

# EXPOSURE DRAFT



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## ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018

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

Dated 2018

Peter Cosgrove  
Governor-General

By His Excellency's Command

Kelly O'Dwyer [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Minister for Revenue and Financial Services

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## 1 Name

This instrument is the *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedules 1 and 2	The day after this instrument is registered.	
3. Schedules 3 to 6	1 July 2018.	1 July 2018
4. Schedule 7	The day after this instrument is registered.	
5. Schedules 8 to 10	1 July 2018.	1 July 2018
6. Schedules 11 and 12	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

## 3 Authority

This instrument is made under the following:

- (a) the *ASIC Supervisory Cost Recovery Levy Act 2017*;
- (b) the *Corporations (Fees) Act 2001*;
- (c) the *Corporations (Review Fees) Act 2003*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Regulatory costs

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## Schedule 1—Regulatory costs

### *ASIC Supervisory Cost Recovery Levy Regulations 2017*

#### **1 After section 5**

Insert:

#### **5A Amounts included in regulatory costs**

For the purposes of paragraph 10(5)(e) of the Act, the amount of ASIC's regulatory costs for a financial year may include an amount of ASIC's operating costs for a financial year before the 2017-18 financial year that:

- (a) ASIC is eligible to recover in the 2017-18 financial year, and later financial years, under item 29 of Schedule 1 to the *ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Act 2017*; and
- (b) ASIC has not previously recovered under that item; and
- (c) do not relate to amounts covered by subsection 10(4) of the Act.

## **Schedule 2—Regulated entities**

### *ASIC Supervisory Cost Recovery Levy Regulations 2017*

#### **1 After Division 1 of Part 2**

Insert:

#### **Division 1A—Regulated entities**

##### **5B Prescribed class of persons**

For the purposes of paragraph (h) of the definition of *regulated entity* in section 7 of the Act, the class of persons:

- (a) who are persons regulated by ASIC in respect of whom ASIC may exercise a power conferred under section 11 or 12A of the *Australian Securities and Investments Commission Act 2001*; and
- (b) none of whom would, apart from this section, be leviable entities; is prescribed.

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Schedule 3 Small and medium amount credit providers sub-sector

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## Schedule 3—Small and medium amount credit providers sub-sector

### *ASIC Supervisory Cost Recovery Levy Regulations 2017*

#### **1 Subsection 4(1)**

Insert:

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

#### **2 Section 24 (heading)**

Repeal the heading, substitute:

#### **24 Small and medium amount credit providers**

#### **3 Subsection 24(1)**

Omit “*small amount credit providers*”, substitute “*small and medium amount credit providers*”.

#### **4 Paragraph 24(1)(b)**

After “contract”, insert “or a medium amount credit contract”.

#### **5 Subsection 24(2)**

After “contracts”, insert “or medium amount credit contracts”.

#### **6 Subsection 26(3)**

After “small amount credit contracts”, insert “or medium amount credit contracts”.

#### **7 Schedule 1 (table item 36)**

Repeal the item, substitute:

36	Small and medium amount credit providers	section 24
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## **Schedule 4—New and established specialised market operators sub-sectors**

### *ASIC Supervisory Cost Recovery Levy Regulations 2017*

#### **1 Subsection 4(1) (definition of *small derivatives market*)**

Repeal the definition.

#### **2 Subsection 4(1)**

Insert:

*specialised market* has the meaning given by subsection 52A(4).

#### **3 Section 50**

Repeal the section.

#### **4 After section 52**

Insert:

#### **52A New specialised market operators**

- (1) A leviable entity forms part of the *new specialised market operators* sub-sector in a financial year if:
  - (a) the entity was first granted an Australian market licence to operate a specialised market in that financial year or the previous 2 financial years; and
  - (b) the entity had not held an Australian market licence at any time before the entity was first granted the licence mentioned in paragraph (a); and
  - (c) the specialised market had not been operated by any entity in Australia or outside Australia before the entity was first granted an Australian market licence to operate the specialised market; and
  - (d) at any time in the financial year, the entity is the operator of the specialised market.

#### *Entity metric*

- (2) The leviable entity's *entity metric* for the sub-sector for the financial year is the number of days in the financial year on which the entity operated the specialised market.
- (3) For the purposes of subsection (2), if the entity was first granted an Australian market licence to operate a specialised market in the financial year before the previous financial year, disregard the days between:
  - (a) the day that is 24 months after the day on which the entity was first granted an Australian market licence to operate the specialised market; and
  - (b) 30 June of the financial year mentioned in paragraph (1)(d).
- (4) A licensed market is a *specialised market*, in relation to a financial year, if:

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## Schedule 4 New and established specialised market operators sub-sectors

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- (a) the market is licensed under subsection 795B(1) of the *Corporations Act 2001* in the financial year; and
- (b) the market is not:
  - (i) an overseas market; or
  - (ii) a small securities (self-listing) exchange; or
  - (iii) a small securities exchange; or
  - (iv) a small futures exchange; or
  - (v) a large securities exchange; or
  - (vi) a large futures exchange.

### 52B Established specialised market operators

- (1) A leviable entity forms part of the *established specialised market operators* sub-sector in a financial year if:
  - (a) at any time in the financial year the entity is the operator of a specialised market; and
  - (b) one or more of the following apply:
    - (i) the entity was first granted an Australian market licence to operate the specialised market in a financial year before the previous financial year;
    - (ii) the specialised market had been operated by any entity in Australia or outside Australia before the entity was first granted an Australian market licence to operate the specialised market;
    - (iii) the entity held an Australian market licence before the entity was first granted an Australian market licence to operate the specialised market.

#### *Entity metric*

- (2) The leviable entity's *entity metric* for the sub-sector for the financial year is:
  - (a) unless paragraph (b) applies—the number of days in the financial year on which the entity operated the specialised market; or
  - (b) if the entity operated 2 or more such specialised markets in the financial year—the sum of the days worked out under paragraph (a) for each of those markets.
- (3) For the purposes of paragraph (2)(a), if the entity was first granted an Australian market licence to operate a specialised market in the financial year before the previous financial year, disregard the days between:
  - (a) 1 July of the financial year mentioned in paragraph (1)(a); and
  - (b) the day that is 24 months after the day on which the entity was first granted an Australian market licence to operate the specialised market.

### 5 Schedule 1 (after table item 8)

Insert:

8A      Established specialised market operators                      section 52B

### 6 Schedule 1 (after table item 24)

Insert:

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New and established specialised market operators sub-sectors **Schedule 4**

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24A New specialised market operators

section 52A

## **7 Schedule 1 (table item 37)**

Repeal the item.

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Schedule 5 Benchmark administrators sub-sector

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## Schedule 5—Benchmark administrators sub-sector

### *ASIC Supervisory Cost Recovery Levy Regulations 2017*

#### 1 After section 62

Insert:

##### 62A Benchmark administrators

- (1) A leviable entity forms part of the *benchmark administrators* sub-sector in a financial year if, at any time in the financial year, the entity holds a benchmark administrator licence to administer a financial benchmark.

*Entity metric*

- (2) The leviable entity's *entity metric* for the sub-sector for the financial year is:
- (a) unless paragraph (b) applies—the number of days in the financial year on which the entity administered the financial benchmark specified in the benchmark administrator licence; or
  - (b) if the entity administered 2 or more financial benchmarks specified in the benchmark administrator licence in the financial year—the sum of the days worked out under paragraph (a) for each of those financial benchmarks.

#### 2 Schedule 1 (after table item 2)

Insert:

2A	Benchmark administrators	section 62A
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## Schedule 6—CSF intermediaries sub-sector

### *ASIC Supervisory Cost Recovery Levy Regulations 2017*

#### **1 After section 67**

Insert:

##### **67A CSF intermediaries**

- (1) A levable entity forms part of the *CSF intermediaries* sub-sector in a financial year if, at any time in the financial year, the entity is a CSF intermediary.

*Levy component*

- (2) The amount of a levable entity's levy component in respect of the sub-sector for the financial year is the sum of:
- (a) the minimum levy component for the sub-sector; and
  - (b) the graduated levy component for the entity for the sub-sector.

Note: For the graduated levy component, see section 10.

*Entity metric*

- (3) The levable entity's *entity metric* for the sub-sector for the financial year is an amount equal to the sum of the maximum subscription amount of each CSF offer first published on the entity's offer platform in the financial year.
- (4) The *minimum levy component* for the sub-sector is \$5,000.

#### **2 Schedule 1 (after table item 6)**

Insert:

6A CSF intermediaries section 67A

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Schedule 7 Over-the-counter traders sub-sector

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## Schedule 7—Over-the-counter traders sub-sector

### *ASIC Supervisory Cost Recovery Levy Regulations 2017*

#### **1 Subparagraph 66(1)(c)(ii)**

Omit “sub-sector; and”, substitute “sub-sector.”.

#### **2 Paragraph 66(1)(d)**

Repeal the paragraph.

#### **3 After subsection 66(1)**

Insert:

- (1A) However, a leviable entity does not form part of the *over-the-counter traders* sub-sector in a financial year if, at all times in the financial year that the entity deals in (or holds out that it deals in) over-the-counter financial products, the entity so deals (or so holds out) only in its capacity as an entity that forms part of one or more of the following sub-sectors:
- (a) the responsible entities sub-sector (see section 35);
  - (b) the superannuation trustees sub-sector (see section 36);
  - (c) the wholesale trustees sub-sector (see section 37).

## **Schedule 8—Review fee for proprietary companies**

### *Corporations (Review Fees) Regulations 2003*

#### **1 Subregulation 4(4)**

After “a review fee”, insert “for a company or registered scheme”.

#### **2 Subregulation 4(6)**

After “a review fee”, insert “for a company or registered scheme”.

#### **3 Subregulation 4(6) (definition of *previous indexable amount*)**

Repeal the definition, substitute:

*previous indexable amount* is the amount of the review fee for the company or registered scheme that was applicable immediately before that 1 July.

#### **4 Subregulation 4(7)**

After “a review fee”, insert “for a company or a registered scheme”.

#### **5 After subregulation 4(7)**

Insert:

(7A) In the financial year starting on 1 July 2018, the review fee for a proprietary company is the amount worked out under subregulation (6) or (7) (as the case requires) increased by \$4.

Note: This increase will be reflected in subsequent financial years, as part of the review fee for the preceding financial year.

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Schedule 9 Prescribed fees for certain notices lodged with ASIC

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## Schedule 9—Prescribed fees for certain notices lodged with ASIC

### *Corporations (Fees) Regulations 2001*

#### **1 Subregulation 3(1) (note)**

Omit “4,”.

#### **2 Regulation 4**

Repeal the regulation.



## **Schedule 10—Large securities exchange participants**

### *ASIC Supervisory Cost Recovery Levy Regulations 2017*

#### **1 Subsection 65(2)**

Repeal the subsection, substitute:

- (2) The amount of a leviable entity's levy component in respect of the sub-sector for the financial year is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) 10% of the graduated levy component for the entity for the sub-sector; and
  - (c) 90% of the graduated levy component for the entity for the sub-sector.

#### **2 Subsection 65(4)**

Omit "paragraph (2)(d)", substitute "paragraph (2)(c)".

#### **3 Subsection 65(5)**

Repeal the subsection.

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Schedule 11 Large and small credit rating agencies

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## Schedule 11—Large and small credit rating agencies

### *ASIC Supervisory Cost Recovery Levy Regulations 2017*

#### 1 Subsection 4(1)

Insert:

*supervisory college* means a college of regulators established for a credit rating agency:

- (a) that has significant cross border operations; and
- (b) that has affiliates or branches in more than one country; and
- (c) whose credit ratings are relied on by investors and other users of credit ratings in more than one country.

#### 2 Section 60

Repeal the section, substitute:

##### 60 Large credit rating agencies

- (1) A leivable entity forms part of the *large credit rating agencies* sub-sector in a financial year if, at any time in the financial year:
  - (a) the entity holds an Australian financial services licence that authorises the holder to provide general advice by issuing a credit rating; and
  - (b) there is a supervisory college for the entity.

*Entity metric*

- (2) The leivable entity's *entity metric* for the sub-sector for the financial year is the number of days in the financial year on which:
  - (a) the entity holds a licence of the kind mentioned in paragraph (1)(a); and
  - (b) there is a supervisory college for the entity.

##### 60A Small credit rating agencies

- (1) A leivable entity forms part of the *small credit rating agencies* sub-sector in a financial year if, at any time in the financial year:
  - (a) the entity holds an Australian financial services licence that authorises the holder to provide general advice by issuing a credit rating; and
  - (b) there is no supervisory college for the entity.

*Entity metric*

- (2) The leivable entity's *entity metric* for the sub-sector for the financial year is the number of days in the financial year on which:
  - (a) the entity holds a licence of the kind mentioned in paragraph (1)(a); and
  - (b) there is no supervisory college for the entity.

#### 3 Schedule 1 (table item 6)

Repeal the item.

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Large and small credit rating agencies **Schedule 11**

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## **4 Schedule 1 (after table item 12)**

Insert:

12A Large credit rating agencies section 60

## **5 Schedule 1 (after table item 36)**

Insert:

36A Small credit rating agencies section 60A

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Schedule 12 Application and transitional provisions

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## Schedule 12—Application and transitional provisions

### *ASIC Supervisory Cost Recovery Levy Regulations 2017*

#### **1 After Part 4**

Insert:

### **Part 5—Application and transitional provisions**

#### **Division 1—Application provisions relating to the ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018**

##### **74 Application of amendments—Schedules 1, 2, 7 and 11 to the ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018**

The amendments to this instrument made by Schedules 1, 2, 7 and 11 to the *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018* apply in relation to the 2017-18 financial year and later financial years.

##### **75 Application of amendments—Schedules 3, 4, 5, 6 and 10 to the ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018**

The amendments to this instrument made by Schedules 3, 4, 5, 6 and 10 to the *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018* apply in relation to the 2018-19 financial year and later financial years.