

# EXPOSURE DRAFT

EXPOSURE DRAFT
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Inserts for  
**Treasury Laws Amendment (Measures  
for Consultation) Bill 2021: Licensing  
exemptions for foreign financial service  
providers**

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1.		
2. Schedule 1	The day after this Act receives the Royal Assent.	
3.		

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## Schedule 1—Licensing exemptions for foreign financial service providers

### *Corporations Act 2001*

#### 1 Section 910A

Insert:

*home jurisdiction*, for a person, has the meaning given by subparagraph 911A(2)(ep)(iii).

*home regulator*, for a person, has the meaning given by subparagraph 911A(2)(ep)(iv).

#### 2 Before section 911A

Insert:

#### Subdivision A—General

#### 3 After paragraph 911A(2)(en)

Insert:

(eo) all of the following apply:

- (i) the financial service is provided only to professional investors;
- (ii) the person provides the financial service from a place outside this jurisdiction;
- (iii) the person's head office and principal place of business are located at one or more places outside this jurisdiction;
- (iv) the person reasonably believes that providing the financial service does not contravene any law applying in any of the places referred to in subparagraph (ii) or (iii);

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

(ep) all of the following apply:

- (i) the financial service is provided only to wholesale clients;
- (ii) the person is a foreign company;

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- 1 (iii) the person has and maintains all authorisations,  
2 registrations or licences (however described) necessary  
3 to legally provide the same financial service in a place  
4 (the person's *home jurisdiction*) that is outside this  
5 jurisdiction;  
6 (iv) the regulator administering those authorisations,  
7 registrations or licences for that place is a regulator  
8 determined under subsection 911T(1) (the person's  
9 *home regulator*);

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

## 11 4 At the end of Division 2 of Part 7.6

12 Add:

### 13 Subdivision B—Exceptions and conditions for certain licensing 14 exemptions for foreign financial service providers

#### 15 911E Exemption for financial services provided to professional 16 investors—regulations may provide exceptions

17 Despite paragraph 911A(2)(eo), the regulations may provide that  
18 the exemption under that paragraph does not apply in relation to:

- 19 (a) a particular kind of financial service; or  
20 (b) a particular kind of financial service in relation to a particular  
21 kind of financial product; or  
22 (c) a particular kind of financial product; or  
23 (d) a particular kind of professional investor.

#### 24 911F Certain licensing exemptions for foreign financial service 25 providers are subject to conditions

26 *Conditions for the exemption for financial services provided to*  
27 *professional investors*

- 28 (1) The exemption under paragraph 911A(2)(eo) applies to a person in  
29 relation to a financial service subject to conditions. These  
30 conditions for the exemption are:  
31 (a) the conditions in sections 911G, 911H, 911J and 911K; and  
32 (b) any additional conditions imposed under section 911Q for the  
33 exemption's future application to the person.

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

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- 1 (a) the person contravenes any of these conditions; or  
2 (b) ASIC reasonably believes that the person (or a related person) is  
3 not a fit and proper person;  
4 (see sections 911M and 911N).

5 *Conditions for the exemption for comparably regulated providers*

- 6 (2) The exemption under paragraph 911A(2)(ep) applies to a person in  
7 relation to a financial service subject to conditions. These  
8 conditions for the exemption are:  
9 (a) the conditions in sections 911G, 911H, 911J and 911L; and  
10 (b) any additional conditions imposed under section 911Q for the  
11 exemption's future application to the person.

- 12 Note: ASIC may cancel the exemption from applying to the person if:  
13 (a) the person contravenes any of these conditions; or  
14 (b) ASIC reasonably believes that the person (or a related person) is  
15 not a fit and proper person;  
16 (see sections 911M and 911N).

17 *Contravening a condition may result in a civil penalty*

- 18 (3) A person contravenes this subsection if:  
19 (a) apart from the exemption under paragraph 911A(2)(eo) or  
20 (ep), the person would contravene subsection 911A(5B) in  
21 relation to providing a financial service; and  
22 (b) the person contravenes a condition for the exemption.

23 Note 1: This subsection is a civil penalty provision (see section 1317E).

24 Note 2: The conditions set out in this Subdivision apply only for one or both  
25 of the exemptions referred to in subsections (1) and (2).

26 **911G Certain licensing exemptions for foreign financial service**  
27 **providers—conditions about notifying or assisting ASIC**

- 28 (1) For the purposes of section 911F, this section sets out conditions  
29 for a person that proposes to rely on the exemption under  
30 paragraph 911A(2)(eo) or (ep) in relation to a financial service.

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

- 32 (2) The person must notify ASIC that the person intends to rely on the  
33 exemption:  
34 (a) as soon as practicable, and before the 15th business day, after  
35 the first time (the *start time*) after the commencement of this

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1 section that the person starts to provide the financial service;  
2 and

- 3 (b) by giving ASIC the notice in a written form that:  
4 (i) is approved by ASIC; and  
5 (ii) includes the person's contact details; and  
6 (iii) includes the information, statements, explanations or  
7 other matters required by the approved form; and  
8 (iv) is accompanied by any other material required by the  
9 approved form; and  
10 (v) is given in a manner required by the approved form  
11 (including in electronic form).

12 *Giving ASIC such assistance as ASIC reasonably requests*

- 13 (3) The person must give such assistance to ASIC, or a person  
14 authorised by ASIC, as ASIC or the authorised person reasonably  
15 requests in relation to the performance of ASIC's functions or the  
16 exercise of ASIC's powers.
- 17 (4) Such assistance may include showing ASIC the person's books,  
18 giving ASIC a copy of the person's books, or giving ASIC other  
19 information.

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

- 21 (5) The person must notify ASIC that the person agrees:  
22 (a) that legal proceedings relating to the provision of the  
23 financial service may be brought in a Court; and  
24 (b) if such proceedings are brought in a Court—that the law  
25 relating to the provision of the financial service is the law in  
26 force in this jurisdiction; and  
27 (c) to comply with any order of a Court from such proceedings  
28 (to the extent that the order does not conflict with an order  
29 made by a court in the person's home jurisdiction).
- 30 (6) The person must give this notice to ASIC:  
31 (a) as soon as practicable, and before the 15th business day, after  
32 the start time (see paragraph (2)(a)); and  
33 (b) in a written form that:  
34 (i) is approved by ASIC; and  
35 (ii) includes the information, statements, explanations or  
36 other matters required by the approved form; and

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- 1 (iii) is accompanied by any other material required by the  
2 approved form; and  
3 (iv) is given in a manner required by the approved form  
4 (including in electronic form).

## 5 **911H Certain licensing exemptions for foreign financial service** 6 **providers—condition to comply with ASIC directions**

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

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## 1 **911J Certain licensing exemptions for foreign financial service** 2 **providers—condition about giving notice of the** 3 **exemption to each recipient of the financial service**

- 4 (1) For the purposes of section 911F, this section sets out a condition  
5 for a person that proposes to rely on the exemption under  
6 paragraph 911A(2)(eo) or (ep) in relation to a financial service.
- 7 (2) The person must provide written notice to each recipient of the  
8 financial service either:  
9 (a) before the financial service is provided to the recipient; or  
10 (b) if that is not practicable—as soon as practicable after starting  
11 to provide the financial service to the recipient.
- 12 (3) The notice must include a statement to the effect that the person is  
13 exempt under this Act from the requirement to hold an Australian  
14 financial services licence covering the provision of the financial  
15 service.

16 Note 1: The notice only needs to be given once to each recipient.

17 Note 2: For subsection (2), the recipient will be:

- 18 (a) for the exemption under paragraph 911A(2)(eo)—a professional  
19 investor; or  
20 (b) for the exemption under paragraph 911A(2)(ep)—a wholesale  
21 client.

## 22 **911K Exemption for financial services provided to professional** 23 **investors—condition to notify ASIC of changes to contact** 24 **details**

- 25 (1) For the purposes of subsection 911F(1), this section sets out a  
26 condition for a person that proposes to rely on the exemption under  
27 paragraph 911A(2)(eo) in relation to a financial service.
- 28 (2) The person must notify ASIC of any change to the person's contact  
29 details:  
30 (a) as soon as practicable after the change happens; and  
31 (b) by giving the notice to ASIC in a written form that:  
32 (i) is approved by ASIC; and  
33 (ii) includes the information, statements, explanations or  
34 other matters required by the approved form; and  
35 (iii) is accompanied by any other material required by the  
36 approved form; and

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

## **911L Exemption for comparably regulated providers—other conditions**

(1) For the purposes of subsection 911F(2), this section sets out conditions for a person that proposes to rely on the exemption under paragraph 911A(2)(ep) in relation to a financial service.

### *Consent to information sharing between ASIC and the person's home regulator*

(2) The person must notify ASIC that the person consents to ASIC and the person's home regulator sharing information about the person.

The person must do so:

- (a) as soon as practicable, and before the 15th business day, after the start time (see paragraph 911G(2)(a)); and
- (b) by giving the notice to ASIC in a written form that:
  - (i) is approved by ASIC; and
  - (ii) includes the information, statements, explanations or other matters required by the approved form; and
  - (iii) is accompanied by any other material required by the approved form; and
  - (iv) is given in a manner required by the approved form (including in electronic form).

### *Notifying ASIC of breaches or investigations in other jurisdictions*

(3) The person must notify ASIC of any significant enforcement action taken, any disciplinary action taken or any significant investigation undertaken against the person in any place outside this jurisdiction:

- (a) as soon as practicable, and before the 15th business day, after the day on which the person becomes aware, or would reasonably be expected to have become aware, of the action or investigation; and
- (b) by giving the notice to ASIC in a written form that:
  - (i) is approved by ASIC; and
  - (ii) includes the information, statements, explanations or other matters required by the approved form; and
  - (iii) is accompanied by any other material required by the approved form; and

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

- (4) Subsection (3) does not apply to the extent that complying with subsection (3) would be contrary to another law in force in this jurisdiction or elsewhere.

*Having an agent when providing the financial service*

- (5) The person must have an agent in this jurisdiction when providing the financial service unless the consecutive period during which the person provides the financial service without an agent is less than 10 business days.

*Sufficient oversight over representatives*

- (6) The person must:
- (a) maintain sufficient oversight over its representatives who provide the financial service; and
  - (b) take reasonable steps to ensure that these representatives comply with the financial services laws in relation to providing the financial service.

**911M Cancelling either exemption—person contravenes a condition for the exemption**

- (1) ASIC may, in writing, decide to cancel an exemption under paragraph 911A(2)(eo) or (ep) from applying to a person in relation to a financial service if subsection (2) or (3) of this section applies.

Note: For an alternative to cancelling the exemption, see section 911Q.

- (2) This subsection applies if the person contravenes a condition for the exemption (see subsection 911F(1) or (2)).
- (3) This subsection applies if the person does not provide ASIC with full particulars of the person's contravention of a condition for the exemption:
- (a) as soon as practicable, and before the 15th business day, after the day on which the person would reasonably be expected to have become aware of the contravention after having made reasonable enquiries; and
  - (b) by giving the particulars to ASIC in a written form that:
    - (i) is approved by ASIC; and

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

## 7 **911N Cancelling either exemption—person fails the fit and proper** 8 **person test**

- 9 (1) ASIC may, in writing, decide to cancel an exemption under  
10 paragraph 911A(2)(eo) or (ep) from applying to a person in  
11 relation to a financial service if ASIC reasonably believes that:  
12 (a) the person (the *first person*) is not a fit and proper person to  
13 provide the financial service; or  
14 (b) a person mentioned in a paragraph of subsection 913BA(1) in  
15 relation to the first person is not a fit and proper person for a  
16 purpose mentioned in that paragraph (assuming any reference  
17 in that paragraph to a licence were a reference to the  
18 exemption).
- 19 (2) In considering whether a person referred to in paragraph (1)(a) or  
20 (b) is fit and proper for a purpose referred to in that paragraph,  
21 ASIC must have regard to the matters in section 913BB.

## 22 **911P Procedures for cancelling an exemption**

23 *ASIC must first give a show cause notice*

- 24 (1) ASIC may only decide under section 911M or 911N to cancel an  
25 exemption from applying to a person after:  
26 (a) taking reasonable steps to give the person written notice of:  
27 (i) the proposed cancellation and the reasons for it; and  
28 (ii) the opportunity to appear (or be represented) at a  
29 hearing before ASIC that takes place in private, and to  
30 make submissions to ASIC in relation to the matter; and  
31 (b) taking into account any information given to ASIC at such a  
32 hearing or in such submissions.

33 Note: A hearing mentioned in subparagraph (a)(ii) could take place virtually  
34 (see section 911S).

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*Notice of cancellation*

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

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

10 **911Q Imposing additional conditions as an alternative to cancelling**  
11 **an exemption**

- 12 (1) If subsection 911M(2) or (3) applies to a person and an exemption,  
13 ASIC may, in writing, decide to impose one or more additional  
14 conditions for the exemption's future application to the person.

15 Note 1: If the person contravenes any of these additional conditions, ASIC  
16 may:

- 17 (a) cancel the exemption (see section 911M); or  
18 (b) vary the additional condition, or impose another additional  
19 condition, under this section.

20 Note 2: The contravention may also result in a civil penalty (see  
21 subsection 911F(3)).

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

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## 911R Procedures for additional conditions

- 1
- 2 (1) This section applies if ASIC is proposing to make any of the
- 3 following decisions (the *proposed decision*) under section 911Q in
- 4 relation to a person:
- 5 (a) impose an additional condition;
- 6 (b) vary an additional condition on ASIC's own initiative;
- 7 (c) refuse to comply with a request made by the person under
- 8 subsection 911Q(3).

9 *ASIC must first give a show cause notice*

- 10 (2) ASIC may only make the proposed decision after:
- 11 (a) taking reasonable steps to give the person written notice of:
- 12 (i) the proposed decision and the reasons for it; and
- 13 (ii) the opportunity to appear (or be represented) at a
- 14 hearing before ASIC that takes place in private, and to
- 15 make submissions to ASIC in relation to the matter; and
- 16 (b) taking into account any information given to ASIC at such a
- 17 hearing or in such submissions.

18 Note: A hearing mentioned in subparagraph (a)(ii) could take place virtually

19 (see section 911S).

20 *Notice of making the proposed decision*

- 21 (3) If ASIC makes the proposed decision, ASIC must take reasonable
- 22 steps to give the person written notice of:
- 23 (a) the decision and the reasons for it; and
- 24 (b) the day the decision is to take effect (which must not be
- 25 before the day the notice is given to the person).

26 Note: The notice could also include notice of the person's right to seek

27 review of the decision (see subsection 1317D(2)).

## 911S Proceedings at hearings

- 28
- 29 (1) For the purposes of a hearing referred to in
- 30 subparagraph 911P(1)(a)(ii) or 911R(2)(a)(ii), ASIC may decide to
- 31 hold all or part of the hearing:
- 32 (a) at a particular place; or
- 33 (b) using any technology that allows an individual to participate
- 34 in the hearing, or that part of the hearing, without being
- 35 physically present at the hearing or that part of the hearing.

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- 1 (2) If ASIC decides to hold all or part of a hearing using technology of  
2 a kind mentioned in paragraph (1)(b):  
3 (a) each participant in the hearing (including ASIC and the  
4 person appearing at the hearing) may use that technology to  
5 participate in the hearing or that part of the hearing; and  
6 (b) the hearing or that part of the hearing may be held at 2 or  
7 more places at the same time.

## 8 **911T List of comparable regulators**

- 9 (1) The Minister may, by legislative instrument, determine regulators  
10 that administer comparable regulatory regimes of authorisations,  
11 registrations or licences (however described) necessary to legally  
12 provide financial services in places outside this jurisdiction.

13 Note: Regulators determined under this subsection are relevant for:  
14 (a) the licensing exemption under paragraph 911A(2)(ep); and  
15 (b) the exemptions in subsections 913B(2A) and 914B(2A) from the  
16 fit and proper person test.

### 17 *Matters to have regard when making determinations*

- 18 (2) In deciding whether to determine a regulator under subsection (1),  
19 the Minister must have regard to:  
20 (a) whether the regulatory regime that the regulator administers  
21 produces comparable outcomes to this jurisdiction in  
22 regulating and improving the performance of:  
23 (i) the relevant financial services system; and  
24 (ii) the financial services providers in that system; and  
25 (b) whether that regulatory regime is clear, transparent, certain  
26 and adequately enforced; and  
27 (c) whether that regulatory regime is broadly consistent with the  
28 Objectives and Principles of Securities Regulation,  
29 developed by the International Organization of Securities  
30 Commissions (*IOSCO*) and as in force from time to time;  
31 and  
32 (d) whether the regulator:  
33 (i) is a signatory to the Multilateral Memorandum of  
34 Understanding Concerning Consultation and  
35 Cooperation and the Exchange of Information,  
36 developed by the IOSCO and as in force from time to  
37 time; or

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- 1 (ii) is a party to any other effective cooperation arrangement  
2 with ASIC; and  
3 (e) any relevant submission received from any entity in relation  
4 to the regulator or that regulatory regime; and  
5 (f) any relevant advice (including any assessment) received from  
6 ASIC in relation to the regulator or that regulatory regime;  
7 and  
8 (g) any other matters prescribed by the regulations for the  
9 purposes of this paragraph.

10 The Minister may also have regard to any other matter that the  
11 Minister considers relevant.

12 Note: The regulation mentioned in paragraph (c), and the memorandum  
13 mentioned in subparagraph (d)(i), could in 2021 be viewed on  
14 IOSCO's website (see <https://www.iosco.org>).

- 15 (3) To assist the Minister decide whether to determine a regulator  
16 under subsection (1), ASIC may:  
17 (a) give advice to the Minister; and  
18 (b) if the Minister requests, include with the advice an  
19 assessment of one or more of the matters in subsection (2) in  
20 relation to the regulator or the regulatory regime that the  
21 regulator administers.

## 22 5 At the end of subsection 913B(1)

23 Add:

24 Note 3: There is an exemption from paragraph (c) for certain foreign  
25 companies (see subsection (2A)).

## 26 6 After subsection 913B(2)

27 Insert:

28 *Fit and proper person test does not apply to certain foreign*  
29 *companies*

- 30 (2A) Paragraph (1)(c) does not apply to an applicant for an Australian  
31 financial services licence if:  
32 (a) the applicant is a foreign company; and  
33 (b) the licence, if granted, would be restricted to the provision of  
34 financial services to wholesale clients; and  
35 (c) the applicant holds one or more authorisations, registrations  
36 or licences (however described) that:

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- 1 (i) are necessary to legally provide financial services in a  
2 place outside this jurisdiction; and  
3 (ii) are issued (however described) by a regulator  
4 determined under subsection 911T(1).

## 5 **7 Before subsection 914B(2)**

6 Insert:

7 *Refusing to grant the application if the fit and proper person test is*  
8 *not satisfied*

## 9 **8 After subsection 914B(2)**

10 Insert:

11 (2A) However, subsection (2) does not apply if:

- 12 (a) the applicant is a foreign company; and  
13 (b) the licence, if the application is granted, would be restricted  
14 to the provision of financial services to wholesale clients; and  
15 (c) the applicant holds one or more authorisations, registrations  
16 or licences (however described) that:  
17 (i) are necessary to legally provide financial services in a  
18 place outside this jurisdiction; and  
19 (ii) are issued (however described) by a regulator  
20 determined under subsection 911T(1).

## 21 **9 Subsection 1317E(3) (after table item dealing with** 22 **subsection 911B(4))**

23 Insert:

subsection 911F(3)	contravening a condition of a licensing exemption for foreign financial services providers	uncategorised
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## 24 **10 In the appropriate position in Chapter 10**

25 Insert:

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## 1 Part 10.63—Transitional provisions relating to the 2 Treasury Laws Amendment (Measures for 3 Consultation) Act 2021 4

### 5 1693 Application of amendments—exemptions from the 6 requirement to hold an Australian financial services 7 licence

8 Paragraphs 911A(2)(eo) and (ep), as inserted by Schedule 1 to the  
9 *Treasury Laws Amendment (Measures for Consultation) Act 2021*,  
10 apply in relation to financial services provided on or after the  
11 commencement of that Schedule.

### 12 1694 Application of amendments—exemption from the fit and 13 proper person test

14 (1) Subsection 913B(2A), as inserted by Schedule 1 to the *Treasury*  
15 *Laws Amendment (Measures for Consultation) Act 2021*, applies in  
16 relation to applications for Australian financial services licences  
17 made on or after the commencement of that Schedule.

18 (2) Subsection 914B(2A), as inserted by Schedule 1 to the *Treasury*  
19 *Laws Amendment (Measures for Consultation) Act 2021*, applies in  
20 relation to applications:

- 21 (a) for ASIC to take certain action in relation to Australian  
22 financial services licences; and
- 23 (b) that are made on or after the commencement of that  
24 Schedule;

25 whether the licences were granted before, on or after that  
26 commencement.

### 27 1695 Transitional—first list of comparable regulators

28 Subsection 911T(2) does not apply in relation to the determination  
29 of a regulator in the first legislative instrument made under  
30 subsection 911T(1) after the commencement of this section if the  
31 Minister is satisfied that:

- 32 (a) the regulator can be identified from a legislative instrument  
33 made by ASIC and in force immediately before the  
34 commencement of this section; and

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- (b) the regulator is responsible for regulating the provision of financial services by providers in a place outside this jurisdiction; and
  - (c) the legislative instrument exempted those providers from certain provisions of Part 7.6 (about licensing of providers of financial services) in relation to the provision of financial services.