



# **Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 28 May 2020

David Hurley  
Governor-General

By His Excellency's Command

Jane Hume  
Assistant Minister for Superannuation, Financial Services and Financial Technology  
Parliamentary Secretary to the Treasurer

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## Part 1—Preliminary

### 1 Name

This instrument is the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020*.

### 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	1 September 2020.	1 September 2020

Note: This table relates only to the provisions of this instrument as originally made.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

A person may use an exemption from the licensing requirements in Part 7.6 of the Act to test eligible financial services.

The exemption will only become available if:

- (a) the person is an eligible person; and
- (b) the person lodges a valid notification and satisfies certain requirements (see Part 4).

The exemption will also not become available if:

- (a) ASIC is not satisfied that it will result, or be likely to result, in a net benefit to the public; or
- (b) ASIC is not satisfied that the financial service is new, or is a new adaptation or improvement of another financial service; or
- (c) ASIC reasonably believes that certain other circumstances exist.

## Section 5

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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 kind 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 kinds of financial services that can be provided to wholesale clients; and
- (b) the kinds 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 2020*.

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:

**Act** means the *Corporations Act 2001*.

**ADI** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959*.

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

**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 11(2)(c).

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**eligible life risk insurance product** means a life risk insurance product covered by paragraph 11(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 covered by 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 11(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 kind 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.

Section 6

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## 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

- (1) 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 has lodged with ASIC in the prescribed form a notification that complies with subsection 16(1) of this instrument for the eligible financial service; and
  - (c) the 30-day period starting on the day the notification was so lodged has ended without ASIC giving the provider written notice of a decision under section 8 of this instrument (about the exemption not being available) relating to the notification.

Note 1: The exemption will also not be available if the provider has already been exempt for providing that kind of financial service for the same kind of financial product (see paragraph (b) and paragraph 16(1)(c)).

Note 2: 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).

- (2) For an eligible financial service relating to an insurance product, subsection (1) applies to the provision of the service whether as principal or agent. Otherwise, subsection (1) applies only to the provision of an eligible financial service as principal.

### 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 day after the last day of the 30-day period referred to in paragraph 6(1)(c).

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

### 8 Grounds for ASIC deciding that the exemption is not available

ASIC may, after considering the notification lodged under paragraph 6(1)(b) by the provider for the eligible financial service, decide that:

- (a) it is not satisfied that both paragraphs 6(1)(a) and (b) are met for the provider and the financial service; or
- (b) it is not satisfied that exempting the financial service will result, or be likely to result, in a benefit to the public that will outweigh the detriment to the public that will result, or be likely to result, from exempting that service; or
- (c) it is not satisfied that the financial service:
  - (i) is new; or



- (ii) is a new adaptation, or new improvement, of another financial service;  
or
- (d) it reasonably believes that a condition in section 17, 18, 19, 20, 21, 22, 23 or 24 is not met for another eligible financial service for which the provider has or has had an exemption under section 6; or
- (e) if the assumption were made that the financial service is covered by a licence—it reasonably believes that the requirement in section 913BA of the Act (about the fit and proper person test) would not be satisfied in relation to the provider and the licence; or
- (f) it reasonably believes that 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
- (g) it reasonably believes that a purpose for seeking the exemption under section 6 for the financial service was to continue or recommence an exemption under section 6 that was earlier obtained by another person; or
- (h) the provider has failed to comply with Division 2 of Part 7.7A of the Act (about best interests obligations) in relation to the provision of another eligible financial service; or
- (i) it reasonably believes that the provision of the financial service is likely to result in significant detriment to one or more persons as retail clients, or wholesale clients, for the service or a related financial product; or
- (j) any exemption of the provider under the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020* is or has been cancelled under section 11 of those Regulations.

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

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

### **Division 1—When exemption ceases automatically**

#### **9 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 2020* for an eligible credit activity (within the meaning of those Regulations) for which the provider has an exemption under those Regulations.

#### **10 Exempt financial services that can be provided to wholesale clients**

The provider meets the condition in this section for an eligible financial service if, when providing the financial service to another person as a wholesale client during the financial service's testing period, the financial service relates to neither a derivative nor a margin lending facility.

#### **11 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, when providing the financial service to another person as a retail client during the financial service's testing period, the financial service is:
  - (a) the issuing, varying or disposing of a non-cash payment facility; or
  - (b) a financial service that relates to only one or more financial products referred to in subsection (2).
- (2) For the purposes of paragraph (1)(b), 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 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:
  - (i) operated outside this jurisdiction; and
  - (ii) approved in a disallowable legislative instrument made by ASIC under one or more of subsections 283GA(1), 601QA(1), 655A(1), 741(1), 926A(2), 992B(1) and 1020F(1) of the Act;

Note: In 2020, the instrument was the *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*.

- (j) for an eligible 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.

## **12 Exposure limits for exempt financial services—total limit for products for each retail client**

- (1) The provider meets the condition in this section for an eligible financial service if the provider ensures that each of the provider's retail clients may commit a total of no more than \$10,000 to financial products as the result of:
  - (a) the provision of the eligible financial service during that service's testing period; and
  - (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.
- (2) However, subsection (1) does not apply to any of the following financial products:
  - (a) an eligible general insurance product;
  - (b) an eligible life risk insurance product;
  - (c) an eligible superannuation product;
  - (d) a deposit-taking facility made available by an ADI in the course of its banking business, other than an RSA;
  - (e) a non-cash payment facility made available by an ADI in the course of its banking business.

## **13 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) gross written premiums for eligible general insurance products;
  - (b) gross written premiums for eligible life risk insurance products;
  - (c) contributions in eligible superannuation products;
  - (d) commitments to other kinds of financial product;
  - (e) the value of credit contracts entered into in relation to eligible credit activities;

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

**Division 1** When exemption ceases automatically

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arises for retail clients, wholesale clients and consumers as the result of the matters referred to in subsections (2) and (3).

- (2) For the purposes of paragraphs (1)(a) to (d), the matters are 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, by the person with that exemption for that service, happened during the testing period of that person's exemption for that service.
- (3) For the purposes of paragraph (1)(e), the matters are 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 2020* for each of the eligible credit activities; and
  - (b) each eligible credit activity was engaged in, by the person with that exemption for that credit activity, during the testing period (within the meaning of those Regulations) of that person's exemption for that credit activity.
- (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 2020*.

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

## **Division 2—Other ways exemption can cease**

### **14 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) one or more of paragraphs 8(c) to (j) now apply for the provider and the financial service; or
  - (b) a condition in section 17, 18, 19, 20, 21, 22, 23 or 24 is not met for the financial service; or
  - (c) the provider has failed to comply with Division 2 of Part 7.7A of the Act (about best interests obligations) in relation to the provision of the financial service; or
  - (d) ASIC reasonably believes that the provision of the financial service has resulted in significant detriment to one or more persons as retail clients, or wholesale clients, for the service or a related financial product.

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 (b), ASIC could seek an order for the provider to comply with the condition (see subsection 926B(4) of the Act).

Note 3: Before, or instead of, acting under this section because of paragraph (d), ASIC could consider making a make-good order (see section 24).

- (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.

### **15 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.

## Part 4—Requirements for the exemption to exist

### 16 Lodging a valid notification for eligible financial services

- (1) The provider's notification complies with this subsection for an eligible financial service if:
- (a) the notification includes the matters in subsection (2); and
  - (b) the notification states that the provider is proposing to use the exemption under section 6 for the eligible financial service; and
  - (c) 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 kind that is 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
  - (d) 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 2020*; and
  - (e) no related body corporate of the provider has lodged with ASIC:
    - (i) a notification under this instrument that includes the matters in subsection (2); or
    - (ii) a notification under the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020* that includes the matters in subsection 13(2) of that instrument;
- during the 30-day period ending on the day the notification referred to in paragraph (a) of this subsection is lodged with ASIC.

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) The matters to include in the notification are as follows:
- (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—the person's date of birth;
  - (d) if the provider is a body corporate:
    - (i) the provider's ABN, ACN and ARBN, if any; and
    - (ii) 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;

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- (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) a justification of why exempting each eligible financial service covered by paragraph (f) will result, or be likely to result, in a benefit to the public that will outweigh the detriment to the public that will result, or be likely to result, from exempting that service;
  - (h) a justification of why each eligible financial service covered by paragraph (f):
    - (i) is new; or
    - (ii) is a new adaptation, or new improvement, of another financial service;
  - (i) 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;
  - (j) if the assumption were made that each eligible financial service covered by paragraph (f) is covered by a licence—information for the purposes of ASIC making a decision about whether the requirement in section 913BA of the Act (about the fit and proper person test) would be satisfied in relation to the provider and the licence;
  - (k) a description of the procedures, memberships and arrangements by which the provider will meet the condition in section 20 (about dispute resolution and compensation) for each eligible financial service covered by paragraph (f).

Note 1: The same notification 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).

Note 2: Paragraph (j) is relevant for decisions by ASIC under paragraph 8(e).

Note 3: Since paragraph 6(1)(b) requires the notification to be lodged with ASIC in the approved form, the notification must include any information, statements, explanations or other matters required by the form (see section 350 of the Act).

## Part 5—Conditions for the exemption

### 17 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 Australian Financial Services Licence Exemption) Regulations 2020*; 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 19(a) (which the provider must list) happens.

### 18 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.

### 19 Condition—notifying clients while providing an exempt financial service

The condition in this section is met for an eligible financial service if, when providing the financial service to one or more persons as retail clients or wholesale clients, the provider:

- (a) 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 the provider's creditors, or has made an assignment of the provider's remuneration for the benefit of the provider's 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 Australian Financial Services Licence Exemption) Regulations 2020*;
  - (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; and
- (b) notifies ASIC in writing within 10 business days after the happening of any of the events referred to in paragraph (a) (other than the events in subparagraphs (a)(v) and (vi)).

## **20 Condition—maintaining certain procedures, memberships and arrangements**

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 the AFCA scheme for the purposes of dealing with 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 adequate professional indemnity insurance; or
  - (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.

## Section 21

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### 21 Condition—statements of advice

The condition in this section is met for an eligible financial service if, when the financial service includes providing personal advice to a person as a retail client of the provider, the provider gives each of those clients a Statement of Advice in accordance with Subdivisions C and D of Division 3 of Part 7.7 of the Act:

- (a) in relation to that personal advice; and
- (b) 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.

### 22 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.

### 23 Condition—financial product disclosure

The condition in this section is met for an eligible financial service if the provider complies with Division 2 of Part 7.9 of the Act:

- (a) in relation to the financial service; and
- (b) as if the provider were a financial services licensee (for any financial products related to the financial service) for the purposes of that Division.

Note: Paragraph (b) will ensure the provider is a regulated person for the purposes of that Division (see the definition of *regulated person* in section 1011B of the Act).

### 24 Condition—make-good orders

- (1) The condition in this section is met for an eligible financial service if, when an order under subsection (2) has been given to the provider for the financial service, the provider:
  - (a) complies with the order within the 30-day period starting on the day after the provider was given the order; and
  - (b) lodges with ASIC, during that 30-day period, a notice in a prescribed form stating that the provider has complied with the order.
- (2) ASIC may, by written notice given to the provider, order that the provider ensures that specified conduct:
  - (a) is engaged in in relation to an eligible financial service; or
  - (b) is not engaged in in relation to an eligible financial service;if:
  - (c) the provider has an exemption under section 6 for the financial service; and
  - (d) ASIC is satisfied that the provision of the financial service has resulted, or is likely to result, in significant detriment to one or more persons as retail clients, or wholesale clients, for the service or a related financial product.

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

## Part 6—Related matters

### 25 Exempt intermediaries for CSF offers

For the purposes of paragraph 742(1)(c) of the Act, if:

(a) a person has an exemption under section 6 of this instrument for an eligible financial service; and

(b) the eligible financial service is providing a crowd-funding service;

Chapter 6D of the Act applies as if section 738C of the Act were modified so that the person is a *CSF intermediary* during the eligible financial service's testing period.