of securities
or managed investment interests, from being sold on a licensed
market in a manner that, but for paragraph 991B(3)(e), would
contravene subsection 991B(1), in order to:

(a) protect persons who might suffer financial loss if they were
to buy or sell those securities or interests in that manner; or
(b) protect the public interest;
ASIC may give written notice to the operator of the market stating that it has formed that opinion and setting out the reasons for that opinion.

(2) If, after receiving the notice:

(a) the operator does not take action to prevent the selling on the market of the securities or managed investment interests, or class of securities or managed investment interests, specified in the notice in the manner referred to in subsection (1); and

(b) ASIC is still of the opinion that it is necessary to prohibit the selling on that market of the securities interests, or class of securities or interests, in that manner;

ASIC may, by a further written notice given to the operator, prohibit the selling on the market of the securities interests, or class of securities or interests, in that manner during a period of not more than 21 days.

(3) As soon as practicable after giving the notice to the operator, ASIC must give to the Minister a written report setting out the reasons for the giving of the notice and send a copy of the report to the operator.

(4) On receiving the report, the Minister may direct ASIC to revoke the notice and, if such a direction is given, ASIC must immediately revoke the notice.

(5) While the notice is in force, the operator must not permit the selling of securities or managed investment interests on the market in a way that contravenes the notice.

991D Part cannot be contracted out of

A condition of a contract for the acquisition of a financial product is void if it provides that a party to the contract is:

(a) required or bound to waive compliance with any requirement of this Part or of regulations for the purposes of this Part; or

(b) taken to have notice of any contract, document or matter not specifically referred to in a Product Disclosure Statement or Supplementary Product Disclosure Statement given to the party.

991E Stop orders by ASIC

(1) This section applies if it appears to ASIC that:
(a) in:

(i) a document or information required to be given under this Part in relation to financial products; or

(ii) an advertisement or statement of a kind referred to in subsection 989A(1) or (2) that relates to financial products;

there is a material statement that is false or misleading; or

(b) there is a material omission from such a document, information, advertisement or statement; or

(c) an issuer of financial products is in breach of section 988C.

(2) ASIC may order that;

(a) if paragraph (1)(a) or (b) applies—specified conduct in respect of the financial products to which the document, information, advertisement or statement relates; or

(b) if paragraph (1)(c) applies—specified conduct in respect of financial products issued by that issuer;

must not be engaged in while the order is in force.

(3) The order may include a statement that specified conduct engaged in contrary to the order will be regarded as not complying with the requirements of a specified provision of this Part.

(4) The order must be in writing and must be served on:

(a) unless paragraph (b) applies—the issuer of the financial products concerned; or

(b) if paragraph (1)(a) or (b) applies and the document, information, advertisement or statement relates to a sale or proposed sale of the financial products—the seller of the financial products.

(5) The person on whom the order is served must take reasonable steps to ensure that other people who engage in conduct to which the order applies are aware of the order.

(6) The person on whom the order is served, or a person who is aware of the order, must not engage in conduct contrary to the order.

(7) If the person on whom the order is served, or a person who is aware of the order, engages in conduct contrary to the order, any relevant statement included in the order under subsection (3) has effect accordingly. This applies in addition to any other consequence that is provided for by this Law.
991F Exemptions and modifications by ASIC

(1) ASIC may, subject to subsection (3):
   (a) exempt a person or class of persons from all or specified provisions of this Part; or
   (b) exempt a financial product or a class of financial products from all or specified provisions of this Part; or
   (c) declare that this Part applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

(2) Without limiting subsection (1), ASIC may, under this section declare that provisions of this Part are modified so that they apply (whether with or without further modifications) in a way that changes the person to whom a document or information is required to be given by a provision of this Part.

(3) However, except as mentioned in subsection (2), ASIC cannot declare that provisions of this Part are modified so that they apply in relation to persons, financial products or situations to which they would not otherwise apply.

(4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

(5) An exemption or declaration must be in writing and ASIC must publish notice of it in the Gazette.

(6) For the purpose of this section, the provisions of this Part include:
   (a) regulations for the purposes of this Part; and
   (b) definitions in this Law, or in the regulations, as they apply to references in:
      (i) this Part; or
      (ii) regulations made for the purposes of this Part; and
   (c) [to be inserted—reference to relevant transitional provisions].

991G Exemptions and modifications by regulations

(1) The regulations may:
(a) exempt a person or class of persons from all or specified provisions of this Part; or
(b) exempt a financial product or a class of financial products from all or specified provisions of this Part; or
(c) provide that this Part applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the regulations.

(2) Without limiting subsection (1), regulations for the purposes of this section may:
(a) declare that provisions of this Part are modified so that they apply (with or without further modifications) in relation to persons, financial products or situations to which they would not otherwise apply; or
(b) declare that provisions of this Part are modified so that they apply (whether with or without further modifications) in a way that changes the person by whom or to whom a document or information is required to be given by a provision of this Part.

(3) For the purpose of this section, the provisions of this Part include:
(a) regulations for the purposes of this Part; and
(b) definitions in this Law, or in the regulations, as they apply to references in:
   (i) this Part; or
   (ii) regulations made for the purposes of this Part; and
(c) [to be inserted—reference to relevant transitional provisions].

Part 7.9—Title and transfer

Division 1—Title to certain securities

1010A Nature of shares and other membership interests in a company

(1) A share or other interest of a member in a company:
(a) is personal property;
(b) is transferable or transmissible:
   (i) as provided by the company’s constitution; or
(ii) the operating rules of a prescribed CS facility if they are applicable; and
(c) is capable of devolution by will or by operation of law.

(2) Paragraph (1)(c) has effect subject to:
(a) the company’s constitution (if any); and
(b) any replaceable rules that apply to the company; and
(c) the operating rules of a prescribed CS facility if they apply to the share or interest.

(3) Subject to subsection (1):
(a) the laws applicable to ownership of and dealing with personal property apply to a share or other interest of a member in a company as they apply to other property; and
(b) equitable interests in respect of a share or other interest of a member in a company may be created, dealt with and enforced as in the case of other personal property.

(4) For the purposes of any law, a share or other interest of a member in a company is taken to be situated:
(a) if the share or other interest is entered on the register kept under section 169—in the State or Territory where that register is kept; or
(b) if the share or other interest is entered on an overseas branch register kept under section 178—in the foreign country where that register is kept.

1010B Numbering shares

(1) Each share in a company is to be distinguished by an appropriate number.

(2) Despite subsection (1):
(a) if at any time all the issued shares in a company, or all the issued shares in a company of a particular class:
   (i) are fully paid up; and
   (ii) rank equally for all purposes;
   none of those shares is required to have a distinguishing number so long as each of those shares remains fully paid up, and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; and
(b) if:
(i) all the issued shares in a company are evidenced by certificates in accordance with section 1010C; and
(ii) each certificate is distinguished by an appropriate number; and
(iii) that number is recorded in the register of members;
none of those shares is required to have a distinguishing number; and
(c) a share need not have a distinguishing number if:
(i) the share is able to be traded on a market; and
(ii) the operating rules of a prescribed CS facility through which shares able to be traded on the market are transferred provide that those shares need not have a distinguishing number.

1010C Share certificate to be evidence of title

(1) A certificate issued after the commencement of Schedule 5 to the Company Law Review Act 1998 specifying shares held by a member of a company must state:
(a) the name of the company and its jurisdiction of registration; and
(b) the class of the shares; and
(c) the amount unpaid on the shares.

(2) A certificate issued in accordance with subsection (1) or a corresponding previous law specifying shares held by a member of a company is prima facie evidence of the title of the member to the shares.

(3) A failure to comply with subsection (1) does not affect the rights of a holder of shares.

1010D Loss or destruction of title documents for certain securities

(1) This section deals with the following securities of a company:
(a) shares in the company;
(b) debentures of the company;
(c) a managed investment product made available by the company.

(2) Subject to subsection (4), a company must issue a duplicate certificate or other title document for securities if:
(a) the certificate or document is lost or destroyed; and
(b) the owner of the securities applies to the company for the duplicate.

(3) The company must issue the duplicate:
(a) if the company requires the payment of an amount not exceeding the prescribed amount—within 21 days after the payment is received by the company or within such longer period as ASIC approves; or
(b) in a case to which paragraph (a) does not apply—within 21 days after the application is made or within such longer period as ASIC approves.

(4) The application must be accompanied by:
(a) a statement in writing that the certificate or other document:
   (i) has been lost or destroyed; and
   (ii) has not been pledged, sold or otherwise disposed of; and
(b) if the certificate or other document has been lost—a statement in writing that proper searches have been made; and
   (b) an undertaking in writing that if the certificate or other document is found or received by the owner it will be returned to the company.

(5) The directors of the company may, before accepting an application for the issue of a duplicate, require the applicant to do either or both of the following:
(a) to place an advertisement in a daily newspaper circulating in a place specified by the directors stating that:
   (i) the certificate or other document has been lost or destroyed; and
   (ii) the owner intends, after the end of 14 days after the publication of the advertisement, to apply to the company for a duplicate;
(b) to furnish a bond for an amount equal to at least the current market value of the securities indemnifying the company against loss following the production of the original certificate or other document.

(6) If:
(a) a certificate or other title document for securities is cancelled
in reliance on the operating rules of a prescribed CS facility;
and
(b) having regard to those provisions, the certificate or other
document should not have been cancelled;
this section applies to the certificate or other document as though it
were destroyed on its cancellation.

Division 2—Transfer of certain securities

Subdivision A—General provisions

1011A Division applies to certain securities of companies

This Division applies to the following securities of a company:
(a) shares in the company;
(b) debentures of the company;
(c) a managed investment product made available by the
company.

1011B Instrument of transfer

(1) This section does not apply to a transfer of a security through a
prescribed CS facility.

(2) A company must not register a transfer of securities unless a proper
instrument of transfer has been delivered to the company. This is
so despite anything in its constitution or in a deed relating to
debentures or interests.

(3) An instrument of transfer is not a proper instrument of transfer for
the purposes of subsection (2) unless it shows the jurisdiction of
registration of the company concerned.

(4) If the transfer of the securities is covered by Division 3 the
instrument must also be a sufficient transfer of the securities under
the regulations made for the purposes of that Division

(5) Subsection (2) does not prejudice the power of the company to
register, as the holder of securities, a person to whom the right to
the securities has devolved by will or by operation of law.

(6) A transfer of securities of a dead holder made by his or her
personal representative is, although the personal representative is
not himself, herself or itself registered as the holder of those
securities, as valid as if he, she or it had been registered as holder
at the time of the execution of the instrument of transfer.

(7) If the personal representative of a dead holder duly constituted as
such under a law of another jurisdiction:
(a) executes an instrument of transfer of a security of the dead
holder to himself, herself or itself or to another person; and
(b) delivers the instrument to the company; and
(c) gives the company a written statement by the personal
representative to the effect that, to the best of the personal
representative’s knowledge, information and belief:
(i) no grant of representation of the estate of the deceased
holder has been applied for or made in this jurisdiction;
and
(ii) no application for such a grant will be made;
being a statement made within the period of 3 months
immediately before the date of delivery of the statement to
the company;
the company must:
(d) register the transfer; and
(e) pay to the personal representative any dividends or other
money accrued in respect of the security up to the time of the
execution of the instrument.

(8) Subsection (7) does not require the company to do an act or thing
that it would not have been required to do if the personal
representative were the personal representative of the dead holder
duly constituted under a law of this jurisdiction.

(9) A transfer or payment made under subsection (7) and a receipt or
acknowledgment of such a payment is, for all purposes, as valid
and effectual as if the personal representative were the personal
representative of the dead holder duly constituted under a law of
this jurisdiction.

(10) For the purposes of this section, an application by a personal
representative of a dead person for registration as the holder of a
security in place of the dead person is taken to be an instrument of
transfer effecting a transfer of the security to the personal
representative.
(11) A company must accept the production to it of a document that is, under the law of a jurisdiction, sufficient evidence of probate of the will, or letters of administration of the estate, of a dead person having been granted to a person. This is so despite anything in its constitution, or in a deed relating to debentures or interests, as sufficient evidence of the grant.

1011C Occupation need not appear in transfer document, register etc.

(1) A transfer document need not state the occupation of the transferor or transferee and, if it is signed by a person, the signature need not be witnessed.

(2) Subsection (1) applies despite anything in:
(a) the constitution of:
   (i) a company; or
   (ii) a body referred to in paragraph 1013A(a) or (b); or
(b) the terms and conditions on which securities are created or issued.

(3) The omission from a register, or transfer document relating to a security, of a statement of the occupation of a person who is, or is entitled to be, registered as the holder of the security does not breach any law, constitution, trust deed or other document relating to the securities.

1011D Registration of transfer at request of transferor

(1) If the transferor of a security of a company, requests the company in writing to do so, the company must enter the transferee’s name in the appropriate register in the same way and subject to the same conditions as if the application for the entry were made by the transferee.

(2) If the transferor of a security of a company requests the company in writing to do so, the company must, by written notice, require a person who has possession, custody or control of either or both of the following:
(a) any title documents for the security;
(b) the instrument of transfer of the security;
to bring it or them into the office of the company within a specified period to have the document cancelled or rectified and the transfer registered or otherwise dealt with.

(3) The period specified under subsection (2) must be not less than 7 and not more than 28 days after the date of the notice.

(4) If a person refuses or fails to comply with a notice given under subsection (2), the transferor may apply to the Court for the issue of a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

(5) The Court may:

(a) if the person appears:
   (i) examine the person upon oath or affirmation; and
   (ii) receive other evidence; or
 (b) if the person does not appear after being duly served with the summons—receive evidence in the person’s absence;
 (c) in either case order the person to deliver up such documents to the company upon such terms or conditions as the Court considers just and reasonable.

The costs of the summons and of proceedings on the summons are in the discretion of the Court.

(6) Lists of share certificates, debentures and other documents required to be brought in under this section and not brought in must:

(a) exhibited in the office of the company; and
(b) advertised in the Gazette and in such newspapers and at such times as the company thinks fit.

1011E Notice of refusal to register transfer

If a company refuses to register a transfer of a security of the company, it must, within 2 months after the date on which the transfer was lodged with it, give the transferee notice of the refusal.

1011F Remedy for refusal to register transfer or transmission

(1) If a relevant authority in relation to a company:

(a) refuses or fails to register; or
(b) refuses or fails to give its consent or approval to the registration of
a transfer or transmission of securities of the company, the
transferee or transmitee may apply to the Court for an order under
this section.

(2) If the Court is satisfied on the application that the refusal or failure
was without just cause, the Court may:
(a) order that the transfer or transmission be registered; or
(b) make such other order as it thinks just and reasonable,
including:
  (i) in the case of a transfer or transmission of shares—an
      order providing for the purchase of the shares by a
      specified member of the company or by the company;
      and
  (ii) in the case of a purchase by the company—providing
       for the reduction accordingly of the capital of the
       company.

(3) In this section:

relevant authority, in relation to a company, means:
(a) a person who has, 2 or more persons who together have, or a
    body that has, authority to register a transfer or transmission
    of securities of the company; or
(b) a person, 2 or more persons, or a body, whose consent or
    approval is required before a transfer or transmission of
    securities of the company is registered.

1011G Certification of transfers
(1) The certification by a company of an instrument of transfer of
    securities of the company:
    (a) is taken as a representation by the company to any person
        acting on the faith of the certification that there have been
        produced to the company such documents as on the face of
        them show prima facie title to the securities in the transferor
        named in the instrument of transfer; and
    (b) is not taken as a representation that the transferor has any
        title to the securities.
(2) If a person acts on the faith of a false certification by a company
    made negligently, the company is under the same liability to the
    person as if the certification had been made fraudulently.
(3) A certification may be expressed to be limited to 42 days or any longer period from the date of certification. If it is, the company and its officers are not, in the absence of fraud, liable in respect of the registration of any transfer of securities comprised in the certification after the end of:
  (a) the period so limited; or
  (b) any extension of that period given by the company; if the instrument of transfer has not, within that period, been lodged with the company for registration.

(4) For the purposes of this section:
  (a) an instrument of transfer is taken to be certified if it bears the words “certificate lodged” or words to the like effect; and
  (b) the certification of an instrument of transfer is taken to be made by a company if:
    (i) the person issuing the instrument is a person authorised to issue certified instruments of transfer on the company’s behalf; and
    (ii) the certification is signed by a person authorised to certify transfers on the company’s behalf or by an officer of the company or of a body corporate so authorised; and
  (c) a certification that purports to be authenticated by a person’s signature or initials (whether handwritten or not) is taken to be signed by the person unless it is shown that the signature or initials:
    (i) was not or were not placed there by the person; and
    (ii) was not or were not placed there by any other person authorised to use the signature or initials; for the purpose of certifying transfers on the company’s behalf.

1011H Duties of company with respect to issue of certificates

(1) Subject to subsection (2), within 2 months after a company issues a security, the company must:
  (a) complete and have ready for delivery to the holder of the securities, all the appropriate certificates or other title documents in connection with the issue of the security; and
  (b) unless otherwise instructed by the holder, send or deliver the completed certificates or other title documents to:
(i) the holder; or
(ii) if the holder has instructed the company in writing to
send them to a nominated person—that person.

Paragraph (a) has effect in relation to shares subject to the
conditions on which the shares are issued.

(2) If the operating rules of a prescribed CS facility include a provision
to the effect that:

(a) no document is required by subsection (1) to be completed
and delivered by a company in relation to the issue of a
security in specified circumstances; or
(b) the only document required by subsection (1) to be
completed and delivered by a company in relation to the
issue of a security in specified circumstances is the document
required by the provision;

the provision has effect accordingly.

(3) Within 1 month after the date on which a transfer of a security is
lodged with a company, the company must:

(a) complete and have ready for delivery to the transferee all the
appropriate transfer and title documents in connection with
the transfer; and
(b) unless otherwise instructed by the transferee, send or deliver
the completed documents to:

(i) the transferee; or
(ii) if the transferee has instructed the company in writing to
send them to a nominated person—that person.

This subsection does not apply to a transfer that the company is for
any reason entitled to refuse to register and does not register.

(4) The only document required by subsection (3) to be completed and
delivered by a company in relation to transfer covered by the
operating rules of a prescribed CS facility is the document (if any)
that those rules require to be completed and delivered.

(5) A company need not comply:

(a) with subsection (1) in relation to the issue of a security; or
(b) with subsection (3) in relation to a transfer of a security;

if the person to whom the security is issued, or the transferee, has:

(c) applied to ASIC for the making of a declaration under this
subsection; and
(d) been declared by ASIC, by writing published in the Gazette, to be a person in relation to whom this section does not apply.

(6) If:
(a) a company on which a notice has been served requiring the company to remedy any contravention of a provision of this section fails to remedy the contravention within 10 days after the service of the notice; and
(b) the person entitled to have the documents delivered to him or her applies to the Court for an order under this subsection; the Court may make an order directing the company and any officer of the company to remedy the contravention within such period as is specified in the order.

(7) An order under subsection (6) may provide that all costs of and incidental to the application are to be borne by:
(a) the company; or
(b) any officer of the company who was involved in the contravention;
in such proportions as the Court thinks just and reasonable.

Subdivision B—Special provisions for shares

1012A Transmission of shares on death (replaceable rule—see section 135)

If shares not held jointly

(1) If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder’s interest in the shares.

(2) If the personal representative gives the directors the information they reasonably require to establish the representative’s entitlement to be registered as holder of the shares:
(a) the personal representative may:
   (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
   (ii) by giving a completed transfer form to the company, transfer the shares to another person; and
(b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.

(3) On receiving an election under subparagraph (2)(a)(i), the company must register the personal representative as the holder of the shares.

(4) A transfer under subparagraph (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

*If shares held jointly*

(5) If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased shareholder’s interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.

1012B Transmission of shares on bankruptcy *(replaceable rule—see section 135)*

(1) If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person’s entitlement to be registered as holder of the shares, the person may:

(a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or

(b) by giving a completed transfer form to the company, transfer the shares to another person.

(2) On receiving an election under paragraph (1)(a), the company must register the person as the holder of the shares.

(3) A transfer under paragraph (1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

(4) This section has effect subject to the *Bankruptcy Act 1966*.

1012C Rights of trustee of estate of bankrupt shareholder

(1) If:
(a) because of the Bankruptcy Act 1966, a share in a company,
being part of the property of a bankrupt, vests in the trustee
of the bankrupt’s estate; and
(b) the bankrupt is the registered holder of that share;
this section applies whether or not the trustee has been registered
as the holder of the share.

(2) On producing such information as the company’s directors
properly require, the trustee is entitled to:
(a) the same dividends and other benefits; and
(b) the same rights, for example, but without limitation, rights in
relation to:
   (i) meetings of the company; or
   (ii) documents, including notices of such meetings; or
   (iii) voting; or
   (iv) inspection of the company’s records;
as the bankrupt would be entitled to if he or she were not a
bankrupt.

(3) The trustee has the same rights:
(a) to transfer the share; and
(b) to require a person to do an act or give a consent in
connection with completing or registering a transfer of the
share;
as the bankrupt would have if he or she were not a bankrupt.

(4) If the trustee transfers the share, the transfer is as valid as if the
trustee had been registered as the holder of the share when the
trustee executed the instrument of transfer.

(5) A person or body whose consent or approval is required for the
transfer of shares in the company must not unreasonably withhold
consent or approval for the transfer of the share by the trustee.

(6) A person who contravenes subsection (5) is not guilty of an
offence.

(7) If:
(a) the company’s constitution requires:
   (i) the share to be offered for purchase to a member of the
company; or
   (ii) an invitation to buy the share to be issued to such a
member; and
(b) as at the end of a reasonable period after the trustee so offers
the share, or so issues such an invitation, no such member
has agreed to buy the share from the trustee at a reasonable
price;
the trustee may sell and transfer the share to a person other than
such a member.

(8) A provision of the company’s constitution is void as against the
trustee in so far as, apart from this section, it would affect rights
attached to the share:
(a) because the bankrupt is a bankrupt; or
(b) because of some event that led to the bankrupt becoming, or
that indicated that the bankrupt was about to become, or
might be about to become, a bankrupt; or
(c) for reasons including a reason referred to in paragraph (a) or
(b).

(9) Nothing in this section limits the generality of anything else in it.

(10) This section has effect despite anything in the company’s
constitution.

1012D Transmission of shares on mental incapacity (replaceable
rule—see section 135)

(1) If a person entitled to shares because of the mental incapacity of a
shareholder gives the directors the information they reasonably
require to establish the person’s entitlement to be registered as the
holder of the shares:
(a) the person may:
   (i) by giving a written and signed notice to the company,
elect to be registered as the holder of the shares; or
   (ii) by giving a completed transfer form to the company,
transfer the shares to another person; and
(b) the person is entitled, whether or not registered as the holder
of the shares, to the same rights as the shareholder.

(2) On receiving an election under subparagraph (1)(a)(i), the
company must register the person as the holder of the shares.

(3) A transfer under subparagraph (1)(a)(ii) is subject to the same rules
(for example, about entitlement to transfer and registration of
transfers) as apply to transfers generally.
1012E  Trustee etc. may be registered as owner of shares

(1) In this section:

share, in relation to a body corporate, means a share in the body
that is registered in a register kept in Australia.

(2) A trustee, executor or administrator of the estate of a dead person
who was the registered holder of a share in a corporation may be
registered as the holder of that share as trustee, executor or
administrator of that estate.

(3) A trustee, executor or administrator of the estate of a dead person
who was entitled in equity to a share in a corporation may, with the
consent of:

(a) the corporation; and

(b) the registered holder of that share;

be registered as the holder of that share as trustee, executor or
administrator of that estate.

(4) If:

(a) a person (the administrator) is appointed, under a law of a
State or Territory relating to the administration of the estates
of persons who, through mental or physical infirmity, are
incapable of managing their affairs, to administer the estate
of a person who is so incapable; and

(b) the incapable person is the registered holder of a share in a
corporation;

the administrator may be registered as the holder of that share as
administrator of that estate.

(5) If:

(a) a person (the administrator) is appointed, under a law of a
State or Territory relating to the administration of the estates
of a person who, through mental or physical infirmity, are
incapable of managing their affairs, to administer the estate
of a person who is so incapable; and

(b) the incapable person is entitled in equity to a share in a
corporation;

the administrator may, with the consent of the corporation and of
the registered holder of that share, be registered as the holder of the
share as administrator of that estate.

(6) If:
(a) by virtue of the Bankruptcy Act 1966, a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and
(b) the bankrupt is the registered holder of that share;
the Official Trustee may be registered as the holder of that share as the Official Trustee in Bankruptcy.

(7) If:
(a) by virtue of the Bankruptcy Act 1966, a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and
(b) the bankrupt is entitled in equity to that share;
the Official Trustee may, with the consent of the body and of the registered holder of that share, be registered as the holder of that share as the Official Trustee in Bankruptcy.

(8) A person registered under subsection (2), (3), (4), (5), (6) or (7), is, while registered as mentioned in that subsection:
(a) subject to the same liabilities in respect of the share as those to which he, she or it would have been subject if the share had remained, or had been, as the case requires, registered in the name of the dead person, the incapable person or the bankrupt, as the case may be; and
(b) subject to no other liabilities in respect of the share.

(9) Shares in a corporation registered in a register and held by a trustee in respect of a particular trust may, with the consent of the corporation, be marked in the register in such a way as to identify them as being held in respect of the trust.

(10) Except as provided in this section and section 169:
(a) no notice of a trust, whether express, implied or constructive, must be entered on a register kept in Australia or be receivable by ASIC;
(b) no liabilities are affected by anything done under a preceding subsection of this section or under section 169; and
(c) nothing so done affects the body corporate concerned with notice of a trust.

(11) A person must, within one month after beginning to hold shares in a proprietary company as trustee for, or otherwise on behalf of or on account of, a body corporate, serve on the company notice in writing that the person so holds the shares.
1012F  Registration of transfers (replaceable rule—see section 135)

(1) A person transferring shares remains the holder of the shares until
the transfer is registered and the name of the person to whom they
are being transferred is entered in the register of members in
respect of the shares.

(2) The directors are not required to register a transfer of shares in the
company unless:
   (a) the transfer and any share certificate have been lodged at the
       company’s registered office; and
   (b) any fee payable on registration of the transfer has been paid;
       and
   (c) the directors have been given any further information they
       reasonably require to establish the right of the person
       transferring the shares to make the transfer.

(3) The directors may refuse to register a transfer of shares in the
company if:
   (a) the shares are not fully-paid; or
   (b) the company has a lien on the shares.

(4) The directors may suspend registration of transfers of shares in the
company at the times and for the periods they determine. The
periods of suspension must not exceed 30 days in any 1 calendar
year.

1012G  Additional general discretion for directors of proprietary
companies to refuse to register transfers (replaceable
rule—see section 135)

The directors of a proprietary company may refuse to register a
transfer of shares in the company for any reason.

1012H  Notices relating to non-beneficial and beneficial ownership of
shares

(1) If, at a particular time:
   (a) an instrument of transfer of shares in a company is lodged, by
       or on behalf of the transferee, with the company for
       registration of the transfer; and
   (b) having regard to all relevant circumstances, it may
       reasonably be expected that, upon registration of the transfer,
the transferee will hold non-beneficially particular shares (the
relevant shares), being all or any of the shares to which the
instrument of transfer relates; and

(c) the instrument of transfer does not include a notice that:
   (i) contains a statement to the effect that, upon registration
       of the transfer, the transferee will hold the relevant
       shares non-beneficially;
   (ii) sets out particulars of the relevant shares; and
   (iii) is signed by or on behalf of the transferee;

the transferee contravenes this subsection.

(2) The fact that a person has contravened subsection (1) does not
affect the validity of the registration of a transfer of shares in a
company.

(3) If:

(a) an instrument of transfer of shares in a company includes a
   notice of the kind referred to in paragraph (1)(c) and is
   lodged with the company for registration of the transfer; and

(b) upon registration of the transfer, the transferee holds
   beneficially particular shares (in this subsection called the
   relevant shares), being all or any of the shares particulars of
   which are set out in the notice;

then, before the end of the period of 14 days beginning on
registration of the transfer, the transferee must, whether or not the
transferee begins before the end of that period to hold all or any of
the relevant shares non-beneficially, give to the company a notice
that:

(c) sets out the name and address of the transferee;

(d) contains a statement to the effect that, as from registration of
    the transfer, the transferee holds the relevant shares
    beneficially;

(e) sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the transferee.

(4) If:

(a) an instrument of transfer of shares in a company is lodged
   with the company for registration of the transfer; and

(b) upon registration of the transfer, the transferee holds
    non-beneficially particular shares (in this subsection called
    the relevant shares), being all or any of the shares to which
    the instrument of transfer relates (other than, in a case in

Financial Services Reform Exposure Draft
which the instrument of transfer includes a notice of the kind referred to in paragraph (1)(c), the shares particulars of which are set out in the notice); then, before the end of the period of 14 days beginning on registration of the transfer, the transferee must, whether or not the transferee begins before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that:

(c) sets out the name and address of the transferee;
(d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares non-beneficially;
(e) sets out particulars of the relevant shares; and
(f) is signed by or on behalf of the transferee.

(5) If:

(a) at a particular time, a person holds beneficially shares in a company; and
(b) immediately after that time, the person holds non-beneficially particular shares (in this subsection called the *relevant shares*), being all or any of the shares referred to in paragraph (a);

then, before the end of the period of 14 days beginning at that time, the person must, whether or not the person recommences before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that:

(c) sets out the name and address of the person;
(d) contains a statement to the effect that, after that time, the person holds the relevant shares non-beneficially;
(e) specifies that time and sets out particulars of the relevant shares; and
(f) is signed by or on behalf of the person.

(6) If:

(a) at a particular time, a person holds non-beneficially shares in a company; and
(b) immediately after that time, the person holds beneficially particular shares (in this subsection called the *relevant shares*), being all or any of the shares referred to in paragraph (a);

then, before the end of the period of 14 days beginning at that time, the person must, whether or not the person recommences before
(c) sets out the name and address of the person;
(d) contains a statement to the effect that, after that time, the
person holds the relevant shares beneficially;
(e) specifies that time and sets out particulars of the relevant
shares; and
(f) is signed by or on behalf of the person.

(7) In proceedings under this section, a person is, unless the contrary is
established, presumed to have been aware at a particular time of a
circumstance of which an employee or agent of the person, being
an employee or agent having duties or acting in relation to the
transfer to, or ownership by, the person of a share or shares in the
company concerned, was aware at that time.

(9) For the purposes of this section and of section 169:
(a) if, at a particular time, a person:
(i) holds shares in a capacity other than that of sole
beneficial owner; or
(ii) without limiting the generality of subparagraph (i),
holds shares as trustee for, as nominee for, or otherwise
on behalf of or on account of, another person;
the first-mentioned person is taken to hold the shares
non-beneficially at that time; and
(b) a person who holds shares at a particular time is taken to hold
the shares beneficially at that time unless the person holds the
shares non-beneficially at that time.

**Division 3—Transfer of certain securities effected otherwise than through a prescribed CS facility**

**1013A Application of Division to certain bodies as if they were companies**

This Division applies to the following as if they were companies:
(a) a body corporate (other than a company) that:
(i) is incorporated in this jurisdiction; and
(ii) is prescribed for the purposes of this paragraph;
(b) an unincorporated society, association or body, that:
(i) is formed or established in this jurisdiction; and
(ii) is included in the official list of a securities exchange; and
(iii) is prescribed for the purposes of this paragraph.

1013B Regulations may govern transfer of certain securities

Kinds of securities the regulations may apply to

(1) The regulations may make provision in relation to the transfer of the following securities:
(a) shares in a company;
(b) debentures of a company;
(c) managed investment products prescribed by the regulations for the purposes of this paragraph;
(d) rights, whether existing or future, and whether contingent or not, of a person to have a security referred to in paragraph (a), (b) or (c) issued to the person (whether or not on payment of any money or for any other consideration);
(e) securities declared by ASIC under section 1013C to be securities to which the regulations apply.

These regulations do not apply to a transfer of a security effected through a prescribed CS facility.

Regulations may make provision in relation to the transfer of securities

(2) The regulations may specify:
(a) the way in which a security may be transferred, including:
   (i) the forms (if any) to be used; and
   (ii) what amounts to a proper or sufficient transfer of a security; and
(b) the legal effect of a proper or sufficient transfer of a security; and
(c) the rights and liabilities of a person in relation to the transfer of the security, including the rights and liabilities of:
   (i) the transferor and transferee; and
   (ii) another person involved in the transfer; and
(d) the circumstances in which a person will be taken to be involved in the transfer of the security for the purposes of the regulations; and
(e) the circumstances in which a person is required not to
register, or give effect to, a transfer; and

(f) the circumstances in which a person will be taken to be the
holder a security for the purposes of:

(i) a meeting; or

(ii) paying or transferring money or property to a person
because the person holds or held a security; or

(iii) issuing securities to a person because the person holds
or held a security; or

(iv) conferring a right on a person because the person holds
or held a security.

Sufficient transfer

(3) Without limiting paragraph (2)(a), the regulations may:

(a) specify the requirements for a document to be a sufficient
transfer of a security; and

(b) provide that a document meeting specified requirements may
be used:

(i) as a proper instrument of transfer for the purposes of
section 1011B; and

(ii) as an instrument of transfer for the purposes of any
other law or instrument governing or relating to the
security.

Rights and liabilities in relation to transfer

(4) Without limiting paragraph (2)(c), the regulations may provide that
a person:

(a) is taken to have:

(i) agreed to do, to accept or to be bound by a particular
thing; or

(ii) done a particular thing; or

(iii) given particular warranties; or

(iv) done particular things on behalf of another person; or

(b) is taken to be authorised to do particular things on behalf of
another person; or

(c) is taken to be bound by a particular act; or

(d) is liable to indemnify another person against particular loss
or damage; or

(e) is entitled to assume a particular matter without inquiry.
(5) Without limiting paragraph (2)(d), the regulations may provide for any of the following to be taken to be involved in a transfer of securities:

(a) a person who carries on a financial services business and who arranges for the transfer; and

(b) a person who operates a financial products market on which the securities are sold; and

(c) a person who operates a licensed CS facility through which the securities are transferred; and

(d) a company with which the transfer is lodged for registration; and

(e) an associate of a person who is involved in the transfer.

The regulations may specify the circumstances in which a person will be taken to be an associate of another person for the purposes of the regulations.

Application to securities of other jurisdictions

(6) The regulations apply in relation to securities to which Division 3 of Part 7.9 of the Corporations Law of another jurisdiction apply and, for the purposes of the regulations as so applying:

(a) subject to paragraph (b) of this subsection, an expression has the same meaning in the regulations as in that Division; and

(b) a reference in the regulations to a document bearing a stamp of a particular kind is taken to be a reference to the document bearing a stamp of that kind that purports to have been stamped in this jurisdiction.

(7) The effect that a regulation has because of subsection (6) is additional to, and does not prejudice, the effect the regulation otherwise has.

1013C ASIC may extend regulations to securities not otherwise covered

(1) ASIC may, by writing, declare that:

(a) particular securities; or

(b) a particular class of securities;

are securities to which the regulations made for the purposes of section 1013B apply.
(2) ASIC may specify in the declaration modifications of the regulations that are to have effect in relation to the application of the regulations to the securities, or the class of securities, to which the declaration relates.

(3) A declaration under subsection (1) has effect accordingly.

(4) ASIC must cause a copy of a declaration under subsection (1) to be published in the Gazette.

Division 4—Transfer of financial products effected through prescribed CS facility

1014A Prescribed CS facility

A clearing and settlement facility is a prescribed CS facility for the purposes of this Division if the facility is:

(a) a licensed CS facility or a facility licensed under the Payment Systems Regulation Act 1998; and

(b) prescribed by the regulations for the purposes of this section.

1014B Operating rules of prescribed CS facility may deal with transfer of title

(1) The operating rules of a prescribed CS facility may deal with the transfer of financial products through the facility.

(2) Without limiting subsection (1), the operating rules of a prescribed CS facility may deal with the way in which a financial product may be transferred, including specifying:

(a) the financial products that may be transferred through the facility; and

(b) what amounts to a proper or sufficient transfer of a financial product through the facility; and

(c) the person or body (if any) authorised to determine whether a transfer substantially complies with the operating rules of the facility.

1014C Valid and effective transfer if operating rules complied with

(1) If a transfer of a financial product is effected:

(a) through a prescribed CS facility; and

(b) in accordance with the operating rules of the facility;
the transfer is valid and effective for the purposes of any law or
instrument governing or relating to the way in which the financial
product may be transferred.

(2) For the purposes of this section, the transfer of a financial product
is taken to be, and always to have been, effected in accordance
with the operating rules of a prescribed CS facility if the person or
body authorised to do so under those rules determines that the
transfer substantially complies with those rules.

1014D Regulations may govern transfer of financial products in
accordance with operating rules of prescribed CS facility

Transfers that regulations may deal with

(1) The regulations may make provision in relation to the transfer of
financial products that are effected:
(a) through a prescribed CS facility; and
(b) in accordance with the operating rules of the facility;

Regulations may make provision in relation to the transfer of
financial products

(2) The regulations may specify:
(a) the legal effect of a proper or sufficient transfer of a financial
product through the facility; and
(b) the rights and liabilities of a person in relation to the transfer
of a financial product through the facility, including the
rights and liabilities of:
(i) the transferor and transferee; and
(ii) another person involved in the transfer; and
(c) the circumstances in which a person will be taken to be
involved in the transfer of the financial product for the
purposes of the regulations; and
(d) the circumstances in which a person is required not to
register, or give effect to, a transfer through the facility; and
(e) the circumstances in which a person is required not to refuse
or fail to register, or give effect to, a transfer through the
facility; and
(f) the circumstances in which a transfer through the facility will
be taken to have been made in accordance with the rules of a
prescribed CS facility; and
(g) the circumstances in which a person will be taken to be the
holder a financial product for the purposes of:
   (i) a meeting; or
   (ii) paying or transferring money or property to a person
        because the person holds or held a financial product; or
   (iii) issuing a financial product to a person because the
        person holds or held a financial product; or
   (iv) conferring a right on a person because the person holds
        or held a financial product.

Legal effect of sufficient transfer

(3) Without limiting paragraph (2)(a), the regulations may provide that
a document, or electronic message or other electronic
communication, meeting specified requirements may be used:
   (a) as a proper instrument of transfer for the purposes of section
       1011B; and
   (b) as an instrument of transfer for the purposes of any other law
       or instrument governing or relating to the financial product.

Rights and liabilities in relation to transfer

(4) Without limiting paragraph (2)(b), the regulations may provide that
a person:
   (a) is taken to have:
       (i) agreed to do, to accept or to be bound by a particular
           thing; or
       (ii) done a particular thing; or
       (iii) given particular warranties; or
       (iv) done particular things on behalf of another person; or
   (b) is taken to be authorised to do particular things on behalf of
        another person (even if the person has died); or
   (ba) is taken to be bound by a particular act; or
   (c) is liable to indemnify another person against particular loss
       or damage; or
   (d) is entitled to assume a particular matter without inquiry.

Person involved in transfer

(5) Without limiting paragraph (2)(c), the regulations may provide for
any of the following to be taken to be involved in a transfer of a
financial product:
(a) a person who carries on a financial services business and who
arranges for the transfer; and
(b) a person who operates a financial products market on which
the financial product is sold; and
(c) a person who operates a licensed CS facility through which
the product is transferred; and
(d) the issuer of the product; and
(e) an associate of a person who is involved in the transfer.

The regulations may specify the circumstances in which a person
will be taken to be an associate of another person for the purposes
of the regulations.

**Effect of regulations on other laws and documents**

(6) The regulations may have effect notwithstanding anything in:
(a) this Law or other regulations; and
(b) any other laws (written or unwritten); and
(c) any documents (for example, the body corporate’s
constitution or any relevant trust deed).

**Application to securities of other jurisdictions**

(7) The regulations apply in relation to financial products, within the
meaning of the Corporations Law of another jurisdiction, and, for
the purposes of the regulations as so applying subject to paragraph
(b), an expression has the same meaning in the regulations as in
Division 4 of Part 7.9 of that Law.

(8) The effect that a regulation has because of subsection (1) is
additional to, and does not prejudice, the effect the regulation
otherwise has.

**1014E Issuer protected from civil liability for person’s
contravention of prescribed CS certificate cancellation
rules**

If:

(a) a person contravenes the certificate cancellation rules of a
prescribed CS facility in relation to the transfer of a particular
financial product through the facility; and
(b) the issuer of the financial product is not involved in the contravention;
the issuer is not liable to an action or other proceeding for damages in relation to the person’s contravention.

Division 5—Operation of Divisions 3 and 4 and regulations made for the purposes of those Divisions

1015A Operation of Divisions 3 and 4 and regulations made for the purposes of those Divisions

(1) This section deals with the effect of the provisions of:
   (a) Divisions 3 and 4; and
   (b) the regulations made for the purposes of those Division.

(2) The provisions apply in relation to a transfer of financial products despite anything to the contrary in:
   (a) this Law (other than Divisions 3 and 4); or
   (b) another law or instrument relating to the transfer of the financial products.

(3) Except as provided in the provisions, the provisions do not affect the terms and conditions on which financial products are sold.

(4) Nothing in the provisions affects any right of the issuer of a financial product to refuse:
   (a) to acknowledge or register a person as the holder of a financial product; or
   (b) to issue a financial product to a person;
   on a ground other than an objection to the form of document, or electronic message or other electronic communication, that is lodged with or sent to the issuer and purports to transfer the financial product to the person.

(5) The registration of a transfer, or the issue, of a financial product by means of a transfer effected in accordance with:
   (a) regulations made for the purposes of Division 3; or
   (b) the operating rules of a prescribed CS facility;
does not breach any law, constitution, trust deed or other instrument relating to financial products.

(6) Nothing in the provisions prevents or affects the use of:
(a) any other form of transfer of financial products; or
(b) any other mode of executing a document transferring
financial products;
that is otherwise permitted by law.

(7) A transfer of a financial product by or to a trustee or legal
representative may be effected by means of a transfer in
accordance with:
(a) regulations made for the purposes of Division 3; or
(b) the operating rules of a prescribed CS facility;
despite any law or the provisions of the instrument (if any)
creating, or having effect in relation to, the trust or will under
which the trustee or legal representative is appointed.

(8) In subsection (7):

legal representative means:
(a) the executor, original or by representation, of a will of a dead
person; or
(b) the administrator of the estate of a dead person.

1015B Regulations may provide for offences

(1) Regulations made for the purposes of Division 3 or 4 may provide
for offences in relation to:
(a) the use, or purported use, of a stamp of a person who:
(i) carries on a financial services business; or
(ii) operates a financial products market; or
(iii) operates a CS facility; or
(b) the execution of a document, or the transmission of an
electronic message or other electronic communication, that
may be used as a sufficient transfer under the operating rules
of a prescribed CS facility or under Division 3; or
(c) the lodgment of a transfer document or title document for a
financial product with the issuer of the product; or
(d) the use of identifying codes in relation to transfers of
financial products; or
(e) contraventions of the operating rules of a prescribed CS
facility.

(2) The regulations may apply to conduct entered into in this
jurisdiction or elsewhere.
1015C Regulations may deal with civil liability for breaches of operating rules

(1) Regulations made for the purposes of Division 4 may:
   (a) provide for the liability of a person who contravenes the operating rules of a prescribed CS facility to compensate a person for loss or damage the person suffers because of the conduct engaged in in contravention of those rules; and
   (b) specify the period within which an action for compensation must be begun.

(2) The regulations do not affect a liability that a person has under any other law.

(3) For the purposes of section 1310B, an action under the regulations is taken to be a proceeding in respect of loss or damage arising out of a contravention of this Law.

Division 6—Exemptions and modifications

1016A ASIC’s power to exempt and modify

(1) ASIC may:
   (a) exempt specified financial products, or a specified class of financial products, from a provision of this Part; or
   (b) declare that this Part applies to specified financial products, or a specified class of financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

(2) ASIC’s power to grant an exemption or make a declaration under this section may be exercised in relation to financial products, or a class of financial products, only if ASIC is satisfied that:
   (a) if the exemption were granted or the declaration were made, the interests of the holders of those financial products, or of financial products in that class, would continue to have adequate protection; and
   (b) the granting of the exemption or the making of the declaration would make transfer of those financial products, or of financial products in that class, more efficient.

(3) The exemption or declaration may:
   (a) apply to all or specified provisions of this Part; and
(b) apply to all persons, specified persons, or a specified class of persons; and
(c) relate to all financial products, specified financial products or a specified class of financial products; and
(d) relate to any other matter generally or as specified.

(4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

(5) The exemption or declaration must be in writing and ASIC must publish notice of it in the Gazette.

(6) For the purposes of this section, the provisions of this Part include:
(a) regulations made for the purposes of this Part; and
(b) definitions in this Law or the regulations as they apply to references in:
   (i) this Part; or
   (ii) regulations made for the purposes of this Part; and
(c) [to be inserted—reference to relevant transitional provisions].

Part 7.10—Miscellaneous

Division 1—Qualified privilege

1040A Qualified privilege for information given to ASIC

(1) A person has qualified privilege in respect of the giving of any information to ASIC that the person is required to give under this Chapter or regulations made for the purposes of this Chapter.

(2) A person or body that is:
   (a) a market licensee; or
   (b) a CS facility licensee; or
   (c) a person acting under an arrangement to supervise a licensed market or licensed facility; or
   (d) a foreign person or body responsible for the supervision of the operation in a foreign country of a financial products market or clearing and settlement facility;
also has qualified privilege in respect of the giving of any information to ASIC in connection with the performance or exercise of ASIC’s functions or powers under, or in relation to, this Chapter or regulations made for the purposes of this Chapter.

(3) A person or body that has qualified privilege under subsection (1) or (2) in respect of conduct is also not liable for any action based on breach of confidence in relation to that conduct.

1040B Qualified privilege for the conduct of market licensees and CS facility licensees

(1) A market licensee, or CS facility licensee, has qualified privilege in respect of actions (including the giving of information) done in connection with:

(a) the performance or purported performance of the licensee’s obligations under this Law; or

(b) the exercise or performance, or purported exercise or performance, of the licensee’s powers, functions or obligations under the operating rules of the market or facility concerned, if the licensee believes, on reasonable grounds, that the action is necessary:

(i) in the case of a market licensee—to ensure the market operates in a fair, orderly and transparent way; or

(ii) in the case of a CS facility licensee—to ensure the facility’s services are provided in a fair and effective manner or to reduce systemic risk in the provision of those services.

(2) A market licensee, or CS facility licensee, has qualified privilege in respect of the giving of information:

(a) to the operator of a financial products market (regardless of where the market is operated) for the purpose of assisting the operator to ensure that market operates in a fair, orderly and transparent way; or

(b) to the operator of a clearing and settlement facility (regardless of where the facility is operated) for the purpose of assisting the operator to ensure that facility’s services are provided in a fair and effective manner or to reduce systemic risk.

(3) Despite subsections (1) and (2), a market licensee does not have qualified privilege in respect of the giving of information if:
(a) an entity included on the market’s official list gave the
information to the licensee under a provision of this Law or
of the market’s operating rules; and
(b) this Law, or those rules, expressly or impliedly authorised the
entity to limit the purposes for which it gave the information
to the licensee; and
(c) when giving the information to the licensee, the entity limited
those purposes as so authorised; and
(d) the giving of the information by the licensee is not solely for
one or more of the limited purposes.

(4) The protections given by this section apply to the giving of
information whether or not the recipient of the information has an
interest in the information.

1040C Qualified privilege for information given to market licensees
and CS facility licensees etc.

A person has qualified privilege in respect of the giving of
information if:
(a) the person gives the information to any of the following
persons or bodies:
   (i) a market licensee
   (ii) a CS facility licensee
   (iii) a person acting under an arrangement to supervise a
        licensed market or licensed CS facility
   (iv) a foreign person or body responsible for the supervision
        of the operation in a foreign country of a financial
        products market or clearing and settlement facility; and
(b) the information is in relation to a contravention or suspected
contravention of this Law or the operating rules of the market
or facility concerned.

1040D Extension of protections given by this Division

The protections given by this Division to a person or body in
respect of conduct extend to officers, employees and
representatives of the person or body.
1041A Approved codes of conduct

(1) ASIC may, on application, approve codes of conduct that relate to any aspect of the activities of:
(a) financial services licensees; or
(b) authorised representatives of financial services licensees; or
(c) issuers of financial products;
being activities in relation to which ASIC has a regulatory responsibility. The approval must be in writing.

(2) ASIC may, on application, approve a variation of an approved code of conduct. The approval must be in writing.

(3) ASIC must not approve a code of conduct, or a variation of a code of conduct, unless it is satisfied that the code, or the code as proposed to be varied, represents best practice in the matters dealt with by the code and is consistent with this Law.

(4) In deciding whether to approve a code of conduct, or a variation of a code of conduct, ASIC must also have regard to the desirability of codes of conduct being harmonised to the greatest extent possible.

(5) ASIC may revoke an approval of a code of conduct:
(a) on application by the person who applied for the approval; or
(b) if ASIC is no longer satisfied as mentioned in subsection (3).
The revocation must be in writing.

1041B Contravention of Chapter does not generally affect validity of transactions etc.

(1) Subject to subsection (2), a failure to comply with any requirement of this Chapter (including requirements in regulations for the purposes of this Chapter) does not affect the validity or enforceability of any transaction, contract or other arrangement.

(2) Subsection (1) has effect subject to any express provision to the contrary in:
(a) this Chapter; or
(b) regulations for the purposes of another provision of this Chapter; or
(c) regulations referred to in subsection (3).

(3) Regulations for the purposes of this subsection may provide that a failure to comply with a specified requirement referred to in subsection (1) has a specified affect on the validity or enforceability of a transaction, contract or arrangement.

1041C Gaming and wagering laws do not affect validity of transactions relating to financial products

Nothing in a law of this jurisdiction about gaming or wagering prevents the entering into of, or affects the validity or enforceability of, a transaction relating to a financial product.

1041D Delegation

The Minister may delegate any of the Minister’s powers under this Chapter to:

(a) ASIC; or

(b) a member of ASIC (within the meaning of section 9 of the Australian Securities and Investment Commission Act 1989); or

(c) a staff member (within the meaning given by subsection 5(1) of that Act).