

EXPOSURE DRAFT EXPLANATORY STATEMENT

Corporations Act 2001

National Consumer Credit Protection Act 2009

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

National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017

Section 1364 of the *Corporations Act 2001* (the ‘Corporations Act’) and section 329 of the *National Consumer Credit Protection Act 2009* (the ‘Credit Act’) provide that the Governor-General may make regulations prescribing matters required or permitted by the respective Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

The *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017* (the ‘AFSL Exemption Regulations’) and the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017* (the ‘ACL Exemption Regulations’) provide for conditional exemptions from the Australian Financial Services Licence (AFSL) and Australian Credit Licence (ACL) requirements to allow the testing of financial services and credit activities relating to certain financial and credit products. Eligible persons can use the AFSL and ACL exemptions concurrently.

The purpose of the AFSL Exemption Regulations and the ACL Exemption Regulations (collectively referred to as ‘the Regulations’) is to create a ‘regulatory sandbox’ to encourage and support the design and delivery of new financial and credit services that will benefit consumers and businesses. The regulatory sandbox will help overcome regulatory burden and cost that may hinder businesses in developing innovative offerings.

The regulatory sandbox will enable FinTech firms to bring innovative services and products to market faster and at lower cost, while still providing for important consumer outcomes such as dispute resolution and consumer compensation arrangements.

AFSL Exemption Regulations

The AFSL Exemption Regulations applies to certain eligible persons, and provides an exemption from the AFSL requirements for the purposes of testing financial services relating to certain financial products with both retail and wholesale clients. To rely on the exemption, an eligible person must provide a notice to ASIC that includes particular information and details.

A start-up business may develop additional offerings as their business grows, or may require several attempts at testing before launching a successful business model or new financial service. In recognition of this, an eligible person can rely on the AFSL Exemption Regulations multiple times in particular circumstances. However, an

eligible person cannot test a particular financial service in relation to a particular financial product, which they or a company in their company group, have tested before under the AFSL Exemption Regulations.

The exemption lasts for a period of no more than 24 months for each financial service provided in relation to each type of financial product, being tested by an eligible person.

There are certain ongoing conditions and requirements that an eligible person must satisfy in order to rely on the AFSL Exemption Regulations. These include exposure limits for retail clients, aggregate exposure limits based on the value of products, notification requirements and maintaining certain procedures, memberships and arrangements.

ACL Exemption Regulations

The ACL Exemption Regulations provide eligible persons with an exemption from the ACL requirements so that they can test certain credit activities in relation to certain credit contracts.

An eligible person can rely on the ACL Exemption Regulations multiple times in certain circumstances. However, an eligible person cannot rely on the exemption if they are testing a particular credit activity that they, or a company within their company group, have tested before under the ACL Exemption Regulations.

The exemption lasts for a period of no more than 24 months for each type of credit activity.

Similar to the AFSL Exemption Regulations, in order for an eligible person to rely on the ACL Exemption Regulations, they must satisfy certain ongoing conditions and requirements.

Requirements and conditions for the exemptions

To access an exemption, an eligible person must notify ASIC of their intention to rely on the exemption to test a financial service and/or credit activity. The person's exemption will apply from the 14th day after the notification is lodged with ASIC.

To rely on the exemptions, an eligible person must satisfy a number of ongoing conditions. The exemptions automatically cease if any of these conditions are breached. These conditions include:

- restrictions on the kinds of financial products and credit products an eligible person can provide financial services or credit activities for;
- exposure limits applying to financial services provided in relation to general financial products, general insurance products, life insurance products and superannuation;
- an exposure limit of 100 retail clients and 100 consumers for each financial service and each credit activity, respectively; and

- an aggregate exposure limit of \$5 million that applies to all financial services and credit activities provided by an eligible person and their related body corporates under the exemption(s).

An eligible person's exemption can also cease to apply if:

- the person notifies ASIC that they are no longer relying on the exemption; or
- ASIC notifies the person that the exemption no longer applies either in relation to a specific financial service or credit activity or to the person in relation to all testing services and activities..

A person who is relying on the exemption must also comply with certain requirements:

- disclosure obligations to clients;
- dispute resolution arrangements;
- best interests, client money and statement of advice obligations provided for in the Corporations Act; and
- responsible lending obligations, requirements for responding to requests for hardship variations, and unfair contact term protections provided for in the Credit Act.

If an eligible person relying on an exemption does not meet one or more of these requirements, ASIC may either provide notification to that person that they can no longer rely on the exemption, or apply to the Federal Court for an order that the person comply with the particular requirement.

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

The Regulations commence three months from the day after the instruments are registered.

Attachment A

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

This Attachment sets out further details of the AFSL Exemption Regulations. All references in this attachment are to the AFSL Exemption Regulations unless otherwise stated.

Part 1 – Preliminary

Section 1 – Name

This section provides that the title of the instrument is the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017*.

Section 2 – Commencement

This section provides that the AFSL Exemption Regulations commence three months from the day after the instrument is registered.

Section 3 - Authority

This section provides that the AFSL Exemption Regulations are made under the *Corporations Act 2001*.

Section 4 – Simplified outline of this instrument

This section provides a simplified outline of the conditional exemption from the AFSL requirements to test the provision of eligible financial services in relation to specific eligible financial products.

Section 5 – Definitions

This section sets out the meaning of some of the key words or terms used in the AFSL Exemption Regulations. In accordance with paragraph 13(1)(b) of the *Legislation Act 2003*, the definitions provided for in the Corporations Act automatically flow through to this instrument. For example, the expression ‘makes non-cash payments’ has the same meaning as in 763D of the Corporations Act. Similarly, the reference to ‘associates’ in the definition of ‘controlling entity’ has the same meaning as under section 13 of the Corporations Act.

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

Section 6 – Exemption for testing eligible financial services in the FinTech sandbox

This section provides that an eligible person is exempt from the requirement to have an AFSL for the purpose of testing certain eligible financial services in relation to certain types of financial products if the conditions outlined below are satisfied.

The exemption is only available for eligible persons

Under the definition of an ‘eligible person’ in section 5, a person will be able to access the exemption to test a financial service in relation to certain types of financial products as long as the person is not:

- authorised by an AFSL to provide the financial service in relation to that kind of financial product;
- an authorised representative of an AFSL holder for the provision of the financial service in relation to that kind of financial product;
- a related body corporate of a person who is:
 - authorised by an AFSL to provide the financial service in relation to that kind of financial product; or
 - an authorised representative of an AFSL holder for the provisions of the financial service in relation to that type of financial product;
- an operator of a financial market or clearing and settlement facility;
- a natural person who is not an Australian Citizen or permanent resident; and
- a foreign company that is not registered under Division 2 of Part 5B.2 of the Corporations Act.

If a person does become authorised to provide a financial service in relation to a kind of financial product, the exemption will automatically cease to apply for the provision of financial services relating to that kind of financial product.

In addition, a person will not be eligible to rely on the exemption to test a financial service in relation to a particular type of financial product, if they or their related body corporates have previously used the exemption to provide that financial service in relation to that particular type of financial product. The restriction applies to prevent testing of the same type of product numerous times.

For example, if Sahara and Sun Co. previously completed a 24 month period of testing a digital financial advice model in relation to general insurance under the AFSL Exemption Regulations, Sahara and Sun Co. (and its related body corporates) cannot rely on the exemption again to test financial advice in relation to general insurance products issued by different general insurance companies. However, Sahara and Sun Co. can rely on the exemption for a second time in order to test a digital distribution model by which it arranges for the issuance of superannuation products.

Types of financial services that can be provided

The eligible financial services (as per the definition in section 5) that can be tested under the exemption include:

- providing financial product advice in relation to a particular kind of eligible financial product;

- applying for or acquiring a particular kind of eligible financial product;
- issuing, varying or disposing of a non-cash payment facility;
- arranging for the issuing, varying or disposing of a particular kind of eligible financial product; and
- providing a crowd-funding service.

ASIC must be notified

In order to rely on the exemption, a person must first notify ASIC that they intend to start relying on the exemption to provide an eligible financial service in relation to a particular kind of eligible financial product.

Section 7 – Duration of the exemption

The exemption applies to an eligible person for a maximum period of 24 months for each eligible financial service provided in relation to a particular kind of financial product. The exemption period commences on the 14th day after the eligible person notifies ASIC that they intend to start relying on the exemption under section 15.

The 24 month period is a fixed period that cannot be extended, paused or reset. The time period applies for each exemption notification provided to ASIC (see section 15).

An eligible person will cease to be exempt prior to the end of their 24 month testing period, in the following situations:

- if they breach any of the conditions in Part 3 of the exemption (including exposure limits and types of financial products that exempt financial services can be provided in relation to); or
- if ASIC determines that the eligible person can no longer rely on the exemption for reasons detailed in section 13, including where the eligible person fails to satisfy conditions in Part 5 or where the eligible person has failed to act fairly, efficiently or honestly in providing financial services; or
- if the eligible person determines that they wish to cease relying on the exemption before the end of the 24 month testing period, and that person notifies ASIC in accordance with section 14.

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

Division 1 – When exemption ceases automatically

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

The exemption from the AFSL regime in the Corporations Act is subject to a number of requirements. Section 8 provides that a breach of the most important conditions (contained in sections 9-12) will result in the automatic termination of the person's exemption. The requirements include:

- a prohibition on providing financial services in relation to particular types of financial products (derivatives and margin lending facilities) for wholesale clients (see section 9);
- only providing financial services in relation to prescribed types of financial products for retail clients (for a complete list see section 10).
- individual exposure limits on the amount each retail investor can commit to invest as a result of financial services provided by the eligible person (section 11); and
- aggregate exposure limits on the total value of financial products that an eligible person can provide financial services in relation to (section 12).

If a person is testing multiple financial services under the AFSL Exemption Regulations, and breaches one of the conditions in Part 3 for only one of the financial services they are testing, the person will no longer be able to rely on the AFSL Exemption Regulations for all of financial services they are testing at the time.

The AFSL Exemption Regulations will also automatically cease to apply, if the person is currently relying on or has relied on the ACL Exemption Regulations, and breaches or has breached a condition in Division 1, Part 3 of that exemption.

Section 9 – Exempt financial services that can be provided to wholesale clients

This section provides that a person can rely on the AFSL Exemption Regulations to provide financial services to wholesale clients, in relation to all financial products except for derivatives and margin lending facilities.

Section 10 – Exempt financial services that can be provided to retail clients

A person can only rely on the AFSL Exemption Regulations to provide financial services to retail clients that relate to the following types of financial products:

- a deposit-taking facility issued by an authorised deposit-taking institution regulated by APRA;
- a non-cash payment facility issued by an authorised deposit-taking institution regulated by APRA;

- a general insurance product issued by a general insurer authorised by APRA, except for a consumer credit insurance product;
- a life insurance product issued by a life insurer authorised by APRA;
- a superannuation product that is issued by an APRA-regulated superannuation fund;
- an interest in a simple managed investment scheme;
- a Commonwealth debenture, stock or bond;
- a listed domestic or international security; and
- a security specified in a regulation made for the purposes of paragraph 738G(1)(c) of the Corporations Act, if the person is providing a crowd-funding service.

Sections 11 – Exposure limits for exempt financial services – limits for each class

For a person to use the exemption, they must remain within the prescribed exposure limits for retail clients. The exposure limits for retail clients apply on a per client per provider basis. This ensures that a person using the exemption can provide financial services relating to various kinds of financial products to each retail client while ensuring that retail clients are not exposed to excessive levels of risk from a firm relying on a licensing exemption.

Retail clients can commit to invest no more than:

- \$10,000 as a result of financial services relating to general financial products;
- \$85,000 as a result of financial services relating to general insurance products;
- \$300,000 as a result of financial services relating to life insurance products; and
- \$40,000 as a result of financial services relating to superannuation.

The limits apply in relation to investments made by retail clients resulting from the financial services provided to them. A person will not be in breach of these limits if a retail client makes other investments outside of the advice provided.

In addition to these exposure limits, a person relying on the exemption cannot have more than 100 retail clients for each financial service provided in relation to a kind of financial product.

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

A person relying on an exemption must not exceed the prescribed aggregate exposure limit across all clients. Under this aggregate client investment cap, all of the following amounts added together cannot exceed \$5 million:

- all amounts invested by all clients in relation to all kinds of financial products the person provides financial services for;
- all amounts that all clients are insured for in relation to general insurance and life risk insurance products the person provides financial services for;
- all amounts that all clients contribute to superannuation products the person provides financial services for; and
- all amounts of credit activity under the ACL Exemption Regulations.

Once a person reaches or exceeds the \$5 million aggregate client exposure cap, they will no longer be able to rely on the exemption to provide any further financial services.

Division 2 – Other ways exemption can cease

Section 13 - Exemption ceases because of ASIC decision

ASIC may provide written notice cancelling a person's exemption from the AFSL requirements. The cancellation can relate to one or all of the exemptions the person is relying on. ASIC may provide notice to cancel a person's exemption under the following circumstances:

- the person has not complied with conditions prescribed in this instrument or the ACL Exemption Regulations;
- ASIC reasonably believes the person (or in the case of a body corporate, a relevant officer) is not of good fame or character;
- ASIC reasonably believes the cancellation to be necessary having regard to the person's failure to act fairly, efficiently, or honestly; or
- ASIC reasonably believes that the purpose for obtaining the exemption was to:
 - effectively continue providing a financial service that has already been provided by the person or a related body corporate under the exemption; or
 - continue providing a financial service in a way to avoid the individual or aggregate exposure limits.

Any decisions made by ASIC are subject to the Administrative Appeals Tribunal (AAT) review.

Section 14 – Exemption ceases if provider notifies ASIC

A person relying on an exemption may notify ASIC if they wish to cancel their exemption, before the 24 month period expires. The cancellation will take effect from the day specified in the notice but this date must not be prior to the date the notice is lodged with ASIC.

Part 4 – Requirements for the exemption to exist

Section 15 – Notifying ASIC of eligible class of financial services

A person seeking to rely on the exemption to test a financial service must notify ASIC of their intention to do so prior to starting to provide the financial service. The notice must comply with the requirements specified in subsection 15(2) of the AFSL Exemption Regulations. A failure to do this will mean that the person will not be covered under the exemption and the person would be breaching the AFSL requirements.

The person will be covered by the exemption on the 14th day after the exemption is lodged with ASIC unless ASIC cancels the exemption under section 14.

Part 5 – Conditions for the exemption

Sections 16 – Condition – notifying all clients before providing an exempt financial service

A person relying on the exemption must provide the information prescribed in section 16 to all its clients before providing them with a financial service. The purpose of this is to inform clients that the financial service is provided under an AFSL exemption and ensure there is an appropriate level of disclosure.

Section 17 – Condition – notifying retail clients before providing an exempt financial service

This section prescribes additional information that must be disclosed to all retail clients before a person provides them with a financial service under the exemption. The information includes details about the services to be provided, remuneration (including commissions) the person could benefit from, details of relevant relationships and information about available dispute resolution systems.

Section 18 – Condition – notifying clients while providing an exempt financial service

A person relying on an exemption is required to notify all their clients within ten business days if the events prescribed in paragraph 18(b) eventuate.

Section 19 – Condition – maintaining certain procedures, memberships and arrangements

This section prescribes the dispute resolution and compensation arrangements a person is required to maintain in order to provide financial services under the exemption.

Section 20 – Condition – best interest obligations

A person who is relying on the exemption is required to operate in the best interest of their clients by providing appropriate advice, adequate disclosure if the advice is based on incomplete or inaccurate information and to prioritise their client's best interest in order to meet the best interest obligations provided for in the Corporations Act.

Section 21 – Condition – client money obligations

A person relying on the exemption is required to meet their client money obligations when dealing with their client's money. This will ensure client money is being handled in accordance with the existing rules under the Corporations Act.

Section 22 – Condition – Statement of advice

There is a requirement for a person relying on the exemption to include a Statement of Advice when personal advice is given to a retail client.

Attachment B

Details of the National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017

This Attachment sets out further details of the ACL Exemption Regulations. All references are to the ACL Exemption Regulations unless otherwise stated.

Section 1 – Name

This section provides that the title of the instrument is the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017*

Section 2 – Commencement

This section provides that the Regulations commence three months from the day after the instrument is registered.

Section 3 - Authority

This section provides that the ACL Exemption Regulations are made under the *National Consumer Credit Protection Act 2009*.

Section 4 – Simplified outlined of this instrument

This section provides a simplified outline of the conditional exemption from the ACL requirements to test eligible credit activities.

Section 5 – Definitions

This section sets out the meaning of some of the key words or terms used in the ACL Exemption Regulations. In accordance with paragraph 13(1)(b) of the *Legislation Act 2003*, the definitions provided for in the Credit Act automatically flow through to this instrument.

Part 2 – Exemption from credit activity licensing requirements for testing in the FinTech sandbox

Section 6 – Exemption for testing eligible credit activities in the FinTech sandbox

This section provides that an eligible person is exempt from the requirement to have an ACL for the purpose of testing eligible credit activities (as per section 5) if the conditions outlined below are satisfied.

The exemption is only available for eligible persons

Under the definition of an ‘eligible person’ in section 5, a person will be able to access the exemption to test a credit activity as the person is not:

- authorised by an ACL to engage in the credit activity;

- a credit representative authorised to engage in the credit activity on behalf of an ACL holder;
- a related body corporate of a person that is authorised by an ACL to provide the credit activity or a credit representative authorised to engage in the credit activity on behalf of an ACL holder;
- a natural person who is not an Australian Citizen or permanent resident; and
- a foreign company that is not registered under Division 2 of Part 5B.2 of the Corporations Act.

If a person does become authorised to provide the credit activity, the exemption will automatically cease to apply for that credit activity.

In addition, a person will not be eligible for the exemption if they or their related body corporates have previously used the exemption to provide the credit activity. A person and their related body corporates will therefore only be able to test each of the two types of eligible credit activities once.

Types of credit activities that can be provided

The eligible credit activities (as per the definition in section 5) that can be tested under the exemption include the provision of credit contracts and credit services which relate to a credit contract (or proposed credit contract) with:

- a term that does not exceed 4 years; and
- a credit limit of more than \$2,000 and less than \$25,000.

However, a credit activity is not eligible if the relevant contract is:

- a reverse mortgage, or a small amount credit contract; or
- secured by a charge or lien over a consumer's household property covered by subregulation 6.03(2) of the *Bankruptcy Regulations 1996*.

ASIC must be notified

In order to rely on the exemption, a person must first notify ASIC that they intend to start relying on the exemption to provide an eligible credit activity.

Section 7 – Duration of the Exemption

The exemption applies to an eligible person for a maximum period of 24 months for each eligible credit activity. The exemption period commences on the 14th day after an eligible person notifies ASIC that they intend to start relying on the exemption under section 13.

The 24 month period is a fixed amount that cannot be extended, paused or reset. The time period applies for each notification to ASIC (see section 13).

An eligible person will cease to be exempt prior to the end of their 24 month testing period in the following situations:

- if they breach any of the conditions in Part 3 of the exemptions (including exposure limits); or
- if ASIC determines that the eligible person can no longer rely on the exemption for reasons detailed in section 11, including where the eligible person fails to satisfy conditions in Part 5 or where the eligible person has failed to act fairly, efficiently or honestly; or
- if the eligible person determines that they wish to cease relying on the exemption before the end of the 24 month testing period, and that person notifies ASIC in accordance with section 12.

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

Division 1 – When exemption ceases automatically

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

The exemption from the ACL regime in the Credit Act is subject to a number of requirements. Section 8 provides that a breach of these requirements (contained in sections 9 and 10) will result in the automatic termination of the person's exemption. The requirements include:

- a cap on the total number of consumers for each credit activity (section 9);
- a cap on the total amount of activity a person can undertake on the basis of the exemption (section 10); and
- a breach of the equivalent conditions under the AFSL Exemption Regulations.

The termination of the person's ability to rely on the exemption applies to all the credit activities being tested at the time of the breach, including any financial services being undertaken under an exemption in the AFSL Exemption Regulations.

Section 9 – Limits on total number of consumers

A person cannot have more than 100 consumers for each kind of credit activity.

Section 10 – Exposure limits for exempt credit activities – total limit for all activities etc.

A person relying on an exemption must not exceed the prescribed aggregate exposure limit across all clients.

Under this aggregate client investment cap, all of the following amounts added together cannot exceed \$5 million:

- all amounts of credit activity; and

- all amounts invested by all clients under the AFSL Exemption Regulations.

Once a person reaches or exceeds the \$5 million aggregate client exposure cap, they will no longer be able to rely on the exemption to provide any further financial services or credit activities.

Division 2 – Other ways exemption can cease

Section 11 – Exemption ceases because of ASIC decision

ASIC may provide written notice cancelling a person's exemption from the ACL requirements. The cancellation can relate to one of the person's exemptions or all of the exemptions the person is relying on. ASIC may provide notice to cancel a person's exemption under the following circumstances:

- the person has not complied with the conditions prescribed in this instrument or the AFSL Exemption Regulations;
- ASIC reasonably believes the person (or in the case of a body corporate, a relevant officer) is not of good fame or character;
- ASIC reasonably believes the cancellation to be necessary having regard to the person's failure to act fairly, efficiently, or honestly; or
- ASIC reasonably believes that the purpose for obtaining the exemption was to:
 - effectively continue providing a credit activity that has already been provided by the person or its related body corporate under the exemption; or
 - continue providing a credit activity in a way to avoid the consumer or aggregate exposure limits.

Any decisions made by ASIC are subject to AAT review.

Section 12 – Exemption ceases if provider notifies ASIC

A person relying on an exemption may notify ASIC if they wish to cancel their exemption. The cancellation will take effect from the day specified in the notice but this date must not be prior to the date the notice is lodged with ASIC.

Part 4 – Requirements for the exemption to exist

Section 13 – Notifying ASIC of eligible credit activities

A person seeking to rely on an exemption to test a credit activity must notify ASIC of their intention to do so before starting to provide the credit activity. The notice must comply with the requirements specified in subsection 13(2) of the ACL Exemption Regulations. A failure to do this will mean that the person will not be covered under the exemption and the person would be breaching the ACL requirements.

The person will be covered by the exemption on the 14th day after the exemption is lodged with ASIC unless ASIC cancels the exemption under section 11.

Part 5 – Conditions for the exemption

Section 14 – Condition – notifying all consumers before engaging in the credit activity

A person relying on the exemption must provide the information prescribed in section 14 to all its clients before providing them with a credit activity. The purpose of this is to inform clients that the credit activity is provided under an ACL exemption and ensure there is an appropriate level of disclosure.

Section 15 – Condition – notifying consumers while engaging in the credit activity

A person relying on an exemption is required to notify all their consumers within ten business days if the events prescribed in paragraph 15(b) eventuate.

Section 16 – Condition – maintaining certain procedures, memberships and arrangements

This section prescribes the dispute resolution and compensation arrangements a person is required to maintain in order to provide credit activities under the exemption.

Section 17 – Condition – other obligations

A person relying on the exemption is required to meet the following obligations while providing a credit activity under the exemption:

- the responsible lending obligations under Chapter 3 of the Credit Act;
- the special rules for short-term contracts provided for in section 124A and Part 3-2C of the Credit Act;
- the limits on the fees and charges under Division 4A of Part 2 and Division 3 of Part 4 of the National Credit Code; and
- the unfair contract terms rules in Subdivision BA of Division 3 of Part 2 of the *Australian Securities and Investments Commission Act 2001*.