

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Measures
for Future Bills) Bill 2023: Licensing
exemptions for foreign financial services
providers**

| Commencement information | | |
|--------------------------|---------------|--------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. | | |
| 2. Schedule # | 1 April 2024. | 1 April 2024 |
| 3. | | |

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Schedule #—Licensing exemptions for foreign financial services providers

Corporations Act 2001

1 Section 9

Insert:

comparable regulator, for a financial service, has the meaning given by subparagraph 911A(2)(ep)(iv).

2 Before section 911A

Insert:

Subdivision A—General

3 After paragraph 911A(2)(en)

Insert:

(eo) all of the following apply:

- (i) the financial service is provided only to professional investors;
- (ii) the financial service does not involve a dealing to which section 911F (about dealings in certain products tradeable on certain markets) applies;
- (iii) the person provides the financial service from a place outside this jurisdiction, unless subsection 911E(1) (about marketing visits) applies to the financial service;
- (iv) the person's head office and principal place of business are located at one or more places outside this jurisdiction;
- (v) the person reasonably believes that providing the same or substantially the same financial service would not contravene any law applying in any of the places referred to in subparagraph (iii) or (iv);

Note: There may be exceptions that make this exemption unavailable, and this exemption is subject to conditions (see Subdivision B).

(ep) all of the following apply:

- (i) the financial service is provided only to wholesale clients;

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- 1 (ii) the person is a foreign company or is a partnership
2 formed outside this jurisdiction;
- 3 (iii) the person has and maintains any authorisations,
4 registrations or licences (however described) necessary
5 to legally provide the same or substantially the same
6 financial service in a place outside this jurisdiction (the
7 *comparable jurisdiction*);
- 8 (iv) the regulator administering those authorisations,
9 registrations or licences for the comparable jurisdiction
10 is a regulator determined under subsection 911X(1) (the
11 financial service's *comparable regulator*);
- 12 (v) the person provides the financial service from this
13 jurisdiction or from the comparable jurisdiction;

14 Note: This exemption is subject to conditions (see Subdivision B).

15 (eq) all of the following apply:

- 16 (i) the financial service involves making a market for
17 derivatives that are able to be traded on a licensed
18 market prescribed by the regulations for the purposes of
19 this subparagraph;
- 20 (ii) the person provides the financial service from a place
21 outside this jurisdiction;
- 22 (iii) the person's head office and principal place of business
23 are located at one or more places outside this
24 jurisdiction;
- 25 (iv) the person reasonably believes that providing the same
26 or substantially the same financial service would not
27 contravene any law applying in any of the places
28 referred to in subparagraph (ii) or (iii);

29 Note: This exemption is subject to conditions (see Subdivision B).

30 **4 At the end of Division 2 of Part 7.6**

31 Add:

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1 **Subdivision B—Extensions, exceptions and conditions for**
2 **certain licensing exemptions for foreign financial**
3 **services providers**

4 **911E Exemption for financial services provided to professional**
5 **investors—extends to financial services provided in**
6 **Australia during limited marketing visits**

- 7 (1) For the purposes of subparagraph 911A(2)(eo)(iii), this subsection
8 applies to a financial service provided by a person:
9 (a) from this jurisdiction; and
10 (b) on a day during a financial year;
11 if the financial service is provided during one or more marketing
12 visits to this jurisdiction by one or more representatives of the
13 person.
- 14 (2) However, subsection (1) does not apply to the financial service for
15 that day if, at the start of that day, the total length of the person's
16 marketing visits to this jurisdiction during the financial year is
17 already 28 days or more.
- 18 (3) For the purposes of subsection (2), work out the total length of
19 those marketing visits as follows:
20 (a) count each marketing visit to this jurisdiction:
21 (i) by any representative of the person; and
22 (ii) that includes time spent with any client (or prospective
23 client) of the person in relation to any financial service;
24 (b) count each day of the visit, whether or not time is spent with
25 a client (or prospective client) on all of the days;
26 (c) count as a whole day any part of a day at the start or end of
27 the visit;
28 (d) count as a single day any day on which 2 or more of the
29 person's representatives are making such visits.

30 **911F Exemption for financial services provided to professional**
31 **investors—not available for dealings in certain financial**
32 **products tradeable on certain licensed markets**

33 For the purposes of subparagraph 911A(2)(eo)(ii), this section
34 applies to a dealing in a financial product if:

- 35 (a) the financial product:

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- 1 (i) is of a kind prescribed by the regulations for the
2 purposes of this subparagraph; and
3 (ii) is able to be traded on a licensed market prescribed by
4 the regulations for the purposes of this subparagraph;
5 and
6 (b) the dealing involves one or more trades in relation to that
7 financial product on that licensed market.

8 Note: This section applies whether or not the financial product is also able to
9 be traded on another financial market.

10 **911G Exemption for financial services provided to professional** 11 **investors—regulations may provide exceptions**

12 Despite paragraph 911A(2)(eo), the regulations may provide that
13 the exemption under that paragraph does not apply for:

- 14 (a) a particular kind of financial service; or
15 (b) a particular kind of financial service in relation to a particular
16 kind of financial product; or
17 (c) a particular kind of financial product; or
18 (d) a particular kind of professional investor.

19 **911H Certain licensing exemptions for foreign financial services** 20 **providers are subject to conditions**

21 *Conditions for the exemption for financial services provided to*
22 *professional investors*

- 23 (1) The exemption under paragraph 911A(2)(eo) applies to a person
24 for a financial service subject to conditions. These conditions for
25 the exemption are:
26 (a) the conditions in sections 911J, 911K, 911L, 911M and
27 911N; and
28 (b) any additional conditions imposed under section 911V for the
29 exemption's future application to the person.

30 Note: ASIC may cancel the exemption from applying to the person if:
31 (a) the person contravenes any of these conditions, other than the
32 condition in section 911N; or
33 (b) ASIC reasonably believes that the person has contravened the
34 condition in section 911N (about providing financial services
35 efficiently, honestly and fairly); or
36 (c) ASIC reasonably believes that the person (or a related person) is
37 not a fit and proper person;
38 (see sections 911S and 911T).

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Conditions for the exemption for comparably regulated providers

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- 2 (2) The exemption under paragraph 911A(2)(ep) applies to a person
3 for a financial service subject to conditions. These conditions for
4 the exemption are:
- 5 (a) the conditions in sections 911J, 911K, 911L, 911M, 911N,
6 911P and 911Q; and
- 7 (b) any additional conditions imposed under section 911V for the
8 exemption's future application to the person.

9 Note: ASIC may cancel the exemption from applying to the person if:

- 10 (a) the person contravenes any of these conditions, other than the
11 condition in section 911N; or
- 12 (b) ASIC reasonably believes that the person has contravened the
13 condition in section 911N (about providing financial services
14 efficiently, honestly and fairly); or
- 15 (c) ASIC reasonably believes that the person (or a related person) is
16 not a fit and proper person;
17 (see sections 911S and 911T).

Conditions for the exemption for making a market for derivatives able to be traded on certain licensed markets

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- 20 (3) The exemption under paragraph 911A(2)(eq) applies to a person
21 for a financial service subject to conditions. These conditions for
22 the exemption are:
- 23 (a) the conditions in sections 911J, 911K, 911M and 911N; and
24 (b) any additional conditions imposed under section 911V for the
25 exemption's future application to the person.

26 Note: ASIC may cancel the exemption from applying to the person if:

- 27 (a) the person contravenes any of these conditions, other than the
28 condition in section 911N; or
- 29 (b) ASIC reasonably believes that the person has contravened the
30 condition in section 911N (about providing financial services
31 efficiently, honestly and fairly); or
- 32 (c) ASIC reasonably believes that the person (or a related person) is
33 not a fit and proper person;
34 (see sections 911S and 911T).

Contravening a condition may result in a civil penalty

- 35
- 36 (4) A person contravenes this subsection if:
- 37 (a) apart from the exemption under paragraph 911A(2)(eo), (ep)
38 or (eq), the person would contravene subsection 911A(5B) in
39 relation to providing a financial service; and
- 40 (b) the person contravenes a condition for the exemption.

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- 1 Note 1: This subsection is a civil penalty provision (see section 1317E).
2 Note 2: The conditions set out in this Subdivision apply to one or more of the
3 exemptions referred to in subsections (1), (2) and (3).
4 Note 3: A condition set out in this Subdivision can require something to be
5 done outside of Australia (see subsection 5(4)).

6 **911J Certain licensing exemptions for foreign financial services** 7 **providers—conditions about notifying or assisting ASIC**

- 8 (1) For the purposes of section 911H, this section sets out conditions
9 for a person that proposes to rely on the exemption under
10 paragraph 911A(2)(eo), (ep) or (eq) for providing one or more
11 kinds of financial service (the *notifiable kinds of service*).

12 *Notifying ASIC of intention to rely on the exemption*

- 13 (2) The person must notify ASIC that the person intends to rely on the
14 exemption for providing the notifiable kinds of service:
15 (a) during the period (the *notification period*):
16 (i) starting on the 15th business day before the first day on
17 which the person intends to start providing any of the
18 notifiable kinds of service in reliance on the exemption;
19 and
20 (ii) ending on the 15th business day after the first day on
21 which the person starts providing any of the notifiable
22 kinds of service in reliance on the exemption; and
23 (b) by giving ASIC the notice in a written form that:
24 (i) is approved by ASIC; and
25 (ii) includes the person's contact details; and
26 (iii) describes each of the notifiable kinds of service; and
27 (iv) includes the information, statements, explanations or
28 other matters required by the approved form; and
29 (v) is accompanied by any other material required by the
30 approved form; and
31 (vi) is given in a manner required by the approved form
32 (including in electronic form).

- 33 Note: A single notice can cover one or more of the notifiable kinds of
34 service.

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Giving ASIC such assistance as ASIC reasonably requests

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2 (3) The person must give such assistance to ASIC, or a person
3 authorised by ASIC, as ASIC or the authorised person reasonably
4 requests in relation to the performance of ASIC's functions or the
5 exercise of ASIC's powers.

6 (4) Such assistance may include showing ASIC the person's books,
7 giving ASIC a copy of the person's books or giving ASIC other
8 information.

9 *Submitting to the non-exclusive jurisdiction of Australian courts*

10 (5) The person must notify ASIC that the person agrees:

11 (a) that legal proceedings relating to providing any of the
12 notifiable kinds of service in reliance on the exemption may
13 be brought in a Court; and

14 (b) if such proceedings are brought in a Court—that the law
15 relating to providing such a service is the law in force in this
16 jurisdiction; and

17 (c) subject to subsection (7), to comply with any order of a Court
18 from such proceedings.

19 (6) The person must give the notice under subsection (5) to ASIC:

20 (a) during the notification period (see paragraph (2)(a)) for the
21 notifiable kinds of service; and

22 (b) in a written form that:

23 (i) is approved by ASIC; and

24 (ii) includes the information, statements, explanations or
25 other matters required by the approved form; and

26 (iii) is accompanied by any other material required by the
27 approved form; and

28 (iv) is given in a manner required by the approved form
29 (including in electronic form).

30 Note: A single notice can cover one or more of the notifiable kinds of
31 service.

32 (7) Paragraph (5)(c) does not require compliance with an order to the
33 extent that the order conflicts with an order made by a court in:

34 (a) for the exemption under paragraph 911A(2)(eo)—any of the
35 places referred to in subparagraph 911A(2)(eo)(iii) or (iv) for
36 such a service; or

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- 1 (b) for the exemption under paragraph 911A(2)(ep)—a
2 comparable jurisdiction referred to in
3 subparagraph 911A(2)(ep)(iii) for such a service; or
4 (c) for the exemption under paragraph 911A(2)(eq)—any of the
5 places referred to in subparagraph 911A(2)(eq)(ii) or (iii) for
6 such a service.

7 **911K Certain licensing exemptions for foreign financial services**
8 **providers—condition to comply with ASIC directions**

- 9 (1) For the purposes of section 911H, this section sets out a condition
10 for a person that proposes to rely on the exemption under
11 paragraph 911A(2)(eo), (ep) or (eq) for providing one or more
12 kinds of financial service.
- 13 (2) ASIC may, by giving written notice to the person, direct the person
14 to give ASIC a statement containing specified information about
15 one or more of the following:
16 (a) one or more of those financial services;
17 (b) one or more of those kinds of financial service;
18 (c) the person's related financial services business.
- 19 (3) Directions given under subsection (2) to the person:
20 (a) may be given at any time; and
21 (b) may require a statement containing information to be given
22 to ASIC on a periodic basis, or each time a particular event
23 or circumstance occurs, without ASIC having to give a
24 further direction; and
25 (c) may require each statement to be given to ASIC in a written
26 form that:
27 (i) is approved by ASIC; and
28 (ii) includes the information, statements, explanations or
29 other matters required by the approved form; and
30 (iii) is accompanied by any other material required by the
31 approved form; and
32 (iv) is given in a manner required by the approved form
33 (including in electronic form).
- 34 (4) The person must comply with a direction given under
35 subsection (2):
36 (a) within the time specified in the direction if that is a
37 reasonable time; or

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1 (b) in any other case—within a reasonable time.
2 ASIC may extend the time within which the person must comply
3 with the direction by giving written notice to the person.

4 **911L Certain licensing exemptions for foreign financial services**
5 **providers—condition about giving notice of the**
6 **exemption to each recipient of a kind of financial service**

- 7 (1) For the purposes of section 911H, this section sets out a condition
8 for a person that proposes to rely on the exemption under
9 paragraph 911A(2)(eo) or (ep) for providing one or more kinds of
10 financial service.
- 11 (2) The person must provide written notice to each recipient of each of
12 those kinds of financial service either:
13 (a) before the person starts providing that kind of financial
14 service to the recipient in reliance on the exemption; or
15 (b) if that is not practicable—as soon as practicable after starting
16 to do so.
- 17 (3) The notice must include:
18 (a) a statement to the effect that the person is exempt from the
19 requirement to hold an Australian financial services licence
20 covering the provision of that kind of financial service; and
21 (b) a statement explaining either that:
22 (i) the exemption is under paragraph 911A(2)(eo) of this
23 Act, which is an exemption for a financial service
24 provided only to professional investors; or
25 (ii) the exemption is under paragraph 911A(2)(ep) of this
26 Act, which is an exemption for a financial service
27 provided only to wholesale clients.
- 28 Note 1: The notice only needs to be given once to each recipient for each
29 exemption for that kind of financial service.
- 30 Note 2: A single notice can cover one or more of those kinds of financial
31 service.
- 32 Note 3: For subsection (2), the recipient will be:
33 (a) for the exemption under paragraph 911A(2)(eo)—a professional
34 investor; or
35 (b) for the exemption under paragraph 911A(2)(ep)—a wholesale
36 client.

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1 **911M Certain licensing exemptions for foreign financial services**
2 **providers—condition to notify ASIC of changes to contact**
3 **details**

- 4 (1) For the purposes of section 911H, this section sets out a condition
5 for a person that proposes to rely on the exemption under
6 paragraph 911A(2)(eo), (ep) or (eq) for providing one or more
7 kinds of financial service.
- 8 (2) The person must notify ASIC of any change to the person's contact
9 details:
- 10 (a) as soon as practicable after the change happens; and
11 (b) by giving the notice to ASIC in a written form that:
- 12 (i) is approved by ASIC; and
13 (ii) includes the information, statements, explanations or
14 other matters required by the approved form; and
15 (iii) is accompanied by any other material required by the
16 approved form; and
17 (iv) is given in a manner required by the approved form
18 (including in electronic form).

19 **911N Certain licensing exemptions for foreign financial services**
20 **providers—condition to ensure that financial services are**
21 **provided efficiently, honestly and fairly**

- 22 (1) For the purposes of section 911H, this section sets out a condition
23 for a person that proposes to rely on the exemption under
24 paragraph 911A(2)(eo), (ep) or (eq) for providing one or more
25 kinds of financial service.
- 26 (2) The person must do all things necessary to ensure that the financial
27 services are provided efficiently, honestly and fairly.
- 28 (3) Subsection (2) does not apply to the extent that:
- 29 (a) the financial services involve:
- 30 (i) providing financial product advice; or
31 (ii) dealing in a financial product; or
32 (iii) making a market for a financial product;
33 where the financial product is able to be traded on a financial
34 market not operated under a licence under
35 subsection 795B(1) (about Australian market licences); or
36 (b) the financial services involve:

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- 1 (i) providing financial product advice; or
2 (ii) dealing in a financial product; or
3 (iii) making a market for a financial product;
4 where the financial product is a derivative having a
5 consideration or value that is ultimately determined, derived
6 from or varied by reference to the value or amount of
7 something else that is located outside this jurisdiction; or
8 (c) the financial services are custodial or depository services
9 involving holding financial products, or beneficial interests in
10 financial products, if:
11 (i) the financial products were issued outside this
12 jurisdiction; and
13 (ii) the financial products, or the beneficial interests, are
14 being held outside this jurisdiction; or
15 (d) circumstances exist that are of a kind prescribed by the
16 regulations for the purposes of this paragraph.

17 Note: For paragraph (b), the thing located outside this jurisdiction could be,
18 for example, an asset, a rate, an index or a commodity (see
19 paragraph 761D(1)(c)).

20 **911P Exemption for comparably regulated providers—information** 21 **about the person and investigations etc.**

- 22 (1) For the purposes of subsection 911H(2), this section sets out
23 conditions for a person that proposes to rely on the exemption
24 under paragraph 911A(2)(ep) for providing one or more kinds of
25 financial service.

26 *Consent to information sharing between ASIC and any comparable* 27 *regulator*

- 28 (2) During the notification period (see paragraph 911J(2)(a)) for each
29 of those kinds of financial service, the person must notify ASIC
30 that the person consents to:
31 (a) ASIC; and
32 (b) the comparable regulator for each financial service of that
33 kind;
34 sharing information about the person.
- 35 (3) The person must give this notice to ASIC in a written form that:
36 (a) is approved by ASIC; and

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- 1 (b) includes the information, statements, explanations or other
2 matters required by the approved form; and
3 (c) is accompanied by any other material required by the
4 approved form; and
5 (d) is given in a manner required by the approved form
6 (including in electronic form).

7 Note: A single notice can cover one or more of those kinds of financial
8 service.

9 *Notifying ASIC of investigations etc. in other jurisdictions*

- 10 (4) The person must notify ASIC of any significant enforcement action
11 taken, any significant disciplinary action taken or any significant
12 investigation undertaken against the person by:
13 (a) any regulator in any place outside this jurisdiction; or
14 (b) any government authority in any place outside this
15 jurisdiction; or
16 (c) any operator of a financial market, in any place outside this
17 jurisdiction, in which the person is a participant.
- 18 (5) The person must give this notice to ASIC:
19 (a) as soon as practicable, and before the 15th business day, after
20 the day on which the person becomes aware, or would
21 reasonably be expected to have become aware, of the action
22 or investigation; and
23 (b) by giving the notice to ASIC in a written form that:
24 (i) is approved by ASIC; and
25 (ii) includes the information, statements, explanations or
26 other matters required by the approved form; and
27 (iii) is accompanied by any other material required by the
28 approved form; and
29 (iv) is given in a manner required by the approved form
30 (including in electronic form).
- 31 (6) Subsection (4) does not apply to the extent that complying with
32 subsection (4) would be contrary to another law in force in this
33 jurisdiction or elsewhere.

34 **911Q Exemption for comparably regulated providers—agents and**
35 **representatives**

- 36 (1) For the purposes of subsection 911H(2), this section sets out
37 conditions for a person that proposes to rely on the exemption
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1 under paragraph 911A(2)(ep) for providing one or more kinds of
2 financial service.

3 *Having an agent when providing each of those financial services*

4 (2) The person must have an agent in this jurisdiction when providing
5 each of those financial services in reliance on the exemption unless
6 the consecutive period during which the person so provides the
7 financial service without an agent is less than 10 business days.

8 (3) The person must ensure that:

9 (a) if the person is a foreign company—the person’s agent is
10 appointed under Division 2 of Part 5B.2 as the person’s local
11 agent; or

12 (b) if the person is not a foreign company but is a partnership
13 formed outside this jurisdiction—the person complies with
14 any obligations under paragraph 912A(1)(j) relating to the
15 person’s agent that the person would have to comply with if
16 the person were a financial services licensee.

17 Note: For paragraph (a), a foreign company that appoints a local agent must
18 give ASIC a statement under subsection 601CG(4).

19 *Adequate oversight over representatives etc.*

20 (4) The person must:

21 (a) maintain adequate oversight over its representatives who
22 provide each of those financial services in reliance on the
23 exemption; and

24 (b) ensure that its representatives who provide each of those
25 kinds of financial service in reliance on the exemption are
26 adequately trained, and are competent, to provide that kind of
27 financial service.

28 **911R Any of the exemptions—person must notify ASIC of any** 29 **contravention of a condition for the exemption**

30 If a person contravenes a condition for an exemption under
31 paragraph 911A(2)(eo), (ep) or (eq) that applies to the person, the
32 person must provide ASIC with full particulars of the
33 contravention:

34 (a) as soon as practicable, and before the 15th business day, after
35 the day on which the person becomes aware, or would
36 reasonably be expected to have become aware, of the
37 contravention; and

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- 1 (b) by giving the particulars to ASIC in a written form that:
2 (i) is approved by ASIC; and
3 (ii) includes the information, statements, explanations or
4 other matters required by the approved form; and
5 (iii) is accompanied by any other material required by the
6 approved form; and
7 (iv) is given in a manner required by the approved form
8 (including in electronic form).

9 Note 1: A failure to provide ASIC with particulars of the contravention may
10 result in ASIC imposing additional conditions for the exemption (see
11 section 911V).

12 Note 2: For the conditions for an exemption, see subsection 911H(1), (2) or
13 (3).

14 **911S Cancelling any of the exemptions—person contravenes a** 15 **condition for the exemption**

- 16 (1) ASIC may, in writing, decide to cancel an exemption under
17 paragraph 911A(2)(eo), (ep) or (eq) from:
18 (a) applying to a person for providing one or more specified
19 kinds of financial service; or
20 (b) applying to a person for providing any kind of financial
21 service;

22 if the person contravenes a condition for the exemption (see
23 subsection 911H(1), (2) or (3)), other than the condition in section
24 911N.

25 Note 1: Paragraphs (a) and (b) mean the cancellation may be partial or
26 complete.

27 Note 2: For an alternative to partially or completely cancelling the exemption,
28 see section 911V.

- 29 (2) ASIC may, in writing, decide to cancel an exemption under
30 paragraph 911A(2)(eo), (ep) or (eq) from:
31 (a) applying to a person for providing one or more specified
32 kinds of financial service; or
33 (b) applying to a person for providing any kind of financial
34 service;

35 if ASIC reasonably believes that the person has contravened the
36 condition in section 911N (about providing financial services
37 efficiently, honestly and fairly) for the exemption.

38 Note 1: Paragraphs (a) and (b) mean the cancellation may be partial or
39 complete.

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1 Note 2: For an alternative to partially or completely cancelling the exemption,
2 see section 911V.

3 **911T Cancelling any of the exemptions—person fails the fit and** 4 **proper person test**

5 (1) ASIC may, in writing, decide to cancel an exemption under
6 paragraph 911A(2)(eo), (ep) or (eq) from applying to a person for
7 providing any kind of financial service if ASIC reasonably believes
8 that:

9 (a) the person (the *first person*) is not a fit and proper person to
10 provide a financial service; or

11 (b) a person mentioned in a paragraph of subsection 913BA(1) in
12 relation to the first person is not a fit and proper person for a
13 purpose mentioned in that paragraph (assuming any reference
14 in that paragraph to a licence were a reference to the
15 exemption).

16 Note: A cancellation under this subsection is a complete cancellation.

17 (2) In considering whether a person referred to in paragraph (1)(a) or
18 (b) is fit and proper for a purpose referred to in that paragraph,
19 ASIC must have regard to the matters in section 913BB.

20 **911U Procedures for cancelling any of the exemptions**

21 *ASIC must first give a show cause notice*

22 (1) ASIC may only decide under section 911S or 911T to cancel an
23 exemption from applying to a person after:

24 (a) taking reasonable steps to give the person written notice of:

25 (i) the proposed cancellation and the reasons for it; and

26 (ii) the opportunity to appear (or be represented) at a
27 hearing before ASIC that takes place in private, and to
28 make submissions to ASIC in relation to the matter; and

29 (b) taking into account any information given to ASIC at such a
30 hearing or in such submissions.

31 Note: For decisions under section 911S, this subsection applies whether the
32 cancellation is partial as described in paragraph 911S(1)(a) or
33 911S(2)(a) or is complete as described in paragraph 911S(1)(b) or
34 911S(2)(b).

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Notice of cancellation

- 1
- 2 (2) If ASIC decides under section 911S or 911T to cancel an
3 exemption from applying to a person, ASIC must take reasonable
4 steps to give the person written notice of:
5 (a) the cancellation and the reasons for it; and
6 (b) the day the cancellation is to take effect (which must not be
7 before the day the notice is given to the person).

8 Note: The notice could also include notice of the person's right to seek
9 review of the decision (see subsection 1317D(2)).

911V Imposing additional conditions as an alternative to cancelling an exemption

- 10 (1) ASIC may, in writing, decide to impose one or more additional
11 conditions for the future application of an exemption under
12 paragraph 911A(2)(eo), (ep) or (eq) to a person for providing one
13 or more specified kinds, or any kind, of financial service if:
14 (a) the person contravenes a condition for the exemption (see
15 subsection 911H(1), (2) or (3)); or
16 (b) the person fails to comply with section 911R in relation to a
17 contravention of a condition for the exemption.

18 Note 1: If the person contravenes any of these additional conditions, ASIC
19 may:
20 (a) cancel the exemption partially or completely (see section 911S);
21 or
22 (b) vary the additional condition, or impose another additional
23 condition, under this section.

24 Note 2: The contravention may also result in a civil penalty (see
25 subsection 911H(4)).

- 26 (2) ASIC may, in writing, vary or revoke a condition imposed under
27 subsection (1):
28 (a) on the person's request under subsection (3); or
29 (b) on ASIC's own initiative.
- 30 (3) The person may request a condition imposed under subsection (1)
31 to be varied or revoked by giving the request to ASIC in a written
32 form that:
33 (a) is approved by ASIC; and
34 (b) includes the information, statements, explanations or other
35 matters required by the approved form; and
36
37

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1 (c) is accompanied by any other material required by the
2 approved form; and

3 (d) is given in a manner required by the approved form
4 (including in electronic form).

5 **911W Procedures for additional conditions**

6 (1) This section applies if ASIC is proposing to make any of the
7 following decisions (the *proposed decision*) under section 911V in
8 relation to a person:

9 (a) imposing an additional condition;

10 (b) varying an additional condition on ASIC's own initiative;

11 (c) refusing to comply with a request made by the person under
12 subsection 911V(3).

13 *ASIC must first give a show cause notice*

14 (2) ASIC may only make the proposed decision after:

15 (a) taking reasonable steps to give the person written notice of:

16 (i) the proposed decision and the reasons for it; and

17 (ii) the opportunity to appear (or be represented) at a
18 hearing before ASIC that takes place in private, and to
19 make submissions to ASIC in relation to the matter; and

20 (b) taking into account any information given to ASIC at such a
21 hearing or in such submissions.

22 *Notice of making the proposed decision*

23 (3) If ASIC makes the proposed decision, ASIC must take reasonable
24 steps to give the person written notice of:

25 (a) the decision and the reasons for it; and

26 (b) the day the decision is to take effect (which must not be
27 before the day the notice is given to the person).

28 Note: The notice could also include notice of the person's right to seek
29 review of the decision (see subsection 1317D(2)).

30 **911X List of comparable regulators**

31 (1) The Minister may, by legislative instrument, determine regulators
32 that administer broadly comparable regulatory regimes of
33 authorisations, registrations or licences (however described)
34 necessary to legally provide financial services in places outside this
35 jurisdiction.

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- 1 Note: Regulators determined under this subsection are relevant for:
2 (a) the licensing exemption under paragraph 911A(2)(ep); and
3 (b) the exemptions under subsections 913B(2A) and 914B(2A) from
4 the fit and proper person test.

5 *Matters to have regard to when making determinations*

- 6 (2) In deciding whether to determine a regulator under subsection (1),
7 the Minister must have regard to:
- 8 (a) whether the regulatory regime that the regulator administers
9 produces broadly comparable outcomes to this jurisdiction in
10 regulating and improving the performance of:
 - 11 (i) the relevant financial services system; and
 - 12 (ii) the financial services providers in that system; and
 - 13 (b) whether that regulatory regime is clear, transparent, certain
14 and adequately enforced; and
 - 15 (c) whether that regulatory regime is broadly consistent with the
16 Objectives and Principles of Securities Regulation,
17 developed by the International Organization of Securities
18 Commissions (*IOSCO*) and as in force from time to time;
19 and
 - 20 (d) whether the regulator:
 - 21 (i) is a signatory to the Multilateral Memorandum of
22 Understanding Concerning Consultation and
23 Cooperation and the Exchange of Information,
24 developed by the IOSCO and as in force from time to
25 time; or
 - 26 (ii) is a party to any other effective cooperation arrangement
27 with ASIC; and
 - 28 (e) any relevant submission received:
 - 29 (i) from the regulator; or
 - 30 (ii) from any entity in relation to the regulator or that
31 regulatory regime; and
 - 32 (f) any relevant advice (including any assessment) received from
33 ASIC in relation to the regulator or that regulatory regime;
34 and
 - 35 (g) any other matters prescribed by the regulations for the
36 purposes of this paragraph.

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

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1 Note: The Regulation mentioned in paragraph (c), and the Memorandum
2 mentioned in subparagraph (d)(i), could in 2023 be viewed on
3 IOSCO's website (see <https://www.iosco.org>).

4 (3) To assist the Minister to decide whether to determine a regulator
5 under subsection (1), ASIC may:

6 (a) give advice to the Minister; and

7 (b) if the Minister requests, include with the advice an
8 assessment of one or more of the matters in subsection (2) in
9 relation to the regulator or the regulatory regime that the
10 regulator administers.

11 5 At the end of subsection 913B(1)

12 Add:

13 Note 3: There is an exemption from paragraph (c) for certain foreign
14 companies or partnerships (see subsection (2A)).

15 6 After subsection 913B(2)

16 Insert:

17 *Fit and proper person test does not apply to certain foreign*
18 *companies or partnerships*

19 (2A) Paragraph (1)(c) does not apply to an applicant for an Australian
20 financial services licence if:

21 (a) the applicant is a foreign company or is a partnership formed
22 outside this jurisdiction; and

23 (b) the licence, if granted, would be restricted to the provision of
24 financial services to wholesale clients; and

25 (c) the applicant holds any authorisations, registrations or
26 licences (however described) that:

27 (i) are necessary to legally provide the same or
28 substantially the same financial services in a place
29 outside this jurisdiction; and

30 (ii) are issued (however described) by a regulator
31 determined under subsection 911X(1).

32 7 Before subsection 914B(2)

33 Insert:

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1 *Refusing to grant the application if the fit and proper person test is*
2 *not satisfied*

3 **8 After subsection 914B(2)**

4 Insert:

5 (2A) However, subsection (2) does not apply if:

6 (a) the applicant is a foreign company or is a partnership formed
7 outside this jurisdiction; and

8 (b) the licence, if the application is granted, would be restricted
9 to the provision of financial services to wholesale clients; and

10 (c) the applicant holds any authorisations, registrations or
11 licences (however described) that:

12 (i) are necessary to legally provide the same or
13 substantially the same financial services in a place
14 outside this jurisdiction; and

15 (ii) are issued (however described) by a regulator
16 determined under subsection 911X(1).

17 **9 In the appropriate position in subsection 1317E(3)**

18 Insert:

subsection 911H(4) contravening a condition of a uncategoryed
licensing exemption for foreign
financial services providers

19 **10 In the appropriate position in Chapter 10**

20 Insert:

21 **Part 10.65—Transitional provisions relating to the** 22 **[Treasury Laws Amendment (Measures for** 23 **Future Bills) Act 2023]** 24

25 **1695 Application of amendments—exemptions from the** 26 **requirement to hold an Australian financial services** 27 **licence**

28 Paragraphs 911A(2)(eo), (ep) and (eq), as inserted by [Schedule #
29 to the *Treasury Laws Amendment (Measures for Future Bills) Act*
30 2023], apply in relation to financial services provided on or after
31 the commencement of that Schedule.

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1695A Application of amendments—exemption from the fit and proper person test

- (1) Subsection 913B(2A), as inserted by [Schedule # to the *Treasury Laws Amendment (Measures for Future Bills) Act 2023*], applies in relation to applications for Australian financial services licences made on or after the commencement of that Schedule.
- (2) Subsection 914B(2A), as inserted by [Schedule # to the *Treasury Laws Amendment (Measures for Future Bills) Act 2023*], applies in relation to applications:
- (a) for ASIC to take certain action in relation to Australian financial services licences; and
 - (b) that are made on or after the commencement of that Schedule;
- whether the licences were granted before, on or after that commencement.

1695B Transitional—first list of comparable regulators

Subsection 911X(2) does not apply in relation to the determination of a regulator in the first legislative instrument made under subsection 911X(1) after the commencement of [Schedule # to the *Treasury Laws Amendment (Measures for Future Bills) Act 2023*] if the Minister is satisfied that:

- (a) the regulator can be identified from a legislative instrument made by ASIC and in force immediately before the commencement of that Schedule; and
- (b) the regulator is responsible for regulating the provision of financial services by providers in a place outside this jurisdiction; and
- (c) the legislative instrument exempted those providers from certain provisions of Part 7.6 (about licensing of providers of financial services) in relation to the provision of financial services.