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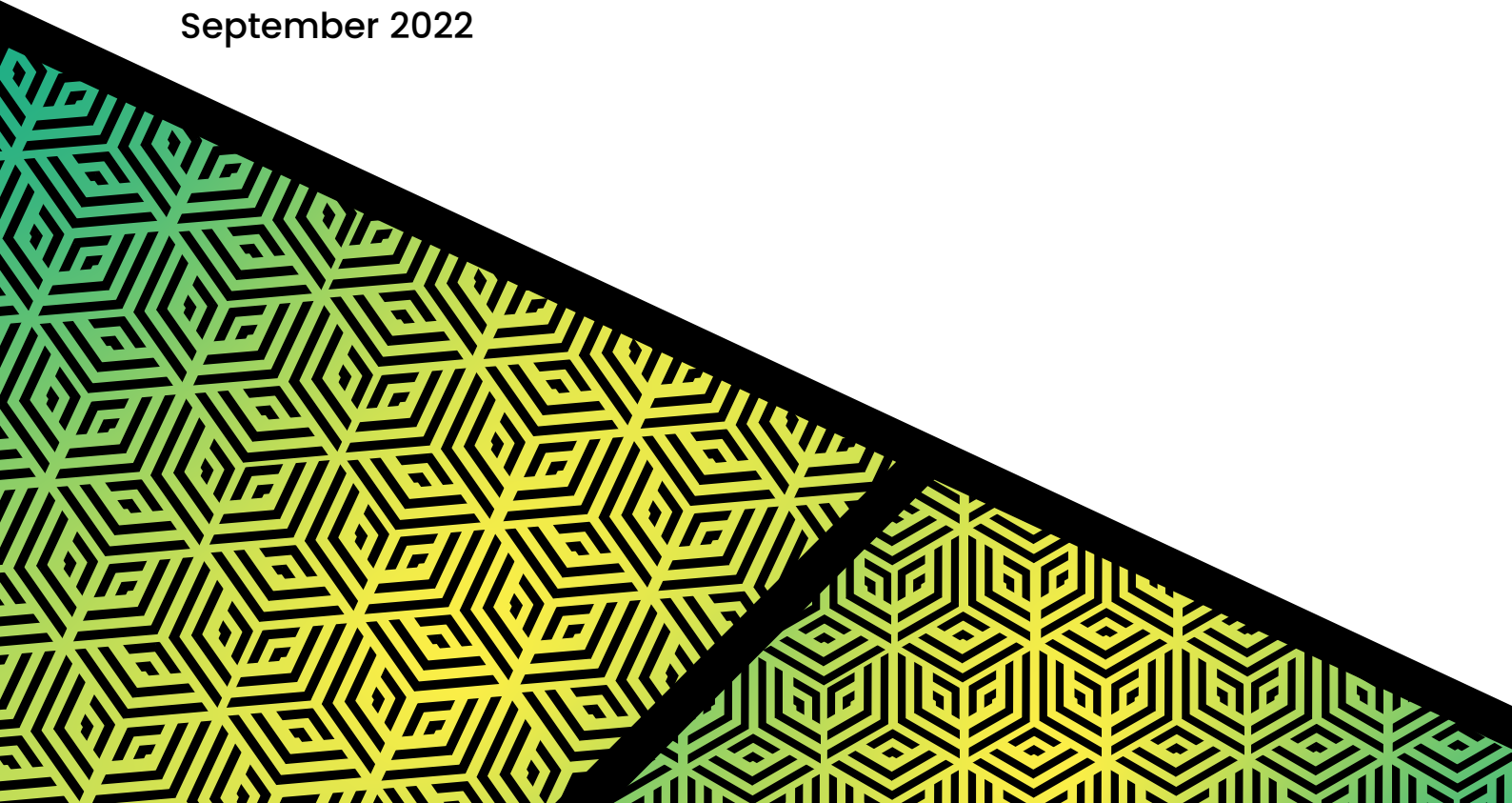
Australian Law Reform Commission

INTERIM REPORT B – ADDITIONAL RESOURCES

# LEGISLATIVE FRAMEWORK FOR CORPORATIONS AND FINANCIAL SERVICES REGULATION

**Prototype Legislation B**  
**Prototype Rules**

September 2022



This document contains the **Prototype Rules** for Prototype Legislation B. The ALRC has prepared Prototype Legislation B to illustrate the application of several key proposals in **Interim Report B** of the Review of the Legislative Framework for Corporations and Financial Services Regulation. These proposals relate to a **proposed legislative model** (Proposals B1–B9) and **simplified use of offences** (Proposal B15). Prototype Legislation B comprises:

- simplified Act provisions focused on fundamental norms, obligations, and the imposition of significant penalties (Prototype Act);
- a ‘Scoping Order’ consolidating exclusions and exemptions, as well as detail to adjust the scope of the Act and its provisions (Prototype Scoping Order); and
- a thematic set of rules containing matters necessary to give effect to the Act in different regulatory contexts (Prototype Rules).

The Explanatory Note to Prototype Legislation B, as well as the other documents comprising the prototype, can be found on the [ALRC Prototype Legislation webpage](#).

### **What are the Prototype Rules?**

Rules are intended to accommodate much of the prescriptive detail necessary for tailoring the regulatory regime to suit different products, services, industry sectors, and circumstances that Chapter 7 of the *Corporations Act 2001* (Cth) presently regulates. Rules appear in self-contained legislative instruments that can be understood without needing to be read alongside the Act or another legislative instrument.

The Prototype Rules are a single legislative instrument that covers the default form and content requirements for disclosure documents relating to securities (for example, prospectuses) and other financial products (for example, Product Disclosure Statements (‘PDSs’) and supplementary PDSs). The Prototype Rules also:

- determine how disclosure is to be provided;
- provide for various procedural requirements, such as for lodging documents with ASIC or keeping records; and
- contain some specific requirements for certain financial products or circumstances.

The Prototype Rules are highly flexible, establishing an architecture to create tailored disclosure regimes for certain financial products, or for creating product-specific rules in relation to existing disclosure documents such as PDSs and prospectuses.

**Interim Report B** is the second of three Interim Reports to be published as part of the ALRC’s Review of the Legislative Framework for Corporations and Financial Services Regulation.

### **[View Interim Report B and the Summary Report](#)**

The Australian Law Reform Commission (ALRC) was established on 1 January 1975 and operates in accordance with the *Australian Law Reform Commission Act 1996* (Cth).

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# Financial Services Rules (Financial Product Disclosure) 2022

## Part 1—Introduction

### Division 1—Preliminary

#### 1-1 Name

This instrument is the *Financial Services Rules (Financial Product Disclosure) 2022*.

#### 1-10 Authority

This instrument is made under section 1098 of the *Corporations Act 2001*, and for the purposes of paragraph 1125(3)(a), and sections 1126 to 1130, of that Act.

#### 1-15 Application to financial products

For the purposes of subsection 765A(4) of the Act, section 765A of the Act affects the application of this instrument only in so far as a scoping order excludes the application of provisions of Chapter 7A of the Act to a financial product.

Note: Subdivision 30-A of the *Corporations (Exclusions and Exemptions from Chapters 7 and 7A) Scoping Order 2022* excludes the application of Chapter 7A of the Act to various financial products. Because of subsection 765A(4) of the Act, that scoping order has the same effect on the application of this instrument.

## Division 5—Dictionary

### 5-5 Definitions

Note: A number of expressions used in this instrument are defined in section 9 of the Act.

In this instrument:

**2-part simple corporate bonds prospectus** means a disclosure document that:

- (a) consists of the combination of documents required by section 15-5; and
- (b) is described as a 2-part simple corporate bonds prospectus as required by section 11-10.

**Act** means the *Corporations Act 2001*.

**CHESS depository interest** in a financial product means, in the case of a financial product that is held by CHESS Depository Nominees Pty Limited in accordance with the operating rules of ASX Settlement Pty Limited, a unit of beneficial ownership in the financial product that is issued for the purpose of enabling the financial product to be recorded and transferred in accordance with those operating rules.

**CSF offer** has the meaning given by subsection 11-25(1).

**CSF offer document** means a disclosure document that is described as a CSF offer document as permitted by section 11-25.

**Issue Statement** has the meaning given by subsection 61-10(1).

**offer information statement** means a disclosure document that is described as an offer information statement as permitted by section 11-15.

**PDS preparer** has the meaning given by subsections 61-10(3) and (4).

**prospectus** means a disclosure document that section 11-5 requires to be described as a prospectus.

**Product Disclosure Statement** means a disclosure document that section 61-5 requires to be described as a Product Disclosure Statement.

**Sale Statement** has the meaning given by subsection 61-10(2).

**simple corporate bond** has the meaning given by subsection 11-10(1).

**Supplementary Product Disclosure Statement** means a disclosure document that section 65-1 requires to be described as a Supplementary Product Disclosure Statement.

## **Part 5—Disclosure documents for shares, debentures and related rights, interests and options**

### **Division 10—Introduction**

#### **10-1 Application of Part**

This Part applies if:

- (a) section 1111 (issue) or 1112 (sale) of the Act requires a disclosure document for a financial product to be prepared, and given to a person (the *recipient*); and
- (b) the financial product is:
  - (i) a share in a body; or
  - (ii) a debenture of a body; or
  - (iii) a legal or equitable right or interest in such a share or debenture; or
  - (iv) an option to acquire, by way of issue, anything covered by subparagraph (i), (ii) or (iii); or
  - (v) a simple corporate bonds depository interest; and
- (c) the financial product is not a foreign passport fund product.

#### **10-5 Application of Chapter 7A to CHESSE depository interests**

- (1) For the purposes of section 1130 of the Act, this section makes provision for how Chapter 7A of the Act, and instruments made under or for the purposes of provisions of that Chapter, are to apply to:
  - (a) a foreign company; and
  - (b) ASX Settlement Pty Limited; and
  - (c) CHESSE Depository Nominees Pty Limited;in relation to:
  - (d) a financial product (the *underlying product*) of any of the following kinds that is issued by the foreign company, and held by CHESSE Depository Nominees Pty Limited in accordance with the operating rules of ASX Settlement Pty Limited:
    - (i) a share in the foreign company in a class of shares that are admitted to quotation on a financial market covered by subsection (2) of this section or are proposed to be so admitted;
    - (ii) a beneficial interest in a share in the foreign company if the interest is in a class of interests, or the share is in a class of shares, that are so admitted or are proposed to be so admitted;
    - (iii) an option to acquire a share in the foreign company by way of issue if the option is in a class of options, or the share is in a class of shares, that are so admitted or are proposed to be so admitted; and
  - (e) a CHESSE depository interest in the underlying product.
- (2) This subsection covers a financial market operated by:
  - (a) ASX Limited; or
  - (b) Asia Pacific Exchange Limited; or



- (c) National Stock Exchange of Australia Limited; or
- (d) SIM Venture Securities Exchange Ltd.

- (3) The foreign company is taken to be the issuer of the CHESS depository interest.
- (4) An act done as mentioned in section 1111 (issue) or 1112 (sale) of the Act in relation to the CHESS depository interest:
  - (a) is taken to have been done instead in relation to the underlying product; and
  - (b) if done by CHESS Depository Nominees Pty Limited, is taken to have been done instead by the foreign company.

Note: For example, an offer of the CHESS depository interest for issue is taken instead to be an offer of the underlying product for issue.

- (5) For the purposes of determining whether an offer of the underlying product for issue by the foreign company is a rights issue, a person who, before the offer, holds a CHESS depository interest in a financial product covered by paragraph (1)(d) is taken to hold that financial product instead of CHESS Depository Nominees Pty Limited.
- (6) If the underlying product is a share, then, for the purposes of determining whether section 1111 (issue) of the Act requires the foreign company to prepare and give a disclosure document in relation to an offer to issue the underlying financial product under a dividend reinvestment plan or bonus share, a person who holds a CHESS depository interest in the underlying product is taken to hold that financial product instead of CHESS Depository Nominees Pty Limited.

Note: Section 35-185 of the *Corporations (Exclusions and Exemptions from Chapters 7 and 7A) Scoping Order 2022* is relevant to an offer by a foreign company under a dividend reinvestment plan or a bonus share plan.

- (7) Without limiting subsection (4), a sale offer of a CHESS depository interest in the underlying product that is made on a financial market covered by subsection (2) is taken to be an offer of the underlying product.
- (8) For the purposes of determining whether subsection 1112(6) of the Act applies, the foreign company is not taken to have issued the underlying product with the purpose referred to in subparagraph 1112(6)(c)(i) of the Act merely because it issued the underlying product to CHESS Depository Nominees Pty Limited.
- (9) If section 1111 (issue) or 1112 (sale) of the Act requires a disclosure document to be given for the underlying product, the disclosure document must explain the difference between holding a CHESS depository interest in the underlying product and holding the underlying product itself.
- (10) A reference to provisions of Chapter 2M (Financial reports and audit) of the Act is taken to be a reference to:
  - (a) if section 601CK of the Act applies to the foreign company—that section; or
  - (b) otherwise—the financial reporting laws that apply to the foreign company in its place of origin and deal with matters dealt with by that Chapter.

Section 10-5

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- (11) A reference to an order under section 340 or 341 of the Act is taken to be a reference to:
- (a) if section 601CK of the Act applies to the foreign company—a declaration under subsection 601CK(7) of the Act; or
  - (b) otherwise—an exemption or waiver (however described) under the financial reporting laws referred to in paragraph (10)(b) of this section.

## **Division 11—How disclosure document to be described**

### **11-5 Prospectus**

The disclosure document must be described as a prospectus, and Division 12 applies to it, except as provided in this Division.

### **11-10 2-part simple corporate bonds prospectus**

- (1) If:
- (a) section 1111 (issue) of the Act applies; and
  - (b) the conditions in this section are satisfied;
- then:
- (c) despite section 11-5, the disclosure document must be described as a 2-part simple corporate bonds prospectus; and
  - (d) the financial product is a *simple corporate bond*; and
  - (e) Division 15 applies to the disclosure document instead of Division 12.

#### *Debenture*

- (2) The financial product must be a debenture.

#### *Quoted on a prescribed financial market*

- (3) The debenture must be offered on the basis that:
- (a) it has been admitted to quotation on a prescribed financial market; or
  - (b) an application for its admission to quotation on a prescribed financial market has been made to the operator of that market; or
  - (c) an application for its admission to quotation on a prescribed financial market will be made to the operator of that market within 7 days after the earlier of:
    - (i) the date of the disclosure document; and
    - (ii) the first day of the offer period.

#### *Denominated in Australian currency*

- (5) The debenture must be denominated in Australian currency.

#### *Fixed term*

- (6) The debenture must be for a fixed term of not more than 15 years.

#### *Principal repayable at end of fixed term*

- (7) The principal in respect of the debenture must be repayable to the holder at the end of the fixed term.

#### *Interest*

- (8) The rate at which interest is payable on the debenture must be:
- (a) a fixed rate that is not to be decreased during the term of the debenture; or

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- (b) a floating rate that is the total of:
  - (i) a reference rate; and
  - (ii) a fixed margin that is not to be decreased during the term of the debenture.

- (11) Interest payments on the debenture:
  - (a) must be payable periodically; and
  - (b) must be payable no later than the end of the fixed term; and
  - (c) must not be able to be deferred or capitalised.

*Price must not exceed \$1,000*

- (12) The price payable for the debenture must not exceed \$1,000.

*Redemption before fixed term*

- (13) The debenture must not be redeemable (other than at the end of the fixed term) except:
  - (a) at the option of the holder; or
  - (b) as a result of the acceptance of an offer to the holder to buy it back; or
  - (c) on the happening of an event referred to in subsection (13A).

- (13A) The events are the following:
  - (a) a change in a law, or in the application or interpretation of a law, with the effect that interest payable on the debenture is not, or may not be, deductible by the issuer for the purposes of calculating its taxation liability;
  - (b) a change in a law, or in the application or interpretation of a law, with the effect that:
    - (i) the issuer, or any guarantor for the issuer, would be required to deduct or withhold an amount in respect of taxes from a payment to the holder; and
    - (ii) under the terms of the debenture, that deduction or withholding would result in the issuer, or any guarantor, being required to pay an additional amount to the holder in relation to the amount deducted or withheld;
  - (c) a change of control of the issuer (as defined in the terms of the debenture), if a redemption of the debenture takes effect only if all debentures issued under the same offer are redeemed;
  - (d) fewer than 10% of the debentures issued under the offer remain on issue, if a redemption of the debenture takes effect only if all debentures issued under the same offer that remain on issue are redeemed.

*Debt to debenture holder is not subordinated to debts to unsecured creditors*

- (14) The issuer's debt to a holder of the debenture must not be subordinated to any of the issuer's debts to unsecured creditors.

*Debenture not convertible*

- (15) The debenture must not be convertible into another class of financial product.

*Debentures are offered at single price*

- (16) The price payable for the debenture must be the same as the price payable by everyone else who accepts an offer of a financial product of the same kind made at the same time as the offer of the debenture.

*Continuously quoted securities*

- (17) The issuer must be a body that:
- (a) has continuously quoted securities; or
  - (b) is a wholly-owned subsidiary of a body corporate that:
    - (i) has continuously quoted securities; and
    - (ii) has guaranteed, or agreed to guarantee, the repayment of any money deposited or lent to the borrower under the securities; and
    - (iii) has guaranteed, or agreed to guarantee, the payment of any interest payable on the securities;

where trading in the securities on a prescribed financial market on which the securities are quoted was not suspended for more than a total of 5 days during the shorter of the following periods:

- (c) the period during which the class of securities is quoted;
  - (d) the period of 12 months before the day on which the offer is made.
- (18) If, at a particular time, there is no prospectus, then, in determining, for the purposes of subsection (17), whether a body has continuously quoted securities at that time, assume that:
- (a) there is a prospectus; and
  - (b) the date of the prospectus is the first day of the offer period.

*Auditor's reports have not been modified*

- (19) If the condition in subsection (17) is satisfied and the issuer has continuously quoted securities, the auditor's report on:
- (a) the issuer's financial report for the most recent financial year; or
  - (b) if a half-year financial report was prepared by the issuer after the issuer's financial report for the most recent financial year—the half-year financial report;
- must not include:
- (c) a statement to the effect that the auditor is of the opinion that the financial report, or the half-year financial report, as the case may be, is not in accordance with the Act; or
  - (d) a description of a defect or an irregularity in the financial report or the half-year financial report, as the case may be; or
  - (e) a description of a deficiency, failure or shortcoming in respect of the matters referred to in paragraph 307(b), (c) or (d) of the Act; or
  - (f) an emphasis of matter paragraph related to going concern.
- (20) If:
- (a) the issuer is a wholly-owned subsidiary of a body corporate; and

## Section 11-15

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(b) the condition in subsection (17) is satisfied because of the application of paragraph (17)(b) to the body corporate;

the auditor's report on:

(c) the body corporate's financial report for the most recent financial year; or

(d) if a half-year financial report was prepared by the body corporate after the body corporate's financial report for the most recent financial year—the half-year financial report;

must not include:

(e) a statement to the effect that the auditor is of the opinion that the financial report, or the half-year financial report, as the case may be, is not in accordance with the Act; or

(f) a description of a defect or an irregularity in the financial report or the half-year financial report, as the case may be; or

(g) a description of a deficiency, failure or shortcoming in respect of the matters referred to in paragraph 307(b), (c) or (d) of the Act; or

(h) an emphasis of matter paragraph related to going concern.

*ASIC power to exclude body from this section*

(21) The issuer must not be a body in relation to which a determination is in force under subsection (23).

(22) If the issuer is a wholly-owned subsidiary of a body corporate, the body corporate must not be a body in relation to which a determination is in force under subsection (23).

(23) ASIC may by notifiable instrument determine that this subsection applies to a body if ASIC is satisfied that, in the previous 12 months, any of the following provisions of the Act were contravened by or in relation to the body:

(a) subsection 283AA(1), 283AB(1) or 283AC(1);

(b) the provisions of Chapter 2M as they apply to the issuer;

(c) section 674, 674A, 675 or 675A;

(d) a provision of Division 4 of Part 7A.2.

### **11-15 Offer information statement**

(1) If:

(a) section 1111 (issue) of the Act applies; and

(b) the condition in subsection (2) of this section is satisfied;

then:

(c) despite section 11-5, but subject to section 11-10, the disclosure document may be described as an offer information statement instead of being described as a prospectus; and

(d) if it is described as an offer information statement, Division 20 applies to it instead of Division 12.

(2) The total of the following must not exceed \$10 million:

(a) the amount to be raised by issuing the financial product;

(b) each amount previously raised, by:

- (i) the issuer of the financial product; or
  - (ii) a related body corporate of the issuer; or
  - (iii) an entity controlled by a person who controls the issuer or by an associate of such a person;
- by issuing financial products the disclosure documents for which were described as offer information statements.
- (3) For the purposes of subsection (2), in working out the amount raised, or to be raised, by issuing a financial product:
- (a) include the following:
    - (i) the amount payable for the financial product when it is issued;
    - (ii) if the financial product is issued partly-paid—each amount payable at a future time if a call is made;
    - (iii) if the financial product is an option—the amount payable on the exercise of the option;
    - (iv) if the financial product carries a right to convert it into another financial product—the amount payable on the exercise of that right; but
  - (b) if the financial product is issued under an eligible employee share scheme—the amount raised, or to be raised, by issuing the financial product is taken to be nil.

### 11-25 CSF offer document

Note: CSF is short for crowd-sourced funding.

- (1) If:
- (a) section 1111 (issue) of the Act requires a disclosure document for a financial product to be given to a person because of an offer by a company to issue fully-paid ordinary shares in the company; and
  - (b) the conditions in subsections (2), (4) and (5) of this section are satisfied;
- then:
- (c) despite section 11-5 of this instrument, the disclosure document may be described as a CSF offer document instead of being described as a prospectus; and
  - (d) if the disclosure document is described as a CSF offer document:
    - (i) the offer is a **CSF offer**; and
    - (ii) Division 25 applies to it instead of Division 12.
- (2) When the offer is made:
- (a) the issuer must be either a public company limited by shares or a proprietary company that has at least 2 directors; and
  - (b) the issuer's principal place of business must be in Australia; and
  - (c) a majority of the issuer's directors (other than alternate directors) must ordinarily reside in Australia; and
  - (d) it must not be the case that either the issuer or an entity (a **subsection (3) entity**) covered by subsection (3) of this section:
    - (i) is a listed corporation; or

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- (ii) is included in an official list of a financial market operated outside this jurisdiction; or
    - (iii) has a substantial purpose of investing in financial products covered by paragraph 10-1(b) or interests in other entities or schemes; and
  - (e) the value of the consolidated gross assets of the issuer and all its subsection (3) entities must be less than \$25 million; and
  - (f) the consolidated annual revenue of the issuer and all its subsection (3) entities must be less than \$25 million.
- (3) This subsection covers the following:
- (a) a related body corporate of the issuer;
  - (b) an entity controlled by a person who controls the issuer, or by an associate of such a person.
- (4) The total of the following must not exceed \$5 million:
- (a) the maximum amount sought to be raised by the offer (the *current offer*) referred to in paragraph (1)(a);
  - (b) each amount raised, in the 12 months ending when the current offer is made, pursuant to a CSF offer made in that period by the issuer or a subsection (3) entity;
  - (c) each amount raised in that period pursuant to an offer, of a financial product covered by paragraph 10-1(b), that was made by the issuer or a subsection (3) entity and in relation to which neither of sections 1111 (issue) and 1112 (sale) of the Act required the issuer or subsection (3) entity to give a disclosure document because of:
    - (i) subsection 1116(2) (sophisticated investors) of the Act; or
    - (ii) section 35-100 (small scale offerings of some financial products) of the *Corporations (Exclusions and Exemptions from Chapters 7 and 7A) Scoping Order 2022*.
- Note: Amounts raised by CSF offers that were made before the start of the 12 month period referred to in paragraph (4)(b) are not to be counted.
- (5) The issuer must not intend that any of the funds sought to be raised by the offer will be used:
- (a) by the issuer or a subsection (3) entity to invest in any of the following:
    - (i) financial products covered by paragraph 10-1(b);
    - (ii) interests in other entities or schemes; or
  - (b) by the issuer to issue a credit facility to a subsection (3) entity that is not a wholly-owned subsidiary of the issuer; or
  - (c) by a subsection (3) entity to issue a credit facility to the issuer or to another subsection (3) entity.



## **Division 12—Prospectus**

### **12-15 Must be lodged with ASIC**

- (1) Before the prospectus is given to the recipient, a copy of it must be lodged with ASIC.

Note: Failure to lodge is an offence: see subsection 1145(1) of the Act.

- (2) Before the copy is lodged with ASIC, the following persons must have consented in writing to it being lodged:
  - (a) if section 1111 (issue) of the Act applies:
    - (i) each director of the issuer;
    - (ii) each person named in the prospectus as a proposed director of the issuer;
  - (b) if section 1112 of the Act applies because subsection 1112(6) (sale amounting to indirect issue) of the Act would apply to the proposed sale:
    - (i) each director of the issuer;
    - (ii) if the seller is an individual—the seller;
    - (iii) if the seller is a body—each director of the body;
  - (c) if section 1112 of the Act applies because subsection 1112(7) (off-market sale by controller) of the Act would apply to the proposed sale:
    - (i) if the seller is an individual—the seller;
    - (ii) if the seller is a body—each director of the body;
  - (d) if section 1112 of the Act applies because subsection 1112(8) (sale amounting to indirect off-market sale by controller) of the Act would apply to the proposed sale:
    - (i) if the seller is an individual—the seller;
    - (ii) if the seller is a body—each director of the body;
    - (iii) each individual who controls the issuer;
    - (iv) each director of each body that controls the issuer.
- (3) The prospectus must state that:
  - (a) a copy of the prospectus has been lodged with ASIC; and
  - (b) ASIC takes no responsibility for the content of the prospectus.

### **12-20 When and how prospectus must be given**

- (1) The prospectus must be given to the recipient at the time provided for by section 1111 (sale) or 1112 (issue) of the Act.
- (2) If paragraph 1111(1)(c) or (d) of the Act applies, the prospectus must accompany the offer or application form, unless the offer or application form is contained in the prospectus itself.

### **12-24 Prospectus must be dated**

The prospectus must be dated with the date on which a copy of it is lodged with ASIC as required by section 12-15.

Section 12-25

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**12-25 Main content of prospectus**

- (1) This section applies unless section 12-27 applies.
- (2) The prospectus must set out:
  - (a) the terms and conditions on which the financial product is being offered for issue or sale; and
  - (b) the rights and liabilities attaching to the financial product; and
  - (c) the assets and liabilities, financial position, performance, profits, losses and prospects of the issuer of the financial product.
- (3) If the financial product is a legal or equitable right or interest in a share or debenture, the prospectus must also set out:
  - (a) the rights and liabilities attaching to the share or debenture; and
  - (b) the assets and liabilities, financial position, performance, profits, losses and prospects of the issuer of the share or debenture.
- (4) If the financial product is an option to acquire, by way of issue, anything covered by subparagraph 10-1(b)(i), (ii) or (iii), the prospectus must also set out:
  - (a) the capacity of the issuer of the option to issue or deliver that thing; and
  - (b) the rights and liabilities attaching to that thing; and
  - (c) if that thing is a legal or equitable right or interest in a share or debenture:
    - (i) the rights and liabilities attaching to the share or debenture; and
    - (ii) the assets and liabilities, financial position, performance, profits, losses and prospects of the issuer of the share or debenture.

**12-27 Main content of prospectus for continuously quoted securities**

- (1) This section applies if the financial product is:
  - (a) a continuously quoted security; or
  - (b) an option to acquire continuously quoted securities.

Note: Under section 250-15, ASIC may exclude the application of this section because of contraventions of provisions of the Act listed in that section.
- (2) The prospectus must:
  - (a) deal with the effect of the offer on the issuer; and
  - (b) set out the rights and liabilities attaching to the financial product; and
  - (c) if paragraph (1)(b) applies—set out the rights and liabilities attaching to:
    - (i) the option itself; and
    - (ii) the continuously quoted securities.
- (3) The prospectus must state that:
  - (a) as a disclosing entity, the issuer is subject to regular reporting and disclosure obligations; and
  - (b) documents lodged with ASIC in relation to the issuer may be accessed by the public in accordance with the disclosure framework.
- (4) For each of the following documents:
  - (a) the annual financial report most recently lodged with ASIC by the issuer;

- (b) any half-year financial report lodged with ASIC by the issuer after the lodgment of that annual financial report and before the lodgment of the copy of the prospectus with ASIC;
- (c) any continuous disclosure notices given by the body after the lodgment of that annual financial report and before the lodgment of the copy of the prospectus with ASIC;

the prospectus must either:

- (d) inform people of their right to obtain a copy of the document; or
  - (e) include, or be accompanied by, a copy of the document.
- (5) If under paragraph (4)(d) the prospectus informs people of their right to obtain a copy of a document, the person making the offer must give a copy of the document free of charge to anyone who asks for it during the application period for the prospectus.

*Information excluded from continuous disclosure notice*

- (6) Information about the offer must also be set out in the prospectus if the information:
- (a) has been excluded from a continuous disclosure notice in accordance with the listing rules of the prescribed financial market whose operator was given the notice; and
  - (b) is information that investors and their professional advisers would reasonably require for the purpose of making an informed assessment of:
    - (i) the assets and liabilities, financial position and performance, profits and losses and prospects of the issuer; and
    - (ii) the rights and liabilities attaching to the financial product.

The prospectus must contain this information, but only to the extent to which it is reasonable for investors and their professional advisers to expect to find the information in the prospectus.

### **12-30 Disclosure of interests and fees of people involved in the offer**

- (1) The prospectus must set out the nature and extent of the interests (if any) that each person covered by subsection (4) holds, or held at any time during the last 2 years, in:
- (a) the formation or promotion of the body; or
  - (b) property acquired, or proposed to be acquired, by the body in connection with:
    - (i) its formation or promotion; or
    - (ii) the offer of the financial product; or
  - (c) the offer of the financial product.
- (2) The prospectus must set out each amount that anyone has paid or agreed to pay, and the nature and value of each benefit that anyone has given or agreed to give:
- (a) to a director, or proposed director, to induce them to become, or to qualify as, a director of the body; or

## Section 12-35

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- (b) for services provided by a person covered by subsection (4) in connection with:
  - (i) the formation or promotion of the body; or
  - (ii) the offer of the financial product.
- (3) To comply with subsection (2) it is not sufficient merely to state in the prospectus that a person has been or will be paid normal, usual or standard fees.
- (4) This subsection covers each of the following:
  - (a) a director and proposed director of the body;
  - (b) a person named in the prospectus as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of the prospectus;
  - (c) a promoter of the body;
  - (d) an underwriter (but not a sub-underwriter) to the issue or sale;
  - (e) a person named in the prospectus as a financial services licensee involved in the issue or sale.

### **12-35 Quotation of financial product on a financial market**

If the prospectus states or implies that the financial product will be able to be traded on a financial market (whether in Australia or elsewhere), the prospectus must state that:

- (a) shares, debentures, rights, interests or options of the same class as the financial product have been admitted to quotation on that financial market; or
- (b) an application for shares, debentures, rights, interests or options of that class to be admitted to quotation on that financial market has been made to the operator of that market; or
- (c) such an application will be made to that operator within 7 days after the date of the prospectus.

Note 1: Paragraph 1149(2)(b) of the Act gives times within which the person should seek and obtain admission to quotation.

Note 2: Section 12-24 requires the prospectus to be dated.

### **12-40 Expiry date**

- (1) The prospectus must state that no financial product will be issued on the basis of the prospectus after the expiry date specified in the prospectus.

Note: For the effect of expiry on an application for the financial product, see section 35-1.

- (2) The expiry date must not be later than 13 months after the date of the prospectus. The expiry date of a replacement prospectus must be the same as that of the original prospectus it replaces.

Note 1: Section 12-24 requires the prospectus to be dated.

Note 2: Division 30 deals with replacement prospectuses.

## **Division 15—2-part simple corporate bonds prospectus**

### **15-1 Application of Division**

This Division applies as provided by paragraph 11-10(1)(c).

### **15-5 Form of disclosure document**

The disclosure document must consist of the combination of the following documents:

- (a) a base prospectus that covers the period during which the financial product is offered;
- (b) an offer-specific prospectus for an offer of the financial product.

### **15-7 Date**

For the purposes of the Act and of this instrument:

- (a) the date of the 2-part simple corporate bonds prospectus is taken to be; and
- (b) a copy of the 2-part simple corporate bonds prospectus is taken to have been lodged with ASIC on;

the day on which a copy of the offer-specific prospectus for the offer is lodged with ASIC.

### **15-10 Base prospectus**

- (1) The base prospectus must state that:
  - (a) it is the base prospectus for all offers of simple corporate bonds made during the 3-year period (the *covered period*) beginning on the day when a copy of the base prospectus is lodged with ASIC; and
  - (b) there will be an offer-specific prospectus for each offer of simple corporate bonds during the covered period; and
  - (c) the disclosure document for each such offer will consist of:
    - (i) the base prospectus; and
    - (ii) the offer-specific prospectus for the offer.

- (2) Before the base prospectus is given to the recipient, a copy of it must be lodged with ASIC.

Note: Failure to lodge a copy of the base prospectus is an offence: see subsection 1145(1) of the Act.

- (2A) Before the copy is lodged with ASIC, the following persons must have consented in writing to it being lodged:
  - (a) each director of the issuer;
  - (b) each person named in the prospectus as a proposed director of the issuer.
- (3) The base prospectus must contain a table of contents and sections dealing with the following matters:
  - (a) Section 1: What you need to know;
  - (b) Section 2: About the bonds;

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- (c) Section 3: About the issuer;
- (d) Section 4: Risks;
- (e) Section 5: Other information you should consider;
- (f) Section 6: Glossary.

Note: If information required by this section is contained in another document that has been lodged with ASIC, the base prospectus may refer to that lodged document instead of setting out the information: see section 250-10.

### *Section 1: What you need to know*

- (4) The following statements, or statements to the same effect as the following statements, must be set out in section 1 of the base prospectus:
  - (a) This document will be the base prospectus for these bonds for 3 years from the time it is lodged with the Australian Securities and Investments Commission.
  - (b) There will be a separate offer-specific prospectus for each offer of bonds during the life of this base prospectus.
  - (c) To make an informed investment decision about these bonds, you should read the offer-specific prospectus and this base prospectus before investing.
  - (d) This base prospectus alone is not an offer. The offer is contained in the offer-specific prospectus, this base prospectus and other information that is incorporated by reference into the offer-specific prospectus and this base prospectus.
  - (e) To find out more about the pros and cons of investing in corporate bonds, visit ASIC's MoneySmart website: <http://moneysmart.gov.au>.

### *Section 2: About the bonds*

- (5) The following information must be contained in section 2 of the base prospectus:
  - (a) information on the program of the bonds (if applicable), including any pre-planned future issues of bonds;
  - (b) details of the key aspects of the bonds, including information about the following matters:
    - (i) the interaction between the coupon rate and yield;
    - (ii) the interest rate of the bonds;
    - (iii) the term of the bonds;
    - (iv) the maturity and redemption of the bonds;
    - (v) events that will constitute default;
    - (vi) guarantees in relation to the bonds and information about any guarantors;
    - (vii) security and ranking.

### *Section 3: About the issuer*

- (6) The following information must be contained in section 3 of the base prospectus:
  - (a) brief information about the issuer that includes a summary of its:
    - (i) business; and
    - (ii) management personnel (including directors and senior managers); and
    - (iii) business strategy; and

- (iv) governance arrangements;
  - (b) the trust deed relating to the issuer;
  - (c) an explanation of the role of the trustee;
  - (d) additional information about the issuer that relates to the investment decision, and where that information can be obtained, including:
    - (i) a reference to the issuer's annual report and financial report; and
    - (ii) a reference to any half-year report that the issuer lodged with ASIC after it lodged an annual financial report and before it lodged the most recent copy of the base prospectus with ASIC;
  - (e) the key financial ratios, calculated in accordance with section 15-20, that are relevant to the issuer, accompanied by:
    - (i) an explanation of those key financial ratios; and
    - (ii) information about how a change to those key financial ratios may affect the bonds to be issued under the base prospectus.
- (7) The following statements, or statements to the same effect as the following statements, must be set out in section 3 of the base prospectus:  
A publicly listed entity must release financial reports and continuously disclose information that may have an impact on its share or bond price. This information is available publicly on the relevant market exchange. You should consider this information when making an investment decision about bonds. While this information is important, it is not considered part of the disclosure document for the offer of bonds using this base prospectus.

*Section 4: Risks*

- (8) The following information must be contained in section 4 of the base prospectus:
- (a) the main risks associated with bonds and an explanation of those risks;
  - (b) the issuer's main business risks;
  - (c) if other risks specific to bonds may be relevant to a consumer's investment decision—an explanation of those other risks;
  - (d) if other business risks may be relevant to a consumer's investment decision—an explanation of those other risks.

*Section 5: Other information you should consider*

- (9) The following information must be contained in section 5 of the base prospectus:
- (a) an explanation of the consequences, relating to taxation, of investing in bonds;
  - (b) information relating to privacy in general and the issuer's obligations under privacy laws;
  - (c) any applicable selling restrictions.
- (10) The following statements, or statements to the same effect as the following statements, must be set out in section 5 of the base prospectus:
- (a) More information on the tax implications associated with investing in bonds can be found on the Australian Taxation Office's website:  
<http://www.ato.gov.au>.

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- (b) The following is a list of material referred to, but not set out in full, in this base prospectus. However, the material (or relevant extracts of the material) is incorporated by reference and, as such, forms part of the offer of bonds covered by this base prospectus.
- (11) Section 5 of the base prospectus must contain a list of material referred to, but not set out in full, in the base prospectus.

### *Section 6: Glossary*

- (12) The information that section 6 of the base prospectus must contain is information that is adequate to explain the meanings of terms required to understand the content of:
- (a) the base prospectus; or
  - (b) the offer-specific prospectus that is combined with the base prospectus to create the 2-part simple corporate bonds prospectus.

## **15-15 Offer-specific prospectus**

- (1) The offer-specific prospectus for the offer must state that:
- (a) it is the offer-specific prospectus for the offer; and
  - (b) there is a base prospectus that is applicable to the offer; and
  - (c) the disclosure document for the financial product consists of:
    - (i) the offer-specific prospectus for the offer; and
    - (ii) the base prospectus.
- (2) The offer-specific prospectus may include material that modifies or supplements the base prospectus component of the 2-part simple corporate bonds prospectus.
- (3) Before the offer-specific prospectus is given to the recipient, a copy of it must be lodged with ASIC.

Note: Failure to lodge is an offence: see subsection 1145(1) of the Act.

- (4) Before the copy is lodged with ASIC, the following persons must have consented in writing to it being lodged:
- (a) each director of the issuer;
  - (b) each person named in the prospectus as a proposed director of the issuer.

### *Expiry date*

- (5) The offer-specific prospectus must state that no simple corporate bonds will be issued under the offer after the expiry date specified in the document. That date is also the expiry date for the 2-part simple corporate bonds prospectus as a whole.

Note: For the effect of expiry on an application for the financial product, see section 35-1.

- (6) The expiry date must not be later than 13 months after the date the offer-specific prospectus is lodged with ASIC. The expiry date of a replacement offer-specific prospectus must be the same as that of the original offer-specific prospectus it replaces.



*Minimum subscription—first offer*

- (7) [Equivalent of subsection 713D(5) of the Act.]

*Table of contents*

- (8) The offer-specific prospectus must contain a table of contents and sections dealing with the following matters:

- (a) Section 1: What you need to know;
- (b) Section 2: Key dates and offer details;
- (c) Section 3: Offer-specific information you should consider.

Note: If information required by this section is contained in another document that has been lodged with ASIC, the base prospectus may refer to that lodged document instead of setting out the information: see section 250-10.

*Section 1: What you need to know*

- (9) The following statements, or statements to the same effect, must be set out in section 1 of the offer-specific prospectus:
- (a) This offer-specific prospectus is not a summary of the information contained in the base prospectus.
  - (b) This offer-specific prospectus is only relevant for this offer of bonds.
  - (c) A base prospectus applies to this offer of bonds.
  - (d) This offer-specific prospectus provides offer details, key dates and other relevant information for the offer. The base prospectus for this offer provides additional information that is also critical to your decision. You should take all of the information in the base prospectus into consideration before making your decision in relation to this offer.
  - (e) To find out more about the pros and cons of investing in corporate bonds, visit ASIC's MoneySmart website: <http://moneysmart.gov.au>.

*Section 2: Key dates and offer details*

- (10) The following information must be contained in section 2 of the offer-specific prospectus:
- (a) the terms of the offer, which must include the following:
    - (i) the name of the issuer;
    - (ii) the size of the series, or tranche, to which the offer relates;
    - (iii) the face value of the bonds;
    - (iv) the term of the bonds;
    - (v) the maturity date of the bonds;
    - (vi) guarantees in relation to the bonds and information about any guarantors;
    - (vii) the interest rate of the bonds;
    - (viii) interest payment dates;
    - (ix) events that will constitute default;
    - (x) details of any existing security;
    - (xi) the structure of the offer;
    - (xii) the minimum size of an application for the bonds;

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- (xiii) the prescribed financial market on which the bonds will be listed;
- (b) a short explanation of the circumstances in which the bonds can be redeemed;
- (c) any fees and costs associated with the offer;
- (d) either:
  - (i) if a provision of the base prospectus contains information about any selling restrictions—a reference to the provision; or
  - (ii) otherwise—information about any selling restrictions;
- (e) an explanation of where investors can obtain additional information about the offer, including:
  - (i) a reference to financial advisors or other professional advisors; and
  - (ii) the contact details of the issuer.

*Section 3: Offer-specific information you should consider*

- (11) The following information must be contained in section 3 of the offer-specific prospectus:
  - (a) any significant information necessary to update the information in the base prospectus;
  - (b) any notices that the issuer has issued to explain changes that have occurred to the base prospectus since it was lodged with ASIC;
  - (c) the key financial ratios, calculated in accordance with section 15-20, that are relevant to the issuer, accompanied by:
    - (i) if an offer-specific prospectus has previously been issued—details of any change in those key financial ratios since the last offer-specific prospectus was issued; or
    - (ii) otherwise—details of any change in those key financial ratios compared with the key financial ratios at the time the base prospectus was lodged with ASIC;
  - (d) an explanation of how the issuer will use the funds raised by issuing the bonds;
  - (e) a brief summary of the effect of the offer on the issuer;
  - (f) the ranking of the bonds and any other debt on issue;
  - (g) an explanation of any changes to the risks disclosed in the base prospectus;
  - (h) the amount that anyone has paid or agreed to pay, or the nature and value of any benefit that anyone has given or agreed to give, to:
    - (i) any directors or proposed directors of the issuer; or
    - (ii) a person named in the prospectus as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of the prospectus; or
    - (iii) a promoter of the issuer; or
    - (iv) an underwriter (but not a sub-underwriter) to the issue or sale or a financial services licensee named in the prospectus as a financial services licensee involved in the issue or sale.

### 15-20 Key financial ratios relevant to issuer

- (1) For the purposes of paragraphs 15-10(6)(e) and 15-15(11)(c), the key financial ratios that are relevant to an issuer are:
  - (a) the gearing ratio; and
  - (b) the working capital ratio; and
  - (c) the interest cover ratio.

- (2) The key financial ratios must be calculated based on the issuer's most recent financial statements or, if applicable, the issuer's consolidated financial statements.

- (3) The gearing ratio must be calculated using the following formula:

$$\frac{\text{Total liabilities}}{\text{Total equity}}$$

- (4) The working capital ratio must be calculated using the following formula:

$$\frac{\text{Current assets}}{\text{Current liabilities}}$$

- (5) The interest cover ratio must be calculated using the following formula:

$$\frac{\text{EBITDA}}{\text{Net interest expense}}$$

where:

**EBITDA** means earnings before net interest expense, taxes, depreciation and amortisation, for the period to which the issuer's most recent financial statements relate.

**net interest expense** means the interest expense net of interest revenue, taking account of any related hedging arrangements recognised in the profit and loss statements, for the period to which the issuer's most recent financial statements relate.

Note: The issuer's most recent financial statements may relate to a period that is less than 12 months.

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## **Division 20—Offer information statement**

### **20-1 Application of Division**

This Part applies if the disclosure document is described as an offer information statement as permitted by subsection 11-15(1).

### **20-3 Must be lodged with ASIC**

- (1) Before the offer information statement is given to the recipient, a copy of it must be lodged with ASIC.

Note: Failure to lodge is an offence: see subsection 1145(1) of the Act.

- (2) Before the copy is lodged with ASIC, the following persons must have consented in writing to it being lodged:

- (a) each director of the issuer;
- (b) each person named in the statement as a proposed director of the issuer.

### **20-4 When and how offer information statement must be given**

- (1) The offer information statement must be given to the recipient at the time provided for by section 1111 (sale) or 1112 (issue) of the Act.
- (2) If paragraph 1111(1)(c) or (d) of the Act applies, the offer information statement must accompany the offer or application form, unless the offer or application form is contained in the offer information statement itself.

### **20-5 Contents of offer information statement**

The offer information statement must:

- (a) be dated with the date on which it is lodged with ASIC; and
- (b) identify the issuer and the nature of the financial product; and
- (c) describe the issuer's business; and
- (d) describe what the funds raised by the issue of the financial product are to be used for; and
- (e) state the nature of the risks involved in investing in the financial product; and
- (f) give details of all amounts payable in respect of the financial product (including any amounts by way of fee, commission or charge); and
- (g) state that:
  - (i) a copy of the statement has been lodged with ASIC; and
  - (ii) ASIC takes no responsibility for the content of the statement; and
- (h) state that the statement is not a prospectus and that it has a lower level of disclosure requirements than a prospectus; and
- (j) state that investors should obtain professional investment advice before accepting the offer; and
- (k) include a copy of a financial report for the issuer that:

- (i) is for a 12 month period and has a balance date that is within 6 months before financial products are first offered under the statement; and
- (ii) is prepared in accordance with the accounting standards; and
- (iii) is audited.

### **20-10 Expiry date**

- (1) The offer information statement must state that no financial product will be issued on the basis of the statement after the expiry date specified in the statement.

Note: For the effect of expiry on an application for the financial product, see section 35-1.

- (2) The expiry date must not be later than 13 months after the date of the offer information statement. The expiry date of a replacement offer information statement must be the same as that of the original statement it replaces.

Note 1: Paragraph 20-5(a) requires the offer information statement to be dated.

Note 2: Division 30 deals with replacement offer information statements.

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## **Division 25—CSF offer document**

### **25-1 Application of Division**

This Part applies if the disclosure document is described as a CSF offer document as permitted by subsection 11-25(1).

### **25-5 Contents: general**

- (1) The CSF offer document must contain a table of contents and sections dealing with the following matters:
  - (a) Section 1: Risk warnings;
  - (b) Section 2: Information about the issuer;
  - (c) Section 3: Information about the offer;
  - (d) Section 4: Information about investor rights.
- (2) Information required to be contained in a section of the CSF offer document may be presented in any order within the section.

Note: The contents of the CSF offer document may be published in a commonly accessible digital format.
- (3) This section does not prevent a CSF offer document from containing other information.

### **25-10 Contents of Section 1: Risk warnings**

The following statement must be set out in section 1 of the CSF offer document:

Crowd-sourced funding is risky. Issuers using this facility include new or rapidly growing ventures. Investment in these types of ventures is speculative and carries high risks.

You may lose your entire investment, and you should be in a position to bear this risk without undue hardship.

Even if the company is successful, the value of your investment and any return on the investment could be reduced if the company issues more shares.

Your investment is unlikely to be liquid. This means you are unlikely to be able to sell your shares quickly or at all if you need the money or decide that this investment is not right for you.

Even though you have remedies for misleading statements in the offer document or misconduct by the company, you may have difficulty recovering your money.

There are rules for handling your money. However, if your money is handled inappropriately or the person operating the platform on which this offer is published becomes insolvent, you may have difficulty recovering your money.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself to any investment.

## **25-15 Contents of Section 2: Information about the issuer**

- (1) The following information must be contained in section 2 of the CSF offer document:
- (a) the name, ACN and type of the issuer;
  - (b) the address of the registered office of the issuer;
  - (c) the address of the principal place of business of the issuer;
  - (d) the names of each of the following persons, as well as the person's skills and experience relevant to the management of the issuer:
    - (i) each director of the issuer, and any person proposed by the issuer to be a director of the issuer;
    - (ii) each senior manager of the issuer, and any person proposed by the issuer to be a senior manager of the issuer;
  - (e) a description of the issuer's business and its organisational structure;
  - (f) a description, or a summary, of the capital structure of the issuer (relating to both equity and debt in the issuer), including:
    - (i) the classes (if any) of financial products issued by the issuer; and
    - (ii) the rights associated with such financial products;
  - (g) a description of the main risks facing the issuer's business;
  - (h) a description, or a summary, of the key provisions of the issuer's constitution that deal with any rights and liabilities that attach to financial products issued by the issuer;
  - (i) if the issuer is a proprietary company, a description or summary of the following:
    - (i) the key provisions of any agreement or proposed agreement between shareholders that deal with any rights and liabilities that attach to, or may affect, financial products issued by the issuer;
    - (ii) any right of the directors of the company to refuse to register a transfer of shares in the company.

Note: For paragraph (a), the issuer will be one of the types set out in subsection 112(1) of the Act.

- (1A) If a summary of the information in paragraph (1)(f) is contained in section 2 of the CSF offer document, then:
- (a) the information in full must be contained in another section of, or in an appendix to, the document; and
  - (b) section 2 of the document must include a cross reference to the location of that information.
- (2) Section 2 of the CSF offer document must also contain a copy, or a summary, of:
- (a) if the issuer was registered before the financial year in which the CSF offer is to be made—the financial statements, that comply with the accounting standards, for the company for the most recently completed financial year; or
  - (b) if the issuer was registered during the financial year in which the CSF offer is to be made—the financial statements for the company for at least so much of that financial year as ends 1 month before the CSF offer is to be made.

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- (2A) If a summary of the financial statements mentioned in subsection (2) is contained in section 2 of the CSF offer document, then:
- (a) a copy of the statements must be contained in another section of, or in an appendix to, the document; and
  - (b) section 2 of the document must include a cross reference to the location of the statements.
- (3) Section 2 of the CSF offer document must also contain the following information:
- (a) if the issuer, or any person referred to in paragraph (1)(d), has been convicted of an offence against the Act—details of the offence, including a description of the circumstances giving rise to it;
  - (b) if a civil penalty under the Act has been imposed on the issuer, or any person referred to in paragraph (1)(d)—details of the penalty, including a description of the circumstances giving rise to it;
  - (c) if a person referred to in paragraph (1)(d) is or has been disqualified from managing corporations under Part 2D.6 of the Act—details of the disqualification, including a description of the circumstances giving rise to it;
  - (d) if a person referred to in paragraph (1)(d) is or has been subject to a banning order under section 920A of the Act—details of the order, including a description of the circumstances giving rise to it;
  - (e) if a person referred to in paragraph (1)(d) is or has been subject to a court order under paragraph 921A(2)(a) of the Act—details of the order, including a description of the circumstances giving rise to it;
  - (f) if a person referred to in paragraph (1)(d) is or has been a director, secretary or senior manager of a corporation when it became insolvent—details of the insolvency, including a description of the circumstances giving rise to it;
  - (g) if ASIC has accepted under subsection 93AA(1) of the ASIC Act an undertaking given by the issuer, or by any person referred to in paragraph (1)(d) in relation to the issuer—details of the undertaking, including a description of the circumstances giving rise to it;
  - (h) if, during the 10-year period before the CSF offer is to be made, the issuer has:
    - (i) been convicted of any offence other than one against the Act; or
    - (ii) had imposed on it any penalty under any law other than the Act; details of the offence or penalty, including a description of the circumstances giving rise to it;
  - (i) if, during the 10-year period before the CSF offer is to be made, any person referred to in paragraph (1)(d) has, in any of the capacities referred to in that paragraph with any company:
    - (i) been convicted of any offence other than one against the Act; or
    - (ii) had imposed on him or her a penalty under any law other than the Act; details of the offence or penalty, including a description of the circumstances giving rise to it.



### **25-20 Contents of Section 3: Information about the offer**

- (1) The following information must be contained in section 3 of the CSF offer document:
  - (a) a description, or a summary, of the financial product, including information on the rights associated with the financial product;
  - (b) the minimum subscription amount for the offer;
  - (c) the maximum subscription amount for the offer;
  - (d) the period that the issuer expects the offer to remain open;
  - (e) a description of how the issuer intends to use the proceeds from the offer (including a description of how the company intends to use any proceeds of the offer in excess of the minimum subscription amount for the offer).
- (1A) If a summary of the information mentioned in paragraph (1)(a) is contained in section 3 of the CSF offer document, then:
  - (a) the information in full must be contained in another section of, or in an appendix to, the document; and
  - (b) section 3 of the document must include a cross reference to the location of that information.
- (2) If any of the proceeds of the offer will be paid, directly or indirectly, to any of the following persons, section 3 of the CSF offer document must also contain a description of the payment:
  - (a) a person covered by paragraph 25-15(1)(d);
  - (b) the CSF intermediary that will publish the offer, or any other person who is:
    - (i) a related body corporate of that CSF intermediary; or
    - (ii) an entity controlled by a person who controls that CSF intermediary, or by an associate of such a person;
  - (c) a person promoting or marketing the offer;
  - (d) a person who holds a financial product entitling the person to exercise more than 20% of the rights to vote at a general meeting of the issuer;
  - (e) a person who controls the issuer;
  - (f) any other person who is covered by subsection 11-25(3).
- (3) Without limiting subsection (2), proceeds of the offer will be paid indirectly to a person if those proceeds will be paid for the benefit of the person by an intermediary entity such as a nominee, trust or partnership.
- (4) Section 3 of the CSF offer document must also contain a description of each previous CSF offer (if any) of a financial product by the following entities:
  - (a) the issuer;
  - (b) for each person covered by paragraph 25-15(1)(d) for the issuer—any other company that had, at the time of a previous CSF offer by that other company, the person as a director or senior manager;
  - (c) for each person who controls the issuer—any other company that the person controlled at the time of a previous CSF offer by that other company;
  - (d) any other company that is covered by subsection 11-25(2).

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- (5) The description of a previous CSF offer referred to in subsection (4) must include a description of the outcome of the offer.

**25-25 Contents of Section 4: Information about investor rights**

- (1) The following information must be contained in section 4 of the CSF offer document:
- (a) a description of the cooling off rights contained in [equivalent of section 738ZD of the Act];
  - (b) a description of the effect of [equivalent of subsection 738ZA(5) of the Act (responsible intermediary for CSF offer to provide communication facility)].
- (2) To the extent that any of the following provisions apply to the issuer, section 4 of the CSF offer document must also contain a description of their effect on the issuer:
- (aa) subsection 301(2) of the Act (about when financial reports have to be audited);
  - (a) subsection 301(5) of the Act (about financial accounts not required to be audited for up to 5 years);
  - (b) subsections 250N(5) and (6) of the Act (about company not required to hold an AGM for up to 5 years);
  - (c) subsections 314(1AF) and (2A) of the Act (about annual financial reporting to members and making the reports accessible online);
  - (d) item 19A of the table in section 611 of the Act (about the exception to the prohibition on acquiring relevant interests in voting shares);
  - (e) [equivalent of section 738ZK of the Act (about Chapter 2E of the Act applying to proprietary companies that have one or more CSF shareholders)].

## **Division 30—Supplementary or replacement disclosure document**

[Provisions based on sections 719, 719A and 738W of the Act.]

## **Division 35—Expiry of disclosure document prepared under this Part**

### **35-1 Obligations of issuer or seller**

- (1) This section applies if the disclosure document passes its expiry date.
- (2) If an application for the financial product in response to the disclosure document is received on or before the expiry date, the issuer or seller is not prohibited from issuing or transferring the financial product to the applicant merely because the disclosure document has passed its expiry date.
- (3) If an application for the financial product in response to the disclosure document is received after the expiry date, the issuer or seller must comply with one of subsections (4), (5) and (6).

#### *Refund of application money*

- (4) The issuer or seller must repay all money paid by the applicant for the financial product.

#### *Fresh or updated disclosure and opportunity to withdraw application*

- (5) The issuer or seller must:
  - (a) give to the applicant a new disclosure document for the financial product that has not passed its expiry date; and
  - (b) notify the applicant that the application can be withdrawn within one month after the notification is given, in which case all money paid by the applicant for the financial product will be repaid.

From the time when the issuer or seller does so, the application is taken to have been made in response to the new disclosure document.

#### *Issue or sale followed by fresh or updated disclosure and opportunity to return product and obtain a refund*

- (6) The issuer or seller must:
  - (a) issue or sell the financial product to the applicant pursuant to the application; and
  - (b) give to the applicant a new disclosure document for the financial product that has not passed its expiry date; and
  - (c) notify the applicant that the financial product can be returned within one month after the notification is given, in which case all money paid for it by the applicant will be repaid.
- (7) If in response to a notification under paragraph (5)(b) or (6)(c) the applicant withdraws the application or returns the financial product, the issuer or seller must repay to the applicant the money referred to in that paragraph.

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*Offence*

- (8) A person commits an offence of strict liability if the person contravenes subsection (3) or (7).

Penalty: [50 penalty units].

## **Part 10—Disclosure documents for most other financial products**

### **Division 60—Introduction**

#### **60-1 Application of Part**

- (1) This Part applies if:
  - (a) section 1111 (issue) or 1112 (sale) of the Act requires a disclosure document for a financial product to be prepared, and given to a person (the *recipient*); and
  - (b) Part 5 of this instrument does not apply; and
  - (c) no Division of Part 20 of this instrument applies.
- (2) This Part also applies if:
  - (a) section 1113, 1114 or 1115 of the Act requires a disclosure document for a financial product to be given to a person (the *recipient*); and
  - (b) no Division of Part 20 of this instrument applies.

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## **Division 61—Product Disclosure Statement**

### **61-5 Product Disclosure Statement**

The disclosure document (the *PDS*) must be described as a Product Disclosure Statement.

### **61-10 Who must prepare it**

- (1) The PDS is an *Issue Statement*, and must be prepared by the issuer of the financial product, unless it is a Sale Statement (see subsection (2)).
- (2) If section 1112 (sale) of the Act requires the disclosure document to be prepared, it is a *Sale Statement*.
- (3) The person by whom the PDS must be prepared is the *PDS preparer*.
- (4) For the purposes of this instrument, if the PDS is prepared on behalf of a person, it is taken to be prepared by the person.
- (5) If the financial product is not a jointly issued product, the PDS may be prepared by, or on behalf of, a single PDS preparer.

### **61-15 Title to be used**

- (1) The title “Product Disclosure Statement” must be used on the cover, or at or near the beginning, of the PDS.
- (2) In any other part of the PDS, “Product Disclosure Statement” may be abbreviated to “PDS”.
- (3) If the PDS is made up of 2 or more separate documents as provided in section 61-45, subsection (1) of this section may be complied with by using the title “Product Disclosure Statement” on the cover, or at or near the beginning, of at least one of those documents.
- (4) If subsection (1) is contravened, the PDS preparer commits an offence of strict liability.

Penalty: [30 penalty units].

### **61-20 PDS must be dated**

- (1) The PDS must be dated. The date must be:
  - (a) if a copy the PDS has been lodged with ASIC under Division 85—the date on which it was so lodged; or
  - (b) otherwise—the date on which the PDS was prepared, or its preparation was completed, as the case requires.
- (2) If the PDS is made up of 2 or more separate documents as provided in section 61-45, then:
  - (a) each of the documents must be dated in accordance with subsection (1) of this section; and

- (b) if not all of the documents are dated with the same date, the date of the PDS as a whole is taken to be the most recent of the dates of those documents.
- (3) If subsection (1) or (2) is contravened, the PDS preparer commits an offence of strict liability.  
Penalty: [30 penalty units].

**61-25 Content: general**

- (1) The PDS must include the name and contact details of:
  - (a) the issuer of the financial product; and
  - (b) in the case of a Sale Statement—the seller.
- (2) The PDS must include the statements and information required by this Part. It may also include other information and may refer to information contained in another document.

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 subsection 1129(2) of the Act.

- (3) The PDS must deal with the matters referred to in subsection 61-30(1).
- (4) However, information about a matter is required to be included only to the extent that the requirement is applicable to the financial product, and the PDS need not indicate that a particular requirement is not applicable to the financial product.

*Information about relationship between financial product and other persons*

- (5) The PDS may include a statement about the association between the financial product and another person, but must not include a statement creating the impression that:
  - (a) the financial product is issued or sold by that other person; or
  - (b) that the financial product is guaranteed or underwritten by that other person;if that is not the case.
- (6) If the PDS states that a person provides, or is to provide, services in relation to the financial product, the PDS must clearly distinguish between the respective roles of that person and the issuer or seller of the financial product.

**61-30 Content: specific matters**

- (1) For the purposes of subsection 61-25(3), the matters are the following:
  - (b) significant benefits to which a holder of the financial product will or may become entitled, including the circumstances in which, the times when, and the way in which, those benefits will or may be provided, and the dollar amounts of those benefits;
  - (c) any significant risks associated with holding the financial product;
  - (d) the cost of the financial product, stated in dollar amounts;

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- (da) amounts (stated in dollars) that will or may be payable by a holder of the financial product, in respect of the product, after its acquisition, including in any of the following ways:
    - (i) by direct payment by the holder;
    - (ii) by deducting an amount from a payment by or to the holder, or from money held on the holder's behalf under the terms of the financial product;
    - (iii) by debiting an account representing the holder's interest in the financial product;  
and whether as a fee, expense or charge relating to a particular transaction connected with the financial product, or otherwise;
  - (db) when and how the amounts referred to in paragraph (da) will or may be payable;
  - (dc) if amounts paid in respect of the financial product are paid into a common fund with amounts paid in respect of other financial products—amounts (stated in dollars) that will or may be deducted from the fund by way of fees, expenses or charges;
  - (e) if the financial product will or may generate a return to a holder of the financial product—any commission, or other similar payments, that will or may affect the amount of the return, including the dollar amounts of the commission or payments;
  - (f) any other significant characteristics or features of the financial product, or of the rights, terms, conditions and obligations attaching to the product;
  - (g) the dispute resolution system that covers complaints by holders of the financial product, including how that system may be accessed;
  - (h) any significant taxation implications of financial products of that kind (subject to subsection (2) of this section);
  - (i) any cooling-off regime for acquisitions of the financial product (whether the regime is provided for by a law or otherwise);
  - (j) the matters set out in section 61-33, if the financial product has an investment component, or is one of the following:
    - (i) a superannuation product;
    - (ii) a registered scheme product;
    - (iii) a foreign passport fund product;
    - (iv) an investment life insurance product.
- (2) Information about the matter referred to in paragraph (1)(h) (significant taxation implications) need only be general information.
- (3) If the issuer (in the case of an Issue Statement) or the seller (in the case of a Sale Statement) makes other information relating to the financial product available to holders or prospective holders of the product, or to people more generally, the PDS must state how that information may be accessed.

**61-32 Exceptions to requirements to specify dollar amounts**

- (1) This section has effect despite subsection 61-30(1).



- (2) [Exceptions based on regulations 7.9.15B and 7.9.15C of the Corporations Regulations and *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767* [Latest: F2022C00534; Series: F2016L01299]]

**61-33 Content: labour standards and environmental, social and ethical considerations**

For the purposes of paragraph 61-30(1)(j), the matters are:

- (a) the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of investments made for the purposes of the financial product; and
- (b) whether the issuer does, or does not, take into account labour standards for the purpose of selecting, retaining or realising such investments; and
- (c) whether the issuer does, or does not, take into account environmental, social or ethical considerations for that purpose; and
- (d) if the PDS states that the issuer does take into account labour standards for that purpose:
  - (i) what standards the issuer considers to be labour standards for that purpose; and
  - (ii) to what extent the issuer takes those standards into account in selecting, retaining or realising such investments; and
- (e) if the PDS states that the issuer does take into account environmental, social or ethical considerations for that purpose:
  - (i) what considerations the issuer regards as environmental, social or ethical considerations for that purpose; and
  - (ii) to what extent the issuer takes those considerations into account in selecting, retaining or realising such investments.

**61-36 PDS may refer to publicly available information not set out in full**

- (1) The PDS need not set out in full particular information, or a particular statement, if:
- (a) the statement or information is in writing and is publicly available in a document other than the PDS; and
  - (b) the PDS refers to the statement or information and provides sufficient details about it to enable a person:
    - (i) to identify by a unique identifier the document, or the part of the document, that contains the statement or information; and
    - (ii) to locate the statement or information; and
    - (iii) to decide whether or not to read the statement or information or obtain a copy of it; and
  - (c) the PDS states that a copy of the statement or information may be obtained from the PDS preparer on request, at no charge; and
  - (d) if any of the statements or information is about a matter referred to in paragraph 61-30(1)(b) (significant benefits) or 61-30(1)(f) (other significant characteristics)—the PDS includes a description, in summary, of the purpose and key features of the financial product; and

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- (e) if any of the statement or information is about a matter referred to in paragraph 61-30(1)(c) (significant risks)—the PDS includes a description, in summary, of the key risks of the financial product; and
  - (f) the PDS includes in full all statements and information required by whichever of the following are applicable:
    - (i) subsection 61-25(1) (name and contact details of issuer and seller);
    - (ii) paragraph 61-30(1)(g) (dispute resolution system);
    - (iii) paragraph 61-30(1)(i) (cooling-off);
    - (iv) [equivalent of Divisions 1 and 2 of Part 2 of Schedule 10 to the Corporations Regulations];
    - (v) [equivalent of paragraphs 209(e) and (h) of Division 4 of Part 2 of Schedule 10 to the Corporations Regulations];
    - (vi) [equivalent of Divisions 5 and 6 of Part 2 of Schedule 10 to the Corporations Regulations]; and
  - (g) the PDS includes in full the Consumer Advisory Warning in [equivalent of Division 7 of Part 2 of Schedule 10 to the Corporations Regulations].
- (2) If a person to whom the PDS is required to be given asks for a copy of the statement or information, the PDS preparer must provide the copy as soon as practicable, at no charge.
- (3) If the PDS complies with subsection (1) in relation to the statement or information, the statement or information is taken, for the purposes of the Act and of this instrument, to be included in the PDS.
- (4) This section does not apply if the financial product is:
- (a) a margin loan; or
  - (b) a superannuation product to which [equivalent of Subdivision 4.2B of Division 4 of Part 7.9 of the Corporations Regulations applies]; or
  - (c) a simple managed investment scheme to which [equivalent of Subdivision 4.2C of Division 4 of Part 7.9 of the Corporations Regulations applies]; or
  - (d) a simple sub-fund product to which [equivalent of Subdivision 4.2D of Division 4 of Part 7.9 of the Corporations Regulations applies].

### **61-37 Altering PDS after its preparation**

- (1) For the purposes of section 1144 of the Act, the PDS may be altered after the date of the PDS, but only in accordance with this section.
- Note: It is an offence to give the PDS to the recipient if it has been altered and the requirements of this section have not been complied with: see section 1144 of the Act.
- (2) The alteration must be made by, or with the authority of, the issuer or seller, as the case requires, of the financial product.
- (3) If the alteration is material, the date of the PDS must be changed to:
- (a) if a copy of the altered PDS is lodged with ASIC under Division 85—the date on which the copy is so lodged; or
  - (b) otherwise—the date on which the alteration was made.

- (4) If the alteration is a material alteration and a copy of the PDS was lodged with ASIC under Division 85, a copy of the altered PDS must be so lodged, and that Division applies accordingly.
- (5) If the PDS is made up of 2 or more separate documents as provided in section 61-45, subsections (1) to (4) of this section have a separate application to each of those documents, and for that purpose:
  - (a) a reference in those subsections to the PDS is a reference to that document; and
  - (b) a reference to the date of the PDS is a reference to the date specified in the document.

### **61-45 PDS may consist of 2 or more separate documents given together**

- (1) Subject to this section, the PDS may be made up of 2 or more separate documents that are given at the same time.
- (2) Each of the documents must have on its cover, or at or near the beginning of it, a statement that:
  - (a) is to the effect that the document is part of a Product Disclosure Statement; and
  - (b) identifies the other documents that make up the PDS.
- (3) A statement required by subsection (2) need not identify a particular version of any of the documents referred to in paragraph (2)(b), but may instead identify the document generically.

Note: For example, if the PDS is made up of a core document that is not updated very often, and a separate document providing information about remuneration that is often updated:

- (a) the statement in the core document need only refer to the fact that it, and a separate document about remuneration, make up the PDS; and
- (b) the statement in the document about remuneration need only refer to the fact that it, and a separate document about all other required matters, make up the PDS.

### **61-50 How PDS is to be given**

- (1) This section provides for how the PDS must be given to the recipient.
- (2) The PDS may be given in printed or electronic form. However, if given in electronic form:
  - (a) it must be presented in a way that clearly distinguishes the information that is part of the PDS from other material; and
  - (b) it must, so far as practicable, be presented in a way that will allow the recipient to keep a copy of it, so that the recipient can have ready access to it in the future.
- (3) The PDS must be given to the recipient, or to the recipient's agent, by:
  - (a) giving it personally; or
  - (b) sending it to the recipient or agent at an address (including an electronic address) or fax number nominated by the recipient or agent (see also subsection (4)); or
  - (c) making it available to the recipient or agent in any way that:

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- (i) is agreed to by the recipient or agent; and
  - (ii) allows the giver of the PDS to be satisfied, on reasonable grounds, that the recipient or agent has received the PDS.
- (4) If the PDS is sent to the recipient or agent as provided in paragraph (3)(b), the envelope or other container in which the PDS is sent, or the message that accompanies the PDS, must be addressed to the recipient or agent.
- (5) The PDS must not be given to an agent of the recipient if the agent is acting in one or more of the following capacities:
  - (a) a financial services practitioner;
  - (b) an employee, director or other representative of a financial services practitioner.

### **61-53 When information from PDS may be given orally and full PDS provided later**

[Provision based on section 1012G of the Act, as notionally substituted by regulation 7.9.15H of the Corporations Regulations.]

### **61-55 Notice, retention and access requirements**

Note: This section does not apply if Division 85 requires a copy of the PDS to be lodged with ASIC.

- (1) The PDS preparer must prepare, and lodge with ASIC, a notice in electronic form each time any of the following happens:
    - (a) the PDS is first given to a person as provided by a provision of Part 7A.2 of the Act;
    - (b) a change is made to fees and charges set out in the PDS;
    - (c) the financial product ceases to be available to be offered in circumstances in which a disclosure document for the financial product would need to be so given.
- Note: The fees and charges may be changed by a Supplementary Product Disclosure Statement: see Division 65.
- (2) The notice must be lodged as soon as practicable, and in any event within 5 business days, after the event.
  - (3) The PDS preparer must keep a copy of the PDS for the period of 7 years after the date of the PDS.
  - <sup>1</sup>(4) During that period, the PDS preparer:
    - (a) must make a copy of the PDS 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 PDS.

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<sup>1</sup> This subsection corresponds to subsection 1015D(4) (penalty of 2 years imprisonment). That level of penalty could be applied by a provision in the Act that is engaged by the financial services rules in a similar way to subsection 1145(2) and section 1152 in the prototype Chapter 7A of the Act.

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- (5) A person commits an offence of strict liability if the person contravenes any of subsections (1) to (4).

Penalty: [50 penalty units].

- (6) Subsection 1145(2) of the Act applies to subsection (1) of this section.

Note: Subsection 1145(2) of the Act provides for an offence for contravening subsection (1) of this section.

- (7) Section 1152 of the Act applies to subsection (3) of this section.

Note: Section 1152 of the Act provides for an offence for contravening subsection (3) of this section.

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## **Division 65—Supplementary Product Disclosure Statement**

### **65-1 Supplementary Product Disclosure Statement**

- (1) The PDS preparer may prepare a disclosure document for the financial product in order to do one or more of the following:
  - (a) correct a misleading or deceptive statement in the PDS;
  - (b) correct an omission from the PDS of information it is required to contain;
  - (c) update, or add to, the information contained in the PDS;
  - (d) if the PDS states as mentioned in paragraph 1148(1)(b) (minimum subscription condition) of the Act—change the statement;
  - (e) if the PDS states or implies as mentioned in paragraph 1149(1)(b) (condition about ability to trade on a market) of the Act—change the statement or implication.
- (2) The disclosure document (the *SPDS*) must be described as a Supplementary Product Disclosure Statement.
- (3) The PDS preparer may prepare the SPDS:
  - (a) whether or not a previous disclosure document relating to the PDS has been prepared under this Division; and
  - (b) whether or not the PDS, or such a previous disclosure document, has been given to the recipient.

### **65-3 Title to be used**

- (1) The title “Supplementary Product Disclosure Statement” must be used on the cover, or at or near the beginning, of the SPDS.
- (2) In any other part of the SPDS, “Supplementary Product Disclosure Statement” may be abbreviated to “SPDS”.
- (3) If subsection (1) is contravened, the PDS preparer commits an offence of strict liability.

Penalty: [30 penalty units].

### **65-5 Form**

- (1) The SPDS must begin with:
  - (a) a statement that it is a Supplementary Product Disclosure Statement; and
  - (b) an identification of the PDS; and
  - (c) a statement that it is to be read together with the PDS and any other specified Supplementary Product Disclosure Statements.
- (2) If subsection (1) is contravened, the PDS preparer commits an offence of strict liability.

Penalty: [30 penalty units].

### **65-10 Other requirements**

This Part applies to the SPDS in the same way as it applies to the PDS, except as provided in this Part.

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## **Division 75—Short-Form Product Disclosure Statement**

### **75-1 Application of Division**

This Division applies if the financial product is none of the following:

- (a) a general insurance product;
- (b) a managed investment product in relation to an Australian passport fund;
- (c) a foreign passport fund product.

### **75-2 Short-Form Product Disclosure Statement**

- (1) An alternative disclosure document for the financial product may be given instead of the PDS.
- (2) The alternative disclosure document (the *Short-Form PDS*) must be described as a Short-Form Product Disclosure Statement.
- (3) However, if the recipient asks to be given the PDS, it must be given to the recipient as soon as reasonably practicable.

### **75-3 Title to be used**

- (1) The title “Short-Form Product Disclosure Statement” must be used on the cover, or at or near the beginning, of the Short-Form PDS.
- (2) In any other part of the Short-Form PDS, “Short-Form Product Disclosure Statement” may be abbreviated to “Short-Form PDS”.
- (3) If subsection (1) is contravened, the PDS preparer commits an offence of strict liability.

Penalty: [30 penalty units].

### **75-5 Contents**

- (1) The Short-Form PDS must contain:
  - (a) a summary of the statements and information that were included in the PDS because of:
    - (i) subsection 61-25(1); and
    - (ii) paragraphs 61-30(1)(a), (b), (c), (d) to (dc), (e), (g) and (i); and
  - (b) a statement:
    - (i) notifying the recipient that the recipient may ask for the PDS; and
    - (ii) setting out how the recipient may ask for the PDS.
- (2) The Short-Form PDS may also:
  - (a) include other information that is permitted to be included in the PDS; and
  - (b) refer to other information set out in the PDS for the financial product, in a way that identifies where that information is set out; and
  - (c) without limiting paragraph (a), include a statement that section 250-5 permits to be included in the PDS.



- (3) Information identified under paragraph (2)(b) is taken for the purposes of the Act and of this instrument to be included in the Short-Form PDS.

**75-10 Other requirements**

- (1) Division 61 applies to the Short-Form PDS in the same way as it applies to the PDS, except as provided in this Division.
- (2) The following provisions of Division 61 do not apply to the Short-Form PDS:
- (a) section 61-36 (Statement may refer to publicly available information not set out in full);
  - (b) section 85-1 (Financial products for which PDS must be lodged with ASIC).

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## **Division 80—Supplementary Short-Form Product Disclosure Statement**

### **80-1 Application of Division**

This Division applies if Division 75 applies.

### **80-2 Supplementary Short-Form Product Disclosure Statement**

- (1) The PDS preparer may prepare a disclosure document for the financial product in order to do one or more of the following:
  - (a) correct a misleading or deceptive statement in the Short-Form PDS;
  - (b) correct an omission from the Short-Form PDS of information it is required to contain;
  - (c) update, or add to, the information contained in the Short-Form PDS;
  - (d) if the Short-Form PDS states as mentioned in paragraph 1148(1)(b) (minimum subscription condition) of the Act—change the statement;
  - (e) if the Short-Form PDS states or implies as mentioned in paragraph 1149(1)(b) (condition about ability to trade on a market) of the Act—change the statement or implication.
- (2) The disclosure document (the *Supplementary Short-Form PDS*) must be described as a Supplementary Short-Form Product Disclosure Statement.
- (3) The PDS preparer may prepare the Supplementary Short-Form Product Disclosure Statement:
  - (a) whether or not a previous disclosure document relating to the Short-Form PDS has been prepared under this Division; and
  - (b) whether or not the Short-Form PDS, or such a previous disclosure document, has been given to the recipient.

### **80-3 Title to be used**

- (1) The title “Supplementary Short-Form Product Disclosure Statement” must be used on the cover, or at or near the beginning, of the Supplementary Short-Form PDS.
- (2) In any other part of the Supplementary Short-Form PDS, “Supplementary Short-Form Product Disclosure Statement” may be abbreviated to “Supplementary Short-Form PDS”.
- (3) If subsection (1) is contravened, the PDS preparer commits an offence of strict liability.

Penalty: [30 penalty units].

### **80-5 Form of Supplementary Short-Form Product Disclosure Statement**

- (1) The Supplementary Short-Form PDS must begin with:
  - (a) a statement that it is a Supplementary Short-Form Product Disclosure Statement; and

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- (b) an identification of the Short-Form PDS that it supplements; and
  - (c) a statement that it is to be read together with that Short-Form PDS and any other specified Supplementary Short-Form Product Disclosure Statement.
- (2) If subsection (1) is contravened, the PDS preparer commits an offence of strict liability.

Penalty: [30 penalty units].

**80-10 Other requirements**

Division 61 applies to the Supplementary Short-Form PDS in the same way as it applies to the PDS, except as provided in this Division.

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## **Division 85—Lodgment with ASIC**

### **85-1 Financial products for which PDS must be lodged with ASIC**

- (1) This section applies if the financial product is a registered scheme product and:
  - (a) it can be traded on a financial market; or
  - (b) the PDS, or a Supplementary Product Disclosure Statement for the PDS:
    - (i) states or implies that the financial product will be able to be traded on a financial market; and
    - (ii) complies with section 90-5 (about whether the financial product is able to be traded); or
  - (c) it is a registered scheme product of an Australian passport fund.
- (2) This section also applies if the financial product is a foreign passport fund product.
- (3) Before the PDS, or a Supplementary Product Disclosure Statement (the *SPDS*) for the PDS, is given to the recipient, a copy of the PDS or SPDS must be lodged with ASIC.
- (4) If the financial product is a registered scheme product, then before the copy is lodged with ASIC, the following persons must have consented in writing to it being lodged:
  - (a) in any case:
    - (i) if the PDS preparer is a body corporate—every director of the PDS preparer;
    - (ii) otherwise—the PDS preparer;
  - (b) in the case of a sale Statement:
    - (i) if the issuer of the financial product is a body corporate—every director of the issuer;
    - (ii) otherwise—the issuer of the financial product.
- (5) If the financial product is a foreign passport fund product, then before the copy is lodged with ASIC, the following persons must have consented to it being lodged:
  - (a) if the operator of the fund is a body corporate—each director of the operator;
  - (b) otherwise—the PDS preparer.
- (6) Section 61-55 (Notice, retention and access requirements for PDS) does not apply to the PDS or the SPDS, as the case may be.
- (7) Subsection 1145(2) of the Act applies to subsection (3) of this section.

Note: Subsection 1145(2) of the Act provides for an offence for contravening subsection (3) of this section.

### **85-5 PDS must mention that it has been lodged with ASIC**

If section 85-1 requires a copy of the PDS, or of a Supplementary Product Disclosure Statement for the PDS, to be lodged with ASIC, the PDS or Supplementary Product Disclosure Statement must include a statement that:

- (a) a copy of it has been lodged with ASIC; and
- (b) ASIC takes no responsibility for its content.

### **85-10 Requirement to lodge documents mentioned in PDS**

- (1) If section 85-1 requires a copy of the PDS, or of a Supplementary Product Disclosure Statement (the **SPDS**) for the PDS, to be lodged with ASIC, then that section applies to each document, or part of a document, mentioned in the PDS or SPDS as if it were part of the PDS or SPDS, as the case may be.
- (2) This section does not apply if the financial product is:
  - (a) a margin loan; or
  - (b) a superannuation product to which [equivalent of Subdivision 4.2B of Division 4 of Part 7.9 of the Corporations Regulations] applies; or
  - (c) a simple managed investment scheme to which [equivalent of Subdivision 4.2C of Division 4 of Part 7.9 of the Corporations Regulations] applies.

### **85-15 Financial product not to be issued or sold for up to 14 days after PDS is lodged**

- (1) If:
  - (a) section 85-1 requires a copy of the PDS to be lodged with ASIC; and
  - (b) the financial product:
    - (i) is not able to be traded on any financial market (whether in Australia or elsewhere); and
    - (ii) is not a registered scheme product of an Australian passport fund; and
    - (iii) is not a foreign passport fund product;a person must not issue or sell the financial product, pursuant to an application made in response to the PDS, before the end of:
  - (c) unless paragraph (d) applies—the period of 7 days starting on the day when the PDS is so lodged; or
  - (d) if that period is extended under subsection (2)—that period as so extended.
- (2) ASIC may extend the period by notice in writing to the person, but not so as to end later than the period of 14 days starting on the day when the PDS was lodged with ASIC.

Note: Contravention of subsection (1) is an offence: see section 1147 of the Act.

## **Division 90—Financial products traded on a financial market**

### **90-5 Requirements if PDS states or implies that financial product will be able to be traded**

If the PDS states or implies that the financial product will be able to be traded on one or more financial markets (whether in Australia or elsewhere), the PDS must set out, for each market, one of the following statements:

- (a) the product is able to be traded on that market;

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- (b) an application has been made to the operator of that market to enable the product to be traded on that market;
- (c) such an application will be made to the operator of that market within 7 days after the date of the PDS.

**90-10 Information that need not be included in PDS for continuously quoted securities**

- (1) This section applies if the financial product is a continuously quoted security.

Note: Under section 250-15, ASIC may exclude the application of this section because of contraventions of provisions of the Act listed in that section.

- (2) Information need not be included in the PDS if:
- (a) in the case of a continuously quoted security that is not a security of a notified foreign passport fund—the information is included in any of the following:
    - (i) the annual financial report most recently lodged with ASIC by the issuer;
    - (ii) any half-year financial report lodged with ASIC by the issuer after the lodgment of that annual financial report and before the date of the PDS;
    - (iii) any continuous disclosure notices given by the issuer after the lodgment of that annual financial report and before the date of the PDS; and
  - (b) in the case of a continuously quoted security of a notified foreign passport fund—the information is included in any of the following documents:
    - (i) a copy of a report for the fund for the most recent financial year for the fund, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund;
    - (ii) a copy of an auditor’s report that relates to the report mentioned in subparagraph (i);
    - (iii) any continuous disclosure notices given by the issuer after the lodgment of the report mentioned in subparagraph (i) and before the date of the PDS; and
  - (c) in any case—the PDS:
    - (i) states that the issuer, as a disclosing entity, is subject to regular reporting and disclosure obligations; and
    - (ii) informs people of their right to obtain a copy of any of the documents referred to in paragraph (a) or (b).
- (3) If the PDS informs people of their right to obtain a copy of the document, the issuer must give a copy of the document free of charge to anyone who asks for it.
- (4) This section has effect for the purposes of subparagraph 1126(1)(d)(i) of the Act and despite anything in Division 61 of this instrument.

Note: Because of section 1127 of the Act, subsection (4) of this section has effect despite section 1125 of the Act, which deals with the content of a disclosure document.

## **Part 15—Additional rules for particular kinds of financial product**

### **Division 150—Introduction**

#### **150-1 Application of Part**

This Part applies if Part 10 (disclosure documents for other financial products) applies.

## **Part 20—Disclosure documents for particular kinds of financial product**

### **Division 200—Low value non-cash payment facility**

#### **200-1 Application of Division**

This Division applies if:

- (a) a provision of Part 7A.2 of the Act provides for a disclosure document for a financial product to be given to a person (the *consumer*); and
- (b) the financial product is a non-cash payment facility; and
- (c) the total amount available for making non-cash payments under all facilities of the same class issued by the issuer of the financial product and held by a single person at the same time does not exceed \$1,000; and
- (d) the total amount available for making non-cash payments under all facilities of the same class issued by that issuer and held by persons at the same time does not exceed \$10 million; and
- (e) the facility is not a component of another financial product.

#### **200-5 Disclosure document**

- (1) The disclosure document must:
  - (a) be in writing; and
  - (b) set out the terms and conditions of the financial product; and
  - (c) prominently set out information about:
    - (i) whether the issuer may unilaterally add to or vary any of the terms and conditions; and
    - (ii) how the consumer may get information about new or varied terms and conditions; and
    - (iii) whether the financial product has an expiry date and, if so, where the expiry date may be found; and
    - (iv) the procedures for dealing with any unauthorised or mistaken transactions relating to the financial product or with the loss or theft of a device through which the financial product is used; and
    - (v) fees or charges for acquiring and using the financial product; and

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- (vi) if any of those fees or charges is subject to change during the term of the facility—how the client may get information about the new fees or charges; and
  - (d) if the financial product has an expiry date and no device is provided through which the financial product is used—set out the expiry date, or have attached to it a written statement setting out the expiry date.
- (2) For the purposes of subparagraph 1126(1)(d)(i) of the Act, the disclosure document need not include anything else.

Note: Because of section 1127 of the Act, subsection (2) of this section has effect despite section 1125 of the Act, which deals with the content of a disclosure document.

**200-10 Information to be displayed on device provided with financial product**

- (1) If:
- (a) a device is provided through which the financial product is used; and
  - (b) the financial product has an expiry date;
- then:
- (c) the expiry date must be set out prominently on the device and in a way that makes it clear that is the expiry date of the financial product; or
  - (d) the following must be set out prominently on the device:
    - (i) either the date of issue of the financial product or a date at most 3 months after the date of issue;
    - (ii) a statement that the financial product cannot be used after the end of a specified period after that date.

*Authority*

- (2) This section has effect for the purposes of subsection 1151(3) of the Act.



## **Part 25—Rules common to all or most kinds of disclosure document**

### **Division 250—Common rules**

#### **250-1 Application of Part**

This Part applies if a provision of Part 7A.2 of the Act provides for a disclosure document for a financial product to be prepared, and given to a person (the *recipient*).

#### **250-5 Consent of person to whom statement attributed**

- (1) For the purposes of section 1143 of the Act, the disclosure document may include a statement by a person, or a statement that the document says is based on a statement by a person, but only in accordance with this section.

Note: It is an offence to give the disclosure document to the recipient if it includes such a statement and the requirements of this section have not been complied with: see section 1143 of the Act.

- (2) The person must have consented in writing to the statement being included in the disclosure document in the form and context in which it is included.
- (3) The disclosure document must state that the person has so consented.
- (4) The person must not have withdrawn the consent before:
  - (a) in the case of a prospectus or offer information statement—a copy of the disclosure document is lodged with ASIC; or
  - (b) in the case of a CSF offer document—the issuer arranges for the CSF offer document to be published on a platform of a CSF intermediary; or
  - (c) in the case of a Product Disclosure Statement—the date of the Statement.

#### **250-10 Disclosure document may simply refer to material lodged with ASIC**

- (1) Instead of setting out information that is contained in a document (the *lodged document*) that has been lodged with ASIC, the disclosure document may simply refer to the lodged document, but only if the reference is done in accordance with subsections (2) and (3).
- (2) The reference must:
  - (a) identify the lodged document and, if necessary, the part (the *relevant part*) of the lodged document that contains the information; and
  - (b) inform people of their right to obtain a copy of the lodged document, or of the relevant part, as the case requires, under subsection (5).
- (3) The reference must also include:
  - (a) if the information is primarily of interest to professional analysts or advisers or to investors with similar specialist information needs:
    - (i) a description of the information; and

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- (ii) a statement to the effect that the information is primarily of interest to those people; or
  - (b) otherwise—sufficient information about the contents of the lodged document, or of the relevant part, to allow a person to whom the disclosure document is given to decide whether to obtain a copy of the lodged document or relevant part.
- (4) For the purposes of the Act and of this instrument, the lodged document is taken to be included in the disclosure document to the extent that the disclosure document refers to it as permitted by subsection (1).
- (5) The person who gives the disclosure document to the recipient must give a copy of the lodged document or relevant part free of charge to anyone who asks for it while the disclosure document remains current.
- (6) A person who wishes to rely on subsection (1) may lodge a document with ASIC even if the document is not otherwise required to be lodged.

### **250-15 ASIC may exclude provisions about continuously quoted securities**

ASIC may determine by notifiable instrument that section 12-27 or 90-10 does not apply if ASIC is satisfied that in the previous 12 months:

- (a) any of the following provisions of the Act were contravened by or in relation to the issuer:
  - (i) a provision of Chapter 2M;
  - (ii) subsection 674(2), 674A(2), 675(2) or 675A(2);
  - (iii) a provision of Division 4 of Part 7A.2;
  - (iv) [equivalent of subsection 708AA(10), 708A(9), 1012DAA(10) or 1012DA(9)];
  - (v) [equivalent of section 1308 as it applies to a notice under equivalent of subsection 708AA(2), 708A(5), 1012DAA(2) or 1012DA(5)]; or
- (b) the person who is required to prepare the disclosure document contravened a provision of Division 4 or 5 of Part 7A.2 of the Act.

## **Division 300—Record-keeping requirements**

### **300-1 Consents**

- (1) If a consent is given for the purposes of a provision of the Act or this instrument, as the provision applies to a disclosure document, the person who prepares the disclosure document must keep the consent, or a copy of it, for 7 years from the day on which the consent is given.
- (2) A copy of a consent may be kept in a physical form, or in an electronic form that can be reproduced in a physical form.
- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: [30 penalty units].

- <sup>2</sup>(4) Section 1152 of the Act applies to subsection (1) of this section.

Note: Section 1152 of the Act provides for an offence for contravening subsection (1) of this section.

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<sup>2</sup> This level of penalty reflects subsection 1013K(2). Lower penalties apply to contraventions of subsections 735(1) (30 penalty units) and 738M(3) (20 penalty units). These distinctions could be maintained in the rules by making more specific provision.