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| **EXPOSURE DRAFT** |

Inserts for

Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: FSRC Rec 2.2 (disclosure of lack of independence)

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule [2.2] | 1 July 2020. | 1 July 2020 |

Schedule [2.2]—Disclosure of lack of independence

Corporations Act 2001

1 At the end of subsection 923A(1)

Add:

Note 3: A Financial Services Guide may need to include a statement relating to the restriction in this subsection (see paragraphs 942B(2)(fa) and 942C(2)(ga)).

2 At the end of section 923A

Add:

(6) To avoid doubt, for the purposes of this section a restricted word or expression is not assumed or used if the restricted word or expression is included in a statement in accordance with a requirement in paragraph 942B(2)(fa) or 942C(2)(ga).

3 Subsection 941C(7)

Omit “paragraphs 942B(2)(a) and (h), or paragraphs 942C(2)(a) and (i),”, substitute “paragraphs 942B(2)(a), (fa) and (h), or paragraphs 942C(2)(a), (ga) and (i),”.

4 Paragraph 941D(3)(a)

Omit “paragraphs 942B(2)(e), (f) and (i), or paragraphs 942C(2)(f), (g) and (j),”, substitute “paragraphs 942B(2)(e), (f), (fa) and (i), or paragraphs 942C(2)(f), (g), (ga) and (j),”.

5 After paragraph 942B(2)(f)

Insert:

(fa) if the authorised services provided by the providing entity include the provision of personal advice to retail clients, and the providing entity would contravene subsection 923A(1) by assuming or using a restricted word or expression (within the meaning of subsection 923A(5)) in relation to such provision of personal advice—a statement that:

(i) sets out that the providing entity is not independent, impartial or unbiased (which are restricted words or expressions within the meaning of subsection 923A(5)) in relation to the provision of personal advice, and explains the reasons why; and

(ii) if any other word or expression has been specified as a restricted word or expression in regulations made for the purposes of subparagraph 923A(5)(a)(ii)—sets out that the providing entity is not able to assume or use the restricted word or expression in relation to the provision of personal advice, and explains the reasons why; and

(iii) meets the requirements (if any) determined in an instrument under subsection (7A); and

6 After subsection 942B(7)

Insert:

(7A) ASIC may, by legislative instrument, determine requirements for a statement for the purposes of subparagraph (2)(fa)(iii).

(7B) Without limiting subsection (7A), the instrument may include the following:

(a) requirements that a specified form, or specified form of words, be used for the statement;

(b) requirements for the statement to include specified information;

(c) requirements about the presentation, structure and format of the statement, including the location of the statement within the Financial Services Guide.

7 After paragraph 942C(2)(g)

Insert:

(ga) if the authorised services provided by the providing entity include the provision of personal advice to retail clients, and the providing entity would contravene subsection 923A(1) by assuming or using a restricted word or expression (within the meaning of subsection 923A(5)) in relation to such provision of personal advice—a statement that:

(i) sets out that the providing entity is not independent, impartial or unbiased (which are restricted words or expressions within the meaning of subsection 923A(5)) in relation to the provision of personal advice, and explains the reasons why; and

(ii) if any other word or expression has been specified as a restricted word or expression in regulations made for the purposes of subparagraph 923A(5)(a)(ii)—sets out that the providing entity is not able to assume or use the restricted word or expression in relation to the provision of personal advice, and explains the reasons why; and

(iii) meets the requirements (if any) determined in an instrument under subsection (7A); and

8 After subsection 942C(7)

Insert:

(7A) ASIC may, by legislative instrument, determine requirements for a statement for the purposes of subparagraph (2)(ga)(iii).

(7B) Without limiting subsection (7A), the instrument may include the following:

(a) requirements that a specified form, or specified form of words, be used for the statement;

(b) requirements for the statement to include specified information;

(c) requirements about the presentation, structure and format of the statement, including the location of the statement within the Financial Services Guide.

9 In the appropriate position in Chapter 10

Insert:

Part 10.46—Application and transitional provisions relating to Schedule [2.2] to the Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Act 2020

1673 Application of disclosure of lack of independence reforms

The amendments made by Schedule [2.2] to the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Act 2020* apply in relation to a financial service provided on or after 1 July 2020.

1673A Obligation to give updated Financial Services Guide

(1) If:

(a) the providing entity has given a Financial Services Guide to the client under section 941A or 941B before 1 July 2020; and

(b) the providing entity will provide a financial service to the client on or after 1 July 2020; and

(c) paragraph 942B(2)(fa) or 942C(2)(ga), as inserted by Schedule [2.2] to the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Act 2020*, applies in relation to the providing entity and the financial service;

the providing entity must, before the financial service is provided to the client, give the client:

(d) another Financial Services Guide that contains the statement required by whichever of the paragraphs referred to in paragraph (c) of this subsection is applicable; or

(e) a Supplementary Financial Services Guide that contains that statement.

(2) Subsections 941A(1) and 941B(1) apply as if the reference in those subsections to “this Division” included a reference to this section.