EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Corporations Act 2001

Corporations Amendment (Stamping Fee Exemption) Regulations 2020

Section 1362 of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Corporations Amendment (Stamping Fee Exemption) Regulations 2020* (the Regulations) is to prohibit the payment or receipt of stamping fees paid in respect of listed investment companies or listed investment trusts. This removes the incentive for financial services licensees or their representatives to mis-sell products to retail clients in order to increase their remuneration, resulting in poor consumer outcomes. It also ensures that licensees using fees for services models are not at a competitive disadvantage vis a vis licensees that receive stamping fees.

Stamping fees are upfront one-off commissions paid to financial service licensees or their representatives for their role in securing investors for a capital raising. Stamping fees create a conflict of interest as licensees or their representatives receive greater remuneration if they recommend that their clients make an investment. This potentially incentivises financial service licensees and representatives to recommend a product without appropriate regard to the features and characteristics of the product or the client's best interests.

The Regulations amend the *Corporations Regulations 2001* to remove the exemption from the prohibition on paying and receiving conflicted remuneration for stamping fees paid in respect of listed investment companies and listed investment trusts. The exemption is retained for real estate investment trusts and infrastructure entities.

The amendments made by the Regulations apply to benefits given on or after 1 July 2020.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

Details of the Regulations are set out in Attachment A.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

ATTACHMENT A

Details of the *Corporations Amendment (Stamping Fee Exemption) Regulations 2020*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Corporations Amendment (Stamping Fee Exemption) Regulations 2020* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the *Corporations Act 2001* (the Act).

Section 4 – Schedule

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

Schedule 1 – Amendments to the *Corporations Regulations 2001*

Item 1

Item 1 amends the scope of the stamping fee exemption so as to exclude listed managed investment schemes and listed companies whose main purpose is investing in passive investment. The exemption has been retained for infrastructure entities and real estate investment trusts.

The consequence of this amendment is that stamping fees paid in respect of listed investment companies and listed managed investment schemes on or after 1 July 2020 are conflicted remuneration and prohibited under Division 4 of Part 7.7A of the Act. Stamping fees paid in respect of infrastructure entities, real estate investment trusts and trading entities remain exempt from the definition of 'conflicted remuneration' and are permitted even if they are paid on or after 1 July 2020.

An entity is 'listed' if it is included in the official list of the Australian Stock Exchange or another financial market that is prescribed in regulation 1.0.02A of the *Corporations Regulations 2001* (refer to section 9 of the Act).

Monetary remuneration paid on Exchange Trade Products, Exchange Traded Funds and managed funds that is not part of an approved capital raising were not covered by the stamping fee exemption prior to the amendments made by these Regulations. The Regulations do not alter that position or include any new forms of remuneration within the scope of the exemption.

Item 2

Item 2 of the Regulations inserts new definitions for ***infrastructure entity***, ***real estate investment trust*** and ***passive investments***.

An 'infrastructure entity' is a company or managed investment scheme whose main purpose is to operate or invest in:

- Airports;
- electricity generation, transmission or distribution facilities;
- gas transmission or distribution facilities;
- hospitals;
- ports;
- railways;
- roads;
- sewerage facilities;
- telecommunication facilities; or
- water supply facilities.

A 'real estate investment trust' is a managed investment scheme whose main purpose is to invest in real property.

The definitions of an 'infrastructure entity' and a 'real estate investment trust' focus on the main purpose of the entity, rather than its day-to-day activities. This is consistent with the approach taken in other similar definitions in the ASX Listing Rules (such as the definition of 'property trust'). The purpose of an entity may be documented in its constitution, its prospectus (for a company) or its Product Disclosure Statement (for a managed investment scheme).

'Passive investments' are those investments listed in the definition of 'listed investment company' in section 115-290 of the *Income Tax Assessment Act 1997* (tax relief for shareholders in listed investment companies). That section includes the following investments:

- Shares, units, options and rights (including investments in other listed investment companies)
- Financial instruments (such as loans, debts, debentures, promissory notes)
- An asset that is mainly used by the company to derive interest, an annuity, rent, royalties or foreign exchange gains (subject to some exceptions)

- Goodwill

Trading companies do not invest in passive investments and may therefore continue to rely on the stamping fees exemption.