

EXPOSURE DRAFT



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Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017

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 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Scott Morrison [**DRAFT ONLY—NOT FOR SIGNATURE**]
Treasurer

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Part 1—Preliminary

1 Name

This instrument is the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017*.

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. The whole of this instrument	The day after the end of the period of 3 months beginning on the day 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Note: This table relates only to the provisions of this instrument as originally made.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 *Corporations Act 2001*.

4 Simplified outline of this instrument

An eligible person may use an exemption from the licensing requirements in Part 7.6 of the Act to test eligible financial services. To get the exemption, the person needs to give ASIC a notice and satisfy certain requirements (see Part 4).

The exemption can become available at different times for different eligible financial services. However, the exemption cannot become available a second time to test the same type of financial service for the same kind of financial product.

Each exemption lasts up to 24 months.

Each exemption is subject to conditions that limit:

- (a) the types of financial services that can be provided to wholesale clients; and

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Part 1 Preliminary

Section 5

- (b) the types of financial services that can be provided to retail clients; and
- (c) the exposure of the person's clients to the financial services, including the total investment activity under the exemptions and any exemptions under the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017*.

Each exemption will cease automatically if the person fails to meet these limits (see Division 1 of Part 3), or if the person ceases to be an eligible person.

Each exemption is also subject to other conditions (see Part 5). Failing to meet these conditions may result in ASIC cancelling the exemption or applying to the Court for an order that the person comply with the conditions.

Only one member of a group of related bodies corporate can use an exemption at any one time.

5 Definitions

In this instrument:

ADI has the same meaning as in the *Banking Act 1959*.

banking business has the same meaning as in the *Banking Act 1959*.

controlling entity, of an eligible person, means an entity who (whether alone or together with one or more associates of the entity) controls the eligible person.

eligible financial service means:

- (a) providing financial product advice in relation to a particular kind of financial product; or
- (b) applying for or acquiring a particular kind of financial product; or
- (c) issuing, varying or disposing of a non-cash payment facility; or
- (d) arranging for the issuing, varying or disposing of a particular kind of financial product; or
- (e) providing a crowd-funding service.

eligible general insurance product means a general insurance product covered by paragraph 10(2)(c).

eligible life risk insurance product means a life risk insurance product covered by paragraph 10(2)(d).

eligible person, for an eligible financial service, means a person who:

- (a) is none of the following:
 - (i) a person authorised by an Australian financial services licence to provide the eligible financial service;
 - (ii) an authorised representative of a financial services licensee for the provision of the eligible financial service;

- (iii) a related body corporate of a body corporate referred to in subparagraph (i) or (ii);
 - (iv) an operator of a financial market or an operator of a clearing and settlement facility;
 - (v) a natural person who is neither an Australian citizen, nor a permanent resident, within the meaning of the *Australian Citizenship Act 2007*; and
- (b) if the person is a foreign company—is registered under Division 2 of Part 5B.2 of the Act.

eligible superannuation product means a superannuation product covered by paragraph 10(2)(e).

non-cash payment facility means a facility through which, or through the acquisition of which, a person makes non-cash payments.

product-type service means a financial service covered by one of the following paragraphs:

- (a) providing financial product advice in relation to a particular kind of financial product;
- (b) applying for or acquiring a particular kind of financial product;
- (c) arranging for the issuing, varying or disposing of a particular kind of financial product.

Each of the financial services covered by one of paragraphs (a) to (c) belongs to the same type of ***product-type service***.

provider has the meaning given by section 6.

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997*.

testing period has the meaning given by section 7.

the Act means the *Corporations Act 2001*.

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Part 2 Exemption from financial services licensing requirements for testing in the FinTech sandbox

Section 6

Part 2—Exemption from financial services licensing requirements for testing in the FinTech sandbox

6 Exemption for testing eligible financial services in the FinTech sandbox

For the purposes of paragraph 926B(1)(a) of the Act, a person (the *provider*) is exempt from subsection 911A(1) of the Act for providing an eligible financial service during the period referred to in section 7 of this instrument if:

- (a) the provider is an eligible person for the eligible financial service; and
- (b) the provider satisfies subsection 15(1) (about notifying ASIC) of this instrument for the eligible financial service.

Note 1: The provider will automatically cease to be exempt if the provider becomes licensed to provide the eligible financial service, or otherwise ceases to be an eligible person for the eligible financial service (see the definition of *eligible person* in section 5).

Note 2: The exemption will not arise if the provider has already been exempt for providing that type of financial service for the same kind of financial product (see paragraph 15(1)(b)).

7 Duration of the exemption

The period (the *testing period*), of the provider's exemption under section 6 for the eligible financial service, is the 24 months starting on the 14th day after the day the provider lodges a notice in accordance with paragraph 15(1)(a) for the eligible financial service.

Note: The exemption may end earlier (see Part 3).

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When exemption ceases before the end of the testing period **Part 3**

When exemption ceases automatically **Division 1**

Section 8

Part 3—When exemption ceases before the end of the testing period

Division 1—When exemption ceases automatically

8 Not meeting certain limits will cause the exemption to cease automatically

Each of the provider's exemptions under section 6 for eligible financial services ceases to apply if (and when) the provider fails to meet:

- (a) a condition in a section of this Division for any of those eligible financial services; or
- (b) a condition in a section of Division 1 of Part 3 of the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017* for an eligible credit activity (within the meaning of those Regulations) for which the provider has an exemption under those Regulations.

9 Exempt financial services that can be provided to wholesale clients

The provider meets the condition in this section for an eligible financial service if:

- (a) during the eligible financial service's testing period, the provider provides the eligible financial service to other persons as wholesale clients; and
- (b) the eligible financial service does not relate to:
 - (i) a derivative; or
 - (ii) a margin lending facility.

10 Exempt financial services that can be provided to retail clients

- (1) The provider meets the condition in this section for an eligible financial service if:
 - (a) during the eligible financial service's testing period, the provider provides the eligible financial service to other persons as retail clients; and
 - (b) the eligible financial service is:
 - (i) the issuing, varying or disposing of a non-cash payment facility; or
 - (ii) a financial service that only relates to one or more financial products referred to in subsection (2).
- (2) For the purposes of subparagraph (1)(b)(ii), the financial products are as follows:
 - (a) a deposit-taking facility made available by an ADI in the course of its banking business, other than an RSA;
 - (b) a non-cash payment facility made available by an ADI in the course of its banking business;
 - (c) a general insurance product provided by a general insurer (within the meaning of the *Insurance Act 1973*), other than a consumer credit

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Part 3 When exemption ceases before the end of the testing period

Division 1 When exemption ceases automatically

Section 11

- insurance product (within the meaning of subparagraph 761G(5)(b)(v) of the Act);
- (d) a life risk insurance product that is a life policy (within the meaning of the *Life Insurance Act 1995*);
- (e) a superannuation product in a regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);
- (f) an interest in a simple managed investment scheme;
- (g) a debenture, stock or bond issued or proposed to be issued by the Commonwealth;
- (h) a security included in an official list of a prescribed financial market;
- (i) a security included in an official list of a financial market operated outside this jurisdiction;
- (j) for a financial service that is the provision of a crowd-funding service—a security in a class specified in regulations made for the purposes of paragraph 738G(1)(c) of the Act.

11 Exposure limits for exempt financial services—product limits

- (1) The provider meets the condition in this section for an eligible financial service if the provider ensures that subsections (2) to (7) are satisfied.

Limit for general products

- (2) Each of the provider's retail clients may commit to invest a total of no more than \$10,000 in financial products as the result of:
 - (a) the provision of the eligible financial service during that service's testing period; or
 - (b) the provision of any other eligible financial service, for which the provider has or has had an exemption under section 6, during that other service's testing period.
- (3) However, subsection (2) does not apply to a financial product referred to in subsection (4), (5) or (6).

Limits for eligible general insurance products, life risk insurance products and superannuation products

- (4) Each of the provider's retail clients may commit to sum insureds totalling no more than \$85,000 for eligible general insurance products as the result of:
 - (a) the provision of the eligible financial service during that service's testing period; or
 - (b) the provision of any other eligible financial service, for which the provider has or has had an exemption under section 6, during that other service's testing period.
- (5) Each of the provider's retail clients may commit to sum insureds totalling no more than \$300,000 for eligible life risk insurance products as the result of:
 - (a) the provision of the eligible financial service during that service's testing period; or

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When exemption ceases before the end of the testing period **Part 3**

When exemption ceases automatically **Division 1**

Section 12

- (b) the provision of any other eligible financial service, for which the provider has or has had an exemption under section 6, during that other service's testing period.
- (6) Each of the provider's retail clients may commit to contribute no more than \$40,000 in eligible superannuation products as the result of:
 - (a) the provision of the eligible financial service during that service's testing period; or
 - (b) the provision of any other eligible financial service, for which the provider has or has had an exemption under section 6, during that other service's testing period.

Limit on total number of retail clients

- (7) No more than 100 persons may, as the provider's retail clients, commit to invest in a particular kind of financial product as the result of the provision of the eligible financial service during that service's testing period.

12 Exposure limits for exempt financial services—total limit for all services etc.

- (1) The provider meets the condition in this section for an eligible financial service if the provider ensures that no more than a total of \$5 million made up of the following:
 - (a) sum insureds for eligible general insurance products;
 - (b) sum insureds for eligible life risk insurance products;
 - (c) contributions in eligible superannuation products;
 - (d) investments in other kinds of financial product;
 - (e) the value of credit contracts entered into in relation to eligible credit activities;arises as the result of commitments referred to in subsections (2) and (3).
- (2) For the purposes of paragraphs (1)(a) to (d), the commitments are those of persons to invest in financial products as the result of the provision of eligible financial services if:
 - (a) either the provider, or a related body corporate of the provider, has or has had an exemption under section 6 for each of the eligible financial services; and
 - (b) the provision of each of the eligible financial services happened during that service's testing period; and
 - (c) the eligible financial services were provided by the provider or a related body corporate of the provider.
- (3) For the purposes of paragraph (1)(e), the commitments are those of consumers to enter into credit contracts as the result of the engaging in of eligible credit activities if:
 - (a) either the provider, or a related body corporate of the provider, has or has had an exemption under section 6 of the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017* for each of the eligible credit activities; and

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Part 3 When exemption ceases before the end of the testing period

Division 1 When exemption ceases automatically

Section 12

- (b) each eligible credit activity was engaged in during that credit activity's testing period (within the meaning of those Regulations); and
- (c) the eligible credit activities were engaged in by the provider or a related body corporate of the provider.

(4) In this section:

consumer has the same meaning as in the *National Consumer Credit Protection Act 2009*.

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

eligible credit activity has the same meaning as in the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017*.

value has the same meaning as in the *National Consumer Credit Protection Act 2009*.

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When exemption ceases before the end of the testing period **Part 3**

Other ways exemption can cease **Division 2**

Section 13

Division 2—Other ways exemption can cease

13 Exemption ceases because of ASIC decision

- (1) ASIC may, by written notice given to the provider, cancel the provider's exemption under section 6 for an eligible financial service if:
 - (a) a condition in section 16, 17, 18, 19, 20, 21 or 22 is not met for:
 - (i) the eligible financial service; or
 - (ii) any other eligible financial service for which the provider has or has had an exemption under section 6; or
 - (b) ASIC reasonably believes that:
 - (i) if the provider is a natural person—the provider is not of good fame or character; or
 - (ii) if the provider is a body corporate—one or more of the provider's officers are not of good fame or character; or
 - (c) ASIC reasonably believes the provider has failed to act fairly, efficiently or honestly in providing financial services or in engaging in credit activities (within the meaning of the *National Consumer Credit Protection Act 2009*); or
 - (d) ASIC reasonably believes that a purpose for obtaining the provider's exemption was to continue or recommence an exemption under section 6 that was earlier obtained by another person; or
 - (e) any exemption of the provider under the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017* is or has been cancelled under section 11 of those Regulations.

Subsection 913B(4) of the Act applies to paragraph (b) in a corresponding way to the way that subsection applies to subsections 913B(2) and (3) of the Act.

Note 1: A decision by ASIC under this section is a reviewable decision under section 1317B of the Act.

Note 2: Before, or instead of, acting under this section for a failure to meet a condition in paragraph (a), ASIC could seek an order for the provider to comply with the condition (see subsection 926B(4) of the Act).

- (2) The cancellation takes effect on the day specified in the notice, which must not be a day before the notice is given to the provider.

14 Exemption ceases if provider notifies ASIC

- (1) The provider's exemption under section 6 ceases to apply for an eligible financial service if the provider lodges with ASIC a written notice to that effect.
- (2) The cancellation takes effect on the day specified in the notice, which must not be a day before the notice is lodged with ASIC.

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Part 4 Requirements for the exemption to exist

Section 15

Part 4—Requirements for the exemption to exist

15 Notifying ASIC of eligible financial services

- (1) The provider satisfies this subsection for an eligible financial service if:
- (a) the provider lodges with ASIC a written notice, to which subsection (2) applies, that states that the provider is proposing to use the exemption under section 6 for the eligible financial service; and
 - (b) if the eligible financial service (the *current service*) is a product-type service—no earlier exemption under section 6 has been obtained:
 - (i) for a financial service of the same type that wholly or partly related to the kind of financial product that the current service relates to; and
 - (ii) by the provider or by a related body corporate of the provider; and
 - (c) no related body corporate of the provider currently has:
 - (i) an exemption under section 6 for an eligible financial service; or
 - (ii) an exemption under section 6 of the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017*; and
 - (d) no related body corporate of the provider has lodged with ASIC:
 - (i) a notice to which subsection (2) applies; or
 - (ii) a notice to which subsection 13(2) of the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017* applies;
- during the 14-day period ending at the time the notice under paragraph (a) is lodged.

Note: A consequence of this subsection is that only one member of a group of related bodies corporate can ever use the exemption to test financial services at any one time.

- (2) This subsection applies to a notice if the notice includes the following:
- (a) the provider's name, address and contact details;
 - (b) the address of the provider's website (if any);
 - (c) if the provider is a natural person:
 - (i) the person's date of birth; and
 - (ii) whether the person is or has been declared bankrupt, or is or has been an insolvent under administration; and
 - (iii) whether the person has been the subject of any findings or judgment in relation to fraud, misrepresentation or dishonesty in any administrative, civil or criminal proceedings in any country, or is currently party to any proceedings that may result in the person being the subject of such findings or judgment; and
 - (iv) a bankruptcy register search for the person, of the bankruptcy registers maintained by the Inspector-General in Bankruptcy or the Australian Financial Security Authority, that is no more than 12 months old; and

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Requirements for the exemption to exist **Part 4**

Section 15

- (v) a national police history check for the person, conducted by the Australian Federal Police or the police force of a State or Territory, that is no more than 12 months old;
- (d) if the provider is a body corporate:
 - (i) the provider's ABN, ACN and ARBN, if any; and
 - (ii) the name of each director, and controlling entity (if any), of the provider; and
 - (iii) for each director and controlling entity who is a natural person, the information referred to in paragraph (c) about that natural person; and
 - (iv) the name and contact details of a contact person who is a natural person who can be contacted in relation to the notice;
- (e) if the provider is:
 - (i) a financial services licensee; or
 - (ii) an authorised representative of a financial services licensee; or
 - (iii) a related body corporate of a person referred to in subparagraph (i) or (ii);the licence number, given under section 913C of the Act, to that licensee;
- (f) a description of each eligible financial service (including of any related kind of financial product) for which the provider is proposing to use the exemption under section 6;
- (g) the name of any person (including any related body corporate of the provider), other than an employee or director:
 - (i) of the provider; or
 - (ii) of any related body corporate of the provider;whose role includes being responsible for making significant decisions about the ongoing provision of each eligible financial service covered by paragraph (f), and a description of that role;
- (h) a description of the procedures, memberships and arrangements by which the provider will meet the condition in section 19 (about dispute resolution and compensation) for each eligible financial service covered by paragraph (f).

Note: The same notice may specify multiple eligible financial services. If it does, each of them will be the subject of a separate exemption under section 6 (assuming the other eligibility criteria are satisfied).

- (3) For the purposes of subparagraph (2)(c)(iv) or (v), it is sufficient if the notice includes a copy of the search or check that has been certified by a lawyer to be a true copy.

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Part 5 Conditions for the exemption

Section 16

Part 5—Conditions for the exemption

16 Condition—notifying all clients before providing an exempt financial service

The condition in this section is met for an eligible financial service if, before providing the financial service to a person as a retail client or wholesale client, the provider clearly and prominently discloses to the client that:

- (a) the provider is not authorised by an Australian financial services licence to provide the financial service; and
- (b) the provider is not an authorised representative of a financial services licensee for the provision of the financial service; and
- (c) the financial service is being provided under an exemption provided under the *Corporations (FinTech Sandbox Regulatory Licensing Exemption) Regulations 2017*; and
- (d) some of the normal protections associated with receiving financial services from a financial services licensee will not apply; and
- (e) the provider will notify the client in writing if any of the events referred to in paragraph 18(b) (which the provider must list) happens.

17 Condition—notifying retail clients before providing an exempt financial service

The condition in this section is met for an eligible financial service if, before providing the financial service to a person as a retail client, the provider clearly and prominently discloses to the client:

- (a) the provider's name and contact details; and
- (b) information about any remuneration (including commissions) to which the provider can become entitled in relation to the financial service; and
- (c) information about any associations or relationships between:
 - (i) the provider or any of the provider's related bodies corporate; and
 - (ii) the issuers of any financial products;that might reasonably be capable of influencing the client in relation to the provision of the financial service; and
- (d) information about the dispute resolution systems available to the client, including about how to access those systems and how long those systems will be available.

18 Condition—notifying clients while providing an exempt financial service

The condition in this section is met for an eligible financial service if:

- (a) the provider is providing the financial service to one or more persons as retail clients or wholesale clients; and
- (b) the provider notifies each of those clients in writing, within 10 business days after the happening of any of the following events:
 - (i) the provider has ceased to carry on a financial services business;

- (ii) the provider has become a Chapter 5 body corporate, or under a foreign law has started to be in a similar position to a Chapter 5 body corporate;
- (iii) the provider has become bankrupt, or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors;
- (iv) the provider has compounded with his or her creditors, or has made an assignment of his or her remuneration for the benefit of his or her creditors;
- (v) the provider has become authorised by an Australian financial services licence to provide the financial service;
- (vi) the provider has become an authorised representative of a financial services licensee for the provision of the financial service;
- (vii) the provider has ceased to rely on the exemption provided under the *Corporations (FinTech Sandbox Regulatory Licensing Exemption) Regulations 2017*;
- (viii) the financial service, or a financial product to which it relates, has materially changed;
- (ix) the financial service, or a financial product to which it relates, is no longer being offered to new clients.

19 Condition—maintaining certain procedures, memberships and arrangements

- (1) The condition in this section is met for an eligible financial service if the provider:
 - (a) establishes and maintains an internal dispute resolution procedure that:
 - (i) complies with the standards, and requirements, made or approved for the purposes of subsection 912A(2) of the Act; and
 - (ii) covers complaints against the provider made by retail clients in connection with the provision of the financial service; and
 - (b) is a member of one or more external dispute resolution schemes referred to in subsection 912A(2) of the Act that together cover complaints against the provider made by retail clients in connection with the provision of the financial service; and
 - (c) establishes and maintains arrangements that:
 - (i) include holding professional indemnity insurance; and
 - (ii) are approved by ASIC in writing as adequate;
for compensating the provider's retail clients for loss or damage suffered because of breaches of the Act, or of the conditions in this instrument, by the provider or its representatives; and
 - (d) continues the memberships referred to in paragraph (b), and the arrangements referred to in paragraph (c), for at least 12 months after the end of the financial service's testing period.
- (2) Paragraph (1)(b) does not apply to complaints that may be dealt with by the Superannuation Complaints Tribunal established by section 6 of the *Superannuation (Resolution of Complaints) Act 1993*.

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Part 5 Conditions for the exemption

Section 20

20 Condition—best interests obligations

The condition in this section is met for an eligible financial service if:

- (a) the financial service includes providing personal advice to a person as a retail client or wholesale client of the provider; and
- (b) the provider complies with Division 2 of Part 7.7A of the Act, as if the provider were a provider for the purposes of that Division, in relation to that personal advice.

Note: Complying with that Division includes complying with any instruments made for the purposes of that Division.

21 Condition—client money obligations

The condition in this section is met for an eligible financial service if the provider complies with Divisions 2 and 3 of Part 7.8 of the Act as if the provider were a financial services licensee for the purposes of those Divisions.

Note: Complying with those Divisions includes complying with any instruments made for the purposes of those Divisions.

22 Condition—statements of advice

The condition in this section is met for an eligible financial service if:

- (a) the financial service includes providing personal advice to a person as a retail client of the provider; and
- (b) the provider gives each of those clients a Statement of Advice:
 - (i) relating to that personal advice; and
 - (ii) in accordance with Subdivisions C and D of Division 3 of Part 7.7 of the Act, as if the provider were a financial services licensee for the purposes of those Subdivisions.

Note: Complying with those Subdivisions includes complying with any instruments made for the purposes of those Subdivisions.