

EXPOSURE DRAFT

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Inserts for
**Corporations Amendment (Asia Region
Funds Passport) Bill 2017: Chapter 8A**

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Schedule 1—Amendment inserting Chapter 8A

Corporations Act 2001

1 After Chapter 8

Insert:

Chapter 8A—Asia Region Funds Passport

Part 8A.1—Preliminary

1210 Definitions

In this Chapter:

APFRN: see *Australian Passport Fund Registration Number*.

Australian Passport Fund Registration Number or *APFRN* means the number assigned to an Australian passport fund under paragraph 1212A(2)(a).

consideration period for a notice of intention to offer interests in a foreign passport fund to a person in this jurisdiction: see section 1213D.

home economy, for a passport fund, means:

- (a) if the passport fund is a regulated CIS, or a sub-fund of a regulated CIS, in only one participating economy—that participating economy; and
- (b) if the passport fund is a regulated CIS, or a sub-fund of a regulated CIS, in more than one participating economy—the participating economy in which the fund is first registered or approved as a regulated CIS (however that registration or approval is described).

home regulator, for a passport fund, means the entity that is the Passport Regulator for the home economy for the passport fund under the Passport Rules for this jurisdiction.

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1 **host economy:** a participating economy is a **host economy** for a
2 passport fund if:

- 3 (a) the participating economy is not the home economy for the
4 fund; and
5 (b) either:
6 (i) it is permitted under the law of the participating
7 economy to offer interests in the fund in that economy,
8 on the basis that the fund is a passport fund; or
9 (ii) an application has been made under the law of the
10 participating economy for permission to offer interests
11 in the fund in that economy, on the basis that the fund is
12 a passport fund.

13 **host regulator,** for a passport fund, means the entity that is the
14 Passport Regulator for a host economy for the passport fund under
15 the Passport Rules for this jurisdiction.

16 **Memorandum of Cooperation** means the Memorandum of
17 Cooperation on the Establishment and Implementation of the Asia
18 Region Funds Passport signed on behalf of Australia on 28 April
19 2016, as it applies in relation to Australia from time to time.

20 **operator,** of a passport fund, means the entity that is the operator of
21 the fund under the Passport Rules for this jurisdiction.

22 **participating economy:** a Participant, within the meaning of the
23 Memorandum of Cooperation, is a **participating economy** at a
24 particular time if:

- 25 (a) the Asia Region Funds Passport Joint Committee established
26 under the Memorandum of Cooperation has published
27 notification on the Passport website under subparagraph 5.6
28 of the Memorandum, at or before that time, that the
29 Participant has effected implementation; and
30 (b) at that time:
31 (i) the Memorandum of Cooperation has not been
32 terminated; and
33 (ii) the Participant has not withdrawn from the
34 Memorandum of Cooperation.

35 **passport fund** means a regulated CIS, or a sub-fund of a regulated
36 CIS, registered as a passport fund in a participating economy.

37 **Register of Passport Funds:** see section 1214.

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1 *regulated CIS* has the same meaning as in the Passport Rules for
2 this jurisdiction.

3 *sub-fund*, in relation to a regulated CIS, has the same meaning as
4 in the Passport Rules for this jurisdiction.

5 **1210A List of participating economies**

- 6 (1) The Minister must, by notifiable instrument, publish a list of
7 participating economies.
- 8 (2) The Minister must:
- 9 (a) include in the instrument the date on which each Participant,
10 within the meaning of the Memorandum of Cooperation,
11 became a participating economy; and
 - 12 (b) if a Participant, within the meaning of the Memorandum of
13 Cooperation, ceases to be a participating economy—include
14 in the instrument the date on which that Participant ceases to
15 be a participating economy; and
 - 16 (c) ensure that the instrument is updated as soon as is reasonably
17 practicable after a Participant, within the meaning of the
18 Memorandum of Cooperation, becomes, or ceases to be, a
19 participating economy.

20 **1210B Minister may determine that funds not to offer interests in** 21 **this jurisdiction**

- 22 (1) The Minister may, by legislative instrument, determine that the
23 operators of passport funds, or a class of passport funds, the home
24 economy for which is specified in the determination, must not offer
25 interests in the funds in this jurisdiction.
- 26 (2) The Minister may only make a determination under subsection (1),
27 if:
- 28 (a) the Minister is satisfied that:
 - 29 (i) under the Memorandum of Cooperation, there are
30 grounds for requiring the operators of the funds to
31 which the determination applies not to offer interests in
32 the funds in this jurisdiction; and
 - 33 (ii) the processes that, under the Memorandum of
34 Cooperation, are to be followed before requiring the
35 operators of the funds to which the determination

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- 1 applies not to offer interests in the funds in this
2 jurisdiction, have been complied with; or
3 (b) the Memorandum of Cooperation has been terminated; or
4 (c) Australia or the home economy for the funds to which the
5 determination applies withdraws from the Memorandum of
6 Cooperation.
- 7 (3) If the Minister makes a determination under this section, the
8 regulations may deal with matters of a transitional nature relating
9 to the movement of funds to which the determination applies from
10 participation in this jurisdiction under this Chapter to participation
11 in this jurisdiction under the other provisions of the Corporations
12 legislation dealing with collective investment vehicles.

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Part 8A.2—Passport Rules

1211 Minister may make Passport Rules for this jurisdiction

- (1) The Minister may, by legislative instrument, make rules that provide for matters relating to passport funds, or entities connected with passport funds.
- (2) The rules made by the Minister under subsection (1) must be substantially the same as the Passport Rules set out in Annex 3 to the Memorandum of Cooperation.

1211A Definition of *Passport Rules*

Passport Rules for this jurisdiction

- (1) ***Passport Rules*** for this jurisdiction, means rules made by the Minister under section 1211 as in force from time to time.

Passport Rules for a participating economy other than Australia

- (2) ***Passport Rules*** for a participating economy other than Australia, means rules that are:
 - (a) substantially the same as the Passport Rules set out in Annex 3 to the Memorandum of Cooperation; and
 - (b) in force from time to time in that participating economy.

1211C Compliance with the Passport Rules

- (1) A person contravenes this subsection if:
 - (a) an obligation is imposed on the person in relation to an Australian passport fund under the Passport Rules for this jurisdiction; and
 - (b) the person does not comply with the obligation.
- (2) A person contravenes this subsection if:
 - (a) an obligation is imposed on the person in relation to a notified foreign passport fund under the Passport Rules for this jurisdiction; and
 - (b) the person does not comply with the obligation; and

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- 1 (c) the failure to comply results, or is likely to result, in a person
2 in this jurisdiction who holds an interest in the fund suffering
3 financial or other disadvantage.
- 4 (3) A person commits an offence if the person contravenes
5 subsection (1) or (2).
- 6 Penalty: 2,000 penalty units or imprisonment for 5 years, or both.
- 7 (4) A person commits an offence of strict liability if the person
8 contravenes subsection (1) or (2).
- 9 Penalty: 60 penalty units.
- 10 (5) Section 15.1 of the *Criminal Code* (extended geographical
11 jurisdiction—category A) applies to an offence against
12 subsection (3) or (4).

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Part 8A.3—Australian passport funds

1212 Application for registration

- (1) A person may lodge an application with ASIC to have a managed investment scheme registered as a passport fund if:
- (a) the scheme is a registered scheme and the person is the responsible entity for the scheme; or
 - (b) an application has been made for the scheme to be registered under section 601EB, and the person is the proposed responsible entity for the scheme.
- (2) The application must:
- (a) be in the prescribed form; and
 - (b) include a copy of the Product Disclosure Statement that the responsible entity for the scheme would be required to prepare if:
 - (i) the responsible entity were a regulated person required to give a Product Disclosure Statement to a retail client under subsection 1012B(3); and
 - (ii) the scheme were registered as a passport fund.
- (3) ASIC may, by legislative instrument, determine that information that is lodged with ASIC under this section will not be available for inspection or copying from ASIC if it is of a kind specified in the determination.

1212A Registration of registered scheme as a passport fund

- (1) ASIC must register a registered scheme as a passport fund if ASIC is of the opinion that:
- (a) the responsible entity for the scheme is an eligible entity, within the meaning of section 3 of Annex 2 of the Memorandum of Cooperation; and
 - (b) each of the following is likely to be complied with in relation to the scheme:
 - (i) this Act (including the Passport Rules for this jurisdiction);
 - (ii) the ASIC Act.

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- 1 (2) A registered scheme is registered as a passport fund by ASIC:
2 (a) assigning a unique number to the passport fund (the
3 *Australian Passport Fund Registration Number* or *APFRN*
4 for the passport fund); and
5 (b) ensuring that details of the fund are entered on the Register of
6 Passport Funds.

7 **1212B All documents etc. lodged with ASIC to bear APFRN**

8 After a registered scheme is registered as a passport fund, all
9 documents relating to the fund that are lodged with ASIC must set
10 out the scheme's APFRN.

11 **1212C Notifying ASIC if offering interests in another participating**
12 **economy in another name**

- 13 (1) The operator of an Australian passport fund must notify ASIC in
14 accordance with this section if:
15 (a) the operator of the fund offers interests in the fund in a
16 participating economy other than Australia; and
17 (b) the name of the fund in the other participating economy is not
18 the same as the name of the Australian passport fund.

19 Note: Failure to comply with this subsection is an offence: see
20 subsection 1311(1).

- 21 (2) The notice must be given:
22 (a) in writing; and
23 (b) within 7 days after interests in the fund begin to be offered
24 under that name.

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1 **Part 8A.4—Notified foreign passport funds**

2 **Division 1—Becoming a notified foreign passport fund**

3 **1213 Notice of intention to offer interests in a foreign passport fund**

- 4 (1) The operator of a foreign passport fund may lodge with ASIC a
5 notice of intention to offer interests in the fund to persons in this
6 jurisdiction, provided the operator is a registered foreign company.
- 7 (2) The notice must:
- 8 (a) be in the prescribed form; and
- 9 (b) include a copy of the Product Disclosure Statement that the
10 operator of the foreign passport fund would be required to
11 prepare if:
- 12 (i) the operator were a regulated person required to give a
13 Product Disclosure Statement to a retail client under
14 subsection 1012B(3); and
- 15 (ii) the fund were a notified foreign passport fund.
- 16 (3) ASIC may, by legislative instrument, determine that information
17 that is lodged with ASIC under this section will not be available for
18 inspection or copying from ASIC if it is of a kind specified in the
19 determination.

20 **1213A ASIC may notify operator that notice of intention lacks** 21 **information required**

- 22 (1) ASIC may, within the consideration period for the notice of
23 intention, notify the operator of the foreign passport fund that
24 ASIC is of the opinion that information required under the
25 prescribed form has not been provided.
- 26 (2) ASIC's notification must be given in writing.

27 **1213B Rejecting a notice of intention**

28 *Circumstances in which ASIC may reject a notice of intention*

- 29 (1) ASIC may, within the consideration period for the notice of
30 intention, reject the notice if:
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- 1 (a) ASIC is of the opinion that one or more of the following has
2 not been, is not being or is not likely to be complied with in
3 relation to the fund:
4 (i) this Act (other than the Passport Rules for this
5 jurisdiction);
6 (ii) the ASIC Act;
7 (iii) the law of the home economy for the fund, to the extent
8 that the law is administered by the home regulator for
9 the fund (including the Passport Rules for the home
10 economy for the fund); or
11 (b) ASIC is of the opinion that it is not in the public interest in
12 this jurisdiction for the operator to offer interests in the
13 passport fund in this jurisdiction; or
14 (c) both of the following are satisfied:
15 (i) an exemption has been given, or a modification made,
16 to the Passport Rules for the home economy for the
17 passport fund that affects the fund or entities connected
18 with the fund;
19 (ii) ASIC does not consent to the exemption or
20 modification; or
21 (d) the name of the passport fund in relation to which the
22 operator has given notice is not available in this jurisdiction.
- 23 (2) In determining its opinion in relation to a matter mentioned in
24 subparagraph (1)(a)(iii), ASIC must:
25 (a) make a request, in writing, to the home regulator for the fund
26 for the opinion of the home regulator on the matter; and
27 (b) specify in the request the basis for ASIC's concerns about
28 compliance with the law of the home economy; and
29 (c) state a reasonable period during which ASIC will wait for a
30 reply before acting; and
31 (d) if the home regulator replies to the request within that
32 period—give effect to the opinion of the home regulator on
33 the matter.
- 34 (3) In paragraph (1)(b), *public interest* does not include any benefit in
35 this jurisdiction that may arise from limiting competition for
36 managed investment schemes operating principally in this
37 jurisdiction.
- 38 (4) Nothing in this section requires ASIC to conduct an assessment of
39 the public interest in this jurisdiction in each case.
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- 1 (5) A name is not available to a foreign passport fund in this
2 jurisdiction for the purposes of paragraph (1)(d) if:
3 (a) the name is:
4 (i) identical (under rules set out in the regulations) to a
5 name that is reserved or registered under this Act for
6 another body; or
7 (ii) identical (under rules set out in the regulations) to a
8 name of a managed investment scheme that is the
9 subject of an application for registration that has been
10 lodged under section 601EA but not yet determined; or
11 (iii) identical (under rules set out in the regulations) to a
12 name of a foreign passport fund in relation to which a
13 notice of intention under section 1213 has already been
14 lodged; or
15 (iv) identical (under rules set out in the regulations) to a
16 name that is held or registered on the Business Names
17 Register in respect of another individual or body who is
18 not the operator; or
19 (v) unacceptable for registration under the regulations; and
20 (b) the operator of the fund has not notified ASIC and the home
21 regulator for the fund in writing that it will adopt an available
22 alternative name for the fund in this jurisdiction.
- 23 (6) The Minister may consent in writing to a name being available to a
24 foreign passport fund in this jurisdiction even if the name would
25 not otherwise be available because of paragraph (5)(a).
- 26 (7) The Minister's consent may be given subject to conditions.
- 27 *Circumstances in which ASIC must reject a notice of intention*
- 28 (8) ASIC must, within the consideration period for the notice of
29 intention, reject the notice if:
30 (a) the Minister has made a determination under
31 subsection 1210B(1) that the operators of passport funds, or a
32 class of passport funds, the home economy for which is
33 specified in the determination, must not offer interests in the
34 fund in this jurisdiction; and
35 (b) the determination applies to the passport fund.
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1 *ASIC must notify operator of decision to reject*

- 2 (9) The notice of intention is rejected by ASIC giving the operator of
3 the foreign passport fund notification in writing of the rejection.

4 **1213C Authority to offer interests in foreign passport funds in this**
5 **jurisdiction through the notification process**

- 6 (1) The operator of a foreign passport fund may offer interests in the
7 fund to persons in this jurisdiction if:
8 (a) the operator of the fund has lodged notice of intention to do
9 so with ASIC under section 1213; and
10 (b) within the consideration period for the notice of intention,
11 ASIC has not given the operator:
12 (i) notification under section 1213A that ASIC is of the
13 opinion that information required under the prescribed
14 form has not been provided; or
15 (ii) notification under section 1213B that the notice of
16 intention has been rejected.
- 17 (2) If the operator of a foreign passport fund may, under
18 subsection (1), offer interests in the fund to persons in this
19 jurisdiction, the fund is a *notified foreign passport fund*.

20 **1213D Definition of *consideration period***

- 21 (1) The *consideration period*, for a notice of intention to offer interests
22 in a foreign passport fund in this jurisdiction, is:
23 (a) a period of 15 business days beginning on the day after the
24 notice is lodged with ASIC; or
25 (b) if ASIC and the operator agree that the period is to be
26 extended under subsection (2)—the extended period.
- 27 (2) ASIC and the operator of the foreign passport fund may agree, in
28 writing, to one or more extensions of the consideration period.
29 However, each extension must be for no more than 5 business
30 days.

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1 **Division 2—Treatment of notified foreign passport funds**

2 **1213E Notified foreign passport funds to be treated as managed** 3 **investment schemes**

- 4 (1) A notified foreign passport fund is to be treated as a *managed*
5 *investment scheme* for the purposes of this Act, even if it would
6 not otherwise be treated as a managed investment scheme for the
7 purposes of this Act because of the way in which that term is
8 defined in section 9.

9 Note: This subsection does not affect the other legal characteristics of a
10 notified foreign passport fund for the purposes of this Act. For
11 example, if a notified foreign passport fund is a body corporate, it
12 remains a body corporate for the purposes of this Act.

- 13 (2) The constituent document (as defined in the Passport Rules for this
14 jurisdiction) for the notified foreign passport fund is taken to be the
15 constitution of the fund as a managed investment scheme.

16 **1213EA Operators and notified foreign passport funds not to be** 17 **treated as companies etc.**

18 To avoid doubt:

- 19 (a) neither the operator of a notified foreign passport fund nor
20 the fund is to be treated as a company for the purposes of the
21 corporations legislation, merely because the operator or the
22 fund is registered as a foreign company under Division 2 of
23 Part 5B.2; and
24 (b) a reference in the corporations legislation to a share does not
25 include an interest in a notified foreign passport fund unless
26 the fund is also a company.

27 **1213EAA Offences relating to the operation of notified foreign** 28 **passport funds**

- 29 (1) This section applies if:
30 (a) one of the following persons engages in conduct that
31 constitutes an alleged offence against this Act or the ASIC
32 Act:
33 (i) a notified foreign passport fund;
34 (ii) the operator of a notified foreign passport fund;
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- 1 (iii) a person with responsibilities in relation to a notified
2 foreign passport fund; and
3 (b) the conduct occurs in relation to the operation of the fund;
4 and
5 (c) the conduct occurs wholly in a foreign country; and
6 (d) the person who engages in the conduct is not:
7 (i) an Australian citizen; or
8 (ii) a body corporate incorporated by or under a law of the
9 Commonwealth or of a State or Territory; and
10 (e) it is not otherwise a physical element of the offence that the
11 conduct results, or is likely to result, in a person in this
12 jurisdiction who has an interest in the fund suffering financial
13 or other disadvantage.
- 14 (2) It is a physical element of the offence that the conduct results, or is
15 likely to result, in a person in this jurisdiction who has an interest
16 in the fund suffering financial or other disadvantage.
- 17 (3) In this section:
- 18 *person with responsibilities in relation to a notified foreign*
19 *passport fund* means a person (other than a regulator) who has
20 functions or duties in relation to the fund under the Passport Rules
21 for this jurisdiction.

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1 **Division 2A—Conduct of notified foreign passport funds in**
2 **this jurisdiction**

3 **1213EB Notified foreign passport funds must not issue debentures in**
4 **this jurisdiction**

5 The operator of a notified foreign passport fund commits an
6 offence of strict liability if the operator or the fund:

- 7 (a) makes an offer to issue a debenture in this jurisdiction; or
8 (b) issues a debenture in this jurisdiction.

9 Penalty: 60 penalty units.

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1 **Division 3—Providing key information in relation to**
2 **notified foreign passport funds**

3 **Subdivision A—Obligations to provide information to members**
4 **in this jurisdiction**

5 **1213F Constitution—right to obtain a copy**

6 *Right to a copy of the constitution*

- 7 (1) The operator of a notified foreign passport fund commits an
8 offence of strict liability if:
- 9 (a) a person makes an application to the operator in accordance
10 with subsection (2) for a copy of the constitution of the fund;
11 and
 - 12 (b) the person is a member, or former member, of the fund who
13 acquired an interest in the fund in this jurisdiction; and
 - 14 (c) the person pays the reasonable costs of the operator, up to a
15 prescribed amount, in providing a copy of the constitution;
16 and
 - 17 (d) the operator fails, or refuses, to give the person a copy of the
18 constitution in accordance with this section; and
 - 19 (e) as a result, the person does not obtain a copy of the
20 constitution of the fund in accordance with this section.

21 Penalty: 60 penalty units.

22 *Application for a copy of the constitution*

- 23 (2) An application to the operator of a notified foreign passport fund is
24 in accordance with this subsection if the application is in writing.

25 *Manner in which constitution must be provided*

- 26 (3) If, in the application, the applicant requests a paper copy of the
27 constitution, the operator must post the applicant a copy of the
28 constitution within 7 days after the application is made.
- 29 (4) Otherwise, the operator must give the applicant a copy of the
30 constitution electronically, within 7 days after the application is
31 made.

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- 1 (5) ASIC may allow a longer period for the operator to give the
2 applicant a copy of the constitution.

3 *Language in which constitution must be provided*

- 4 (6) If, in the application, the applicant requests that the copy of the
5 constitution be in an official language of the home economy of the
6 fund (other than English), the copy of the constitution given to the
7 applicant must be in that language.

- 8 (7) Otherwise, the copy of the constitution given to the applicant must
9 be in English.

10 *Geographical jurisdiction*

- 11 (8) Section 15.1 of the *Criminal Code* (extended geographical
12 jurisdiction—category A) applies to an offence against
13 subsection (1).

14 **1213G Register of members—right to obtain a copy**

15 *Right to a copy of the register of members of a fund*

- 16 (1) The operator of a notified foreign passport fund commits an
17 offence of strict liability if:
- 18 (a) a person makes an application to the operator in accordance
19 with subsection (2) for a copy of the register of members for
20 the fund; and
 - 21 (b) the person is:
 - 22 (i) in this jurisdiction; or
 - 23 (ii) a member, or former member, of the fund who acquired
24 an interest in the fund in this jurisdiction; and
 - 25 (c) the person pays the reasonable costs of the operator, up to a
26 prescribed amount, in providing a copy of the register; and
 - 27 (d) the operator fails, or refuses, to give the person a copy of the
28 register in accordance with this section; and
 - 29 (e) as a result, the person does not obtain a copy of the register
30 of the fund in accordance with this section.

31 Penalty: 60 penalty units.

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Application for a copy of the register

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- 2 (2) An application to the operator of a notified foreign passport fund is
3 in accordance with this subsection if:
4 (a) the application is in writing; and
5 (b) the application states each purpose for which the applicant
6 wishes to obtain a copy of the register; and
7 (c) none of those purposes is a prescribed purpose.

8 *Manner in which register must be provided*

- 9 (3) If, in the application, the applicant requests a paper copy of the
10 register, the operator must post the applicant a copy of the register
11 within 7 days after the application is made.
- 12 (4) Otherwise, the operator must give the applicant a copy of the
13 register electronically, within 7 days after the application is made.
- 14 (5) ASIC may allow a longer period for the operator to give the
15 applicant a copy of the register.

16 *Language in which register must be provided*

- 17 (6) If, in the application, the applicant requests that the copy of the
18 register be in an official language of the home economy of the fund
19 (other than English), the copy of the register given to the applicant
20 must be in that language.
- 21 (7) Otherwise, the copy of the register given to the applicant must be
22 in English.

23 *Geographical jurisdiction*

- 24 (8) Section 15.1 of the *Criminal Code* (extended geographical
25 jurisdiction—category A) applies to an offence against
26 subsection (1).

27 **1213H Use of information on register of members**

28 *Offence—using information obtained from the register to contact*
29 *members*

- 30 (1) A person who obtains a copy of a register of members of a notified
31 foreign passport fund under section 1213G must not:
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- 1 (a) use information about a person (the *other member*) obtained
2 from the register to contact or send material to the person; or
3 (b) disclose information of that kind knowing that the
4 information is likely to be used to contact or send material to
5 the other member.

6 Penalty: 60 penalty units.

7 Note: An example of using information to send material to a person is
8 putting a person's name and address on a mailing list for advertising
9 material.

10 *Exception*

- 11 (2) Subsection (1) does not apply if the use or disclosure of the
12 information is:
13 (a) relevant to the holding of the interests recorded in the register
14 or the exercise of the rights attaching to them; or
15 (b) approved by the operator of the fund.

16 Note: A defendant bears an evidential burden in relation to the matter in
17 subsection (2), see subsection 13.3(3) of the *Criminal Code*.

18 *Offence—using information obtained from the register for a* 19 *prescribed purpose*

- 20 (3) A person who obtains a copy of a register of members of a notified
21 foreign passport fund under section 1213G must not:
22 (a) use information obtained from the register for any purpose
23 prescribed by regulations made for the purposes of
24 paragraph 1213G(2)(c); or
25 (b) disclose information of that kind knowing that the
26 information is likely to be used for any such purpose.

27 Penalty: 60 penalty units.

28 *Strict liability*

- 29 (4) An offence based on subsection (1) or (3) is an offence of strict
30 liability.

31 *Geographical jurisdiction*

- 32 (5) Section 15.1 of the *Criminal Code* (extended geographical
33 jurisdiction—category A) applies to an offence against
34 subsection (1) or (3).

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Liability to pay compensation

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2 (6) A person who contravenes subsection (1) or (3) is liable to
3 compensate anyone else who suffers loss or damage because of the
4 contravention.

5 *Returning profits made by contravening subsection (1) or (3)*

- 6 (7) A person who makes a profit by contravening subsection (1) or (3)
7 owes a debt to the fund. The amount of the debt is the amount of
8 the profit.

- 9 (8) If a person owes a debt under subsection (7) to the fund:
10 (a) the debt may be recovered by the operator of the fund as a
11 debt due to it; and
12 (b) any amount paid or recovered in respect of the debt forms
13 part of the property of the fund.

14 **1213HA Reports required under the law of the home economy**

15 *Right to a copy of reports*

- 16 (1) The operator of a notified foreign passport fund commits an
17 offence of strict liability if:
18 (a) the operator or the fund is required under the law of the home
19 economy for the fund to prepare a report (however described)
20 in relation to the fund; and
21 (b) the operator or the fund makes the report available to
22 members of the fund in the home economy without charge;
23 and
24 (c) the operator does not give members of the fund in this
25 jurisdiction, in accordance with this section:
26 (i) a copy of the report; and
27 (ii) if a summary in English of all or part of the report is
28 required under subsection (5)—a summary in English of
29 all or that part of the report.

30 Penalty: 60 penalty units.

31 *Manner in which report must be made available*

- 32 (2) The report must be given to members of the fund in this
33 jurisdiction within 7 days after the first day on which the report is

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1 made available to a member of the fund in the home economy
2 without charge.

3 (3) The report may be given to members of the fund in this jurisdiction
4 by:

5 (a) putting the report on the fund's website so that it is accessible
6 to members of the fund in this jurisdiction; and

7 (b) if members of the fund in the home economy are notified that
8 the report is available on the fund's website, or how those
9 members may access it—giving equivalent notice to
10 members of the fund in this jurisdiction.

11 (4) The report must be given without charge.

12 *Language in which the report is given*

13 (5) If all or part of the report is not in English, the operator must also
14 give members of the fund in this jurisdiction a summary of the
15 report, or that part of the report, in English in the same manner as
16 the operator gives the report under subsections (2), (3) and (4).

17 *Exception*

18 (6) Subsection (1) does not apply if the operator of the fund is required
19 under another provision of this Act to lodge the report, or to give
20 the report to members of the fund in this jurisdiction.

21 *Geographical jurisdiction*

22 (7) Section 15.1 of the *Criminal Code* (extended geographical
23 jurisdiction—category A) applies to an offence against
24 subsection (1).

25 **Subdivision B—Obligations to provide information to ASIC**

26 **1213J Register of members—ASIC may require lodgment**

27 (1) The operator of a notified foreign passport fund commits an
28 offence of strict liability if:

29 (a) ASIC requires the operator of the fund to lodge a copy of the
30 whole or a specified part of the register of members of the
31 fund, in accordance with subsections (2) and (3); and

32 (b) the operator fails, or refuses, to lodge a copy of the register in
33 accordance with this section.

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1 Penalty: 60 penalty units.

2 *Notice requiring operator to lodge register of members*

3 (2) ASIC may, by written notice given to the operator of a notified
4 foreign passport fund, require the operator to lodge a copy of the
5 whole or a specified part of the register of members of the fund.

6 (3) ASIC may, in the notice, require the copy of the whole or the
7 specified part of the register to be lodged in English.

8 *Manner in which register must be lodged*

9 (4) The operator must lodge a copy of the register with ASIC
10 electronically, within 7 days after being given notice to do so in
11 accordance with subsections (2) and (3).

12 (5) ASIC may allow a longer period for the operator to lodge a copy of
13 the register.

14 *Language in which register must be provided*

15 (6) If, in the notice, ASIC requires a copy of the whole or a specified
16 part of the register to be lodged in English, the operator must lodge
17 the whole or that part of the register in English.

18 *Geographical jurisdiction*

19 (7) Section 15.1 of the *Criminal Code* (extended geographical
20 jurisdiction—category A) applies to an offence against
21 subsection (1).

22 **1213K Destruction of records by ASIC**

23 ASIC may destroy or otherwise dispose of any document that is
24 lodged under, or for the purposes of, a provision of this Chapter or
25 the Passport Rules for this jurisdiction if:

26 (a) ASIC is of the opinion that it is no longer necessary or
27 desirable to retain it; and

28 (b) it has been in the possession of ASIC for such period as is
29 specified in the regulations, either generally or in relation to a
30 particular document or class of documents.

Part 8A.5—Register of Passport Funds

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2

1214 Register of Passport Funds

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(1) ASIC must either:

5

(a) establish and maintain a Register of Passport Funds; or

6

(b) ensure that a Register of Passport Funds is established and maintained.

7

8

(2) If the Register of Passport Funds is kept by ASIC, ASIC may do so in any form that ASIC considers appropriate.

9

10

(3) The Register of Passport Funds:

11

(a) must include the prescribed details of Australian passport funds and notified foreign passport funds; and

12

(b) may include details of other passport funds.

13

Part 8A.6—Stop orders

1215 Stop order—Australian passport funds

ASIC may make stop orders

- (1) ASIC may, by written instrument, order the operator of an Australian passport fund to do one or more of the following:
- (a) cease to offer, or not to begin offering, interests in the fund to persons in this jurisdiction either indefinitely or for a period specified in the order;
 - (b) cease to offer, or not to begin offering, interests in the fund to persons in another participating economy either indefinitely or for a period specified in the order;
 - (c) take other action specified in the order;
 - (d) cease to take other action specified in the order.

The order is a *stop order*.

- (2) A stop order may include a statement that specified conduct engaged in contrary to the order will be regarded as not complying with the requirements of a specified provision of this Act.

Basis on which stop orders may be made

- (3) However, ASIC may only make a stop order under this section if ASIC is of the opinion that:
- (a) one or more of the following has not been, is not being or is not likely to be complied with in relation to the fund (whether in this jurisdiction or in any other place):
 - (i) this Act (including the Passport Rules for this jurisdiction);
 - (ii) the ASIC Act; or
 - (b) if the order is made under paragraph (1)(c)—taking the action specified in the order is reasonably necessary to ensure that an order made under paragraph (1)(a) or (b) is complied with; or
 - (c) if the order is made under paragraph (1)(d)—not taking the action specified in the order is reasonably necessary to ensure that an order made under paragraph (1)(a) or (b) is complied with.

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Hearing before stop order made

- 1
- 2 (4) Before making a stop order, ASIC must:
- 3 (a) hold a hearing; and
- 4 (b) give a reasonable opportunity to any interested people to
- 5 make oral or written submissions to ASIC on whether an
- 6 order should be made.

7 *ASIC must give notice if stop order made*

- 8 (5) If ASIC makes a stop order under this section, ASIC must give the
- 9 operator of the fund a copy of the order as soon as reasonably
- 10 practicable after it is made.

11 **1215A Stop order—notified foreign passport fund**

12 *ASIC may make stop orders*

- 13 (1) ASIC may, by written instrument, order the operator of a notified
- 14 foreign passport fund to do one or more of the following:
- 15 (a) cease to offer, or not to begin offering, interests in the fund to
- 16 persons in this jurisdiction either indefinitely or for a period
- 17 specified in the order;
- 18 (b) take other action specified in the order;
- 19 (c) cease to take other action specified in the order.

20 The order is a **stop order**.

- 21 (2) A stop order may include a statement that specified conduct
- 22 engaged in contrary to the order will be regarded as not complying
- 23 with the requirements of a specified provision of this Act.

24 *Basis on which stop orders may be made*

- 25 (3) However, ASIC may only make a stop order under this section if:
- 26 (a) subsections (4) and (6) are satisfied; or
- 27 (b) the operator of the fund has ceased to be a registered foreign
- 28 company; or
- 29 (c) the operator of the fund has not had a local agent for more
- 30 than 21 days; or
- 31 (d) both of the following are satisfied:
- 32 (i) the Minister has made a determination under
- 33 subsection 1210B(1) that the operators of passport

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- 1 funds, or a class of passport funds, the home economy
2 for which is specified in the determination, must not
3 offer interests in the fund in this jurisdiction;
- 4 (ii) the determination applies to the passport fund;
- 5 (e) if the order is made under paragraph (1)(b)—taking the
6 action specified in the order is reasonably necessary to ensure
7 that an order made under paragraph (1)(a) is complied with;
8 or
- 9 (f) if the order is made under paragraph (1)(c)—not taking the
10 action specified in the order is reasonably necessary to ensure
11 that an order made under paragraph (1)(a) is complied with.
- 12 (4) For the purposes of paragraph (3)(a), this subsection is satisfied if
13 ASIC is of the opinion that one or more of the following has not
14 been, is not being or is not likely to be complied with in relation to
15 the fund (whether in this jurisdiction or in any other place):
- 16 (a) this Act (including the Passport Rules for this jurisdiction);
17 (b) the ASIC Act;
18 (c) the law of the home economy for the fund, to the extent that
19 the law is administered by the home regulator for the fund
20 (including the Passport Rules for the home economy of the
21 fund).
- 22 (5) In determining its opinion in relation to a matter mentioned in
23 paragraph (4)(c), ASIC must:
- 24 (a) make a request, in writing, to the home regulator for the fund
25 for the opinion of the home regulator on the matter; and
26 (b) specify in the request the basis for ASIC’s concerns about
27 compliance with the law of the home economy; and
28 (c) state a reasonable period during which ASIC will wait for a
29 reply before acting; and
30 (d) if the home regulator replies to the request within that
31 period—give effect to the opinion of the home regulator on
32 the matter.
- 33 (6) For the purposes of paragraph (3)(a), this subsection is satisfied if
34 ASIC is of the opinion that the stop order is necessary, having
35 regard to:
- 36 (a) the impact on the members and prospective members of the
37 fund of the failure, or potential failure, to comply with a law
38 mentioned in subsection (4); and
-

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- 1 (b) any action taken, or that may be taken, by the home regulator
2 for the fund.

3 *Hearings before certain stop orders made*

- 4 (7) Before making a stop order on the basis of subsections (4) and (6),
5 ASIC must:
6 (a) hold a hearing; and
7 (b) give a reasonable opportunity to any interested people to
8 make oral or written submissions to ASIC on whether an
9 order should be made.

10 *ASIC must give notice if stop order made*

- 11 (8) If ASIC makes a stop order under this section, ASIC must give the
12 operator of the fund a copy of the order as soon as reasonably
13 practicable after it is made.

14 **1215B Interim stop orders**

- 15 (1) ASIC may make an interim stop order, if ASIC is of the opinion
16 that:
17 (a) any delay in making a stop order under section 1215 or
18 1215A would be prejudicial to the public interest; and
19 (b) either:
20 (i) in the case of an order that is to be made in relation to
21 an Australian passport fund—one or more of the
22 circumstances mentioned in subsection 1215(3) exists;
23 or
24 (ii) in the case of an order that is to be made in relation to a
25 notified foreign passport fund—one or more of the
26 circumstances mentioned in subsection 1215A(3) exists.
- 27 (2) An interim stop order under subsection (1):
28 (a) may be made without holding a hearing, or during a hearing;
29 and
30 (b) must be in writing; and
31 (c) lasts:
32 (i) if the stop order is made during a hearing—until ASIC
33 makes a stop order after the conclusion of the hearing,
34 or the interim stop order is revoked; and

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(ii) otherwise—for 21 days after the day on which it is made, unless sooner revoked.

- (3) If ASIC makes an interim stop order, ASIC must give the operator of the fund a copy of the order as soon as reasonably practicable after it is made.

1215C Revocation of stop order made under section 1215 or 1215A

- (1) The operator of an Australian passport fund may make an application to ASIC, in accordance with this section, to have a stop order that is in force in relation to the fund revoked on the basis that there are no longer grounds for the order under subsection 1215(3).
- (2) The operator of a notified foreign passport fund may make an application to ASIC, in accordance with this section, to have a stop order that is in force in relation to the fund revoked on the basis that there are no longer grounds for the order under subsection 1215A(3).
- (3) An application under subsection (1) or (2) must:
- (a) be in the prescribed form; and
 - (b) without limiting paragraph (a), set out the basis on which the operator of the fund believes that there are no longer grounds for the stop order.
- (4) ASIC must:
- (a) revoke a stop order made under section 1215 in relation to an Australian passport fund if:
 - (i) an application is made under subsection (1) of this section; and
 - (ii) ASIC is of the opinion that there are no longer grounds for the stop order; and
 - (b) revoke a stop order made under section 1215A in relation to a notified foreign passport fund if:
 - (i) an application is made under subsection (2) of this section; and
 - (ii) ASIC is of the opinion that there are no longer grounds for the stop order.

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- 1 (5) Nothing in this section limits the circumstances in which ASIC
2 may revoke or vary a stop order made under section 1215 or
3 1215A.

4 **1215D Compliance with stop orders**

- 5 (1) This section applies if:

- 6 (a) ASIC gives the operator of an Australian passport fund a
7 copy of a stop order under subsection 1215(5) or an interim
8 stop order under subsection 1215B(3); or
9 (b) ASIC gives the operator of a notified foreign passport fund a
10 stop order under subsection 1215A(8) or an interim stop
11 order under subsection 1215B(3).

- 12 (2) The operator must not contravene the order.

13 Note: Failure to comply with this subsection is an offence (see
14 subsection 1311(1)).

- 15 (3) The operator must take reasonable steps to ensure that any other
16 person who might engage in conduct that is contrary to the order, is
17 aware of the order.

18 Note: Failure to comply with this subsection is an offence (see
19 subsection 1311(1)).

- 20 (4) A person who is aware of the order must not engage in conduct
21 that is contrary to the order.

22 Note: Failure to comply with this subsection is an offence (see
23 subsection 1311(1)).

Part 8A.7 Infringement notices

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1216 Infringement notices for failure to comply with the Passport Rules or this Chapter

3
4

Provisions subject to an infringement notice

5

(1) A strict liability offence against one of the following provisions is subject to an infringement notice under Part 5 of the Regulatory Powers Act:

6
7
8

- (a) subsection 1211C(1) or (2);
- (b) subsection 1213F(1);
- (c) subsection 1213G(1);
- (d) subsection 1213H(1) or (3).

9
10
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Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

13
14

Infringement officer

15

(2) For the purposes of Part 5 of the Regulatory Powers Act, ASIC is the infringement officer in relation to the provisions mentioned in subsection (1).

16
17
18

Note: ASIC may delegate any or all of its functions and powers under section 102 of the ASIC Act.

19
20

Relevant chief executive

21

(3) For the purposes of Part 5 of the Regulatory Powers Act, ASIC is the relevant chief executive in relation to the provisions mentioned in subsection (1).

22
23
24

Note: ASIC may delegate any or all of its functions and powers under section 102 of the ASIC Act.

25
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EXPOSURE DRAFT

Part 8A.8—Exemptions and modifications

1217 ASIC’s power to make exemptions and declare modifications etc. in relation to this Chapter

Exemptions and declarations on application of this Chapter

(1) ASIC may:

- (a) exempt an entity from a provision of this Chapter; or
- (b) declare that this Chapter applies to an entity as if specified provisions were omitted, modified or varied as specified in the declaration.

(2) The exemption or declaration may:

- (a) apply to all or specified provisions of this Chapter; and
- (b) apply to all entities, a specified class of entities or a specified entity; and
- (c) apply to all passport funds, a specified class of passport funds or a specified passport fund; and
- (d) relate to any other matter generally or as specified.

Imposition of conditions on exemption

(3) An exemption may apply unconditionally or subject to specified conditions.

(4) An entity to whom a condition specified in an exemption applies must comply with the condition.

(5) The Court may order the entity to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

Exemptions and declarations relating to all or a class of entities or passport funds

(6) An exemption or declaration that relates to all entities, a specified class of entities, all passport funds or a specified class of passport funds, must be made by legislative instrument.

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Exemptions and declarations relating to specified entities or passport funds

(7) An exemption or declaration that relates to a specified entity or a specified passport fund must be made by notifiable instrument.

(8) ASIC must also:

(a) give a copy of an exemption or declaration that relates to a specified entity to the entity; and

(b) give a copy of an exemption or declaration that relates to a specified passport fund to the operator of the fund.

ASIC must do so as soon as is reasonably practicable after the exemption or declaration is made.

Definitions

(9) In this section:

provisions of this Chapter include:

(a) regulations made for the purposes of this Chapter; and

(b) definitions in this Act or the regulations as they apply to references in:

(i) this Chapter; or

(ii) regulations made for the purposes of this Chapter.

1217A ASIC's power to make exemptions and declare modifications etc. in relation to the Passport Rules

Exemptions and declaration on Passport Rules

(1) ASIC may:

(a) exempt an entity from a provision of the Passport Rules for this jurisdiction; or

(b) declare that the Passport Rules for this jurisdiction apply to an entity as if specified provisions were omitted, modified or varied as specified in the declaration.

(2) The exemption or declaration may:

(a) apply to all or specified provisions of the Passport Rules for this jurisdiction; and

(b) apply to all entities, a specified class of entities or a specified entity; and

EXPOSURE DRAFT

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- 1 (c) apply to all passport funds, a specified class of passport funds
2 or a specified passport fund; and
3 (d) relate to any other matter generally or as specified.

4 (3) However:

- 5 (a) ASIC may only give an exemption or make a declaration
6 under subsection (1) in relation to an Australian passport
7 fund if each host regulator for the fund has agreed to the
8 exemption being given or the declaration being made; and
9 (b) ASIC may only give an exemption or make a declaration
10 under subsection (1) in relation to a foreign passport fund if
11 the home regulator for the fund has granted an equivalent
12 exemption or made a similar omission, modification or
13 variation of the Passport Rules for the home economy for the
14 fund.

15 *Imposition of conditions on exemption*

- 16 (4) An exemption may apply unconditionally or subject to specified
17 conditions.
18 (5) An entity to whom a condition specified in an exemption applies
19 must comply with the condition.
20 (6) The Court may order the entity to comply with the condition in a
21 specified way. Only ASIC may apply to the Court for the order.

22 *Exemptions and declarations relating to all or a class of entities or
23 passport funds*

- 24 (7) An exemption or declaration that relates to all entities, a specified
25 class of entities, all passport funds or a specified class of passport
26 funds, must be made by legislative instrument.

27 *Exemptions and declarations relating to specified entities or
28 passport funds*

- 29 (8) An exemption or declaration that relates to a specified entity or a
30 specified passport fund must be made by notifiable instrument.

31 (9) ASIC must also:

- 32 (a) give a copy of an exemption or declaration that relates to a
33 specified entity to the entity; and

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-
- 1 (b) give a copy of an exemption or declaration that relates to a
2 specified passport fund to the operator of the fund.
3 ASIC must do so as soon as is reasonably practicable after the
4 exemption or declaration is made.

5 **1217B Exemptions and modification by regulations**

6 The regulations may:

- 7 (a) exempt from all or specified provisions of the Corporations
8 legislation (which includes this Chapter and the Passport
9 Rules for this jurisdiction):
10 (i) a passport fund, all passport funds of a specified class or
11 all passport funds; or
12 (ii) an entity, all entities of a specified class or all entities,
13 in relation to a passport fund, all passport funds of a
14 specified class or all passport funds;
15 (b) provide that the Corporations legislation (which includes this
16 Chapter and the Passport Rules for this jurisdiction) applies
17 in relation to:
18 (i) a passport fund, all passport funds of a specified class or
19 all passport funds; or
20 (ii) an entity, all entities of a specified class or all entities,
21 in relation to a passport fund, all passport funds of a
22 specified class or all passport funds;
23 as if specified provisions of the Corporations legislation were
24 omitted, modified or varied as specified in the regulations.

EXPOSURE DRAFT

Schedule 2—Amendments consequential on Chapter 8A

Australian Securities and Investments Commission Act 2001

1 After subsection 11(16)

Insert:

(16A) ASIC has the functions and powers of a home regulator or a host regulator for a passport fund under the Memorandum of Cooperation. However, ASIC is not under a duty to perform such functions or exercise such powers.

2 Paragraph 11(17)(c)

Omit “or (14)”, substitute “, (14) or (16A)”.

3 Part 3A (heading)

Repeal the heading, substitute:

Part 3A—Enforceable undertakings

4 Section 93A (heading)

Repeal the heading, substitute:

93A Undertakings—registered schemes

5 At the end of Part 3A

Add:

93B Undertakings—notified foreign passport funds

- (1) ASIC may accept a written undertaking given by the operator of a notified foreign passport fund in connection with a matter:
 - (a) concerning the fund; and
 - (b) in relation to which ASIC has a power or function under the corporations legislation (other than the excluded provisions).
- (2) The operator may withdraw or vary the undertaking at any time, but only with ASIC’s consent.

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- 1 (3) If ASIC considers that the operator has breached any of the terms
2 of the undertaking, ASIC may apply to the Court for an order
3 under subsection (4).
- 4 (4) If the Court is satisfied that the operator has breached a term of the
5 undertaking, the Court may make all or any of the following
6 orders:
- 7 (a) an order directing the operator to comply with that term of
8 the undertaking;
- 9 (b) an order directing the operator to transfer to fund property an
10 amount up to the amount of any financial benefit that the
11 operator has obtained directly or indirectly and that is
12 reasonably attributable to the breach;
- 13 (c) any order that the Court considers appropriate directing the
14 operator to compensate any person who has suffered loss or
15 damage as a result of the breach;
- 16 (d) any other order that the Court considers appropriate.
- 17 (5) ASIC must keep a record of the full text of the undertaking.
- 18 (6) ASIC must make available to a person who asks for it a copy of the
19 text of the undertaking, but ASIC must delete from the copy
20 information:
- 21 (a) that the operator has asked it not to release; and
22 (b) that ASIC is satisfied:
- 23 (i) is commercial in confidence; or
24 (ii) should not be disclosed because it would be against the
25 public interest to do so; or
26 (iii) consists of personal details of an individual.
- 27 (7) If ASIC makes available a copy that has information deleted from
28 it, the copy must include a note stating that information has been
29 deleted.

6 After subsection 127(3)

30 Insert:

- 31
- 32 (3AA) For the purposes of subsection (1), the disclosure of information by
33 a person to enable or assist the performance of functions, or
34 exercise of powers, by a home regulator or a host regulator for a
35 passport fund under the Memorandum of Cooperation is authorised
36 use and disclosure of the information.

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1 *Corporations Act 2001*

2 **7 Section 9**

3 Insert:

4 *Australian passport fund* means a registered scheme that is also
5 registered as a passport fund under Part 8A.3.

6 **8 Section 9 (paragraph (a) of the definition of *cash* 7 *management trust interest*)**

8 After “registered scheme”, insert “or a notified foreign passport fund”.

9 **9 Section 9 (paragraph (c) of the definition of *civil penalty* 10 *order*)**

11 Omit “or 1317HB”, substitute “, 1317HB or 1317HC”.

12 **10 Section 9 (definition of *consolidated entity*)**

13 Omit “registered managed investment scheme”, substitute “registered
14 scheme”.

15 **11 Section 9 (note at the end of the definition of *constitution*)**

16 Omit “Note”, substitute “Note 1”.

17 **12 Section 9 (at the end of the definition of *constitution*)**

18 Add:

19 Note 2: The constituent document (as defined in the Passport Rules for this
20 jurisdiction) for a notified foreign passport fund is taken under
21 section 1213E to be the constitution of the fund as a managed
22 investment scheme.

23 **13 Section 9 (definition of *entity*)**

24 Omit “Chapter 2E”, substitute “Chapters 2E and 8A”.

25 **14 Section 9 (definition of *extract of particulars*)**

26 Omit “a company or a registered scheme”, substitute “a company,
27 registered scheme or notified foreign passport fund”.

28 **15 Section 9 (paragraph (a) of the definition of *extract of* 29 *particulars*)**

30 Repeal the paragraph, substitute:

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- 1 (a) some or all of the particulars in relation to the company,
2 scheme or fund that are recorded in a register that ASIC
3 maintains, or ensures is maintained, under subsection 1214(1)
4 or 1274(1);

5 **16 Section 9 (definition of *financial year*)**

6 Repeal the definition, substitute:

7 *financial year*, when used in a provision outside Schedule 2, has
8 the following meaning:

- 9 (a) for a company, registered scheme or disclosing entity (other
10 than a notified foreign passport fund)—the meaning given by
11 section 323D;
12 (b) for a notified foreign passport fund—the meaning given by
13 section 323DAA.

14 **17 Section 9**

15 Insert:

16 *foreign passport fund* means a passport fund the home economy
17 for which is not Australia.

18 *foreign passport fund product*, when used in a provision outside
19 Chapter 7, has the same meaning as in Chapter 7.

20 *fund property* of a notified foreign passport fund means:

- 21 (a) contributions of money or money's worth to the fund; and
22 (b) money that forms part of the fund property under provisions
23 of this Act or the ASIC Act; and
24 (c) money borrowed or raised by the operator of the fund for the
25 purposes of the fund; and
26 (d) property acquired, directly or indirectly, with, or with the
27 proceeds of, contributions or money referred to in
28 paragraph (a), (b) or (c); and
29 (e) income and property derived, directly or indirectly, from
30 contributions, money or property referred to in paragraph (a),
31 (b), (c) or (d).

32 Note: Paragraph (a)—if what a member contributes to a fund is rights over
33 property, the rights in the property that the member retains do not
34 form part of the fund property.

35 *home economy*: see section 1210.

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1 *home regulator*: see section 1210.

2 *host economy*: see section 1210.

3 *host regulator*: see section 1210.

4 **18 Section 9 (definition of *interest*)**

5 After “in a managed investment scheme”, insert “(including a notified
6 foreign passport fund)”.

7 **19 Section 9**

8 Insert:

9 *investment* in a notified foreign passport fund means:

10 (a) an interest in the fund; or

11 (b) a legal or equitable interest in an interest in the fund; or

12 (c) an option to acquire (whether by way of issue or transfer) an
13 investment in the fund covered by paragraph (a) or (b); or

14 (d) an option to dispose of an investment in the fund covered by
15 paragraph (a) or (b); or

16 (e) an interest a person holds under an arrangement that is a
17 derivative if:

18 (i) the consideration to be provided under the arrangement;
19 or

20 (ii) the value of the arrangement;

21 is ultimately determined, derived from or varies by reference
22 to an investment in the fund covered by paragraph (a), (b), (c)
23 or (d); or

24 (f) an investment in the operator of the fund.

25 To avoid doubt, the consideration to be provided under, or the
26 value of, an arrangement in relation to an index is taken not to be
27 ultimately determined, derived from or vary by reference to an
28 investment in the fund merely because the investment is taken into
29 account in determining the value of the index.

30 **20 Section 9 (note after paragraph (c) of the definition of 31 *managed investment scheme*)**

32 Repeal the note.

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1 **21 Section 9 (note after paragraph (i) of the definition of**
2 ***managed investment scheme*)**

3 Repeal the note.

4 **22 Section 9 (note at the end of the definition of *managed***
5 ***investment scheme*)**

6 Omit “Note”, substitute “Note 1”.

7 **23 Section 9 (at the end of the definition of *managed***
8 ***investment scheme*)**

9 Add:

10 Note 2: Paragraphs (c) and (i) have an extended meaning in relation to
11 Chapter 8 (see subsection 1200A(3)).

12 Note 3: Under section 1213EA, a notified foreign passport fund is to be
13 treated as a managed investment scheme for the purposes of this Act.

14 **24 Section 9**

15 Insert:

16 ***notified foreign passport fund***: see subsection 1213C(2).

17 ***operator*** of a passport fund: see section 1210.

18 ***Passport Rules***: see section 1211A.

19 ***Regulatory Powers Act*** means the *Regulatory Powers (Standard*
20 *Provisions) Act 2014*.

21 **25 Section 9 (definition of *relevant financial market*)**

22 Omit “or listed registered scheme,”, substitute “listed registered scheme
23 or listed notified foreign passport fund”.

24 **26 Section 9 (paragraphs (a) and (b) of the definition of**
25 ***relevant financial market*)**

26 Omit “the company or scheme”, substitute “the company, scheme or
27 fund”.

28 **27 Section 9 (definition of *relevant market operator*)**

29 Omit “or listed registered scheme,”, substitute “listed registered scheme
30 or listed notified foreign passport fund”.

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1 **28 Section 9 (paragraphs (a) and (b) of the definition of**
2 ***relevant market operator*)**

3 Omit “the company or scheme”, substitute “the company, scheme or
4 fund”.

5 **29 Section 9**

6 Insert:

7 ***responsible holding party*** for an Australian passport fund or a
8 notified foreign passport fund means the responsible holding party
9 of the assets of the fund under the Passport Rules for this
10 jurisdiction.

11 **30 Section 9 (definition of *return of particulars*)**

12 Omit “a company or a registered scheme”, substitute “a company,
13 registered scheme or notified foreign passport fund”.

14 **31 Section 9 (paragraph (a) of the definition of *return of***
15 ***particulars*)**

16 Repeal the paragraph, substitute:

- 17 (a) some or all of the particulars in relation to the company,
18 scheme or fund that are recorded in a register that ASIC
19 maintains, or ensures is maintained, under subsection 1214(1)
20 or 1274(1);

21 **32 Section 9 (definition of *substantial holding*)**

22 Omit “registered managed investment scheme”, substitute “registered
23 scheme”.

24 **33 Section 9 (definition of *this Act*)**

25 Omit “and the Insolvency Practice Rules”, substitute “, the Insolvency
26 Practice Rules and the Passport Rules for this jurisdiction”.

27 **34 Subsection 9A(2)**

28 Omit “a managed investment scheme”, substitute “a registered scheme
29 or notified foreign passport fund”.

30 **35 Paragraph 9A(3)(a)**

31 Omit “the body or responsible entity (as the case requires)”, substitute
32 “the offering entity”.

EXPOSURE DRAFT

36 Paragraphs 9A(3)(b) and (c)

Omit “the body or responsible entity”, substitute “the offering entity”.

37 After subsection 9A(3)

Insert:

(3A) For the purposes of subsection (3), *offering entity* means the following:

- (a) in relation to an offer of securities in a body that is not a registered scheme or a notified foreign passport fund—the body;
- (b) in relation to an offer of interests in a registered scheme—the responsible entity of the scheme;
- (c) in relation to an offer of interests in a notified foreign passport fund—the operator of the fund.

38 Section 64A

Omit “Chapter 2E”, substitute “Chapters 2E and 8A”.

39 After subsection 92(2)

Insert:

(2A) In Part 1.2A, *securities* means:

- (a) shares in a body; or
- (b) debentures of a body; or
- (c) interests in a registered scheme or a notified foreign passport fund; or
- (d) legal or equitable rights or interests in:
 - (i) shares; or
 - (ii) debentures; or
 - (iii) interests in a registered scheme or a notified foreign passport fund; or
- (e) options to acquire (whether by way of issue or transfer) a security covered by paragraph (a), (b), (c) or (d).

It does not cover:

- (f) a derivative (as defined in Chapter 7), other than an option to acquire by way of transfer a security covered by paragraph (a), (b), (c) or (d); or
- (g) a market traded option.

EXPOSURE DRAFT

1 Note 1: A derivative does not include an option to acquire a security by way of
2 issue (see the note to subsection (1)).

3 Note 2: Section 9 defines *body*.

4 **40 Subsection 92(3)**

5 Repeal the subsection, substitute:

6 (3) In Chapters 6 to 6CA (inclusive):

7 *securities* means:

- 8 (a) shares in a body; or
- 9 (b) debentures of a body; or
- 10 (c) interests in a registered scheme; or
- 11 (d) when used in Chapter 6C in relation to a listed notified
12 foreign passport fund that is the target for a takeover bid—an
13 interest in the fund; or
- 14 (e) legal or equitable rights or interests in:
 - 15 (i) shares; or
 - 16 (ii) debentures; or
 - 17 (iii) interests in a registered scheme or interests in a fund
18 mentioned in paragraph (d);
- 19 (f) options to acquire (whether by way of issue or transfer) a
20 security covered by paragraph (a), (b), (c), (d) or (e).

21 It does not cover:

- 22 (g) a derivative (as defined in Chapter 7), other than an option to
23 acquire by way of transfer a security covered by
24 paragraph (a), (b), (c), (d) or (e); or
- 25 (h) a market traded option; or
- 26 (i) when used outside Chapter 6C in relation to a notified
27 foreign passport fund that is the target for a takeover bid—an
28 interest in the fund.

29 Note 1: A derivative does not include an option to acquire a security by way of
30 issue (see the note to subsection (1)).

31 Note 2: Section 9 defines *body*.

32 **41 Paragraph 111AD(1)(a)**

33 After “111AFA,” insert “111AFB,”.

34 **42 Section 111AE (heading)**

35 Repeal the heading, substitute:

EXPOSURE DRAFT

1 **111AE Securities of bodies or undertakings included in a licensed**
2 **market's official list**

3 **43 Paragraph 111AE(1)(a)**

4 After "a body corporate", insert "(other than a notified foreign passport
5 fund)".

6 **44 After subsection 111AE(1A)**

7 Insert:

8 (1B) If:

9 (a) an undertaking to which interests in a notified foreign
10 passport fund relate is, with the agreement, consent or
11 acquiescence of the operator of the fund, included in the
12 official list of a prescribed financial market; and

13 (b) the market's listing rules (according to their terms) apply to
14 the fund in relation to a class (which may be some or all) of
15 foreign passport fund products that relate to the fund;

16 foreign passport fund products in that class that relate to the fund
17 are *ED securities*, and that market is a *listing market* in relation to
18 the fund.

19 **45 After section 111AFA**

20 Insert:

21 **111AFB Foreign passport fund products held by 100 or more**
22 **persons**

23 Foreign passport fund products in a class of foreign passport fund
24 products issued by a body are *ED securities* if 100 or more people
25 who reside in this jurisdiction hold foreign passport fund products
26 in that class.

27 **46 Section 111AH (heading)**

28 Repeal the heading, substitute:

29 **111AH When a person holds securities for the purposes of**
30 **sections 111AF, 111AFA, 111AFB and 111AG**

31 **47 After subsection 111AH(1)**

32 Insert:

EXPOSURE DRAFT

1 (1A) For the purposes of section 111AFB, a person holds securities in a
2 notified foreign passport fund if, and only if:

- 3 (a) the person is registered as the holder of securities in the fund
4 on a register maintained by the operator of the fund under the
5 law of the home economy for the fund; or
6 (b) the person is entitled to be so registered.

7 **48 Subsection 111AH(2)**

8 After “111AFA”, insert “, 111AFB”.

9 **49 Subsection 168(1) (note 1A)**

10 Omit “or registered scheme”, substitute “, listed registered scheme or
11 notified foreign passport fund”.

12 **50 Section 178 (heading)**

13 Repeal the heading, substitute:

14 **178 Overseas branch registers—companies**

15 **51 Subsection 178(1)**

16 After “a branch register of members”, insert “of the company”.

17 **52 At the end of Part 2C.1**

18 Add:

19 **178AA Overseas branch registers—Australian passport funds**

- 20 (1) An Australian passport fund may keep a branch register of
21 members of the fund outside Australia.
- 22 (2) If an Australian passport fund keeps an overseas branch register
23 under subsection (1):
- 24 (a) the fund must keep the branch register in the same manner as
25 this Act requires the fund to keep the register kept under
26 section 169 (the *principal register*); and
- 27 (b) the fund must enter in the principal register the details
28 contained in the branch register; and
- 29 (c) the fund must distinguish interests that are registered in the
30 branch register from the interests registered in the principal
31 register.

EXPOSURE DRAFT

53 At the end of Division 1 of Part 2D.1

Add:

190C Division does not apply in relation to notified foreign passport funds or their operators

This Division does not apply to an act or omission by a person, if:

- (a) the act or omission is in the person's capacity as a director, other officer or employee of a notified foreign passport fund; or
- (b) the act or omission:
 - (i) is in the person's capacity as a director, other officer or employee of the operator of a notified foreign passport fund; and
 - (ii) is connected with the operation of the fund.

54 After subsection 197(3)

Insert:

(3A) This section does not apply to a liability incurred by a corporation that is:

- (a) a notified foreign passport fund; or
- (b) the operator of a notified foreign passport fund acting in that capacity.

55 Paragraph 199A(2)(b)

Omit "or 1317HB", substitute ", 1317HB or 1317HC".

56 At the end of subsection 206B(6)

Add:

- ; or (c) being a director of a passport fund, or of an operator of a passport fund; or
- (d) being concerned in the management of a passport fund.

57 Subparagraph 206EAA(1)(a)(ii)

Omit "company; and", substitute "company; or".

58 At the end of paragraph 206EAA(1)(a)

Add:

EXPOSURE DRAFT

-
- 1 (iii) being a director of a passport fund, or of the operator of
2 a passport fund; or
3 (iv) being concerned in the management of a passport fund;
4 or
5 (v) carrying on activities that the Court is satisfied are
6 substantially similar to being a director of a passport
7 fund, or of the operator of a passport fund, or being
8 concerned in the management of a passport fund; and

9 **59 Paragraph 206EAA(3)(a)**

10 After “a foreign company”, insert “or a passport fund (as the case
11 requires)”.

12 **60 Section 206H (heading)**

13 Repeal the heading, substitute:

14 **206H Limited application of Part to foreign companies**

15 **61 After section 206H**

16 Insert:

17 **206HAA Limited application of Part to notified foreign passport** 18 **funds and their operators**

19 This Part (except for subsection 206B(6) and section 206EAA)
20 does not apply in respect of an act or omission by a person while
21 they are managing a corporation that is either the operator of a
22 notified foreign passport fund, or a notified foreign passport fund,
23 unless the act or omission occurred in connection with:

- 24 (a) the operator or the fund carrying on business in this
25 jurisdiction; or
26 (b) an act that the operator or the fund does, or proposes to do, in
27 this jurisdiction; or
28 (c) a decision by the operator or the fund whether or not to do, or
29 refrain from doing, an act in this jurisdiction.

30 **62 Section 247A (heading)**

31 Repeal the heading, substitute:

EXPOSURE DRAFT

1 **247A Order for inspection of books of company or registered**
2 **scheme**

3 **63 Subsection 247A(1)**

4 Omit “registered managed investment scheme”, substitute “registered
5 scheme”.

6 **64 Part 2G.4 (heading)**

7 Repeal the heading, substitute:

8 **Part 2G.4—Meetings of members of registered**
9 **schemes**

10 **65 Subsection 285(1) (heading)**

11 Repeal the heading, substitute:

12 *Obligations under this Chapter—companies, registered schemes*
13 *and disclosing entities*

14 **66 Subsection 285(1) (table heading)**

15 Repeal the heading, substitute:

16 **Annual financial reporting for companies, registered schemes and**
17 **disclosing entities**

18 **67 After subsection 285(1)**

19 Insert:

20 *Obligations under this Chapter—notified foreign passport funds*

21 (1A) Under this Chapter, all notified foreign passport funds must
22 provide reports on financial matters to members (see section 314A)
23 and to ASIC (see section 319).

24 **68 At the end of section 285**

25 Add:

26 *Application to notified foreign passport funds*

27 (4) For the purposes of applying this Chapter to a notified foreign
28 passport fund:

EXPOSURE DRAFT

-
- 1 (a) the operator of the fund is responsible for the performance of
2 obligations in respect of the fund; and
3 (b) the debts incurred in operating the fund are taken to be the
4 debts of the fund.

5 **69 Section 314 (heading)**

6 Repeal the heading, substitute:

7 **314 Annual financial reporting by companies, registered schemes**
8 **and disclosing entities to members**

9 **70 Subsection 314(1A) (note)**

10 Repeal the note.

11 **71 After section 314**

12 Insert:

13 **314A Annual financial reporting by notified foreign passport funds**
14 **to members**

- 15 (1) A notified foreign passport fund must report to members for each
16 financial year for the fund by providing members with each of the
17 following:
- 18 (a) a copy of a report for the fund for the year, prepared in
19 accordance with the financial reporting requirements
20 applying to the fund under the Passport Rules for the home
21 economy for the fund;
 - 22 (b) a copy of each auditor's report that relates to the report
23 mentioned in paragraph (a).

24 Note: Under the Passport Rules for this jurisdiction, the operator of a
25 notified foreign passport fund must ensure that the financial report for
26 the fund is audited and an audit report prepared.

- 27 (2) A notified foreign passport fund may provide the reports for a
28 financial year by doing all of the following:
- 29 (a) sending, to each member who has made the election referred
30 to in paragraph (3)(a):
 - 31 (i) a hard copy of the reports; or
 - 32 (ii) if the member has elected to receive the reports as an
33 electronic copy in accordance paragraph (3)(c)—an
34 electronic copy of the reports;

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-
- 1 (b) making a copy of the reports readily accessible, in English,
2 on a website;
- 3 (c) directly notifying, in writing, all members who did not make
4 the election referred to in paragraph (3)(a) that the copy is
5 accessible on the website, and specifying the direct address
6 on the website where the reports may be accessed.
- 7 Note: A direct address may be specified, for example, by specifying the
8 URL of the reports.
- 9 (3) For the purposes of paragraph (2)(a), a notified foreign passport
10 fund must, on at least one occasion, directly notify in writing each
11 member that:
- 12 (a) the member may elect to receive, free of charge, a copy of
13 the reports for each financial year for the fund; and
- 14 (b) if the member does not so elect—the member may access the
15 report on a specified website; and
- 16 (c) if the member elects to receive reports under paragraph (a)
17 and the fund offers to send reports either as a hard copy or an
18 electronic copy—the member may elect to receive the copy
19 as either a hard copy or an electronic copy; and
- 20 (d) if the member elects to receive reports under paragraph (a),
21 the member may elect to receive the reports in English, or in
22 an official language of the home economy of the fund.
- 23 (4) An election made under subsection (3) is a standing election for
24 each later financial year for the fund until the member changes his,
25 her or its election.
- 26 (5) A member may, for the purposes of paragraph (2)(c) or
27 subsection (3), be notified by electronic means only if the member
28 has previously nominated that means as one by which the member
29 may be notified.
- 30 (6) A notified foreign passport fund may provide the reports by
31 sending each member:
- 32 (a) a hard copy of the reports; or
- 33 (b) an electronic copy of the reports if the member has
34 nominated that means as one by which the member may be
35 sent the reports.
- 36 (7) A notified foreign passport fund must provide the reports in the
37 following language:
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EXPOSURE DRAFT

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- 1 (a) if the member elects under paragraph 314A(3)(d) to receive
2 reports in English or in an official language of the home
3 economy of the fund—in the language elected by the
4 member;
5 (b) otherwise—in English.
- 6 (8) Subsection (1) does not apply in relation to a member of the fund
7 for a financial year if the member has elected under
8 subsection 316AA(1) not to receive the report for the year.
- 9 (9) An offence based on subsection (1), (3) or (7) is an offence of strict
10 liability.

11 **72 After subsection 315(3)**

12 *Notified foreign passport funds*

- 13 (3A) A notified foreign passport fund must report to members under
14 section 314A within 3 months after the end of the financial year for
15 the fund.

16 **73 At the end of section 315**

17 Add:

- 18 (6) For the purposes of this section, a notified foreign passport fund
19 that reports in accordance with subsection 314A(2) is taken to
20 report at the time the fund has fully complied with the
21 requirements of that subsection.

22 **74 Section 316 (heading)**

23 Repeal the heading, substitute:

24 **316 Choices for members of companies, registered schemes or** 25 **disclosing entities**

26 **75 Subsection 316(4) (note)**

27 Repeal the note.

28 **76 After section 316**

29 Insert:

EXPOSURE DRAFT

1 316AA Choices for members of notified foreign passport funds

2 (1) A member of a notified foreign passport fund may request the fund
3 not to send the member one or more of the reports required under
4 subsection 314A(1).

5 (2) A request under subsection (1) may be a standing request or for a
6 particular financial year for the fund.

7 77 After subsection 319(1)

8 Insert:

9 (1AA) A notified foreign passport fund must lodge each of the following
10 with ASIC for each financial year for the fund:

11 (a) a copy of a report for the fund for the year, prepared in
12 accordance with the financial reporting requirements
13 applying to the fund under the Passport Rules for the home
14 economy for the fund;

15 (b) a copy of each auditor's report that relates to the report
16 mentioned in paragraph (a).

17 78 Subsection 319(1A)

18 After "subsection (1)", insert "or (1AA)".

19 79 Paragraph 319(3)(a)

20 Omit "or registered scheme", substitute ", registered scheme or notified
21 foreign passport fund".

22 80 After subsection 321(1)

23 Insert:

24 (1AA) ASIC may give a notified foreign passport fund a direction to
25 lodge with ASIC:

26 (a) a copy of a report for the fund for a financial year, prepared
27 in accordance with the financial reporting requirements
28 applying to the fund under the Passport Rules for the home
29 economy for the fund; and

30 (b) a copy of each auditor's report that relates to the report
31 mentioned in paragraph (a).

32 81 Subsection 321(1A)

33 After "subsection (1)", insert "or (1AA)".

EXPOSURE DRAFT

82 Before subsection 322(1)

Insert:

*Financial reports and directors' reports lodged by companies,
registered schemes or disclosing entities*

83 After subsection 322(1)

Insert:

*Reports on financial matters lodged by notified foreign passport
funds*

(1A) If a report lodged with ASIC by a notified foreign passport fund is amended after it is lodged with ASIC, the notified foreign passport fund must:

- (a) lodge the amended report with ASIC within 14 days after the amendment; and
- (b) give a copy of the amended report free of charge to any member who asks for it.

Notifying members if there is a material amendment

84 Subsection 322(2)

After “registered scheme”, insert “, notified foreign passport fund”.

85 Paragraph 322(2)(b)

After “subsection (1)”, insert “or (1A)”.

86 Before subsection 322(3)

Insert:

Offence

87 Subsection 322(3)

Omit “subsection (1) or (2)”, insert “subsection (1), (1A) or (2)”.

88 Section 323D (heading)

Repeal the heading, substitute:

EXPOSURE DRAFT

1 **323D Financial years and half-years for companies, registered**
2 **schemes and disclosing entities**

3 **89 At the end of Division 7 of Part 2M.3**

4 Add:

5 **323DAA Financial years for notified foreign passport funds**

6 A *financial year* for a notified foreign passport fund means:

- 7 (a) a period of 12 months in relation to which the operator of the
8 fund must, under the Passport Rules for the home economy
9 for the fund, prepare a report in accordance with the financial
10 reporting requirements applying to the fund under those
11 Passport Rules; or
12 (b) if, under the law of the home economy for the fund, an
13 exception allows a report in accordance with the financial
14 reporting requirements applying to the fund under the
15 Passport Rules for the home economy for the fund to be
16 prepared for a shorter or longer period—that period.

17 **90 After section 340**

18 Insert:

19 **340A Exemption orders—notified foreign passport funds**

- 20 (1) On an application made in accordance with subsection (3) in
21 relation to a notified foreign passport fund, ASIC may make an
22 order, in writing, relieving any of the following from all or
23 specified requirements of Part 2M.3:
24 (a) a notified foreign passport fund;
25 (b) the operator of a notified foreign passport fund;
26 (c) directors of the operator of a notified foreign passport fund.

27 Note: For the criteria for making orders under this section, see section 342.

- 28 (2) The order may:
29 (a) be expressed to be subject to conditions; and
30 (b) be indefinite or limited to a specified period.
31 (3) The application must be:
32 (a) authorised by the operator of the notified foreign passport
33 fund; and

EXPOSURE DRAFT

-
- 1 (b) in writing; and
2 (c) lodged with ASIC.

- 3 (4) ASIC must give the applicant written notice of the making,
4 revocation or suspension of the order.

5 **91 After section 341**

6 Insert:

7 **341A Exemption orders—class orders for notified foreign passport** 8 **funds**

- 9 (1) ASIC may, by notifiable instrument, make an order in respect of a
10 specified class of notified foreign passport funds, relieving any of
11 the following from all or specified requirements of Part 2M.3:
12 (a) notified foreign passport funds;
13 (b) the operators of notified foreign passport funds;
14 (c) the directors of the operators of notified foreign passport
15 funds.

16 Note: For the criteria for making orders under this section, see section 342.

- 17 (2) The order may:
18 (a) be expressed to be subject to conditions; and
19 (b) be indefinite or limited to a specified period.

20 **92 Section 342 (heading)**

21 Repeal the heading, substitute:

22 **342 Exemption orders—criteria for orders for companies, registered** 23 **schemes, notified foreign passport funds and disclosing** 24 **entities**

25 **93 Subsection 342(1)**

26 Omit “section 340 or 341”, substitute “section 340, 340A, 341 or
27 341A”.

28 **94 Paragraph 343(a)**

29 After “registered scheme”, insert “, notified foreign passport fund”.

EXPOSURE DRAFT

95 Paragraph 343(b)

After “registered schemes”, insert “, notified foreign passport funds”.

96 At the end of Part 2M.6

Add:

343A Minister may apply the Chapter to notified foreign passport funds

(1) The Minister may, by legislative instrument:

(a) order that this Chapter, or provisions of this Chapter specified in the legislative instrument, are to apply in relation to one or more of the following:

(i) notified foreign passport funds the home economy for which is specified in the legislative instrument;

(ii) operators and other entities connected with notified foreign passport funds the home economy for which is specified in the legislative instrument; and

(b) modify the operation of this Chapter, or those provisions of this Chapter specified in the legislative instrument, for the purpose of giving effect to an order under paragraph (a).

(2) The legislative instrument has effect according to its terms.

97 Subsection 344(1) (note)

Omit “This section”, substitute “This subsection”.

98 After subsection 344(1)

Insert:

(1A) A person contravenes this section if:

(a) the person is a director of the operator of a notified foreign passport fund; and

(b) the person fails to take all reasonable steps to comply with, or to secure compliance with, Part 2M.3.

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

99 Subsection 344(2)

After “subsection (1)”, insert “or (1A)”.

EXPOSURE DRAFT

1 **100 Chapter 2N (heading)**

2 Repeal the heading, substitute:

3 **Chapter 2N—Updating ASIC information**
4 **about companies, registered schemes**
5 **and notified foreign passport funds**

6 **101 At the end of section 345A**

7 Add:

8 (3) The *review date* for a notified foreign passport fund is:

9 (a) the anniversary of the day on which the fund first became a
10 notified foreign passport fund; or

11 (b) if a choice of a different date has effect under section 345C—
12 that different date.

13 **102 Section 345B (heading)**

14 Repeal the heading, substitute:

15 **345B Company, responsible entity or operator may change review**
16 **date**

17 **103 After subsection 345B(2)**

18 Insert:

19 (2A) With ASIC’s approval, the operator of a notified foreign passport
20 fund may choose as the review date for the fund a date that is
21 different from the anniversary of the day on which the fund first
22 became a notified foreign passport fund.

23 **104 Subsection 345B(3)**

24 Omit “the company or responsible entity”, substitute “the company,
25 responsible entity or operator”.

26 **105 Section 345C**

27 Omit “the company or responsible entity”, substitute “the company,
28 responsible entity or operator”.

29 **106 Paragraph 345C(a) and (b)**

30 Omit “company or scheme”, substitute “company, scheme or fund”.

EXPOSURE DRAFT

107 Subsections 346A(1) and (2)

Repeal the subsections, substitute:

(1) ASIC must, within 2 weeks after each review date for a company, registered scheme or notified foreign passport fund, give to the company, responsible entity of the scheme or operator of the fund an extract of particulars for the company, scheme or fund.

(1A) Subsection (2) applies if an agreement or approval under subsection 352(1) covers the lodgment of a response to an extract of particulars for a company, registered scheme or notified foreign passport fund.

(2) ASIC may satisfy subsection (1) by making the extract of particulars available by electronic means to:

- (a) the company, the responsible entity of the scheme or the operator of the fund; or
- (b) an agent of the company, the responsible entity or the operator.

108 Section 346B

Repeal the section, substitute:

346B ASIC may ask questions

ASIC may include, in an extract of particulars for a company, registered scheme or notified foreign passport fund, a requirement that the company, responsible entity of the scheme or operator of the fund provide a particular prescribed by the regulations for the purposes of this section.

109 Subsections 346C(1) and (2)

Omit “A company, or responsible entity of a registered scheme,”, substitute “A company, a responsible entity of a registered scheme or an operator of a notified foreign passport fund”.

110 Subsection 346C(3)

Omit “by a company, or by the responsible entity of a registered scheme”, substitute “by a company, the responsible entity of a registered scheme or the operator of a notified foreign passport fund”.

EXPOSURE DRAFT

111 After subsection 348A(1)

Insert:

(1A) ASIC may give to the operator of a notified foreign passport fund a return of particulars for the fund if ASIC suspects or believes that particulars recorded in relation to the fund in a register:

(a) that ASIC maintains, or ensures is maintained, under subsection 1214(1); or

(b) that ASIC maintains under subsection 1274(1);
are not correct.

112 Subsection 348A(2)

Repeal the subsection, substitute:

(2) Subsection (2A) applies if an agreement or approval under subsection 352(1) covers the lodgment of a response to a return of particulars for a company, registered scheme or notified foreign passport fund.

(2A) ASIC may satisfy subsection (1) or (1A) by making the return of particulars available by electronic means to:

(a) the company, the responsible entity of the scheme or the operator of the fund; or

(b) an agent of the company, the responsible entity or the operator.

113 Section 348B

Repeal the section, substitute:

348B ASIC may ask questions

ASIC may include, in a return of particulars for a company, a registered scheme or a notified foreign passport fund a requirement that the company, responsible entity of the scheme or operator of the fund provide a particular prescribed by the regulations for the purposes of this section.

114 Subsection 348D(1)

Omit “or responsible entity of a registered scheme,” substitute “responsible entity of a registered scheme or operator of a notified foreign passport fund”.

EXPOSURE DRAFT

115 Subsection 348D(2)

Omit “or by the responsible entity of a registered scheme”, substitute “the responsible entity of a registered scheme or the operator of a notified foreign passport fund”.

116 Paragraph 348D(2)(e)

Omit “or responsible entity of the scheme”, substitute “, responsible entity of the scheme or operator of the fund”.

117 After subsection 351(1)

Insert:

(1A) A document lodged with ASIC in writing by, or on behalf of, a notified foreign passport fund or its operator, must be signed by:

(a) a director or secretary of the operator of the fund; or

(b) the local agent for the operator of the fund; or

(c) if the local agent is a company—a director or secretary of that company.

Subsection (1) does not apply in relation to documents lodged with ASIC in writing by, or on behalf of, a notified foreign passport fund or its operator.

118 Subsection 354(2)

After “the company’s”, insert “or the scheme’s”.

119 Subsection 601ED(1)

Omit “Subject to subsection (2)”, substitute “Subject to subsections (2) and (2A)”.

120 After subsection 601ED(2)

Insert:

(2A) A notified foreign passport fund does not have to be registered.

121 Subparagraphs 601HG(10)(b)(i) and (ii)

After “registered scheme”, insert “, notified foreign passport fund”.

122 Paragraph 601JB(4)(b)

Omit “registered managed investment scheme”, substitute “registered scheme”.

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1 **123 Subparagraph 602(a)(ii)**

2 After “listed body”, insert “(other than a notified foreign passport
3 fund)”.

4 **124 Subparagraph 602(a)(iii)**

5 Omit “listed managed investment scheme”, substitute “listed registered
6 scheme”.

7 **125 Subsections 602A(1) and (3)**

8 Omit “listed body or listed managed investment scheme”, substitute
9 “listed body (other than a notified foreign passport fund) or listed
10 registered scheme”.

11 **126 Section 604 (heading)**

12 Repeal the heading, substitute:

13 **604 Chapter extends to listed registered schemes**

14 **127 Subsection 604(2)**

15 Omit “listed managed investment schemes”, substitute “listed registered
16 schemes”.

17 **128 Paragraph 636(1)(d)**

18 Omit “managed investment scheme”, substitute “registered scheme”.

19 **129 Paragraph 636(1)(g)**

20 After “managed investment products”, insert “or foreign passport fund
21 products”.

22 **130 Subparagraphs 636(1)(ga)(i) and (ii)**

23 Omit “managed investment scheme”, substitute “registered scheme”.

24 **131 After paragraph 636(1)(ga)**

25 Insert:

26 (gb) if any foreign passport products are offered as consideration
27 under the bid and the bidder is:

28 (i) the operator of the fund; or

29 (ii) a person who controls the operator of the fund;

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1 all material that would be required by section 1013C to be
2 included in a Product Disclosure Statement given to a person
3 in an issue situation (within the meaning of section 1012B) in
4 relation to those foreign passport fund products;

5 **132 Paragraph 637(1)(a)**

6 After “body corporate”, insert “(other than a notified foreign passport
7 fund)”.

8 **133 After paragraph 637(1)(a)**

9 Insert:

10 (aa) for a bidder that is a notified foreign passport fund:

- 11 (i) if the consideration offered under the bid is a cash sum
12 only—a resolution passed by the directors of the
13 operator of the fund; or
14 (ii) otherwise—a unanimous resolution passed by all the
15 directors of the operator of the fund; or

16 **134 Paragraphs 650D(3)(b) and (c)**

17 After “body corporate”, insert “(other than a notified foreign passport
18 fund)”.

19 **135 At the end of subsection 650D(3)**

20 Add:

- 21 ; and (d) if the bidder is, or includes, a notified foreign passport fund
22 and the operator of the fund has 2 or more directors—not
23 fewer than 2 of the directors of the operator of the fund who
24 are authorised to sign the notice by a resolution passed at a
25 directors’ meeting; and
26 (e) if the bidder is, or includes, a notified foreign passport fund
27 and the operator of the fund has only one director—that
28 director.

29 **136 Paragraph 658C(5)(b)**

30 After “body corporate”, insert “(other than a notified foreign passport
31 fund)”.

32 **137 After paragraph 658C(5)(b)**

33 Insert:

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1 ; or (c) if that person is a notified foreign passport fund—the
2 directors of the operator of the fund.

3 **138 Section 660B (heading)**

4 Repeal the heading, substitute:

5 **660B Chapter extends to listed registered schemes**

6 **139 Subsection 660B(4)**

7 Omit “listed managed investment schemes”, substitute “listed registered
8 schemes”.

9 **140 Subsection 670B(1) (table item 2, column headed “*For*
10 *these documents these people...*”)**

11 Repeal the cell, substitute:

if the consideration offered under
the bid is not a cash sum only:

- (a) each director of a bidder that is a
body (other than a notified
foreign passport fund); or
- (b) if the bidder is a notified foreign
passport fund—each director of
the operator of the fund

12 **141 Subsection 670B(1) (table item 3, column headed “*For*
13 *these documents these people...*”)**

14 After “body” insert “(other than a notified foreign passport fund)”.

15 **142 Subsection 670B(1) (after table item 3)**

16 Insert:

- | | | |
|----|---|---|
| 3A | if the bidder is a notified foreign passport fund and the consideration offered under the bid is a cash sum only—a director of the operator of the fund unless the director proves that they: | any contravention of subsection 670A(1) in relation to the document |
| | (a) were not present when the directors resolved to adopt the statement or offer document; or | See also items 10 and 11. |
| | (b) voted against the resolution | |

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1 **143 Subsection 670B(1) (table item 5, column headed “*For*”**
2 ***these documents these people...*”)**

3 Repeal the cell, substitute:

- (a) a director of a bidder that is a body (other than a notified foreign passport fund); or
- (b) if the bidder is a notified foreign passport fund—a director of the operator of the fund

4 **144 Subsection 670B(1) (table item 9, column headed “*For*”**
5 ***these documents these people...*”)**

6 After “body corporate”, insert “(other than a notified foreign passport
7 fund)”.

8 **145 Subsection 670B(1) (after table item 9)**

9 Insert:

- | | | |
|----|--|---|
| 9A | if a notified foreign passport fund is giving the notice, a director of the operator of the fund unless the director proves that they: | any contravention of subsection 670A(1) in relation to the document |
| | (a) were not present when the directors resolved to give the notice; or | See also items 10 and 11. |
| | (b) voted against the resolution | |

10 **146 Chapter 6C (heading)**

11 Repeal the heading, substitute:

12 **Chapter 6C—Information about ownership**
13 **of listed companies, listed registered**
14 **schemes and listed notified foreign**
15 **passport funds**

16 **147 Section 671B (heading)**

17 After “responsible entity”, insert “, fund operator”.

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148 Subsection 671B(1)

Omit “listed registered managed investment scheme”, substitute “listed registered scheme, or the operator of a listed notified foreign passport fund”.

149 Paragraphs 671B(1)(a), (b) and (c)

Omit “or scheme”, substitute “, scheme or fund”.

150 Subsection 671B(2)

Repeal the subsection, substitute:

- (2) For the purposes of this section, there is a *movement of at least 1%* in a person’s holding if the percentage worked out using the following formula increases or decreases by 1 or more percentage points from the percentage they last disclosed under this Part in relation to the company, scheme or fund:

$$\frac{\text{Person's and associates' votes}}{\text{Total votes in company, scheme or fund}} \times 100$$

where:

person’s and associates’ votes is the total number of votes attached to all the voting shares in the company, interests in the scheme or interests in the fund (if any) that the person or an associate has a relevant interest in.

total votes in company, scheme or fund is the total number of votes attached to all voting shares in the company, interests in the scheme or interests in the fund.

Note: Subsection (7) expands the normal concept of relevant interest to take account of market traded options and conditional agreements.

151 Paragraphs 671B(3)(b) and (c)

Repeal the paragraphs, substitute:

(b) details of their relevant interest in:

- (i) voting shares in the company; or
- (ii) interests in the scheme; or
- (iii) interests in the fund; and

(c) details of any relevant agreement through which they would have a relevant interest in:

- (i) voting shares in the company; or

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-
- 1 (ii) interests in the scheme; or
2 (iii) interests in the fund; and

3 **152 Paragraph 671B(3)(d)**

4 Omit “or interests in the scheme”, substitute “, interests in the scheme
5 or interests in the fund”.

6 **153 Subparagraph 671B(6)(b)(i)**

7 Omit “or voting interests in the scheme”, substitute “, voting interests in
8 the scheme or voting interests in the fund”.

9 **154 Subsection 672A(1)**

10 Repeal the subsection, substitute:

- 11 (1) ASIC, a listed company, the responsible entity for a listed
12 registered scheme or the operator of a listed notified foreign
13 passport fund may direct:
14 (a) a member of the company, scheme or fund; or
15 (b) a person named in a previous disclosure under section 672B
16 as having a relevant interest in, or having given instructions
17 about, voting shares in the company, interests in the scheme
18 or interests in the fund;
19 to make the disclosure required by section 672B.

20 **155 Subsection 672A(2)**

21 Omit “or scheme”, substitute “, scheme or fund”.

22 **156 Paragraph 672B(1)(a)**

23 Omit “or interests in the scheme”, substitute “, interests in the scheme
24 or interests in the fund”.

25 **157 Paragraph 672B(2)(c)**

26 Repeal the paragraph, substitute:

- 27 (c) if the direction is given by a listed company, the responsible
28 entity of a listed registered scheme or the operator of a listed
29 notified foreign passport fund—the company, responsible
30 entity or operator pays any fee payable under the regulations
31 made for the purposes of section 672D.

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158 Subsection 672B(3)

Omit “or the responsible entity”, substitute “, responsible entity or operator”.

159 Section 672C

Omit “or interests in a listed managed investment scheme”, substitute “, interests in a listed registered scheme or interests in a listed notified foreign passport fund”.

160 Paragraph 672C(a)

Omit “or the responsible entity for the scheme”, substitute “, the responsible entity for the scheme or the operator of the fund”.

161 Section 672D (heading)

Repeal the heading, substitute:

672D Fee for complying with a direction given by a company, scheme or fund under this Part

162 Subsection 672D(1)

Omit “companies and responsible entities”, substitute “listed companies, responsible entities of listed registered schemes and operators of listed notified foreign passport funds”.

163 Subsection 672D(2)

Omit “or responsible entity”, substitute “, responsible entity or operator”.

164 Section 672DA (heading)

Repeal the heading, substitute:

672DA Register of information about relevant interests in listed company, listed registered scheme or listed notified foreign passport fund

165 Subsection 672DA(1)

Repeal the subsection, substitute:

- (1) A listed company, the responsible entity for a listed registered scheme or the operator of a listed notified foreign passport fund,

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1 must keep a register of the following information that it receives
2 under this Part on or after 1 January 2005 (whether the information
3 is received pursuant to a direction the company, the responsible
4 entity or the operator itself gives under section 672A or is received
5 from ASIC under section 672C):

- 6 (a) details of the nature and extent of a person's relevant interest
7 in shares in the company, interests in the scheme or interests
8 in the fund;
- 9 (b) details of the circumstances that give rise to a person's
10 relevant interest in shares in the company, interests in the
11 scheme or interests in the fund;
- 12 (c) the name and address of a person who has a relevant interest
13 in shares in the company, interests in the scheme or interests
14 in the fund;
- 15 (d) details of instructions that a person has given about:
- 16 (i) the acquisition or disposal of shares in the company,
17 interests in the scheme or interests in the fund; or
- 18 (ii) the exercise of any voting or other rights attached to
19 shares in the company, interests in the scheme or
20 interests in the fund; or
- 21 (iii) any other matter relating to shares in the company,
22 interests in the scheme or interests in the fund;
- 23 (e) the name and address of a person who has given instructions
24 of the kind referred to in paragraph (d).

25 The register must be kept in accordance with this section.

26 **166 Subsection 672DA(3)**

27 Omit "listed managed investment scheme", substitute "listed registered
28 scheme".

29 **167 After subsection 672DA(3)**

30 Insert:

31 (3A) A register kept under this section by the operator of a listed
32 notified foreign passport fund must be kept at:

- 33 (a) the operator's registered office; or
34 (b) the operator's principal place of business in this jurisdiction;
35 or
36 (c) a place in this jurisdiction (whether or not an office of the
37 operator) where the work involved in maintaining the register
38 is done; or
-

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(d) another place in this jurisdiction approved by ASIC.

168 Subsection 672DA(4)

Repeal the subsection, substitute:

(4) The company, responsible entity or operator must lodge with ASIC a notice of the address at which the register is kept within 7 days after the register is:

(a) established at a place that:

(i) is not the registered office of the company, responsible entity or operator; and

(ii) is not at the principal place of business of the company, responsible entity or operator in this jurisdiction; or

(b) moved from one place to another.

Notice is not required for moving the register between the registered office and the principal place of business in this jurisdiction.

Note: The obligation to notify ASIC under this subsection is a continuing obligation and the company, responsible entity or operator is guilty of an offence for each day, after the 7 day period, until ASIC is notified (see section 4K of the *Crimes Act 1914*).

169 Subsection 672DA(5)

After “(3)”, insert “, (3A)”.

170 Paragraph 672DA(6)(a)

Omit “or interests in the scheme,”, substitute “interests in the scheme or interests in the fund”.

171 Subparagraphs 672DA(6)(b)(i) and (ii)

Omit “or the responsible entity,”, substitute “responsible entity or operator”.

172 Paragraph 672DA(7)(a)

Omit “or scheme”, substitute “, scheme or fund”.

173 Subsection 672DA(7)

Omit “or the responsible entity,” (wherever occurring), substitute “responsible entity or operator”.

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174 Subsection 672DA(8)

Repeal the subsection, substitute:

(8) A person may request the company, responsible entity or operator to give to the person a copy of the register (or any part of the register) and, if such a request is made, the company, responsible entity or operator must give the person the copy:

(a) if the company, responsible entity or operator requires payment of a fee for the copy:

(i) before the end of 21 days after the day on which the payment of the fee is received by the company, responsible entity or operator; or

(ii) within such longer period as ASIC approves in writing; or

(b) if the company, responsible entity or operator does not require payment of a fee for the copy:

(i) before the end of 21 days after the day on which the request is made; or

(ii) within such longer period as ASIC approves in writing.

The amount of the fee required by the company, responsible entity or operator under paragraph (a) must not exceed the amount prescribed by the regulations for the purposes of this subsection.

Note: The obligation to give the copy under this subsection is a continuing obligation and the company, responsible entity or operator is guilty of an offence for each day, after the period referred to in paragraph (a) or (b), until the copy is given (see section 4K of the *Crimes Act 1914*).

175 Subsection 672DA(9)

Omit “or the responsible entity,” (wherever occurring), substitute “responsible entity or operator”.

176 Subsection 672DA(9) (note)

Omit “or responsible entity”, substitute “, responsible entity or operator”.

177 Section 672E

Omit “or responsible entity”, substitute “, responsible entity or operator”.

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178 Section 672E

Omit “or an interest in the listed managed investment scheme”, substitute “, an interest in the listed registered scheme or an interest in the listed notified foreign passport fund”.

179 After subsection 674(3)

Insert:

(3A) For the purposes of the application of subsection (2) to a listed disclosing entity that is an undertaking to which interests in a notified foreign passport fund relate, the obligation of the entity to notify the market operator of information is an obligation of the operator of the fund.

180 After paragraph 674(5)(b)

Insert:

; or (c) if the entity is an undertaking to which interests in a notified foreign passport fund relate—the operator of the fund.

181 Subparagraphs 675(2)(c)(i) and (ii)

After “managed investment products”, insert “or foreign passport fund products”.

182 At the end of section 675

Add:

- (4) For the purposes of the application of this section to a disclosing entity that is an undertaking to which interests in a notified foreign passport fund relate:
- (a) the entity is aware of information if, and only if, the operator of the fund is aware of the information; and
 - (b) the obligation of the entity to lodge a document under subsection (2) is an obligation of the operator of the fund.

183 Section 761A (after paragraph (b) of the definition of *financial services law*)

Insert:

(ba) a provision of the Passport Rules for this jurisdiction; or

184 Section 761A

Insert:

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1 *foreign passport fund product* means a financial product described
2 in paragraph 764A(1)(bb).

3 **185 Section 761A (subparagraph (e)(ii) of the definition of**
4 **security)**

5 Omit “or (ba)”, substitute “, (ba) or (bb)”.

6 **186 Section 761A (definition of security)**

7 Omit “but does not include an excluded security. In Part 7.11, it also
8 includes a managed investment product”, substitute “but does not
9 include an excluded security or a foreign passport fund product. In
10 Part 7.11, it also includes a managed investment product and a foreign
11 passport fund product”.

12 **187 After paragraph 764A(1)(ba)**

13 Insert:

14 (bb) any of the following in relation to a notified foreign passport
15 fund:

16 (i) an interest in the fund;

17 (ii) a legal or equitable right or interest in an interest
18 covered by subparagraph (i);

19 (iii) an option to acquire, by way of issue, an interest or right
20 covered by subparagraph (i) or (ii);

21 **188 Paragraph 765A(1)(s)**

22 After “that is not a registered scheme”, insert “or a notified foreign
23 passport fund”.

24 **189 Paragraph 766C(1)(c)**

25 Repeal the paragraph, substitute:

26 (c) in relation to securities, managed investment products and
27 foreign passport fund products—underwriting the securities
28 or products;

29 **190 Paragraph 766D(2)(b)**

30 Repeal the paragraph, substitute:

31 (b) the products are:

32 (i) superannuation products; or

33 (ii) managed investment products; or

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-
- 1 (iii) financial products referred to in paragraph 764A(1)(ba)
2 (which relates to certain managed investment schemes
3 that are not registered schemes); or
4 (iv) foreign passport fund products.

191 After paragraph 766E(3)(b)

6 Insert:

- 7 (ba) the operation of a notified foreign passport fund;
8 (bb) the holding of the assets of a notified foreign passport fund;

192 Paragraph 793C(2)(b)

9
10 After “a body corporate”, insert “(other than a notified foreign passport
11 fund)”.

193 Subsection 793C(3)

12
13 After “a body corporate” (first occurring), insert “(other than a notified
14 foreign passport fund)”.

194 Subsection 793C(3)

15
16 Omit “with its acquiescence”, substitute “with its agreement, consent or
17 acquiescence”.

195 Subsection 793C(4)

18
19 Omit “with the responsible entity’s acquiescence”, substitute “with the
20 responsible entity’s agreement, consent or acquiescence”.

196 After subsection 793C(4)

21
22 Insert:

- 23 (4A) For the purposes of this section, if a disclosing entity that is an
24 undertaking to which interests in a notified foreign passport fund
25 relate is, with the agreement, consent or acquiescence of the
26 operator of the fund, included in the official list of a licensed
27 market, the operator of the fund, or an associate of the operator, is
28 taken to be under an obligation to comply with the operating rules
29 of that market to the extent to which those rules purport to apply to
30 the operator or associate.

197 Subsection 798C(1)

31
32 Omit “or scheme” (first occurring), substitute “, scheme or fund”.

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198 Paragraph 798C(1)(c)

Omit “managed investment scheme”, substitute “registered scheme”.

199 After paragraph 798C(1)(c)

Insert:

(ca) a notified foreign passport fund whose operator is a related body corporate of the market licensee;

200 Subsection 798C(1) (note)

Omit “or scheme”, substitute “, scheme or fund”.

201 Subsection 798C(6)

Omit “or scheme”, substitute “, scheme or fund”.

202 Paragraphs 798D(1)(a) and (b)

Omit “or scheme”, substitute “, scheme or fund”.

203 Subsections 798D(4) and (5)

Omit “or scheme”, substitute “, scheme or fund”.

204 After paragraph 911A(2)(eg)

Insert:

(eh) the service is the acquisition of a financial product as an investment of the assets of a notified foreign passport fund by:

(i) the operator of the fund; or

(ii) another person acting on the direction of the operator of the fund, or the direction of an agent of the operator of the fund;

(ei) the service is the disposal of a financial product that was acquired as an investment of the assets of a notified foreign passport fund by:

(i) the operator of the fund; or

(ii) another person acting on the direction of the operator of the fund, or the direction of an agent of the operator of the fund;

(ej) the service is the issuing or disposal of a derivative or foreign exchange contract by:

(i) the operator of a notified foreign passport fund; or

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1 (ii) another person acting on the direction of the operator of
2 a notified foreign passport fund, or the direction of an
3 agent of the operator of a notified foreign passport fund;
4 for the purposes of managing the financial consequences to
5 the fund of particular circumstances happening, or avoiding
6 or limiting the financial consequences of fluctuations in, or in
7 the value of, receipts or costs (including prices or interest
8 rates);

205 After paragraph 912A(1)(ca)

9 Insert:

10 (cb) if the licensee is the operator of an Australian passport fund,
11 or a person with responsibilities in relation to an Australian
12 passport fund, comply with the law of each host economy for
13 the fund; and
14

206 Subsection 912A(6)

15 Omit “In subsections (4) and (5)”, substitute “In this section”.

207 Subsection 912A(6)

16 Insert:

17 *person with responsibilities in relation to an Australian passport*
18 *fund* means a person (other than a regulator) who has functions or
19 duties in relation to the fund under the Passport Rules for this
20 jurisdiction.
21
22

208 Subparagraph 912D(1)(a)(ii)

23 Omit “paragraphs (a), (b) and (c)”, substitute “paragraphs (a), (b), (ba)
24 and (c)”.

209 After paragraph 915B(3)(c)

25 Insert:

26 (caa) is an operator of a notified foreign passport fund whose
27 members have suffered, or are likely to suffer, loss or
28 damage because the body has breached this Act; or
29
30

210 At the end of subsection 915C(1)

31 Add:
32

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1 ; (e) the licensee is the operator of an Australian passport fund, or
2 a person with responsibilities in relation to an Australian
3 passport fund, and each of the following is satisfied:

- 4 (i) a host regulator for the fund has notified ASIC in
5 writing that it is of the opinion that the person or the
6 fund has not complied, is not complying or is not likely
7 to comply with the law of that host economy to the
8 extent that the law is administered by the host regulator
9 for the fund (including the Passport Rules for the host
10 economy for the fund);
- 11 (ii) ASIC is of the opinion that it should suspend or cancel
12 the licence, given the potential impact of the failure, or
13 potential failure, to comply on members or potential
14 members of the fund.

15 **211 At the end of section 915C**

16 Add:

17 (5) In this section:

18 *person with responsibilities in relation to an Australian passport*
19 *fund* means a person (other than a regulator) who has functions or
20 duties in relation to the fund under the Passport Rules for this
21 jurisdiction.

22 **212 At the end of subsection 920A(1)**

23 Add:

24 ; or (i) the person is the operator of, or another person connected
25 with, an Australian passport fund, and each of the following
26 is satisfied:

- 27 (i) a host regulator for the fund has notified ASIC in
28 writing that it is of the opinion that the person or the
29 fund has not complied, is not complying or is not likely
30 to comply with the law of that host economy to the
31 extent that the law is administered by the host regulator
32 for the fund (including the Passport Rules for the host
33 economy for the fund);
- 34 (ii) ASIC is of the opinion that it should make the banning
35 order, given the potential impact of the failure, or
36 potential failure, to comply on members or potential
37 members of the fund.

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213 After subsection 941C(3)

Insert:

Providing entity is merely operating a notified foreign passport fund

(3A) The providing entity does not have to give the client a Financial Services Guide if:

(a) the providing entity is the operator of a notified foreign passport fund; and

(b) the financial service consists only of the operation of that fund by the operator.

214 Paragraph 946B(1)(c)

After “managed investment products”, insert “, foreign passport fund products”.

215 Subsection 946B(2) (paragraph (a) of the definition of *able to be traded on a licensed market*)

Omit “or managed investment products”, substitute “, managed investment products or foreign passport fund products”.

216 Subsection 946B(2) (paragraph (a) of the definition of *cash management facility*)

After “a registered scheme”, insert “or a notified foreign passport fund”.

217 Subsection 946B(2) (definition of *cash management facility advice*)

After “managed investment products”, insert “, foreign passport fund products”.

218 Paragraph 964(1)(b)

Omit “or an RSE licensee”, substitute “, RSE licensee or the operator of a notified foreign passport fund”.

219 Paragraphs 988E(e) and (f)

Omit “or managed investment products”, substitute “, managed investment products or foreign passport fund products”.

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220 Subsection 992A(2)

Omit “, or to offering of managed investment products,”, substitute “, or to offering interests in managed investment schemes,”.

221 Section 992AA (heading)

Repeal the heading, substitute:

992AA Prohibition on hawking of interests in managed investment schemes

222 After paragraph 1010B(2)(a)

Insert:

(aa) any foreign passport fund product; or

223 After subparagraph 1012D(5)(b)(i)

Insert:

(ia) a foreign passport fund product; or

224 After subparagraph 1012D(7)(a)(i)

Insert:

(ia) a foreign passport fund product; or

225 After subsection 1012D(9B)

Insert:

Recommendation, issue or sale situation—client is associated with a notified foreign passport fund

(9C) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) the financial product is a foreign passport fund product; and

(b) the client is associated (within the meaning of subsection (9D)) with the fund’s operator.

(9D) For the purposes of subsection (9C), the client is associated with the fund’s operator if the client is:

(a) a senior manager of the operator or of a related body corporate; or

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-
- 1 (b) a spouse, parent, child, brother or sister of a person who is a
2 senior manager of the operator or a related body corporate; or
3 (c) a body corporate controlled by a person referred to in
4 paragraph (a) or (b).

5 **226 Paragraph 1012D(10)(a)**

6 After “managed investment product”, insert “, a foreign passport fund
7 product”.

8 **227 Paragraph 1012D(10)(b)**

9 Omit “a managed investment product, or a superannuation product,”,
10 substitute “a managed investment product, a foreign passport fund
11 product or a superannuation product”.

12 **228 After paragraph 1012DAA(3)(a)**

13 Insert:

- 14 (aa) the provisions of Chapter 2M as they apply to the notified
15 foreign passport fund in which the relevant product is an
16 interest;

17 **229 After paragraph 1012DAA(3)(b)**

18 Insert:

- 19 (ba) section 674 or 675 as it applies to the notified foreign
20 passport fund in which the relevant product is an interest;

21 **230 Paragraph 1012DAA(7)(d)**

22 Before “states that”, insert “if the relevant product is a managed
23 investment product—”.

24 **231 After paragraph 1012DAA(7)(d)**

25 Insert:

- 26 (da) if the relevant product is a foreign passport fund product—
27 states that, as at the date of the notice, the issuer of the
28 relevant product has complied with:
29 (i) the provisions of Chapter 2M as they apply to the fund
30 in which the relevant product is an interest; and
31 (ii) section 674 as it applies to that fund; and

32 **232 Paragraph 1012DA(2)(a)**

33 Repeal the paragraph, substitute:

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- 1 (a) the provisions of Chapter 2M as they apply to:
2 (i) the issuer; or
3 (ii) if the relevant product is an interest in a registered
4 scheme—the scheme; or
5 (iii) if the relevant product is an interest in a notified foreign
6 passport fund—the fund;

233 Paragraph 1012DA(2)(b)

- 7 Repeal the paragraph, substitute:
8 (b) section 674 or 675 as it applies to:
9 (i) the issuer; or
10 (ii) if the relevant product is an interest in a registered
11 scheme—the scheme; or
12 (iii) if the relevant product is an interest in a notified foreign
13 passport fund—the fund;
14

234 Paragraph 1012DA(6)(e)

- 15 Repeal the paragraph, substitute:
16 (e) states that, as at the date of the notice, the issuer of the
17 relevant product has complied with the provisions of
18 Chapter 2M, and of section 674, as those provisions apply to:
19 (i) the issuer; or
20 (ii) if the relevant product is an interest in a registered
21 scheme—the scheme; or
22 (iii) if the relevant product is an interest is a notified foreign
23 passport fund—the fund; and
24

235 Subsection 1013A(3)

- 25 Omit “The person who”, substitute “The person by whom”.

236 Subsection 1013D(2A)

- 27 After “managed investment products”, insert “, foreign passport fund
28 products”.
29

237 Paragraph 1013FA(2)(a)

- 30 Before “the information”, insert “for a continuously quoted security that
31 is not a security of a notified foreign passport fund—”.
32

EXPOSURE DRAFT

238 After paragraph 1013FA(2)(a)

Insert:

- (aa) for a continuously quoted security of a notified foreign passport fund—the information is included in any of the following documents:
 - (i) a copy of a report for the fund for the most recent financial year for the fund, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund;
 - (ii) a copy of an auditor’s report that relates to the report mentioned in subparagraph (i);
 - (iii) any continuous disclosure notices given by the issuer of the product after the lodgment of the report mentioned in subparagraph (i) and before the date of the Product Disclosure Statement; and

239 Subparagraph 1013FA(2)(b)(ii)

After “paragraph (a)”, insert “or (aa) (as the case requires)”.

240 After section 1013G

Insert:

1013GA Extra requirements if Product Disclosure Statement relates to foreign passport fund products

- (1) This section applies to a Product Disclosure Statement that relates to foreign passport fund products.
- (2) The Product Disclosure Statement must:
 - (a) identify the home economy for the notified foreign passport fund to which the foreign passport fund products relate; and
 - (b) include a statement that:
 - (i) the operation of the fund is regulated by the law of the home economy for the fund; and
 - (ii) the operator of the fund, the custodian of assets of the fund and other persons connected with the operation of the fund are regulated under the law of the home economy for the fund; and
 - (iii) the rights and remedies available to a person who acquires the foreign passport fund product may differ

EXPOSURE DRAFT

-
- 1 from the rights and remedies available in relation to a
2 registered scheme; and
3 (iv) information made available to members of the fund in
4 the home economy will from time to time be made
5 available to members of the fund in this jurisdiction by
6 posting the information on the fund's website; and
7 (c) include an outline of the main rights and remedies available
8 under the law of the home economy for the fund to persons
9 who acquire the foreign passport fund product in this
10 jurisdiction; and
11 (d) include an outline of how information mentioned in
12 subparagraph (b)(iv) may be accessed by members of the
13 fund in this jurisdiction.

241 After section 1013I

14 Insert:

16 **1013IA Extra requirements if Product Disclosure Statement relates** 17 **to foreign passport fund products that are ED securities**

- 18 (1) This section applies to a Product Disclosure Statement that relates
19 to foreign passport fund products that are ED securities.
- 20 (2) The Product Disclosure Statement must include a statement that:
21 (a) as a disclosing entity, the fund is subject to regular reporting
22 and disclosure obligations; and
23 (b) copies of documents lodged with ASIC in relation to the fund
24 may be obtained from, or inspected at, an ASIC office.
- 25 (3) The Product Disclosure Statement must either:
26 (a) inform people of their right to obtain a copy of the following
27 documents:
28 (i) a copy of a report for the most recent financial year for
29 the fund, prepared in accordance with the financial
30 reporting requirements applying to the fund under the
31 Passport Rules for the home economy for the fund; and
32 (ii) a copy of each auditor's report that relates to the report
33 mentioned in subparagraph (i); or
34 (b) include, or be accompanied by, a copy of that document or
35 those documents.
- 36 (4) Subsections (5) and (6) apply if:
-

EXPOSURE DRAFT

-
- 1 (a) the Product Disclosure Statement informs people of their
2 right to obtain a copy of a document referred to in
3 subsection (3); and
4 (b) a person asks the issuer (in the case of an issue Statement) or
5 the seller (in the case of a sale Statement) for a copy of the
6 document.

- 7 (5) The issuer or seller must give (see subsection (6)) the person a
8 copy of the document:
9 (a) free of charge; and
10 (b) as soon as practicable, and in any event within 5 days, after
11 receiving the person’s request; and
12 (c) if the person asks the issuer or seller for a copy of the
13 document in English—in English.

14 Note: Failure to comply with this subsection is an offence (see
15 subsection 1311(1)).

- 16 (6) In subsection (5), *give* means give in a way that would satisfy
17 requirements of section 1015C if the copy of the document were a
18 Statement to which that section applied.

19 **242 Subparagraph 1015B(1)(a)(i)**

20 After “managed investment product”, insert “or a foreign passport fund
21 product”.

22 **243 Paragraph 1015B(1)(b)**

23 After “managed investment product”, insert “or a foreign passport fund
24 product”.

25 **244 Subsection 1015B(2)**

26 After “The lodgment of a Statement”, insert “in relation to a managed
27 investment product”.

28 **245 At the end of section 1015B**

29 Add:

- 30 (3) The lodgment of a Statement in relation to a foreign passport fund
31 product with ASIC requires the consent of:
32 (a) if the operator of the fund is a body corporate—every
33 director of the operator; or
34 (b) otherwise—the responsible person.

EXPOSURE DRAFT

1 **246 Subsection 1016A(1) (after paragraph (a) of the definition**
2 **of *relevant financial product*)**

3 Insert:

4 (aa) a foreign passport fund product; or

5 **247 Subparagraph 1017A(4)(a)(i)**

6 After “at a suitable place”, insert “in this jurisdiction”.

7 **248 Subsection 1017B(2)**

8 After “managed investment product”, insert “or foreign passport fund
9 product”.

10 **249 Subsection 1017B(2) (note 1)**

11 After “managed investment products”, insert “and foreign passport fund
12 products”.

13 **250 After subparagraph 1017D(1)(b)(i)**

14 Insert:

15 (ia) a foreign passport fund product; or

16 **251 After subsection 1017E(1)**

17 Insert:

18 (1A) However, this section does not apply in relation to money paid to
19 an issuer (the *product provider*) of foreign passport fund products
20 if the money is paid to acquire, or acquire an increased interest in,
21 one or more of those foreign passport fund products from the
22 product provider (whether or not the acquisition would be by a
23 person as a retail client).

24 **252 Subparagraph 1017G(2)(a)(ii) and (b)(ii)**

25 After “financial services provided in relation to any of those products”,
26 insert “or, if any of those products are foreign passport fund products,
27 the operation of the relevant notified foreign passport fund”.

28 **253 After subparagraph 1019A(1)(a)(iii)**

29 Insert:

30 (iiia) foreign passport fund products;

EXPOSURE DRAFT

1 **254 Subsection 1020AA(1) (subparagraph (a)(i) of the**
2 **definition of *securities lending arrangement*)**

3 After “managed investment products”, insert “, foreign passport fund
4 products”.

5 **255 After section 1020A**

6 Insert:

7 **1020BAA Offers etc. relating to foreign passport funds not to be**
8 **made in certain circumstances**

- 9 (1) A person must not engage in conduct of a kind referred to in
10 subsection (2) in relation to an interest in a foreign passport fund if
11 the fund is not a notified foreign passport fund. This is so even if it
12 is proposed that the fund will become a notified foreign passport
13 fund.

14 Note: Failure to comply with this subsection is an offence (see
15 subsection 1311(1)).

- 16 (2) Subject to subsection (3), the kinds of conduct that must not be
17 engaged in in relation to an interest in such a foreign passport fund
18 are as follows:

- 19 (a) making a recommendation, as described in
20 subsection 1012A(3), that is received in this jurisdiction;
21 (b) making an offer, as described in subsection 1012B(3) or
22 1012C(3), that is received in this jurisdiction;
23 (c) accepting an offer, made as described in subsection 1012B(3)
24 or (4), that was received in this jurisdiction.

- 25 (3) Subsection (2) does not apply to a recommendation or offer made
26 in a situation to which a subsection of section 1012D, other than
27 subsection 1012D(1), applies.

28 **256 Section 1020B (heading)**

29 Repeal the heading, substitute:

EXPOSURE DRAFT

1 **1020B Prohibition of certain short sales securities, managed**
2 **investment products, foreign passport fund products and**
3 **certain other financial products**

4 **257 Subsection 1020B(1) (after paragraph (b) of the definition**
5 **of section 1020B products)**

6 Insert:

7 (ba) foreign passport fund products; or

8 **258 Section 1043B (heading)**

9 Repeal the heading, substitute:

10 **1043B Exception for withdrawal from registered scheme or notified**
11 **foreign passport fund**

12 **259 Section 1043B**

13 After “a registered scheme”, insert “or a notified foreign passport fund”.

14 **260 Paragraphs 1043C(1)(a) and (c)**

15 Omit “or managed investment products”, substitute “, managed
16 investment products or foreign passport fund products”.

17 **261 Paragraphs 1043C(2)(a) and (b)**

18 Omit “or managed investment products” (wherever occurring),
19 substitute “, managed investment products or foreign passport fund
20 products”.

21 **262 Subsection 1043L(8) (heading)**

22 Repeal the heading, substitute:

23 *Special provision for registered schemes and notified foreign*
24 *passport funds—treatment of amount recovered in respect of*
25 *subsection (2) loss*

26 **263 Paragraphs 1043L(8)(a) and (b)**

27 After “the responsible entity for a registered scheme”, insert “or the
28 operator of a notified foreign passport fund”.

29 **264 Subsection 1043L(8)**

30 After “any interests in the scheme”, insert “or fund”.

EXPOSURE DRAFT

265 Paragraph 1043L(8)(c)

Repeal the paragraph, substitute:

(c) is to be held:

- (i) in the case of a registered scheme other than an Australian passport fund—by the responsible entity; and
- (ii) in the case of an Australian passport fund or a notified foreign passport fund—by the responsible holding party for the fund;

on behalf of the persons who, at the time of the subscription or agreement, had rights or interests in the relevant financial or business undertaking or scheme, common enterprise, investment contract or time-sharing scheme; and

266 Subsection 1043L(9) (heading)

Repeal the heading, substitute:

Special provision for registered schemes and notified foreign passport funds—treatment of amount recovered in respect of subsection (5) loss

267 Paragraphs 1043L(9)(a) and (b)

After “the responsible entity for a registered scheme”, insert “or the operator of a notified foreign passport fund”.

268 Subsection 1043L(9)

After “interests in the scheme”, insert “or fund”.

269 Paragraph 1043L(9)(c)

Repeal the paragraph, substitute:

(c) is to be held:

- (i) in the case of a registered scheme other than an Australian passport fund—by the responsible entity; and
- (ii) in the case of an Australian passport fund or a notified foreign passport fund—by the responsible holding party for the fund;

on behalf of the persons who, at the time of the disposal, acquisition or agreement, had rights or interests in the relevant financial or business undertaking or scheme, common enterprise, investment contract or time-sharing scheme; and

EXPOSURE DRAFT

1 **270 Before subparagraph 1274(2)(a)(ii)**

2 Insert:

3 (iab) information of the kind specified under
4 subsection 1212(3) or 1213(3) (information included in,
5 or accompanying, applications in relation to passport
6 funds); or

7 **271 After paragraph 1311(1A)(dc)**

8 Insert:

9 (dd) Chapter 8A;

10 **272 Subsection 1317E(1) (table item 5, column 1)**

11 Omit “subsection 344(1)”, substitute “subsections 344(1) and (1A)”.

12 **273 Paragraph 1317E(2)(e)**

13 Omit “the corporation or registered scheme”, substitute “the
14 corporation, registered scheme or notified foreign passport fund”.

15 **274 Subparagraph 1317G(1)(b)(i)**

16 Omit “the corporation or scheme”, substitute “the corporation, scheme
17 or fund”.

18 **275 Subsection 1317H(1)**

19 Omit “compensate a corporation or registered scheme”, substitute
20 “compensate a corporation, registered scheme or notified foreign
21 passport fund”.

22 **276 Subsection 1317H(1)**

23 Omit “corporation or scheme” (wherever occurring), substitute
24 “corporation, scheme or fund”.

25 **277 Subsection 1317H(2)**

26 Omit “corporation or scheme”, substitute “corporation, scheme or
27 fund”.

28 **278 Subsection 1317H(3) (heading)**

29 Repeal the heading, substitute:

EXPOSURE DRAFT

Damage includes diminution of value of scheme or fund property

1
2 **279 Subsection 1317H(3)**

3 After “the scheme” (wherever occurring), insert “or fund”.

4 **280 After subsection 1317H(4)**

5 Insert:

6 (4A) If the operator of a notified foreign passport fund is ordered to
7 compensate the fund, the operator must transfer the amount of the
8 compensation to the fund property. If anyone else is ordered to
9 compensate the fund, the operator may recover the compensation
10 on behalf of the fund.

11 **281 Subsection 1317HA(1)**

12 Omit “, or a registered scheme, for damaged suffered by the person or
13 scheme”, substitute “, registered scheme or notified foreign passport
14 fund for damage suffered by the person, scheme or fund”.

15 **282 Subsection 1317HA(2)**

16 Omit “person or scheme”, substitute “person, scheme or fund”.

17 **283 Subsection 1317HA(3) (heading)**

18 Repeal the heading, substitute:

19 *Damage includes diminution of value of scheme or fund property*

20 **284 Subsection 1317HA(3)**

21 After “a registered scheme”, insert “or notified foreign passport fund”.

22 **285 Subsection 1317HA(3)**

23 After “the scheme”, insert “or fund”.

24 **286 After subsection 1317HA(4)**

25 Insert:

26 (4A) If the operator of a notified foreign passport fund is ordered to
27 compensate the fund, the operator must transfer the amount of the
28 compensation to the fund property. If anyone else is ordered to
29 compensate the fund, the operator may recover the compensation
30 on behalf of the fund.

EXPOSURE DRAFT

287 After section 1317HB

Insert:

1317HC Compensation orders—Passport Rules

(1) A Court may order a person (the *liable person*) to compensate another person (other than a passport fund) for damage suffered by the other person if:

(a) the liable person has contravened subsection 1211C(1) or (2) (failure to comply with the Passport Rules for this jurisdiction); and

(b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

(2) A Court may order a person to compensate a passport fund for damage suffered by the fund if:

(a) the person has contravened subsection 1211C(1) or (2) (failure to comply with the Passport Rules for this jurisdiction); and

(b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

(3) In determining the damage suffered by a person or passport fund for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

(4) In determining the damage suffered by a passport fund for the purposes of making a compensation order, include any diminution in value of the property of the fund.

(5) A compensation order may be enforced as if it were a judgment of the Court.

288 Subsection 1317J(2)

Omit “or the responsible entity for the registered scheme,” substitute “responsible entity for the registered scheme or operator of the notified foreign passport fund”.

EXPOSURE DRAFT

289 Subsection 1317J(2)

After “a compensation order”, insert “under section 1317H, 1317HA or 1317HB”.

290 After subsection 1317J(2) (before the note)

Insert:

(2A) Each of the following may apply for a compensation order under section 1317HC:

(a) any person who has suffered damage as a result of a contravention;

(b) the operator of any passport fund that has suffered damage as a result of the contravention.

291 Subsection 1317S(1) (paragraphs (a) and (b) of the definition of *eligible proceedings*)

Omit “or 1317HB”, substitute “, 1317HB or 1317HC”.

292 Subsection 1378(1) (note)

Omit “registered managed investment schemes”, substitute “registered schemes”.

293 Schedule 3 (after table item 108)

Insert:

| | | |
|------|--------------------------------|---|
| 108A | Subsection 314A(1), (3) or (7) | 10 penalty units or imprisonment for 3 months, or both. |
|------|--------------------------------|---|

294 Schedule 3 (table item 229AA, column headed “provision”)

Repeal the cell, substitute:

Subsections 672DA(1), (2), (3), (3A), (4), (6), (7), (8) and (9)

295 Schedule 3 (after table item 291B)

Insert:

| | | |
|-------|----------------------|---|
| 291BA | Subsection 1013IA(5) | 100 penalty units or imprisonment for 2 years, or both. |
|-------|----------------------|---|

EXPOSURE DRAFT

1 **296 Schedule 3 (after table item 300B)**

2 Insert:

300BA Section 1020BAA 200 penalty units or imprisonment for 5 years,
or both.

3 **297 Schedule 3 (after table item 328)**

4 Insert:

328A Subsection 1212C(1) 60 penalty units.

328B Subsection 1215D(2) 100 penalty units or imprisonment for 2 years,
or both.

328C Subsection 1215D(3) 100 penalty units or imprisonment for 2 years,
or both.

328D Subsection 1215D(4) 100 penalty units or imprisonment for 2 years,
or both.

5