

EXPOSURE DRAFT

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2018

No. , 2018

(Treasury)

**A Bill for an Act to amend the law relating to
corporations and taxation, and for related purposes**

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

| | | |
|---|------------------------------|------------|
| 1 | Short title..... | 1 |
| 2 | Commencement..... | 1 |
| 3 | Schedules..... | 2 |
| Schedule 1—Main amendments | | 3 |
| | <i>Corporations Act 2001</i> | 3 |
| Schedule 2—Other amendments | | 106 |
| | <i>Corporations Act 2001</i> | 106 |
| Schedule 3—Transitional provisions | | 119 |
| | <i>Corporations Act 2001</i> | 119 |

EXPOSURE DRAFT

1 **A Bill for an Act to amend the law relating to**
2 **corporations and taxation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Treasury Laws Amendment (Corporate Collective*
6 *Investment Vehicle) Act 2018.*

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.

No. , 2018 *Treasury Laws Amendment (Corporate Collective Investment Vehicle)* 1
Bill 2018

EXPOSURE DRAFT

EXPOSURE DRAFT

1

Commencement information

| Column 1 | Column 2 | Column 3 |
|---|---|--------------|
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | |
| 2. Schedules 1, 2 and 3 | | |

2

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

3

4

5

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

6

7

8

3 Schedules

9

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

10

11

12

2

Treasury Laws Amendment (Corporate Collective Investment Vehicle) No. , 2018
Bill 2018

EXPOSURE DRAFT

1 **Schedule 1—Main amendments**
2

3 *Corporations Act 2001*

4 **1 Subsection 112(1) (at the end of the table)**

5 Add:

6

| | |
|--|-------------------|
| Corporate collective investment vehicles | Limited by shares |
|--|-------------------|

7 **2 Subsection 112(1) (note)**

8 Omit “Note”, substitute “Note 1”.

9 **3 At the end of subsection 112(1)**

10 Add:

11 Note 2: For corporate collective investment vehicles, see Chapter 8B.

12 **4 Before Chapter 9**

13 Insert:

14 **Chapter 8B—Corporate collective investment**
15 **vehicles**

16 **Part 8B.1—Preliminary**
17

18 **1230 Objects of this Chapter**

19 The objects of this Chapter are:

- 20 (a) to provide a regulatory framework for corporate collective
21 investment vehicles that is fair, efficient and competitive; and
22 (b) together with Chapter 7, to promote confident and informed
23 decision making by consumers of financial products and
24 services related to shares in corporate collective investment
25 vehicles.

EXPOSURE DRAFT

Schedule 1 Main amendments

1 **Part 8B.2—Registration and basic features**

2 **Division 1—Registering a CCIV**

3 **1231 Types of companies—basic requirements for registration as a** 4 **CCIV**

5 A company may be registered as a corporate collective investment
6 vehicle only if:

- 7 (a) the company is a company limited by shares; and
8 (b) the company has a constitution; and
9 (c) the proposed director of the company is a public company
10 that holds an Australian financial services licence authorising
11 it to operate the business and conduct the affairs of the CCIV.

12 Note: CCIV is short for corporate collective investment vehicle.

13 **1231A Minimum of 1 sub-fund**

- 14 (1) A CCIV must have at least 1 sub-fund.

15 Note: For sub-funds, see Division 3 of this Part.

- 16 (2) Section 114 is taken to also require each sub-fund of a CCIV to
17 have at least 1 member.

18 **1231B Applying for registration**

- 19 (1) This section applies in relation to an application for registration
20 made under subsection 117(1) if the type of company that is
21 proposed to be registered under this Act is a CCIV.

- 22 (2) The application is not required to state the information mentioned
23 in paragraphs 117(2)(d), (e), (f), (ma) and (mb).

- 24 (3) In addition to the information required by subsection 117(2) as
25 modified by subsection (2) of this section, the application must
26 also state:

- 27 (a) the name, and the address of the registered office, of the
28 public company that consents in writing to become the
29 corporate director of the CCIV; and
-

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (b) the proposed name of each sub-fund the CCIV is to have
2 when it is registered; and
3 (c) for each such proposed sub-fund:
4 (i) which of the members identified under
5 paragraph 117(2)(c) are to be members of the sub-fund;
6 and
7 (ii) which of the shares identified under paragraph 117(2)(k)
8 are to be referable to the sub-fund; and
9 (d) if the CCIV is to have a depositary—the name, and address
10 of the registered office, of a public company, or foreign
11 company registered under Division 2 of Part 5B.2, that
12 consents in writing to be the depositary.
- 13 Note: For paragraph (b), see section 1233S.
- 14 (4) A copy of the CCIV’s constitution must be lodged with the
15 application.
16 (5) The application must be in the prescribed form.
17 (6) Subsection 117(5) applies as if the consents referred to in
18 subsection (3) of this section were referred to in subsection 117(2).

19 **1231C Registration of body as company on basis of State or** 20 **Territory law**

- 21 (1) Subsections (2) and (3) apply in relation to a notice mentioned in
22 subsection 5H(2) if the type of company that a body mentioned in
23 subsection 5H(1) is specified to be registered as under this Act is a
24 CCIV.
- 25 (2) The notice is not required to state the information mentioned in
26 paragraphs 5H(2)(b), (c) and (d).
- 27 (3) In addition to the information required by subsection 5H(2) as
28 modified by subsection (2) of this section, the notice must also
29 state:
30 (a) the name, and the address of the registered office, of the
31 public company that consents in writing to become the
32 corporate director of the CCIV; and

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (b) the proposed name of each sub-fund the CCIV is to have
2 when it is registered; and
3 (c) for each such proposed sub-fund:
4 (i) which of the members identified under
5 paragraph 5H(2)(1) are to be members of the sub-fund;
6 and
7 (ii) which of the shares identified under paragraph 5H(2)(h)
8 are to be referable to the sub-fund; and
9 (d) if the CCIV is to have a depositary—the name, and address
10 of the registered office, of a public company, or foreign
11 company registered under Division 2 of Part 5B.2, that
12 consents in writing to be the depositary.

13 Note: For paragraph (b), see section 1233S.

- 14 (4) Subsection 5H(3) applies in relation to the company in the same
15 way as it applies in relation to a public company.

16 **1231D Registration of a CCIV—modification of section 118**

- 17 (1) If an application to register a company as a CCIV is lodged under
18 section 117, ASIC may take the steps set out in paragraphs
19 118(1)(a), (b) and (c), if ASIC is of the opinion that:
20 (a) the proposed corporate director of the CCIV meets the
21 requirements of section 1238E; and
22 (b) if the CCIV is to have a depositary—the proposed depositary
23 meets the requirements of section 1234C.

24 Note: The company comes into existence on registration: see section 119.

25 *Initial sub-funds to be registered when the CCIV is registered*

- 26 (2) If ASIC registers a CCIV, ASIC must also register one or more
27 sub-funds of the CCIV.

28 Note: For ASIC's power to register a sub-fund of a CCIV, see
29 section 1233D.

30 **1231E Members, corporate director and depositary of a CCIV**

- 31 (1) Subsection 120(1) does not apply in relation to a CCIV.
-

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (2) A public company becomes the director of a CCIV on registration
2 if the public company is specified in the application with its
3 consent as the proposed corporate director of the CCIV.
- 4 (3) A public company, or a foreign company registered under
5 Division 2 of Part 5B.2, becomes the depositary of a CCIV on
6 registration if the public company or foreign company is specified
7 in the application with its consent as the proposed depositary of the
8 CCIV.
- 9 (4) A person becomes a member of a CCIV on registration if the
10 person is specified in the application with their consent as a
11 proposed member of the CCIV.
- 12 Note: The shares taken to be issued to the member are those specified in the
13 application: see subsection 120(2).

14 **Division 2—CCIV powers and internal rules**

15 **Subdivision A—CCIV powers and how they are exercised**

16 **1232 Execution of documents (including deeds) by the CCIV itself**

- 17 (1) A document is taken to have been signed in accordance with
18 subsection 127(1) if the document is signed by:
19 (a) 2 directors of the corporate director of the CCIV; or
20 (b) a director and a company secretary of the corporate director
21 of the CCIV.
- 22 Note: If a document is signed in this way, a person will be able to rely on the
23 assumptions in subsection 129(5) for dealings in relation to the CCIV.
- 24 (2) A CCIV's common seal (if any) is taken to have been fixed to a
25 document in accordance with subsection 127(2) if:
26 (a) the CCIV's common seal is fixed to the document; and
27 (b) the fixing of the seal is witnessed by:
28 (i) 2 directors of the corporate director of the CCIV; or
29 (ii) a director and a company secretary of the corporate
30 director of the CCIV.

EXPOSURE DRAFT

Schedule 1 Main amendments

1 Note: If a CCIV executes a document in this way, a person will be able to
2 rely on the assumptions in subsection 129(6) for dealings in relation to
3 the CCIV.

4 (3) A CCIV may execute a document as a deed if the document is
5 expressed to be executed as a deed and is executed in accordance
6 with subsection 127(1) or (2), as affected by this section.

7 (4) This section does not limit the ways in which a CCIV may execute
8 a document (including a deed).

9 **Subdivision B—Replaceable rules and constitution**

10 **1232A Replaceable rules**

11 (1) A section or subsection whose heading contains the words
12 *replaceable rule* does not apply as a replaceable rule to a CCIV.

13 (2) A section or subsection whose heading contains the words
14 *replaceable rule for CCIVs* applies as a replaceable rule to a CCIV.

15 Note: Section 135 is about replaceable rules and how they apply.

16 (3) Subsection (1) applies despite paragraph 135(1)(a).

17 **1232B Constitution of a CCIV**

18 (1) Section 136 does not apply to a CCIV.

19 (2) A CCIV must have a constitution. A wholesale CCIV's
20 constitution must specify the requirements that must be complied
21 with for the CCIV to do the following:

22 (a) adopt a constitution after registration;

23 (b) modify or repeal its constitution.

24 (3) A CCIV adopts a constitution:

25 (a) on registration—if each person specified in the application
26 for the CCIV's registration as a person who consents to
27 become a member agrees in writing to the terms of a
28 constitution before the application is lodged; or

29 (b) after registration:

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (i) if the CCIV is a retail CCIV—by complying with
2 section 1232H; or
3 (ii) if the CCIV is a wholesale CCIV—by complying with
4 the requirements set out in the constitution for the
5 adoption.
- 6 (4) A CCIV may modify or repeal its constitution, or a provision of its
7 constitution:
8 (a) if the CCIV is a retail CCIV—by complying with
9 section 1232H; or
10 (b) if the CCIV is a wholesale CCIV—by complying with the
11 requirements set out in the constitution for the modification
12 or repeal.
- 13 (5) If the constitution of a CCIV is modified, or the CCIV adopts a
14 constitution after registration, the CCIV must lodge with ASIC a
15 copy of the modification or the new constitution.
- 16 Note: The constitution may be modified or repealed by court order: see
17 section 233.

18 **1232C Date of effect of adoption, modification or repeal of** 19 **constitution**

- 20 (1) This section applies in relation to a CCIV if:
21 (a) a new constitution of the CCIV is adopted or an existing
22 constitution of the CCIV is modified or repealed; and
23 (b) the adoption, modification or repeal is neither the result of a
24 special resolution nor the result of a court order made under
25 section 233.
- 26 Note: Section 137 sets the date of effect for changes resulting from a special
27 resolution or court order.
- 28 (2) The adoption, modification or repeal takes effect on the later of the
29 following:
30 (a) the date on which the modification or the new constitution is
31 lodged with ASIC;
32 (b) if the CCIV is a retail CCIV, and the corporate director
33 determines a later date for the change to take effect—that
34 later date;

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (c) if the CCIV is a wholesale CCIV, and a later date is
2 determined in accordance with any requirements in the
3 constitution of the CCIV—that later date.

4 **1232D Effect of constitution and replaceable rules**

5 In addition to the effect mentioned in subsection 140(1), a CCIV's
6 constitution and any replaceable rules that apply to the CCIV also
7 have effect as a contract between the corporate director and each
8 member.

9 **1232E Table of replaceable rules**

10 The following table sets out the provisions of this Act that apply as
11 replaceable rules to a CCIV.

12

Provisions that apply to a CCIV as replaceable rules

| Item | Topic | Provision |
|------|-------------------------------|---------------|
| 1 | Resolutions of CCIVs | section 1244 |
| 2 | Voting at meetings of members | section 1244F |

13

14 **Subdivision C—Additional protections for retail clients**

15 **1232F Meaning of *retail CCIV* and *wholesale CCIV***

16 (1) A CCIV is a *wholesale CCIV* if it is not a retail CCIV.

17 (2) A CCIV is a *retail CCIV* if:

- 18 (a) the issue of a security (within the meaning of Chapter 7) in
19 the CCIV gave rise to an obligation under Division 2 of
20 Part 7.9 for the giving of a Product Disclosure Statement; or
21 (b) both of the following apply:
22 (i) the acquisition by a person of a security (within the
23 meaning of that Chapter) in the CCIV occurred under a
24 custodial arrangement (within the meaning of
25 section 1012IA);

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (ii) this Act required the provider in relation to the custodial
2 arrangement to give the person a Product Disclosure
3 Statement before the acquisition occurred.

4 **1232G Contents of the constitution**

- 5 (1) The constitution of a retail CCIV must make adequate provision
6 for the following:
7 (a) the establishment of sub-funds, and classes of shares
8 referable to sub-funds;
9 (b) the method by which complaints made by members in
10 relation to the CCIV are to be dealt with.

11 *Fees and indemnities to be expressly provided for*

- 12 (2) If the corporate director is to have any rights to be paid fees out of
13 assets of a sub-fund of a retail CCIV, or to be indemnified out of
14 assets of a sub-fund of a retail CCIV for liabilities or expenses
15 incurred in relation to the performance of its duties, those rights:
16 (a) must be specified in the CCIV's constitution; and
17 (b) must be available only in relation to the proper performance
18 of those duties;
19 and any other agreement or arrangement has no effect to the extent
20 that it purports to confer such a right.

21 Note: Sections 199A to 199C may prohibit giving an indemnity for the
22 corporate director of a CCIV. Those sections have extended operation
23 in relation to a CCIV: see sections 1238 and 1238A.

24 *Powers to borrow or raise money to be expressly provided for*

- 25 (3) The constitution of a retail CCIV must:
26 (a) state that the CCIV has power to borrow or raise money; and
27 (b) if there are to be any limits on the CCIV's exercise of that
28 power—set out those limits.

29 **1232H Changing the constitution**

30 The constitution of a retail CCIV may be modified, or repealed and
31 replaced with a new constitution:

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (a) by special resolution of the members of the CCIV; or
2 (b) by the corporate director if the corporate director reasonably
3 considers the change will not adversely affect members'
4 rights.

5 **1232J Redemption of redeemable shares to be provided for in**
6 **constitution**

- 7 (1) This section applies if all or some of the shares in a CCIV are
8 redeemable shares.
- 9 (2) The constitution of the CCIV must make provision for redeemable
10 shares in the CCIV to be redeemed. The provision must:
11 (a) specify a period within which a redemption must be satisfied
12 while a sub-fund is liquid; and
13 (b) be consistent with Subdivision B of Division 2 of Part 8B.7.

14 **Subdivision D—Changing company type**

15 **1232K Part 2B.7 does not apply to a CCIV**

16 Part 2B.7 (about changing company type) does not apply to a
17 CCIV.

18 **Subdivision E—Names**

19 **1232L Special requirements for naming of CCIVs**

- 20 (1) Subsection 148(1) applies to a CCIV as if the reference to
21 subsections (2) and (3) of section 148 were instead a reference to
22 subsection (2) of this section.
- 23 (2) A CCIV must have the expression “Corporate Collective
24 Investment Vehicle” at the end of its name.

25 **1232M Special requirements for acceptable abbreviations of CCIV**
26 **names**

27 Section 149 has effect as if the following item were added to the
28 table in subsection (1) of that section:

EXPOSURE DRAFT

Main amendments **Schedule 1**

1

10 Corporate Collective CCIV
Investment Vehicle

2

3 **1232N Carrying on business using “CCIV” in name**

4 Section 156 has effect as if paragraph 156(1)(a) included a
5 reference to the words “Corporate Collective Investment Vehicle”
6 (or an abbreviation of those words).

7 **Division 3—Sub-funds**

8 **Subdivision A—Requirement for sub-funds**

9 **1233 Meaning of *sub-fund***

- 10 (1) A *sub-fund* of a CCIV is all or part of the business of the CCIV
11 that is registered as a sub-fund under section 1233D.
12 (2) A sub-fund does not have legal personality.

13 **1233A Segregated operation of business of sub-funds**

- 14 (1) No part of the business of a CCIV may be operated otherwise than
15 as a registered sub-fund of the CCIV.
16 (2) A part of the business of a CCIV that is registered as a sub-fund
17 must be operated as a business separately from the business of any
18 other sub-fund of the CCIV.

19 **1233B Minimum of 1 class of shares per sub-fund**

- 20 (1) Subject to subsection (2), members who hold shares in a CCIV that
21 are referable to the same sub-fund of the CCIV form a separate
22 class.

23 Note: A CCIV can issue shares only if the rights attaching to the shares are
24 referable to one (and only one) sub-fund of the CCIV: see
25 section 1245.

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (2) Shares in a CCIV that are referable to the same sub-fund of the
2 CCIV may be divided into further classes.
- 3 (3) A class of shares is *referable* to a sub-fund of a CCIV if the shares
4 in the class are referable to the sub-fund.
- 5 *Part 2F.2 does not permit variation contrary to this section*
- 6 (4) Nothing in Part 2F.2 permits rights attached to shares in a class of
7 shares to be varied or cancelled in a manner that results in a
8 contravention of this section.

1233C Membership of a sub-fund

- 9 A person is a *member* of a sub-fund of a CCIV if the person:
- 10 (a) is a member of the CCIV; and
11 (b) holds one or more shares that are referable to the sub-fund.
- 12 Note: For when a share is referable to a sub-fund, see section 1245.
13

Subdivision B—Registration of a sub-fund

1233D Registration of a sub-fund

- 14 *Registration of initial sub-funds*
- 15 (1) ASIC may register a sub-fund of a CCIV if:
16 (a) ASIC registers the CCIV; and
17 (b) the proposed name of the sub-fund is specified in the
18 application to register the CCIV.
19
- 20 *Registration of further sub-funds*
- 21 (2) ASIC may also register a sub-fund of a CCIV if an application to
22 register the sub-fund is lodged under section 1233F.
23
- 24 *ASIC to give sub-fund an ARFN*
- 25 (3) If ASIC registers a sub-fund, ASIC must give the sub-fund an
26 ARFN.

EXPOSURE DRAFT

Main amendments **Schedule 1**

1 *ASIC must keep record of registration*

2 (4) ASIC must keep a record of the registration. Subsections 1274(2)
3 and (5) apply to the record as if it were a document lodged with
4 ASIC.

5 **1233E Sub-fund is established on registration**

6 (1) A sub-fund of a CCIV is established at the beginning of the day on
7 which the sub-fund is registered.

8 (2) The sub-fund's name is the name specified in ASIC's record of the
9 registration.

10 **1233F Application to register further sub-funds**

11 (1) To register a sub-fund of a CCIV, a person must lodge an
12 application with ASIC.

13 Note: A CCIV must have at least one sub-fund when it is first registered: see
14 section 1231D(2).

15 (2) The application must state:
16 (a) the name and ACN of the CCIV; and
17 (b) the proposed name of the sub-fund.

18 (3) The application must be in the prescribed form.

19 **Subdivision C—Assets of sub-funds**

20 **1233G Assets of sub-funds to be clearly identified**

21 (1) The corporate director of a CCIV must ensure that assets of a
22 sub-fund of the CCIV are clearly identified as assets of the
23 sub-fund.

24 *Assets not automatically allocated to one sub-fund of the CCIV*

25 (2) If section 1233K applies to an asset of a CCIV, the corporate
26 director must ensure that the asset is clearly identified as an asset to
27 which that section applies.

EXPOSURE DRAFT

Schedule 1 Main amendments

1 **1233H Segregated holding of assets of sub-funds**

2 *Assets held by the CCIV*

- 3 (1) Assets of a sub-fund of a CCIV that are not required to be held by
4 a depository of the CCIV must be held by the CCIV separately
5 from assets of any other sub-fund of the CCIV.

6 Note: For assets that are required to be held by a depository, see
7 section 1234J.

8 *Assets held by someone other than the depository or the CCIV*

- 9 (2) However, if assets of a sub-fund of a CCIV that are not required to
10 be held by a depository of the CCIV are held by a person other than
11 the CCIV:
12 (a) the person must hold the assets separately from property of
13 the person and from assets of any other sub-fund of the
14 CCIV; and
15 (b) where the asset is not held by the person on trust for the
16 CCIV (disregarding this section)—the person is taken to hold
17 the asset on trust for the CCIV.

18 *Assets not automatically allocated to one sub-fund of the CCIV*

- 19 (3) If section 1233K applies to an asset of a CCIV, the asset must be
20 held by the CCIV separately from other assets of the sub-funds of
21 the CCIV.

22 *Separate account with ADI required for each sub-fund*

- 23 (4) A CCIV must maintain a separate account with an ADI for each
24 sub-fund.

25 *Chapter does not make a CCIV a trustee of assets of a sub-fund*

- 26 (5) To avoid doubt, nothing in this Chapter is intended to have the
27 effect of making a CCIV or its corporate director a trustee or
28 trustees of the assets of a sub-fund of the CCIV.

EXPOSURE DRAFT

Main amendments **Schedule 1**

1 *Exception for assets determined by CCIV rules*

2 (6) This section does not apply to an asset that is in a class of assets
3 determined by the CCIV rules.

4 (7) The CCIV rules may make provision in relation to the holding of
5 assets of a CCIV that are in a class of assets determined by the
6 CCIV rules for the purposes of subsection (6).

7 **1233J What are the assets of a sub-fund**

8 (1) A single asset of a CCIV cannot be an *asset* of more than one
9 sub-fund of the CCIV.

10 (2) The *assets* of a sub-fund of a CCIV at a particular time are the
11 following:

12 (a) amounts paid up in consideration for the issue of shares that
13 are referable to the sub-fund;

14 (b) money deposited with or lent to the CCIV under debentures
15 that are referable to the sub-fund;

16 (c) assets obtained by the CCIV as a result of the application of
17 assets of the sub-fund in carrying on the business of the
18 sub-fund;

19 (d) assets of the CCIV that relate solely to the business of the
20 sub-fund.

21 *Assets not automatically allocated to one sub-fund of the CCIV*

22 (3) Subsections (4) and (5) apply if an asset of the CCIV does not, at
23 the time it is acquired, become part of the assets of any sub-fund of
24 the CCIV under subsection (2).

25 (4) Despite subsection (1), if the corporate director has not yet
26 converted the asset as required by subsection 1233K(7), the *assets*
27 of a sub-fund of the CCIV include the proportion of the asset that
28 is allocated to the sub-fund under section 1233K.

29 Note: The asset must not be applied by the CCIV for any purpose other than
30 the conversion: see subsection 1233L(3).

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (5) Subject to subsection (1), if the corporate director of a CCIV has
2 converted the asset (the *original asset*) as required by
3 subsection 1233K(7), the *assets* of a sub-fund of the CCIV include:
4 (a) for a conversion into money—so much of the money
5 obtained by the CCIV as a result of the conversion as
6 represents the proportion of the original asset that was
7 allocated to the sub-fund under section 1233K; or
8 (b) for a conversion into 2 or more assets—so many of the assets
9 obtained by the CCIV as a result of the conversion as
10 represent the proportion of the original asset that was
11 allocated to the sub-fund under section 1233K.

12 **1233K Dealing with assets that are not automatically allocated to** 13 **one sub-fund of the CCIV**

- 14 (1) This section applies to an asset of the CCIV that does not, at the
15 time it is acquired, become part of the assets of any sub-fund of the
16 CCIV under subsection 1233J(2).

17 *Default allocation of fair and reasonable proportion of asset to*
18 *each sub-fund*

- 19 (2) A proportion of the asset that is fair and reasonable, in the
20 circumstances, is allocated to each sub-fund of the CCIV.
21 (3) The proportion is determined at the time the asset is acquired.

22 *Corporate director must determine allocation*

- 23 (4) The corporate director must determine in writing the proportion
24 (including nil) of the asset that is to be allocated to each sub-fund
25 of the CCIV. The proportion determined must be fair and
26 reasonable in the circumstances.
27 (5) The determination under subsection (4) must be made as soon as
28 practicable after the asset is acquired.
29 (6) If:
30 (a) the corporate director determines under subsection (4) that a
31 proportion of an asset is to be allocated to a sub-fund of the
32 CCIV; and
-

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (b) the determination is one that a reasonable person in the
2 corporate director's position could make;
3 then, despite subsection (2), the proportion of the asset that is
4 allocated to each sub-fund of the CCIV is the proportion of the
5 asset so determined.

6 *Corporate director must convert asset*

- 7 (7) The corporate director must convert the asset as soon as practicable
8 into:
9 (a) money; or
10 (b) 2 or more fungible assets that could be allocated between the
11 sub-funds of the CCIV in the proportions mentioned in
12 subsection (2) or (6) (whichever is applicable) without a
13 single asset of the CCIV being allocated to more than one
14 sub-fund of the CCIV.

15 *Regulations*

- 16 (8) The regulations may provide for a method of determining a fair
17 and reasonable allocation.

18 **1233L Segregated application of assets of sub-funds**

- 19 (1) A CCIV must not apply, or deal with, assets of a sub-fund, whether
20 directly or indirectly, except in accordance with this section.
- 21 (2) The assets of a sub-fund must not be applied:
22 (a) for any purpose other than:
23 (i) meeting liabilities of the sub-fund, or expenses incurred
24 for the purposes of the business of the sub-fund; or
25 (ii) carrying on the business of the sub-fund; or
26 (iii) making a distribution under Chapter 5; or
27 (iv) paying a dividend to members of the sub-fund; or
28 (v) providing consideration to a member of the sub-fund in
29 respect of a reduction of share capital affecting the
30 sub-fund; or
31 (vi) redeeming redeemable shares or redeemable preference
32 shares that are referable to the sub-fund; or

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (vii) making any other distribution to members of the
2 sub-fund that the CCIV is permitted by this Act and its
3 constitution to make; or
4 (viii) a purpose specified in the CCIV rules for the purposes
5 of this subparagraph; or
6 (b) for a purpose specified in the CCIV rules made for the
7 purposes of this paragraph.

8 *Assets not automatically allocated to one sub-fund of the CCIV*

- 9 (3) However, to the extent that the assets of a sub-fund of the CCIV
10 comprise a proportion of an asset as a result of the application of
11 subsection 1233J(4), the assets may not be applied for any purpose,
12 except for the purpose of the conversion mentioned in
13 subsection 1233K(7).

14 *No joint investments*

- 15 (4) The assets of 2 or more sub-funds of a CCIV must not be applied
16 jointly to acquire a single asset of the CCIV.

17 *Court orders*

- 18 (5) In a proceeding to which a CCIV is a party, a court must not make
19 an order that is inconsistent with subsection (2), (3) or (4), unless
20 the court considers that the interests of justice require otherwise.
21 (6) If a court makes an order that is inconsistent with subsection (2),
22 (3) or (4), the assets of a sub-fund must be applied for the purpose
23 of complying with the court order, in priority to any other
24 permitted application of the assets.

25 **1233M Consequences of breach of section 1233L**

26 If a CCIV contravenes section 1233L:

- 27 (a) the contravention does not affect the validity of any contract
28 or transaction connected with the application or dealing; and
29 (b) the CCIV does not commit an offence.

30 Note: A Court may order an injunction to stop the CCIV applying or dealing
31 with the asset (see section 1324).

1 **Subdivision D—Liabilities of sub-funds**

2 **1233N Segregation of liabilities of sub-funds**

- 3 (1) The corporate director of a CCIV must ensure that liabilities of a
4 sub-fund of the CCIV are clearly identified as liabilities of the
5 sub-fund.

6 *Liabilities that do not relate solely to the business of a sub-fund*

- 7 (2) If section 1233P applies to a liability of the CCIV, the corporate
8 director must ensure that the liability is clearly identified as a
9 liability to which that section applies and that the proportions
10 allocated to each sub-fund of the CCIV are clearly identified.

11 **1233P What are the liabilities of a sub-fund**

- 12 (1) The *liabilities* of a sub-fund of a CCIV at a particular time are the
13 liabilities of the CCIV that relate solely to the business of the
14 sub-fund.

15 *Liabilities that do not relate solely to the business of a sub-fund*

- 16 (2) If a liability of a CCIV does not, at the time it is incurred, become
17 a liability of any sub-fund of the CCIV under subsection (1), the
18 *liabilities* of a sub-fund of the CCIV at a time include a proportion
19 of the liability that is equal to the proportion of the liability
20 allocated to the sub-fund under section 1233Q.

21 Note: As a result of this subsection and section 1233L, the corporate director
22 must ensure that assets of the CCIV that are applied to meet the
23 liability are drawn from the sub-funds in the same proportions.

24 **1233Q Dealing with liabilities that do not relate solely to the**
25 **business of one sub-fund**

- 26 (1) This section applies to a liability of a CCIV that does not, at the
27 time it is incurred, become a liability of any sub-fund of the CCIV
28 under subsection 1233P(1).

EXPOSURE DRAFT

Schedule 1 Main amendments

1 *Default allocation of fair and reasonable proportion of liability to*
2 *each sub-fund*

- 3 (2) A proportion of the liability that is fair and reasonable, in the
4 circumstances, is allocated to each sub-fund of the CCIV.
- 5 (3) The proportion is determined at the time the liability is incurred.
- 6 (4) If the liability relates partly to the business of a sub-fund of the
7 CCIV, the proportion that is fair and reasonable is the proportion
8 that reflects the extent to which the liability relates to the business
9 of the sub-fund.

10 *Corporate director must determine allocation*

- 11 (5) The corporate director must determine in writing the proportion
12 (including nil) of the liability that is to be allocated to each
13 sub-fund of the CCIV. The proportion determined must be fair and
14 reasonable in the circumstances.
- 15 (6) The determination under subsection (5) must be made as soon as
16 practicable after the liability is incurred.
- 17 (7) If:
- 18 (a) the corporate director makes a determination under
19 subsection (5); and
- 20 (b) the determination is one that a reasonable person in the
21 corporate director's position could make;
- 22 then, despite subsection (2), the proportion of the liability that is
23 allocated to each sub-fund of the CCIV is the proportion of the
24 liability so determined.

25 *Regulations*

- 26 (8) The regulations may provide for a method of determining a fair
27 and reasonable allocation.

1 **Subdivision E—Allocation register**

2 **1233R Documenting the allocation of assets and liabilities to**
3 **sub-funds**

- 4 (1) The corporate director must keep records that set out the
5 identification required by sections 1233G and 1233N.
- 6 (2) A record may be kept and retained in written or electronic form.

7 *Period for which records must be retained*

- 8 (3) The records must be retained for 7 years after the end of the year in
9 which:
- 10 (a) for an asset—the CCIV disposes of the asset; and
11 (b) for a liability—the CCIV discharges the liability.

12 **Subdivision F—Names of sub-funds**

13 **1233S A sub-fund’s name**

14 *CCIV using ACN*

- 15 (1) If a CCIV has as its name the expression “Australian Company
16 Number” followed by the CCIV’s ACN, a sub-fund of the CCIV
17 may have as its name the expression “Australian Registered Fund
18 Number” followed by the sub-fund’s ARFN.

19 *CCIV using available name*

- 20 (2) If a CCIV has as its name an available name, a sub-fund of the
21 CCIV may have as its name an expression comprising the
22 following 3 elements, in the following order:
- 23 (a) first element—the CCIV’s name (without the words
24 “Corporate Collective Investment Vehicle” at the end of the
25 name);
- 26 (b) second element—a name that meets the requirements in
27 subsection (3);
- 28 (c) third element—the expression “Sub-fund”.

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (3) A name meets the requirements in this subsection unless the name
2 is:
3 (a) identical to a name that is used as the second element of the
4 name of another sub-fund of the same CCIV; or
5 (b) identical to a name that is reserved by ASIC in respect of
6 another individual or body who is not the person applying to
7 have the name; or
8 (c) unacceptable for registration under the regulations.

9 **1233T Using sub-fund name and ARFN on documents**

- 10 (1) A CCIV must set out a sub-fund's name and ARFN on all its
11 public documents and negotiable instruments that relate to the
12 sub-fund.
- 13 (2) An offence based on subsection (1) is an offence of strict liability.
14 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 15 (3) The regulations may exempt a specified CCIV, or a class of
16 CCIVs, from the requirement in subsection (1) to set out
17 information on its public documents and negotiable instruments.
18 The exemption may relate to specified documents or instruments,
19 or a class of documents or instruments.

20 **1233U Acceptable abbreviations of sub-fund names**

- 21 (1) The abbreviations set out in the following table may be used:
22 (a) instead of words that this Act requires to be part of a
23 sub-fund's name or to be included in a document or
24 negotiable instrument; and
25 (b) instead of words that are part of a sub-fund's name; and
26 (c) with or without full stops.
27

| Acceptable abbreviations | | |
|---------------------------------|--------------------------------------|---------------------|
| | Word | Abbreviation |
| 1 | Sub-fund | SF |
| 2 | Australian Registered Fund Number | ARFN |

EXPOSURE DRAFT

Main amendments **Schedule 1**

Acceptable abbreviations

| Word | Abbreviation |
|--------------|--------------|
| 3 Australian | Aust |
| 4 Number | No |
| 5 and | & |

1

2

3

- (2) If a sub-fund's name includes any of these abbreviations, the word or words corresponding to the abbreviation may be used instead.

4

1233V Sub-fund changing its name

5

6

7

8

9

10

- (1) If the members of a sub-fund of a CCIV want to change the name of the sub-fund:
- (a) the members must pass a special resolution adopting a new name; and
 - (b) the CCIV must lodge an application in the prescribed form with ASIC.

11

12

- (2) The CCIV must lodge a copy of the special resolution with ASIC within 14 days after it is passed.

13

14

- (3) An offence based on subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

15

16

17

18

19

- (4) If the proposed name meets the requirements of section 1233S, ASIC must change the sub-fund's name by altering ASIC's record of the sub-fund's registration to reflect the change. The change of name takes effect when ASIC alters ASIC's record of the sub-fund's registration.

20

1233W ASIC's power to direct CCIV to change a sub-fund's name

21

22

23

24

25

- (1) ASIC may direct a CCIV in writing to change the name of a sub-fund of the CCIV within 2 months if:
- (a) the name should not have been registered; or
 - (b) ASIC has directed the CCIV to change its name under section 158.

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (2) The CCIV must comply with the direction within 2 months after
2 being given it by doing everything necessary to change its name
3 under section 1233V.
- 4 (3) An offence based on subsection (2) is an offence of strict liability.
5 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 6 (4) If the CCIV does not comply with subsection (2), ASIC may
7 change the sub-fund's name to the expression "Australian
8 Registered Fund Number" followed by the sub-fund's ARFN.
9 ASIC does this by altering ASIC's record of the sub-fund's
10 registration to reflect the change.
11 Note: For ASIC's record of the registration of a sub-fund, see
12 subsection 1233D(4).
- 13 (5) A change of name under subsection (4) takes effect when ASIC
14 alters ASIC's record of the sub-fund's registration.

1233X Effect of name change

- 16 A change of the name of a sub-fund of a CCIV does not:
17 (a) create a new legal entity; or
18 (b) affect the sub-fund's existing property, rights or obligations;
19 or
20 (c) render defective any legal proceedings by or against the
21 CCIV and relating to the sub-fund.

22 Division 4—Depositary

23 Subdivision A—When assets must be held by an independent 24 depositary

25 1234 CCIV must transfer assets to depositary

- 26 If a CCIV acquires an asset that is required to be held by the
27 depositary of the CCIV, the CCIV must transfer the asset to the
28 depositary immediately after it is acquired.

EXPOSURE DRAFT

Main amendments **Schedule 1**

1 **1234A When a depositary must hold the assets of a CCIV**

- 2 (1) Subject to this section, if a CCIV has, or is required to have, a
3 depositary, then the assets of the CCIV must be held by the
4 depositary.

5 Note: For the manner in which the depositary is required to hold the assets,
6 see section 1234J.

7 *Exception for assets that the corporate director is required to*
8 *convert*

- 9 (2) An asset to which section 1233K (about assets that are not
10 automatically allocated to one sub-fund of the CCIV) applies must
11 not be held by the depositary of the CCIV.

12 *Exception for assets determined by CCIV rules*

- 13 (3) An asset of a CCIV is not required to be held by the depositary if
14 the asset is in a class of assets determined by the CCIV rules.

- 15 (4) The CCIV rules may make provision in relation to the holding of
16 assets of a CCIV that are in a class of assets determined by the
17 CCIV rules for the purposes of subsection (3).

18 **1234B Depositary compulsory for retail CCIVs, optional for**
19 **wholesale CCIVs**

- 20 (1) A retail CCIV must have a depositary.

- 21 (2) A wholesale CCIV may have a depositary.

- 22 (3) A CCIV may not have more than one depositary.

- 23 (4) This Division applies to a wholesale CCIV that:

24 (a) has appointed a depositary; and

25 (b) has given ASIC the notice referred to in section 1234E.

- 26 (5) **Depositary**, of a CCIV, means the body named in ASIC's record of
27 the CCIV's registration as the depositary or temporary depositary
28 of the CCIV.

EXPOSURE DRAFT

Schedule 1 Main amendments

1 Note: Changes in the depositary only take effect when ASIC alters the
2 record of registration: see subsection 1235(1).

3 **1234C Who can be a depositary**

4 The depositary of a CCIV:

5 (a) must be:

6 (i) a public company; or

7 (ii) a foreign company registered under Division 2 of
8 Part 5B.2; and

9 (b) must hold an Australian financial services licence authorising
10 it to act as a depositary; and

11 (c) must meet the independence requirement set out in
12 section 1234D.

13 **1234D Independence requirement for depositary**

14

| |
|---|
| The independence requirement for depositaries is under 15 development. |
|---|

16 **1234E Notifying ASIC when a depositary is first appointed**

17 If a depositary is to be appointed to a CCIV that does not have a
18 depositary, or temporary depositary, the corporate director must
19 give ASIC written notice of the name, and address of the registered
20 office, of a public company or foreign company registered under
21 Division 2 of Part 5B.2 that meets the requirements in
22 section 1234C and consents in writing to be the depositary.

23 Note: A depositary may be appointed on registration: see section 1231E.

24 **1234F Corporate director to provide depositary with reasonable 25 assistance**

26 (1) The corporate director of a CCIV must give the depositary of the
27 CCIV:

28 (a) any information in the corporate director's possession or
29 control that the depositary reasonably requires for the

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 purpose of fulfilling the depositary's responsibilities in
2 relation to the CCIV; and
3 (b) any other assistance the depositary reasonably requires for
4 the purpose of fulfilling those responsibilities.

5 Note: The depositary has a similar obligation to the corporate director: see
6 section 1234M.

- 7 (2) The depositary may give the corporate director a written request to
8 give information covered by paragraph (1)(a).
9 (3) A corporate director that is requested under subsection (2) to give
10 information must give the information within a reasonable period.

11 **Subdivision B—Duties and powers**

12 **1234G Functions of depositary**

13 The depositary of a CCIV is to:

- 14 (a) hold assets of the CCIV, that are transferred to the
15 depositary, in the manner required by this Subdivision; and
16 (b) perform the functions conferred on it by this Act.

17 **1234H Appointing an agent or engaging a person**

- 18 (1) The depositary has power to appoint an agent, or otherwise engage
19 a person, to do anything that it is authorised to do in connection
20 with the CCIV (other than its functions under
21 subsection 1234L(1)). The agent or person:
22 (a) must not be the corporate director of the CCIV; and
23 (b) must meet the independence requirement set out in
24 section 1234D.

25 *Sub-agents*

- 26 (2) An agent appointed, or a person otherwise engaged, by:
27 (a) the agent or person referred to in subsection (1); or
28 (b) a person who is taken under this subsection to be an agent of
29 the depositary;

EXPOSURE DRAFT

Schedule 1 Main amendments

1 to do anything that the depositary is authorised to do in connection
2 with the CCIV (other than its functions under subsection 1234L(1))
3 is taken to be an agent appointed by the depositary to do that thing
4 for the purposes of this section.

5 *Extended liability for acts of agents*

6 (3) For the purpose of determining whether there is a liability to the
7 CCIV, the depositary is taken to have done (or failed to do)
8 anything that the agent or person has done (or failed to do) because
9 of the appointment or engagement, even if the person or agent was
10 acting fraudulently or outside the scope of the authority or
11 engagement.

12 **1234J Assets to be held in segregated manner and on trust**

13 (1) Assets of a sub-fund of a CCIV that are required to be held by the
14 depositary of the CCIV must be held by the depositary separately
15 from property of the depositary and from assets of any other
16 sub-fund of the CCIV.

17 (2) Assets of a CCIV that are required to be held by the depositary of
18 the CCIV must be held by the depositary on trust for the CCIV.

19 **1234K Depositary to deal on instructions**

20 The depositary of a CCIV may deal with assets the depositary
21 holds only on instructions given by, or on behalf of, the corporate
22 director or the CCIV, that the depositary reasonably believes:

- 23 (a) are lawful; and
24 (b) comply with the CCIV's constitution.

25 **1234L Depositary to have supervisory responsibility**

26 (1) The depositary of a CCIV must take reasonable care to verify that
27 the activities covered by subsection (2) are carried out in a manner
28 that complies with:

- 29 (a) the CCIV's constitution; and
30 (b) the provisions of this Act.

- 1 (2) This subsection covers the following:
- 2 (a) issuing, redeeming and cancelling shares in the CCIV;
- 3 (b) valuing shares in the CCIV;
- 4 (c) allocating assets and liabilities of the CCIV to sub-funds of
- 5 the CCIV;
- 6 (d) allocating and distributing income of the CCIV.
- 7 (3) The depositary may not appoint an agent, or otherwise engage a
- 8 person, to carry out its functions under subsection (1).

9 **1234M Depositary to provide corporate director with reasonable**

10 **assistance**

- 11 (1) The depositary of a CCIV must give the corporate director of the
- 12 CCIV:
- 13 (a) any information in the depositary's possession or control that
- 14 the corporate director reasonably requires for the purpose of
- 15 fulfilling the corporate director's responsibilities in relation
- 16 to the CCIV; and
- 17 (b) any other assistance the corporate director reasonably
- 18 requires for the purpose of fulfilling those responsibilities.
- 19 Note: The corporate director has a similar obligation to the depositary: see
- 20 section 1234F.
- 21 (2) The corporate director may give the depositary a written request to
- 22 give information covered by paragraph (1)(a).
- 23 (3) A depositary that is requested under subsection (2) to give
- 24 information must give the information within a reasonable period.

25 **1234N Duties owed by depositary**

- 26 In exercising its powers and carrying out its duties, the depositary
- 27 of a CCIV must:
- 28 (a) act honestly; and
- 29 (b) exercise the degree of care and diligence that a reasonable
- 30 person would exercise in the depositary's position; and

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (c) act in the best interests of the CCIV and, if there is a conflict
2 between the CCIV's interests and its own interests, give
3 priority to the CCIV's interests.

4 **1234P Depository must report breaches to ASIC**

- 5 (1) The depository of a CCIV must comply with subsection (2) if:
6 (a) the depository:
7 (i) becomes aware that a breach of this Act has occurred; or
8 (ii) reasonably suspects that a breach of this Act has
9 occurred; and
10 (b) the breach or suspected breach:
11 (i) relates to the CCIV; and
12 (ii) arises in relation to the activities covered by
13 subsection 1234L(2); and
14 (iii) is, or would be, in the opinion of the depository, a
15 material breach of this Act.
- 16 (2) The depository must, as soon as practicable and in any case within
17 10 business days after becoming aware of, or reasonably
18 suspecting, the breach, lodge a written report on the matter with
19 ASIC.

20 **1234Q Dealing with conflicting duties**

- 21 An obligation placed on the depository of a CCIV by this
22 Subdivision overrides any conflicting duty an officer or employee
23 of the depository has under Part 2D.1.

24 **Subdivision C—Replacing the depository**

25 **1235 Changes only take effect when ASIC alters record of** 26 **registration**

- 27 (1) Despite anything in this Subdivision, the body named in ASIC's
28 record of registration as the depository or temporary depository of a
29 CCIV remains the CCIV's depository until the record is altered to
30 name another body as the CCIV's depository or temporary
31 depository.

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (2) A purported change of the CCIV's depositary is ineffective unless
2 it is in accordance with this Subdivision.
- 3 (3) If a new depositary, or temporary depositary, is chosen, or
4 appointed by the Court, the corporate director must, as soon as
5 practicable, lodge a notice with ASIC informing ASIC of the
6 choice or appointment.

7 **1235A Requirements of section 1234C must be met**

8 A body cannot be chosen or appointed as the depositary or
9 temporary depositary of a CCIV unless it meets the requirements
10 of section 1234C.

11 **1235B Initiating retirement or removal of depositary**

12 *Retirement of depositary*

- 13 (1) If the depositary of a CCIV wants to retire, it must notify the
14 corporate director of the CCIV of its intention to retire and explain
15 its reason for wanting to retire.
- 16 (2) Within 21 days of receiving from the CCIV's depositary a notice
17 of intention to retire, the corporate director must call a members'
18 meeting to enable the members to vote on a special resolution to
19 choose a body to be the new depositary.
- 20 (3) The notice of meeting of the CCIV's members must:
21 (a) set out the depositary's reason for wanting to retire; and
22 (b) set a day for the meeting that is no later than 2 months after
23 the depositary gave notice of its intention to retire; and
24 (c) nominate a body to be the new depositary of the CCIV.
- 25 (4) If the corporate director fails to call a members' meeting within the
26 period of 21 days referred to in subsection (2), the depositary may
27 call the meeting.

EXPOSURE DRAFT

Schedule 1 Main amendments

1

Removal initiated by corporate director

2

- (5) If the corporate director of a CCIV wants to remove the depositary, the corporate director may call a meeting of the CCIV's members to consider and vote on:

3

4

5

- (a) a special resolution that the current depositary should be removed; and

6

7

- (b) a special resolution choosing a body to be the new depositary.

8

9

Removal initiated by members

10

- (6) If the members of a CCIV want to remove the depositary, the members may take action under Part 2G.4 for the calling of a meeting of the CCIV's members to consider and vote on:

11

12

13

- (a) a special resolution that the current depositary should be removed; and

14

15

- (b) a special resolution choosing a body to be the new depositary.

16

17

Requirements for notice

18

- (7) To initiate the removal of the depositary under subsection (5) or (6), the notice of meeting of the CCIV's members must:

19

20

- (a) set out the intention to remove the depositary; and

21

- (b) nominate, as the new depositary of the CCIV, a body that:

22

- (i) meets the requirements of section 1234C; and

23

- (ii) consents to be chosen as the new depositary.

24

Effect of section

25

- (8) This section has effect despite anything to the contrary in:

26

- (a) the CCIV's constitution; or

27

- (b) any contract entered into by the depositary, the CCIV, the corporate director or the members of the CCIV.

28

1 **1235C Requirement to choose new depositary**

2 The depositary of a CCIV may not retire, or be removed by a
3 special resolution passed at a meeting of the members of the CCIV,
4 unless a new depositary is chosen.

5 **1235D How a new depositary is chosen**

- 6 (1) A new depositary is chosen only if:
- 7 (a) a meeting of the members of the CCIV passes a special
8 resolution choosing a body to be the new depositary of the
9 CCIV; and
 - 10 (b) that body has consented, in writing, to become the new
11 depositary of the CCIV.
- 12 (2) Provided it still meets the requirements in section 1234C, nothing
13 prevents a body that is the temporary depositary from being chosen
14 as the new depositary.

15 **1235E Application to Court if new depositary not chosen**

- 16 (1) This section applies if:
- 17 (a) the retirement or removal of the depositary of a CCIV is
18 initiated under subsection 1235B(1), (5) or (6); and
 - 19 (b) the retirement or removal of the depositary is prevented by
20 section 1235C.
- 21 (2) However, this section does not apply if:
- 22 (a) the removal of the depositary was initiated under
23 subsection 1235B(5) or (6); and
 - 24 (b) the meeting of the members of the CCIV failed to pass a
25 special resolution that the current depositary should be
26 removed.
- 27 (3) An application to the Court for appointment of a temporary
28 depositary under section 1235G must be made by the corporate
29 director of the CCIV.

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (4) An application to the Court for appointment of a temporary
2 depositary under section 1235G may be made by any of the
3 following:
4 (a) ASIC;
5 (b) the depositary;
6 (c) a member, or group of members, of the CCIV.

7 **1235F Application to Court if depositary stops meeting** 8 **requirements**

- 9 (1) This section applies if the depositary of a CCIV stops meeting the
10 requirements in section 1234C.
11 (2) An application to the Court for appointment of a temporary
12 depositary of the CCIV must be made by the corporate director of
13 the CCIV.
14 (3) An application to the Court for appointment of a temporary
15 depositary of the CCIV may be made by any of the following:
16 (a) ASIC;
17 (b) a member, or group of members, of the CCIV.

18 **1235G Appointment of temporary depositary by Court**

- 19 (1) On application under section 1235E or 1235F, the Court may, by
20 order, remove the current depositary of a CCIV and appoint a body
21 as the temporary depositary of the CCIV.
22 (2) The Court must not make an order under subsection (1) unless:
23 (a) the Court is satisfied that the order is in the interest of the
24 members of the CCIV; and
25 (b) the body consents in writing to becoming the CCIV's
26 temporary depositary.
27 (3) The Court may make any further orders that it considers
28 appropriate.

EXPOSURE DRAFT

Main amendments **Schedule 1**

1 **1235H Corporate director to initiate appointment of permanent**
2 **depository**

- 3 (1) Within 3 months of the appointment of a temporary depository by
4 the Court under section 1235G, the corporate director of a CCIV
5 must call a meeting of the CCIV's members to consider and vote
6 on a special resolution choosing a body to be the new depository.
- 7 (2) Before the end of the 3 months, the corporate director may apply to
8 the Court for an extension of that period. If the Court grants the
9 extension, the corporate director must call the meeting within the
10 extended period.

11 *Requirements for notice*

- 12 (3) The notice of meeting of the CCIV's members must nominate, as
13 the new depository of the CCIV, a body that:
14 (a) meets the requirements of section 1234C; and
15 (b) consents to be chosen as the new depository.

16 **1235J Application to Court for winding up if permanent depository**
17 **not appointed**

- 18 (1) This section applies if:
19 (a) a temporary depository is appointed by the Court under
20 section 1235G; and
21 (b) either:
22 (i) the corporate director fails to call a meeting within the
23 period required by section 1235H; or
24 (ii) the corporate director calls a meeting within the period
25 required by section 1235H, but a new depository is not
26 chosen.

27 Note: For when a new depository is chosen, see section 1235D.

- 28 (2) An application to the Court for a winding up of the CCIV must be
29 made by the corporate director of the CCIV.
- 30 (3) An application to the Court for a winding up of the CCIV may be
31 made by any of the following, if the corporate director does not do
32 so:
-

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (a) ASIC;
2 (b) a member, or group of members, of the CCIV.

3 **Subdivision D—Consequences of changing the depositary**

4 **1235K Former depositary to hand over books and provide** 5 **reasonable assistance**

6 If the depositary of a CCIV changes, the former depositary must:

- 7 (a) as soon as practicable give the new depositary any books in
8 the former depositary's possession or control that this Act
9 requires to be kept in relation to the CCIV; and
10 (b) give other reasonable assistance to the new depositary to
11 facilitate the change of depositary.

12 **1235L Rights, obligations and liabilities of former depositary**

- 13 (1) If the depositary of a CCIV changes, the rights, obligations and
14 liabilities of the former depositary in relation to the CCIV become
15 rights, obligations and liabilities of the new depositary.
- 16 (2) Despite subsection (1), the following rights and liabilities remain
17 rights and liabilities of the former depositary:
- 18 (a) any right of the former depositary to be paid fees for the
19 performance of its functions before it ceased to be the
20 depositary;
- 21 (b) any right of the former depositary to be indemnified for
22 expenses it incurred before it ceased to be the depositary;
- 23 (c) any right, obligation or liability that the former depositary
24 had as a member of the CCIV;
- 25 (d) any liability for which the former depositary could not have
26 been indemnified out of the assets of the CCIV if it had
27 remained the CCIV's depositary.

28 **1235M Effect of change of depositary on documents etc. to which** 29 **former depositary is party**

- 30 (1) If the depositary of a CCIV changes, a document:
-

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (a) to which the former depositary is a party, in which a
2 reference is made to the former depositary, or under which
3 the former depositary has acquired or incurred a right,
4 obligation or liability, or might have acquired or incurred a
5 right, obligation or liability if it had remained the depositary;
6 and
7 (b) that is capable of having effect after the change;
8 has effect as if the new depositary (and not the former depositary)
9 were a party to it, were referred to in it or had or might have
10 acquired or incurred the right, obligation or liability under it.
- 11 (2) Subsection (1) does not apply to a right, obligation or liability that
12 remains a right, obligation or liability of the former depositary
13 because of subsection 1235L(2).

14 **1235N Officers of depositary have qualified privilege in certain cases**

15 The following have qualified privilege in proceedings for
16 defamation in respect of a statement to ASIC in connection with
17 this Subdivision or Subdivision C:

- 18 (a) officers and employees of a depositary or former depositary;
19 (b) former officers and former employees of a depositary or
20 former depositary.

21 **Division 5—Registers**

22 **1236 Registers relating to CCIVs**

- 23 (1) The register of members kept in accordance with section 169 must
24 also show, in addition to the information mentioned in
25 subsection 169(3), the sub-fund to which each share is referable.
- 26 (2) The register of option holders kept in accordance with section 170
27 must also show, as part of the description of a share mentioned in
28 paragraph 170(1)(d), the sub-fund to which the share is referable.
- 29 (3) The register of debenture holders kept in accordance with
30 section 171 must also contain information about the sub-fund to
31 which the debenture is referable.

EXPOSURE DRAFT

Schedule 1 Main amendments

1 **Part 8B.3—Officers and employees**

2 **Division 1—Duties and powers**

3 **Subdivision A—General duties**

4 **1237 Responsibility of secretary of corporate director for certain**
5 **contraventions by CCIV**

6 (1) A secretary of the corporate director of a CCIV contravenes
7 subsection 188(1) if the CCIV contravenes a corporate
8 responsibility provision.

9 Note: Subsection 188(1) is a civil penalty provision (see section 1317E).

10 (2) For the purposes of subsection 188(1) as it applies to the secretary
11 of the corporate director under this section, section 1245S
12 (half-yearly report to ASIC about shares in a CCIV), in addition to
13 the provisions mentioned in subsection 188(1), is taken to be a
14 corporate responsibility provision.

15 **1237A Responsibility of secretary of corporate director for certain**
16 **contraventions by corporate director**

17 For the purposes of subsection 188(1) as it applies to the secretary
18 of the corporate director, the following provisions, in addition to
19 the provisions mentioned in subsection 188(1), are taken to be
20 corporate responsibility provisions:

- 21 (a) paragraph 1238M(3)(a) (lodgement of notice with ASIC);
22 (b) paragraph 1238N(2)(a) (lodgement of notice with ASIC);
23 (c) subsection 1238Q(3) (lodgement of notice with ASIC);
24 (d) subsection 1238R(4) (lodgement of notice with ASIC);
25 (e) section 1163F (notifying ASIC when a depositary is first
26 appointed);
27 (f) subsection 1235(3) (notifying ASIC of change in depositary).

EXPOSURE DRAFT

Main amendments **Schedule 1**

1 **Subdivision B—General duties—additional protections for**
2 **retail clients**

3 **1237B Subdivision does not apply in relation to wholesale CCIVs**

- 4 (1) The provisions in this Subdivision do not apply in relation to a
5 corporate director or other officer of a wholesale CCIV or an
6 officer or employee of a corporate director of a wholesale CCIV.
- 7 (2) Nothing in this Subdivision affects:
- 8 (a) any duty owed under Part 2D.1 by a corporate director or
9 other officer of a wholesale CCIV or an officer or employee
10 of a corporate director of a wholesale CCIV; or
- 11 (b) any rule of law, relating to a duty or liability of a person
12 because of their office or employment in relation to a
13 wholesale CCIV or the corporate director of a wholesale
14 CCIV.

15 **1237C Duties owed by officers of CCIV**

16 *Duties owed by all officers of a CCIV*

- 17 (1) In exercising its powers and carrying out its duties, an officer,
18 including the corporate director, of a CCIV must:
- 19 (a) act honestly; and
- 20 (b) exercise the degree of care and diligence that a reasonable
21 person would exercise in the officer's position; and
- 22 (c) act in the best interests of the members and, if there is a
23 conflict between the members' interests and its own interests,
24 give priority to the members' interests; and
- 25 (d) treat members who hold shares of the same class equally; and
- 26 (e) treat members who hold shares of different classes fairly; and
- 27 (f) treat members of different sub-funds fairly; and
- 28 (g) not make use of information acquired through being an
29 officer of the CCIV in order to:
- 30 (i) gain an improper advantage for itself or another person;
31 or
- 32 (ii) cause detriment to the members of the CCIV; and

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (h) ensure that all payments out of the assets of the CCIV are
2 made in accordance with the CCIV's constitution and this
3 Act; and
4 (i) report to ASIC any breach of this Act that:
5 (i) relates to the CCIV; and
6 (ii) has had, or is likely to have, a materially adverse effect
7 on the interests of members;
8 as soon as practicable after it becomes aware of the breach;
9 and
10 (j) carry out or comply with any other duty, not inconsistent
11 with this Act, that is conferred on the officer by the CCIV's
12 constitution.

Additional duties owed by corporate director of a CCIV

- 13
14 (2) In exercising its powers and carrying out its duties, the corporate
15 director of a CCIV must:
16 (a) ensure that the CCIV's constitution meets the requirements
17 of this Act; and
18 (b) ensure that the CCIV's compliance plan meets the
19 requirements of section 1241B; and
20 (c) comply with the CCIV's compliance plan; and
21 (d) ensure that assets of the CCIV are clearly identified as assets
22 of a sub-fund of the CCIV or as assets to which
23 section 1233K applies; and
24 (e) ensure that assets of a sub-fund of the CCIV that are not
25 required to be held by a depositary of the CCIV are held in
26 the manner required by section 1233H; and
27 (f) ensure that the assets of a sub-fund of the CCIV are valued at
28 regular intervals appropriate to the nature of the assets.

Duties under this section prevail in case of conflict

- 29
30 (3) If there is a conflict between a duty owed by an officer of a CCIV
31 under this section and a duty owed by the officer under Part 2D.1,
32 the duty owed under this section prevails.

1 **1237D Duties owed by officers of corporate director**

- 2 (1) An officer of the corporate director of a CCIV must:
- 3 (a) act honestly; and
- 4 (b) exercise the degree of care and diligence that a reasonable
- 5 person would exercise in the officer's position; and
- 6 (c) act in the best interests of the members and, if there is a
- 7 conflict between the members' interests and the interests of
- 8 the corporate director, give priority to the members' interests;
- 9 and
- 10 (d) not make use of information acquired through being an
- 11 officer of the corporate director in order to:
- 12 (i) gain an improper advantage for the officer or another
- 13 person; or
- 14 (ii) cause detriment to the members of the CCIV; and
- 15 (e) not make improper use of their position as an officer to gain,
- 16 directly or indirectly, an advantage for themselves or for any
- 17 other person or to cause detriment to the members of the
- 18 CCIV; and
- 19 (f) take all steps that a reasonable person would take, in the
- 20 officer's position, to ensure that the corporate director
- 21 complies with:
- 22 (i) this Act; and
- 23 (ii) any conditions imposed on the corporate director's
- 24 Australian financial services licence; and
- 25 (iii) the CCIV's constitution; and
- 26 (iv) the CCIV's compliance plan.

27 *Duties under this section prevail in case of conflict*

- 28 (2) If there is a conflict between a duty owed by an officer of the
- 29 corporate director of a CCIV under this section and a duty owed by
- 30 the officer under Part 2D.1, the duty owed under this section
- 31 prevails.

32 **1237E Duties owed by employees of corporate director**

- 33 (1) An employee of the corporate director of a CCIV must not:
-

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (a) make use of information acquired through being an employee
2 of the corporate director in order to:
3 (i) gain an improper advantage for the employee or another
4 person; or
5 (ii) cause detriment to members of the CCIV; or
6 (b) make improper use of their position as an employee to gain,
7 directly or indirectly, an advantage for themselves or for any
8 other person or to cause detriment to the members of the
9 CCIV.

10 *Duties under this section prevail in case of conflict*

- 11 (2) If there is a conflict between a duty owed by an employee of the
12 corporate director of a CCIV under this section and a duty owed by
13 the employee under Part 2D.1, the duty owed under this section
14 prevails.

15 **1237F Interaction with other laws etc.**

16 The provisions in this Subdivision:

- 17 (a) have effect in addition to, and not in derogation of, any rule
18 of law relating to the duty or liability of a person because of
19 their office or employment in relation to a corporation; and
20 (b) do not prevent the commencement of civil proceedings for a
21 breach of a duty or in respect of a liability referred to in
22 paragraph (a).

23 **Subdivision C—Material personal interests**

24 **1237G Extended obligation of directors of corporate director**

- 25 (1) For the purposes of Division 2 of Part 2D.1, a material personal
26 interest in a matter that relates to the affairs of a CCIV is treated as
27 being a material personal interest in a matter that relates to the
28 affairs of the corporate director of the CCIV.

29 Note: The effect of this subsection is that Division 2 of Part 2D.1 applies to
30 directors of the corporate director of a CCIV in relation to material
31 personal interests those directors have in matters relating to the affairs
32 of the CCIV.

EXPOSURE DRAFT

Main amendments **Schedule 1**

1 (2) Subsection (1) does not affect the operation of Division 2 of
2 Part 2D.1 in relation to an interest that, apart from that subsection,
3 is a material personal interest in a matter that relates to the affairs
4 of the corporate director.

5 (3) For an offence based on subsection 191(1), as it applies to the
6 director of a corporate director as a result of subsection (1) of this
7 section, strict liability applies to the circumstance, that the director
8 of the corporate director has a material personal interest in a matter
9 that relates to the affairs of the CCIV.

10 Note: For strict liability, see section 6.1 of the *Criminal Code*.

11 (4) For the purposes of determining under subsection 191(2) whether
12 the director does not need to give notice of the interest, references
13 in that subsection to the company are taken to be references to the
14 CCIV, unless the reference is to the director's position as director,
15 or officer, of the company.

16 (5) Nothing in this section limits:

17 (a) the effect sections 191 and 192 have in relation to the director
18 of the corporate director apart from this Subdivision; or

19 (b) the effect section 193 has in relation to sections 191 and 192
20 as those sections apply as a result of this section.

21 Note: Section 193 is about the interaction of sections 191 and 192 with other
22 laws etc.

23 **1237H Corporate director not required to disclose material personal** 24 **interest**

25 Section 191 does not apply in relation to the director of a company
26 if the company is a CCIV.

27 **Subdivision D—Powers**

28 **1237J Powers and obligations of corporate director**

29 (1) The corporate director of a CCIV is to:

30 (a) operate the business and conduct the affairs of the CCIV; and

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (b) perform the functions conferred on the corporate director by
2 the CCIV's constitution and this Act; and
3 (c) ensure that the CCIV complies with its constitution and this
4 Act.
- 5 (2) The corporate director of a CCIV may exercise all the powers of
6 the CCIV except any powers that this Act or the CCIV's
7 constitution requires the CCIV to exercise in general meeting.

8 **1237K Appointing an agent or engaging a person**

9 *Agents appointed by corporate director*

- 10 (1) The corporate director has power to appoint an agent, or otherwise
11 engage a person, to do anything that the corporate director is
12 authorised to do in connection with the CCIV.

13 Note: A CCIV may also have an agent: see section 126.

14 *Agents appointed by CCIV and sub-agents*

- 15 (2) An agent appointed, or a person otherwise engaged, by:
16 (a) an agent or person referred to in subsection (1); or
17 (b) the CCIV; or
18 (c) a person who is taken under this subsection to be an agent of
19 the corporate director;
20 to do anything that the corporate director is authorised to do in
21 connection with the CCIV is taken to be an agent appointed by the
22 corporate director to do that thing for the purposes of this section.

23 *Extended liability for acts of agents*

- 24 (3) Subject to subsection (4), for the purpose of determining whether:
25 (a) there is a liability to the CCIV or the CCIV's members; or
26 (b) for a retail CCIV—the corporate director has properly
27 performed its duties for the purposes of subsection 1232G(2);
28 the corporate director is taken to have done (or failed to do)
29 anything that the agent or person has done (or failed to do) because
30 of the appointment or engagement, even if the person or agent was

EXPOSURE DRAFT

Main amendments **Schedule 1**

1 acting fraudulently or outside the scope of the authority or
2 engagement.

3 Note: A CCIV's constitution may provide for the corporate director to be
4 indemnified for liabilities—see subsection 1232G(2).

5 (4) Subsection (3) does not apply to a thing the depositary of a CCIV
6 does (or fails to do) in the course of its duties as depositary.

7 *Delegation*

8 (5) Section 198D does not apply to a CCIV.

9 **1237L Right of access to CCIV books**

10 (1) Section 198F applies in relation to a director of a corporate director
11 of a CCIV as if the person were a director of the CCIV.

12 (2) For the purposes of subsection (1), a person is taken to cease being
13 a director of the CCIV if either of the following occurs:

14 (a) the person ceases to be a director of the corporate director;

15 (b) the company of which the person is a director ceases to be
16 the corporate director of the CCIV.

17 **Division 2—Restrictions on indemnities, insurance and**
18 **termination payments**

19 **Subdivision A—Indemnities and insurance for officers and**
20 **auditors**

21 **1238 Extended operation of section 199A (about indemnification and**
22 **exemption of officer or auditor)**

23 (1) Section 199A applies to a CCIV and a related body corporate of a
24 CCIV as if a liability incurred by a person as an officer or auditor
25 of the corporate director of the CCIV were a liability incurred by
26 the person as an officer or auditor of the CCIV.

27 Note: If the CCIV is a retail CCIV, there are additional restrictions: see
28 section 1232G.

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (2) Subsection (1) does not affect the operation of section 199A in
2 determining whether:
3 (a) the corporate director or a related body corporate must not
4 exempt a person from, or indemnify a person against, a
5 liability; or
6 (b) the CCIV or a related body corporate must not exempt the
7 corporate director from, or indemnify the corporate director
8 against, a liability.

9 **1238A Extended operation of section 199B (about insurance**
10 **premiums for certain liabilities)**

- 11 (1) Subsection 199B(1) applies to a CCIV and a related body corporate
12 of a CCIV as if a person who is or has been an officer or auditor of
13 the corporate director of the CCIV were a person who is or has
14 been an officer or auditor of the CCIV.
- 15 (2) If the CCIV is a retail CCIV, for the purposes of subsection (1),
16 paragraph 199B(1)(b) is taken to include a reference to
17 contraventions of the following provisions (which are about duties
18 owed to members of a CCIV):
19 (a) section 1237C;
20 (b) section 1237D;
21 (c) section 1237E.
- 22 (3) Subsection (1) does not affect the operation of section 199B in
23 determining whether:
24 (a) the corporate director or a related body corporate must not
25 pay, or agree to pay, a premium for a contract insuring a
26 person; or
27 (b) the CCIV or a related body corporate must not pay, or agree
28 to pay, a premium for a contract insuring the corporate
29 director.

1 **Subdivision B—Termination payments**

2 **1238B Member approval not needed for benefit specified in**
3 **constitution**

4 Despite subsection 200AB(1), for the purposes of Division 2 of
5 Part 2D.2, a *benefit* does not include a payment made by the CCIV
6 to its corporate director if:

- 7 (a) the corporate director is entitled to the payment under
8 provisions of the constitution; and
9 (b) for a retail CCIV—the provisions comply with
10 subsection 1232G(2).

11 **1238C Modified member approval for CCIVs**

- 12 (1) Sections 200B and 200C apply in relation to a CCIV as if:
13 (a) the members whose approval is required under those
14 provisions were the members of the sub-fund of the CCIV
15 that would be affected by the giving of the benefit; and
16 (b) that member approval were required to be given under
17 section 200E as modified by subsection (3) of this section.

18 Note: If the CCIV is a retail CCIV, there are additional restrictions on giving
19 benefits: see section 1232G.

- 20 (2) If the giving of the benefit would affect 2 or more sub-funds of the
21 CCIV, then the approval of each affected sub-fund must be
22 obtained in the way mentioned in subsection (1).

23 *Member approval*

- 24 (3) Section 200E applies in relation to a CCIV as if a reference to a
25 general meeting were instead a reference to a meeting of the
26 members of the affected sub-fund.

EXPOSURE DRAFT

Schedule 1 Main amendments

1 **1238D Benefits paid to corporate director not covered by**
2 **exemptions**

3 To avoid doubt, a benefit that is a payment to the corporate director
4 of a CCIV is not a benefit to which paragraph 200F(1)(a),
5 subsection 200F(2), or section 200G applies.

6 **Division 3—Corporate director: appointment and**
7 **cessation of appointment**

8 **Subdivision A—Appointment of corporate director**

9 **1238E Director to be public company and hold Australian financial**
10 **services licence**

- 11 (1) The director of a CCIV must be a public company that holds an
12 Australian financial services licence authorising it to operate the
13 business and conduct the affairs of the CCIV.
- 14 (2) The position of director of a CCIV is the position of corporate
15 director.
- 16 (3) *Corporate director* of a CCIV means the company named in
17 ASIC's record of the CCIV's registration as the corporate director
18 or temporary corporate director of the CCIV.

19 Note: A change in the corporate director does not take effect until ASIC
20 alters the record of registration: see section 1238K.

21 **1238F Restriction on engagement of other directors**

22 A CCIV must not have any directors other than the corporate
23 director.

24 **1238G Effectiveness of acts by corporate director**

- 25 (1) An act done by the corporate director of a CCIV is effective even if
26 the corporate director's appointment, or the continuance of the
27 corporate director's appointment, is invalid because the CCIV or
28 corporate director did not comply with the CCIV's constitution or
29 any provision of this Act.

EXPOSURE DRAFT

Main amendments **Schedule 1**

1 Note: For when a change of corporate director takes effect, see
2 section 1238K.

3 (2) Subsection (1) does not deal with the question whether an effective
4 act by a corporate director:

- 5 (a) binds the CCIV in its dealings with other people; or
6 (b) makes the CCIV liable to another person.

7 Note: The kinds of acts that this section validates are those that are only
8 legally effective if the person doing them is a director (for example,
9 calling a meeting of the company's members or signing a document to
10 be lodged with ASIC or minutes of a meeting). Sections 128 to 130
11 contain rules about the assumptions people are entitled to make when
12 dealing with a company and its officers.

13 **1238H Additional protection for retail clients—requirement for**
14 **external directors of corporate director**

15 (1) At least half of the directors of the corporate director of a retail
16 CCIV must be external directors.

17 (2) A director of the corporate director is an external director if the
18 director:

- 19 (a) is not, and has not been in the previous 2 years, an employee
20 of the corporate director or a related body corporate; and
21 (b) is not, and has not been in the previous 2 years, a senior
22 manager of the corporate director or a related body corporate;
23 and
24 (c) is not, and has not been in the previous 2 years, substantially
25 involved in business dealings, or in a professional capacity,
26 with the corporate director or a related body corporate; and
27 (d) is not a member of a partnership that is, or has been in the
28 previous 2 years, substantially involved in business dealings,
29 or in a professional capacity, with the corporate director or a
30 related body corporate; and
31 (e) does not have a material interest in the corporate director or a
32 related body corporate; and
33 (f) is not a relative of a person who has a material interest in the
34 corporate director or a related body corporate.

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (3) The public company that is the corporate director of a retail CCIV
2 must ensure that it complies with subsection (1) within 14 days (or
3 a longer period allowed in writing by ASIC) of the company
4 becoming the corporate director of the CCIV.
- 5 (4) If the corporate director stops complying with subsection (1) on a
6 later day, it must ensure it complies with that subsection within 14
7 days (or a longer period allowed in writing by ASIC) of that day.

8 **1238J Part 2D.3 does not apply to CCIVs**

9 Part 2D.3 (about appointment, remuneration and cessation of
10 appointment of directors) does not apply to a CCIV.

11 **Subdivision B—Replacing the corporate director**

12 **1238K Changes only take effect when ASIC alters record of** 13 **registration**

- 14 (1) Despite anything in this Subdivision, the company named in
15 ASIC's record of registration as the corporate director or
16 temporary corporate director of a CCIV remains the CCIV's
17 corporate director until the record is altered to name another
18 company as the CCIV's corporate director or temporary corporate
19 director.
- 20 (2) A purported change of the CCIV's corporate director is ineffective
21 unless it is in accordance with this Subdivision.

22 **1238L Requirements of subsection 1238E(1) must be met**

23 A company cannot be chosen or appointed as the corporate director
24 or temporary corporate director of a CCIV unless it meets the
25 requirements of subsection 1238E(1).

26 **1238M Retirement of corporate director**

- 27 (1) If the corporate director of a CCIV wants to retire, it must call a
28 members' meeting to explain its reason for wanting to retire and to
29 enable the members to vote on a resolution to choose a company to

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 be the new corporate director. The resolution must be a special
2 resolution.
- 3 (2) The notice of meeting of the CCIV's members must:
4 (a) set out the corporate director's reason for wanting to retire;
5 and
6 (b) nominate a company to be the new corporate director of the
7 CCIV.
- 8 (3) If the members choose a company to be the new corporate director
9 and that company has consented, in writing, to becoming the
10 CCIV's corporate director:
11 (a) as soon as practicable and in any event within 2 business
12 days after the resolution is passed, the current corporate
13 director must lodge a notice with ASIC asking it to alter the
14 record of the CCIV's registration to name the chosen
15 company as the CCIV's corporate director; and
16 (b) if the current corporate director does not lodge the notice
17 required by paragraph (a), the company chosen by the
18 members to be the new corporate director may lodge that
19 notice; and
20 (c) ASIC must comply with the notice when it is lodged.
- 21 (4) If the members do not choose a company to be the new corporate
22 director, or the company they choose does not consent to becoming
23 the CCIV's corporate director, an application to the Court for
24 appointment of a temporary corporate director under
25 section 1238Q may be made by any of the following:
26 (a) the current corporate director of the CCIV;
27 (b) if the CCIV has a depositary—the depositary of the CCIV.
- 28 (5) A person must not lodge a notice under subsection (3) unless the
29 consent referred to in that subsection has been given before the
30 notice is lodged.

31 **1238N Removal of corporate director by members**

- 32 (1) If members of a CCIV want to remove the corporate director, they
33 may take action under Division 1 of Part 2G.4 for the calling of a
34 members' meeting to consider and vote on a resolution that the
-

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 current corporate director should be removed and a resolution
2 choosing a company to be the new corporate director. The
3 resolutions must be special resolutions.
- 4 (2) If the members vote to remove the corporate director and, at the
5 same meeting, choose a company to be the new corporate director
6 that consents, in writing, to becoming the CCIV's corporate
7 director:
- 8 (a) as soon as practicable and in any event within 2 business
9 days after the resolution is passed, the current corporate
10 director must lodge a notice with ASIC asking it to alter the
11 record of the CCIV's registration to name the chosen
12 company as the CCIV's corporate director; and
- 13 (b) if the current corporate director does not lodge the notice
14 required by paragraph (a), the company chosen by the
15 members to be the new corporate director may lodge that
16 notice; and
- 17 (c) ASIC must comply with the notice when it is lodged.
- 18 (3) A person must not lodge a notice under subsection (2) unless the
19 consent referred to in that subsection has been given before the
20 notice is lodged.

21 **1238P Applying to Court for appointment of temporary corporate** 22 **director**

- 23 If a CCIV does not have a corporate director that meets the
24 requirements of subsection 1238E(1), an application to the Court
25 for the appointment of a temporary corporate director of the CCIV
26 under section 1238Q may be made by any of the following:
- 27 (a) ASIC;
- 28 (b) a member of the CCIV;
- 29 (c) if the CCIV has a depositary—the depositary of the CCIV.

30 **1238Q Appointment of temporary corporate director by Court**

- 31 (1) On application under section 1238M or 1238P, the Court may, by
32 order, appoint a company as the temporary corporate director of a
33 CCIV if:

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (a) the Court is satisfied that the appointment is in the interest of
2 the members; and
3 (b) the company consents in writing to becoming the CCIV's
4 temporary corporate director.
- 5 (2) The Court may make any further orders that it considers
6 appropriate.
- 7 (3) If the application was made by the current corporate director, it
8 must, as soon as practicable after the Court's order appointing the
9 temporary corporate director, lodge a notice with ASIC informing
10 ASIC of the appointment made by the Court.
- 11 (4) As soon as practicable after the appointment, ASIC must alter the
12 record of the CCIV's registration to name the appointed company
13 as the CCIV's temporary corporate director.

14 **1238R Temporary corporate director to take steps for appointment** 15 **of new corporate director**

- 16 (1) The temporary corporate director of a CCIV must call a members'
17 meeting for the purpose of the members, by resolution, choosing a
18 company to be the new corporate director. The resolution must be a
19 special resolution. The temporary corporate director must call the
20 meeting as soon as practicable and, in any event, within 3 months
21 of becoming the temporary corporate director.
- 22 (2) Within that 3 months, the temporary corporate director may call
23 further members' meetings for the purpose of choosing a company
24 to be the new corporate director. Before the end of the 3 months, it
25 may apply to the Court for an extension of that period. If the Court
26 grants the extension, the temporary corporate director may, within
27 the extended period, call further members' meetings for the
28 purpose of choosing a company to be the new corporate director.
- 29 (3) Provided it still meets the requirements in subsection 1238E(1),
30 nothing prevents the company that is the temporary corporate
31 director from being chosen as the new corporate director.
- 32 (4) If the members choose a company to be the new corporate director
33 and that company has consented, in writing, to becoming the

EXPOSURE DRAFT

Schedule 1 Main amendments

1 CCIV's corporate director, the temporary corporate director must,
2 as soon as practicable and in any event within 2 business days,
3 lodge a notice with ASIC asking it to alter the record of the
4 CCIV's registration to name the chosen company as the CCIV's
5 corporate director. ASIC must comply with the notice when it is
6 lodged.

- 7 (5) The temporary corporate director must apply to the Court for an
8 order directing it to wind up the CCIV, and the Court may make
9 the order, if:
10 (a) no meeting is called within the 3 months or extended period
11 for the purpose of choosing a new company to be the
12 corporate director; or
13 (b) the meeting or meetings called within that period for that
14 purpose have not resulted in the members choosing a
15 company to be the new corporate director that consents to
16 becoming the CCIV's corporate director.

17 ASIC or a member of the CCIV may apply for the order if the
18 temporary corporate director does not do so.

- 19 (6) The temporary corporate director must not lodge a notice under
20 subsection (4) unless the consent referred to in that subsection has
21 been given before the notice is lodged.

22 **1238S Former corporate director to hand over books and provide** 23 **reasonable assistance**

24 If the corporate director of a CCIV changes, the former corporate
25 director must:

- 26 (a) as soon as practicable give the new corporate director any
27 books in the former corporate director's possession or control
28 that this Act requires to be kept in relation to the CCIV; and
29 (b) give other reasonable assistance to the new corporate director
30 to facilitate the change of corporate director.

1 **1238T Rights, obligations and liabilities of former corporate**
2 **director**

- 3 (1) If the corporate director of a CCIV changes, the rights, obligations
4 and liabilities of the former corporate director in relation to the
5 CCIV become rights, obligations and liabilities of the new
6 corporate director.
- 7 (2) Despite subsection (1), the following rights and liabilities remain
8 rights and liabilities of the former corporate director:
- 9 (a) any right of the former corporate director to be paid fees for
10 the performance of its functions before it ceased to be the
11 corporate director;
 - 12 (b) any right of the former corporate director to be indemnified
13 for expenses it incurred before it ceased to be the corporate
14 director;
 - 15 (c) any right, obligation or liability that the former corporate
16 director had as a member of the CCIV;
 - 17 (d) any liability for which the former corporate director could not
18 have been indemnified out of the assets of the CCIV if it had
19 remained the CCIV's corporate director.

20 **1238U Effect of change of corporate director on documents etc. to**
21 **which former corporate director is party**

- 22 (1) If the corporate director of a CCIV changes, a document:
- 23 (a) to which the former corporate director is a party, in which a
24 reference is made to the former corporate director, or under
25 which the former corporate director has acquired or incurred
26 a right, obligation or liability, or might have acquired or
27 incurred a right, obligation or liability if it had remained the
28 corporate director; and
 - 29 (b) that is capable of having effect after the change;
- 30 has effect as if the new corporate director (and not the former
31 corporate director) were a party to it, were referred to in it or had
32 or might have acquired or incurred the right, obligation or liability
33 under it.

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (2) Subsection (1) does not apply to a right, obligation or liability that
2 remains a right, obligation or liability of the former corporate
3 director because of subsection 1238T(2).

4 **Division 4—Restriction on appointment of other officers** 5 **and employees**

6 **1239 Restrictions on engagement etc. of persons by a CCIV**

- 7 (1) A CCIV must not have any officers other than:
8 (a) the corporate director; and
9 (b) officers covered by any of paragraphs (c) to (g) of the
10 definition of *officer* in section 9.
- 11 (2) A CCIV must not have any employees.
12 Note: However, a CCIV may appoint an agent: see section 126.
- 13 (3) Part 2D.4 (about appointment of secretaries) does not apply to a
14 CCIV.

15 **Division 5—Modifications relating to Parts 2D.5, 2D.6,** 16 **2D.7 and 2D.8**

17 **1240 Part 2D.5 does not apply to CCIVs**

18 Part 2D.5 (about public information about directors and
19 secretaries) does not apply to a CCIV.

20 **1240A Part 2D.6 does not apply to CCIVs**

21 Part 2D.6 (about disqualification from managing corporations)
22 does not apply to a CCIV.

23 **1240B Part 2D.7 does not apply to CCIVs**

24 Part 2D.7 (about ban on hedging remuneration of key management
25 personnel) does not apply to a CCIV.

1 **1240C Part 2D.8 does not apply to CCIVs**

2 Part 2D.8 (about remuneration recommendations in relation to key
3 management personnel for disclosing entities) does not apply to a
4 CCIV.

5 **Division 6—Additional protections for retail clients:
6 compliance plan**

7 **Subdivision A—Division does not apply to wholesale CCIVs**

8 **1241 Division does not apply to wholesale CCIVs**

9 The provisions in this Division do not apply in relation to
10 wholesale CCIVs.

11 **Subdivision B—Documenting the compliance plan**

12 **1241A Requirement for compliance plan**

13 A CCIV must have a compliance plan, and a copy of the
14 compliance plan must be lodged with ASIC with the application to
15 register the company as a CCIV.

16 **1241B Contents of the compliance plan**

17 The compliance plan of a CCIV must set out adequate measures
18 that the corporate director is to apply in fulfilling its
19 responsibilities in relation to the CCIV to ensure compliance with
20 this Act and the CCIV's constitution.

21 **1241C Compliance plan may incorporate provisions from another
22 CCIV's plan**

23 (1) The corporate director of a CCIV may lodge with ASIC a
24 compliance plan for the CCIV that is expressed to incorporate
25 specified provisions of a compliance plan of another CCIV of
26 which it is also the corporate director. The provisions may be

EXPOSURE DRAFT

Schedule 1 Main amendments

1 incorporated as in force at a specified time, or as in force from time
2 to time.

3 (2) The specified provisions, as in force at the specified time, or as in
4 force from time to time (as the case requires) are taken to be
5 included in the plan.

6 **1241D Directors must sign lodged copy of compliance plan**

7 The copy of a CCIV's compliance plan that is lodged with ASIC
8 must be signed by all the directors of the corporate director.

9 **1241E ASIC may require further information about compliance** 10 **plan**

11 ASIC may direct the corporate director of a CCIV to give it
12 information about the arrangements contained in the compliance
13 plan. The direction is to be given by notice in writing to the
14 corporate director.

15 **1241F Changing the compliance plan**

16 *Corporate director's powers*

17 (1) The corporate director of a CCIV may modify the CCIV's
18 compliance plan or repeal it and replace it with a new compliance
19 plan.

20 *ASIC may require modifications*

21 (2) ASIC may direct the corporate director of a CCIV to modify the
22 CCIV's compliance plan, as set out in the direction, to ensure that
23 the plan is consistent with section 1241B. The direction is to be
24 given by notice in writing to the corporate director.

25 *Lodgement of modification or new plan*

26 (3) The corporate director must lodge with ASIC a copy of a
27 modification of the CCIV's compliance plan or of a new
28 compliance plan within 14 days after the modification is made or

EXPOSURE DRAFT

Main amendments **Schedule 1**

1 the old plan is repealed. The copy must be signed by all the
2 directors of the corporate director.

3 **1241G ASIC may require consolidation of compliance plan to be**
4 **lodged**

- 5 (1) ASIC may direct the corporate director of a CCIV to lodge a
6 consolidated copy of the CCIV's compliance plan.
- 7 (2) The consolidation must set out:
8 (a) the plan as modified to the time of lodgement; and
9 (b) if required by ASIC's direction—the full text of provisions
10 taken to be included in the plan by subsection 1241C(2).

11 **Subdivision C—Auditing the compliance plan**

12 **1241H Engaging auditor**

- 13 (1) The corporate director of a CCIV must ensure that at all times a
14 registered company auditor, an audit firm or an authorised audit
15 company is engaged to audit compliance with the CCIV's
16 compliance plan in accordance with this section. This auditor, firm
17 or company is referred to as the *auditor of the compliance plan*.
- 18 (2) A person is not eligible to act as the individual auditor, lead auditor
19 or review auditor of the compliance plan if the person is:
20 (a) the corporate director; or
21 (b) an associate of the corporate director; or
22 (c) the depositary; or
23 (d) an associate of the depositary; or
24 (e) an agent holding assets of the CCIV on behalf of the
25 depositary or an associate of an agent of that kind; or
26 (f) the auditor of the corporate director's financial statements.
- 27 (3) However:
28 (a) the auditor of the compliance plan and the auditor of the
29 corporate director's financial statements may work for the
30 same firm of auditors or audit company; and

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (b) the lead auditor or review auditor of the compliance plan (on
2 the one hand) and the lead auditor or review auditor of the
3 corporate director's financial statements (on the other hand)
4 may work for the same firm of auditors or audit company.
- 5 (4) This Subdivision does not prevent the corporate director from
6 arranging for the auditor of the compliance plan to carry out audits
7 in addition to those required by this Subdivision.

8 **1241J Audit and audit report**

- 9 (1) Within 3 months after the end of a financial year of the CCIV, the
10 auditor of the compliance plan must:
- 11 (a) examine the CCIV's compliance plan; and
12 (b) carry out:
- 13 (i) if the CCIV has only had one corporate director during
14 the financial year—an audit of the corporate director's
15 compliance with the compliance plan during the
16 financial year; or
17 (ii) if the CCIV has had more than one corporate director
18 during the financial year—an audit of each corporate
19 director's compliance with the compliance plan during
20 that part of the financial year when it was the CCIV's
21 corporate director; and
- 22 (c) give to the CCIV's current corporate director a report that
23 states whether, in the auditor's opinion:
- 24 (i) the corporate director, or each corporate director,
25 complied with the CCIV's compliance plan during the
26 financial year or that part of the financial year when it
27 was the CCIV's corporate director; and
28 (ii) the plan continues to meet the requirements of this
29 Division.
- 30 (2) The auditor of the compliance plan:
- 31 (a) has a right of access at all reasonable times to the books of
32 the CCIV; and
33 (b) may require an officer of the corporate director to give the
34 auditor information and explanations for the purposes of the
35 audit.
-

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (3) An officer of the corporate director must:
2 (a) allow the auditor of the compliance plan to have access to the
3 books of the CCIV; and
4 (b) give the auditor information or an explanation required under
5 subsection (2); and
6 (c) otherwise assist the conduct of the audit.
- 7 (4) The corporate director must lodge the auditor's report under
8 subsection (1) with ASIC at the same time as the financial
9 statements and reports in respect of the CCIV are to be lodged with
10 ASIC (see sections 292 and 319).
- 11 (5) The auditor of the compliance plan has qualified privilege in
12 respect of:
13 (a) a statement made in a report under subsection (1); or
14 (b) a notification to ASIC under any of the following:
15 (i) paragraph 1241K(1)(c);
16 (ii) paragraph 1241K(2)(c);
17 (iii) paragraph 1241K(3)(d).

18 **1241K Contraventions by auditor**

19 *Contravention by individual auditor*

- 20 (1) An individual auditor conducting an audit of a compliance plan
21 contravenes this subsection if:
22 (a) the auditor is aware of circumstances that:
23 (i) the auditor has reasonable grounds to suspect amount to
24 a contravention of this Act; or
25 (ii) amount to an attempt, in relation to the audit, by any
26 person to unduly influence, coerce, manipulate or
27 mislead a person involved in the conduct of the audit
28 (see subsection (6)); or
29 (iii) amount to an attempt, by any person, to otherwise
30 interfere with the proper conduct of the audit; and
31 (b) if subparagraph (a)(i) applies:
32 (i) the contravention is a significant one; or

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (ii) the contravention is not a significant one and the auditor
2 believes that the contravention has not been or will not
3 be adequately dealt with by commenting on it in the
4 auditor's report or bringing it to the attention of the
5 directors; and
6 (c) the auditor does not notify ASIC in writing of those
7 circumstances as soon as practicable, and in any case within
8 7 days, after the auditor becomes aware of those
9 circumstances.

10 *Contravention by audit company*

- 11 (2) An audit company conducting an audit of a compliance plan
12 contravenes this subsection if:
13 (a) the lead auditor for the audit is aware of circumstances that:
14 (i) the lead auditor has reasonable grounds to suspect
15 amount to a contravention of this Act; or
16 (ii) amount to an attempt, in relation to the audit, by any
17 person to unduly influence, coerce, manipulate or
18 mislead a person involved in the conduct of the audit
19 (see subsection (6)); or
20 (iii) amount to an attempt, by any person, to otherwise
21 interfere with the proper conduct of the audit; and
22 (b) if subparagraph (a)(i) applies:
23 (i) the contravention is a significant one; or
24 (ii) the contravention is not a significant one and the lead
25 auditor believes that the contravention has not been or
26 will not be adequately dealt with by commenting on it in
27 the auditor's report or bringing it to the attention of the
28 directors; and
29 (c) the lead auditor does not notify ASIC in writing of those
30 circumstances as soon as practicable, and in any case within
31 7 days, after the lead auditor becomes aware of those
32 circumstances.

33 *Contravention by lead auditor*

- 34 (3) A person contravenes this subsection if:
-

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (a) the person is the lead auditor for an audit of a compliance
2 plan; and
3 (b) the person is aware of circumstances that:
4 (i) the person has reasonable grounds to suspect amount to
5 a contravention of this Act; or
6 (ii) amount to an attempt, in relation to the audit, by any
7 person to unduly influence, coerce, manipulate or
8 mislead a person involved in the conduct of the audit
9 (see subsection (6)); or
10 (iii) amount to an attempt, by any person, to otherwise
11 interfere with the proper conduct of the audit; and
12 (c) if subparagraph (b)(i) applies:
13 (i) the contravention is a significant one; or
14 (ii) the contravention is not a significant one and the person
15 believes that the contravention has not been or will not
16 be adequately dealt with by commenting on it in the
17 auditor's report or bringing it to the attention of the
18 directors; and
19 (d) the person does not notify ASIC in writing of those
20 circumstances as soon as practicable, and in any case within
21 7 days, after the person becomes aware of those
22 circumstances.

23 *Significant contraventions*

- 24 (4) In determining for the purposes of this section whether a
25 contravention of this Act is a significant one, have regard to:
26 (a) the level of penalty provided for in relation to the
27 contravention; and
28 (b) the effect that the contravention has, or may have, on:
29 (i) the overall financial position of the CCIV; or
30 (ii) the adequacy of the information available about the
31 overall financial position of the CCIV; and
32 (c) any other relevant matter.
33 (5) Without limiting paragraph (4)(a), a penalty provided for in
34 relation to a contravention of a provision of Part 2M.2 or 2M.3, or
35 section 324DAA, 324DAB or 324DAC, includes a penalty

EXPOSURE DRAFT

Schedule 1 Main amendments

1 imposed on a director, because of the operation of section 344, for
2 failing to take reasonable steps to comply with, or to secure
3 compliance with, that provision.

4 *Person involved in audit*

5 (6) In this section:

6 ***person involved in the conduct of an audit*** means:

- 7 (a) the auditor; or
8 (b) the lead auditor for the audit; or
9 (c) the review auditor for the audit; or
10 (d) a professional member of the audit team for the audit; or
11 (e) any other person involved in the conduct of the audit.

12 **1241L Removal and resignation of auditors**

13 *Removal of auditor by corporate director*

14 (1) The corporate director:

- 15 (a) must remove the auditor of the compliance plan if the auditor
16 becomes ineligible under subsection 1241H(2) to act as
17 auditor of the compliance plan; and
18 (b) may, with ASIC's consent, remove the auditor of the
19 compliance plan.

20 *Resignation of auditor*

21 (2) The auditor of the compliance plan may resign by written notice to
22 the corporate director if:

- 23 (a) the auditor:
24 (i) applies to ASIC in writing for its consent to the
25 resignation; and
26 (ii) gives the corporate director written notice of the
27 application at or about the same time as applying to
28 ASIC; and
29 (b) ASIC consents to the resignation.

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (3) As soon as practicable after receiving the application, ASIC must
2 notify the auditor and the corporate director whether it consents to
3 the resignation.
- 4 (4) A statement by the auditor in the application or in answer to an
5 inquiry by ASIC relating to the reasons for the application:
6 (a) is not admissible in evidence in any civil or criminal
7 proceedings against the auditor (other than proceedings for a
8 contravention of section 1308); and
9 (b) may not be made the ground of a prosecution (other than a
10 prosecution for a contravention of section 1308), action or
11 suit against the auditor.
- 12 A certificate by ASIC that the statement was made in the
13 application, or in answer to an inquiry by ASIC, is conclusive
14 evidence that the statement was so made.
- 15 (5) The auditor's resignation takes effect on the later of:
16 (a) the day (if any) specified in the notice of resignation; or
17 (b) the day ASIC consents to the resignation; or
18 (c) the day (if any) fixed by ASIC for the purpose.

19 **1241M Action on change of auditor of compliance plan**

20 If the auditor of the compliance plan of a CCIV changes, the
21 corporate director must, within 7 days and in writing, ask ASIC to
22 alter the record of the CCIV's registration to show the name of the
23 new auditor as the auditor of the CCIV's compliance plan. ASIC
24 must comply with the request if the change complies with this Act.

25 **Part 8B.4—Related party transactions**

26 **Division 1—Application of Chapter 2E to CCIVs**

27 **1242 Application of Chapter 2E to CCIVs**

- 28 (1) Subject to this Part, Chapter 2E applies:
29 (a) to a CCIV in the same way as it applies to a public company;
30 and

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (b) to an entity a CCIV controls in the same way as it applies to
2 an entity a public company controls.
- 3 (2) In its application in relation to a CCIV, the members whose
4 interests the rules in Chapter 2E are designed to protect are:
- 5 (a) if one sub-fund would be affected by the giving of the
6 relevant financial benefit to the related party—the members,
7 as a whole, of that sub-fund; or
- 8 (b) if 2 or more sub-funds would be affected by the giving of the
9 relevant financial benefit to the related party—the members,
10 as a whole, of each such sub-fund.

11 **Division 2—Member approval needed for related party** 12 **benefit**

13 **Subdivision A—Need for approval of members of affected** 14 **sub-funds**

15 **1242A Need for member approval for financial benefit**

- 16 (1) Section 208 applies in relation to a CCIV as if:
- 17 (a) the members whose approval is required to be obtained under
18 subparagraph 208(1)(a)(i) were the members of the sub-fund
19 of the CCIV that would be affected by the giving of the
20 financial benefit; and
- 21 (b) that member approval were required to be given in the way
22 set out in sections 217 to 227 (as modified by this Part).
- 23 Note 1: For provisions about meetings of members of sub-funds, see
24 section 1244A.
- 25 Note 2: Some kinds of financial benefits are prohibited by sections 199A to
26 199C. For CCIVs, those sections have an extended application: see
27 sections 1238 and 1238A.
- 28 (2) If the giving of a financial benefit would affect 2 or more
29 sub-funds of the CCIV, paragraph 208(1)(a) applies as if it
30 required the CCIV or entity to:
- 31 (a) obtain the approval of each affected sub-fund in the way
32 mentioned in subsection (1) of this section; and

EXPOSURE DRAFT

Main amendments **Schedule 1**

1 (b) give the benefit within 15 months after the first such approval
2 is given.

3 Note: The consequences of contravening section 208 are set out in
4 section 209.

5 (3) Subsection 208(1) does not apply in relation to a financial benefit
6 if:

7 (a) the financial benefit is fees, or an indemnity, to be given to
8 the corporate director by the CCIV; and

9 (b) the corporate director is entitled to the fees, or the indemnity,
10 under provisions of the constitution; and

11 (c) for a retail CCIV—the provisions comply with
12 subsection 1232G(2).

13 **Subdivision B—Exceptions to the requirement for member** 14 **approval**

15 **1242B Exception for remuneration does not apply to CCIV**

16 (1) Section 211 does not apply where the financial benefit is, or is to
17 be, given by the CCIV.

18 (2) Subsection (1) does not affect the application of section 211 where
19 the financial benefit is, or is to be, given by an entity the CCIV
20 controls.

21 *Modified exceptions for financial benefits given to corporate*
22 *director of wholesale CCIV*

23 (3) Member approval is not needed to give a financial benefit if:

24 (a) the benefit is fees paid, or to be paid, by the CCIV to the
25 corporate director of a wholesale CCIV for the performance
26 of duties as an officer of the CCIV; and

27 (b) to give the benefit would be reasonable in the circumstances
28 of the CCIV giving the benefit.

29 Note: Fees paid to the corporate director of a retail CCIV are required to be
30 specified in the constitution (see section 1232G) and are exempted
31 from Chapter 2E by subsection 1242A(3).

32 (4) Member approval is not needed to give a financial benefit if:

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (a) the benefit is payment by the CCIV of expenses incurred or
2 to be incurred, or reimbursement for expenses incurred, by
3 the corporate director of a wholesale CCIV in performing
4 duties as an officer of the CCIV; and
5 (b) to give the benefit would be reasonable in the circumstances
6 of the CCIV giving the benefit.

7 **1242C Sections 213 and 214 do not apply**

- 8 (1) The following provisions of Division 2 of Part 2E.1 do not apply
9 where the financial benefit is, or is to be, given by a CCIV:
10 (a) section 213 (which deals with small amounts given to a
11 related party);
12 (b) section 214 (which deals with financial benefits given to a
13 closely held subsidiary).
14 (2) Subsection (1) does not affect the application of those provisions
15 where the financial benefit is, or is to be, given by an entity the
16 CCIV controls.

17 **Subdivision C—Procedure for obtaining member approval**

18 **1242D Requirements for explanatory statement to members**

- 19 (1) Section 219 applies to a CCIV as if:
20 (a) the requirements in paragraphs 219(1)(c) and (d) applied in
21 relation to:
22 (i) the corporate director of the CCIV; and
23 (ii) each director of the corporate director of the CCIV; and
24 (b) the requirement in paragraph 219(1)(e) were a requirement to
25 set out all other information that:
26 (i) is reasonably required by members in order to decide
27 whether or not it is in the sub-fund's interests to pass the
28 proposed resolution; and
29 (ii) is known to the corporate director of the CCIV or to any
30 of the directors of the corporate director of the CCIV.

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (2) An example of the kind of information referred to in
2 paragraph (1)(b) is the kind of information mentioned in
3 subsection 219(2).

4 **1242E Modified references**

- 5 Division 3 of Chapter 2E applies in relation to a CCIV as if:
6 (a) a reference to a general meeting were instead a reference to a
7 meeting of the members of the affected sub-fund; and
8 (b) a reference to section 250D were instead a reference to
9 section 253B.

10 **Division 3—Related parties**

11 **1242F Related parties of a CCIV**

- 12 (1) Section 228 does not apply in relation to a CCIV.

13 *Corporate director etc*

- 14 (2) The following are related parties of a CCIV:
15 (a) the corporate director of the CCIV;
16 (b) an entity that controls the corporate director of the CCIV;
17 (c) an agent of, or person engaged by, the corporate director.

18 *Directors and their spouses*

- 19 (3) The following persons are related parties of a CCIV:
20 (a) directors of the corporate director of the CCIV;
21 (b) directors (if any) of an entity that controls the corporate
22 director of the CCIV;
23 (c) if the corporate director of the CCIV is controlled by an
24 entity that is not a body corporate—each of the persons
25 making up the controlling entity;
26 (d) spouses of the persons referred to in paragraphs (a), (b) and
27 (c).

EXPOSURE DRAFT

Schedule 1 Main amendments

1

Relatives of directors and spouses

2

- (4) The following relatives of persons referred to in subsection (3) are related parties of the CCIV:

3

4

(a) parents;

5

(b) children.

6

Entities controlled by other related parties

7

- (5) An entity controlled by a related party referred to in subsection (2), (3) or (4) is a related party of the CCIV unless the entity is also controlled by the CCIV.

8

9

10

Related party in previous 6 months

11

- (6) An entity is a related party of a CCIV at a particular time if the entity was a related party of the CCIV of a kind referred to in subsection (2), (3), (4) or (5) at any time within the previous 6 months.

12

13

14

15

Entity has reasonable grounds to believe it will become related party in future

16

17

- (7) An entity is a related party of a CCIV at a particular time if the entity believes or has reasonable grounds to believe that it is likely to become a related party of the CCIV of a kind referred to in subsection (2), (3), (4) or (5) at any time in the future.

18

19

20

21

Acting in concert with related party

22

- (8) An entity is a related party of a CCIV if the entity acts in concert with a related party of the CCIV on the understanding that the related party will receive a financial benefit if the CCIV gives the entity a financial benefit.

23

24

25

72

Treasury Laws Amendment (Corporate Collective Investment Vehicle)

No. , 2018

Bill 2018

EXPOSURE DRAFT

1 **Part 8B.5—CCIV members’ rights and remedies**

2 **Division 1—Oppressive conduct of affairs**

3 **1243 Orders the Court can make**

4 Subsection 233(3) applies to a CCIV as if the reference to
5 section 136 were a reference to:

- 6 (a) if the CCIV is a retail CCIV—section 1232H; or
7 (b) if the CCIV is a wholesale CCIV—the CCIV’s constitution.

8 **Division 2—Proceedings on behalf of a CCIV by members
9 and others**

10 **1243A Applying for and granting leave**

- 11 (1) Paragraph 237(4)(a) does not apply to a CCIV.
12 (2) For the purposes of subsection 237(3), a person is a third party if
13 the company is a CCIV and the person is not a related party of the
14 CCIV.

15 Note: *Related party*, in relation to a CCIV, is defined in section 1242F.

16 **Division 3—Class rights**

17 **1243B Varying and cancelling class rights**

18 In its application to a CCIV whose constitution does not set out the
19 procedure for varying or cancelling rights attached to shares in a
20 class of shares, subsection 246B(2) is taken to require a special
21 resolution of the sub-fund of the CCIV to which the shares are
22 referable, instead of a special resolution of the CCIV.

23 Note: Paragraphs 246B(2)(c) and (d) will also require either a special
24 resolution of members of the affected class or the written consent of
25 members with at least 75% of the votes in the class.

EXPOSURE DRAFT

Schedule 1 Main amendments

1243C Certain actions taken to vary rights etc.

If:

- (a) a CCIV has a sub-fund to which only 1 class of shares is referable (the *existing shares*); and
- (b) the CCIV issues new shares that are also referable to that sub-fund; and
- (c) the rights attaching to the new shares are not the same as the rights attached to the existing shares; and
- (d) the rights attaching to the new shares are not provided for in:
 - (i) the CCIV's constitution; or
 - (ii) a notice, document or resolution that is lodged with ASIC;

the issue is taken to vary the rights attached to the existing shares.

1243D Company must lodge documents and resolutions with ASIC

Subsection 246F(3) applies to a CCIV in the same way as it applies to a public company.

Part 8B.6—Meetings

Division 1—Directors' meetings

1244 Resolutions of CCIVs (replaceable rule for CCIVs see sections 135 and 1232A)

- (1) The corporate director of a CCIV may pass a resolution by the directors of the corporate director passing a resolution that:
 - (a) expressly states that the resolution is passed on behalf of the corporate director in its capacity as corporate director; and
 - (b) if the corporate director is the corporate director of more than one CCIV—expressly states the CCIV on behalf of which the resolution is passed.
- (2) Part 2G.1 (about directors' meetings) does not apply to a CCIV.
- (3) To avoid doubt, subsection (2) does not affect:

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (a) the application of Part 2G.1 to a resolution of, or a meeting
2 of, the directors of the corporate director of a CCIV; or
3 (a) the application of Part 2G.3 (about minutes and members'
4 access to minutes) to a resolution passed under
5 subsection (1).

6 **Division 2—Meetings of members of CCIVs or sub-funds**

7 **1244A Meetings of members of CCIVs**

- 8 (1) Parts 2G.2 (about meetings of members of companies) and 2G.3
9 (about minutes and members' access to minutes) do not apply to a
10 CCIV or its members.
- 11 (2) Subject to the modifications set out in this Division, Part 2G.4
12 (about meetings of members of registered managed investment
13 schemes) applies in relation to a CCIV and its members as if:
14 (a) the CCIV were a registered scheme; and
15 (b) the members of the CCIV were the members of that scheme;
16 and
17 (c) the corporate director of the CCIV were the responsible
18 entity of that scheme; and
19 (d) the CCIV's compliance plan were the compliance plan of that
20 scheme.
- 21 (3) Any power to prescribe, for the purposes of a provision of
22 Part 2G.4, a number of members of a particular registered scheme
23 or class of scheme includes a power to prescribe, for the purposes
24 of that provision as it applies under this section, a number of
25 members of:
26 (a) a particular CCIV; or
27 (b) a particular class of CCIV.
- 28 Note: Subsections 252B(1A), 252L(1A) and 252N(2A) provide for the
29 prescribing of numbers of members.

30 **1244B Meetings of members of sub-funds**

- 31 (1) Subject to the modifications set out in this Division, Part 2G.4
32 (about meetings of members of registered managed investment
-

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 schemes) applies in relation to a sub-fund of a CCIV and the
2 members of the sub-fund as if:
- 3 (a) the sub-fund were a registered scheme; and
4 (b) the members of the sub-fund were the members of that
5 scheme; and
6 (c) the corporate director of the CCIV were the responsible
7 entity of that scheme; and
8 (d) the CCIV's compliance plan were the compliance plan of that
9 scheme.
- 10 (2) Any power to prescribe, for the purposes of a provision of
11 Part 2G.4, a number of members of a particular registered scheme
12 or class of scheme includes a power to prescribe, for the purposes
13 of that provision as it applies under this section, a number of
14 members of:
- 15 (a) a particular sub-fund of a CCIV; or
16 (b) a particular class of sub-funds of one or more CCIVs.
- 17 Note: Subsections 252B(1A), 252L(1A) and 252N(2A) provide for the
18 prescribing of numbers of members.

19 **1244C Auditors of scheme compliance plans**

- 20 In applying a provision of Part 2G.4 in relation to a wholesale
21 CCIV, or a sub-fund of a wholesale CCIV, disregard any
22 application of the provision in relation to the auditor of the scheme
23 compliance plan.
- 24 Note: Provisions that apply in relation to the auditor of the scheme
25 compliance plan are subsections 252G(1), 252H(1) and 252T(1).

26 **1244D Copy of the register of members—sub-funds**

- 27 (1) Subsection 252C(3) does not apply in relation to a CCIV or a
28 sub-fund of a CCIV.
- 29 (2) To call a meeting of the members of a CCIV, the members
30 requesting the meeting may ask the CCIV under section 173 for a
31 copy of the register of members.

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (3) To call a meeting of the members of a sub-fund of a CCIV, the
2 members requesting the meeting may ask the CCIV under
3 section 173 for a copy of so much of the register of members as
4 relates to membership of the sub-fund.
- 5 (4) Despite paragraph 173(3)(b), the CCIV must, without charge, give
6 the members requesting the meeting:
7 (a) if subsection (2) of this section applies—the copy of the
8 register; or
9 (b) if subsection (3) of this section applies—so much of the
10 register of members as relates to membership of the
11 sub-fund.
- 12 (5) An offence based on subsection (4) is an offence of strict liability.
13 Note: For strict liability, see section 6.1 of the *Criminal Code*.

14 **1244E Members' resolutions**

- 15 (1) Subsection 252L(1B) applies in relation to a CCIV as if:
16 (a) the requirement in paragraph 252L(1B)(c) that the registered
17 scheme be listed did not apply; and
18 (b) the resolution is subject to a further requirement that it must
19 not treat members of any sub-fund of the CCIV differently
20 from members of any other sub-fund of the CCIV.
- 21 (2) Subsection 252L(1B) applies in relation to one or more sub-funds
22 of a CCIV as if:
23 (a) paragraph 252L(1B)(c) did not apply; and
24 (b) the resolution is subject to a further requirement that it must
25 not affect the interests of any member of any other sub-fund
26 of the CCIV.

27 **1244F Voting at meetings of members (replaceable rule for CCIVs** 28 **see sections 135 and 1232A)**

- 29 (1) Sections 253C and 253D do not apply in relation to a CCIV or a
30 sub-fund of a CCIV.
- 31 (2) At a meeting of members of a CCIV:
-

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (a) on a show of hands, each member has 1 vote; and
2 (b) on a poll, each member has 1 vote for each share in the CCIV
3 that the member holds; and
4 (c) the chair has a casting vote, and also, if the chair is a
5 member, any vote the chair has in his or her capacity as a
6 member; and
7 (d) if a share is held jointly and more than 1 member votes in
8 respect of that share—only the vote of the member whose
9 name appears first in the register of members counts.
- 10 (3) At a meeting of members of a sub-fund of a CCIV:
11 (a) on a show of hands, each member has 1 vote; and
12 (b) on a poll, each member has 1 vote for each share in the CCIV
13 that:
14 (i) is held by the member; and
15 (ii) is referable to the sub-fund; and
16 (c) the chair has a casting vote, and also, if the chair is a
17 member, any vote the chair has in his or her capacity as a
18 member; and
19 (d) if a share that is referable to the sub-fund is held jointly and
20 more than 1 member votes in respect of that share—only the
21 vote of the member whose name appears first in the register
22 of members counts.

23 **1244G Corporate director and associates cannot vote if interested in** 24 **resolution**

25 Section 253E applies in relation to a sub-fund of a CCIV as if the
26 associates of the corporate director of the CCIV, and the CCIV's
27 associates, were also the sub-fund's associates.

28 **1244H How to work out the value of an interest**

29 Section 253F does not apply in relation to a CCIV or a sub-fund of
30 a CCIV.

1 **Part 8B.7—Shares**

2 **Division 1—Issuing and converting shares in a CCIV**

3 **1245 Shares can only be issued in respect of sub-funds**

4 (1) A CCIV can issue a share only if the rights attaching to the share,
5 so far as the rights are in respect of the assets of the CCIV, are
6 restricted to rights in respect of the assets of one (and only one)
7 sub-fund of the CCIV. This is the sub-fund to which the share is
8 *referable*.

9 (2) Subsection (1) limits paragraph 124(1)(a) and section 254A in
10 relation to a CCIV.

11 Note: Subsection (1) effectively also limits some other paragraphs of
12 subsection 124(1), such as paragraph (c) (about granting options over
13 unissued shares in a company).

14 (3) A court must not make an order under section 254E that is
15 inconsistent with subsection (1), unless the court considers that the
16 interests of justice require otherwise.

17 **1245A Power to issue redeemable shares**

18 (1) Subject to section 1245, a CCIV's power under section 124 to issue
19 shares includes the power to issue redeemable shares.

20 (2) All, some, or none of the shares in a CCIV may be redeemable
21 shares.

22 Note: Subsections (1) and (2) reflect the fact that CCIVs may be open-ended
23 investment vehicles.

24 (3) This section operates concurrently with section 254A.

25 (4) A *redeemable share*, in a CCIV, is a share (other than a preference
26 share) in a CCIV that is liable to be redeemed at the option of one
27 or more of the following:

- 28 (a) the CCIV;
29 (b) the member.

1 **Division 2—Redemption of redeemable shares**

2 **Subdivision A—Requirements for redemption of redeemable**
3 **shares**

4 **1245E General requirements for redemption of redeemable shares**

5 (1) A CCIV may redeem redeemable shares only on the terms on
6 which they are on issue. On redemption, the shares are cancelled.

7 Note 1: For the power to issue redeemable shares, see section 1245A.

8 Note 2: For the redemption of redeemable preference shares, see Part 2H.2
9 and section 1245P.

10 (2) A CCIV may only redeem redeemable shares if:

11 (a) the shares are fully paid-up; and

12 (b) each sub-fund to which the shares are referable:

13 (i) is solvent immediately before the redemption; and

14 (ii) will not be insolvent immediately after the redemption.

15 Note 1: For when a sub-fund of a CCIV is *solvent*, or *insolvent*, see
16 section 1246A.

17 Note 2: For redemptions that involve a reduction of share capital, see
18 section 1246D.

19 Note 3: For retail CCIVs, there are additional requirements in section 1245H.

20 **1245F Consequences of contravening section 1245E**

21 (1) If a CCIV redeems shares in contravention of section 1245E:

22 (a) the contravention does not affect the validity of the
23 redemption or of any contract or transaction connected with
24 it; and

25 (b) the CCIV does not commit an offence.

26 (2) Any person who is involved in a CCIV's contravention of
27 section 1245E contravenes this subsection.

28 Note 1: Subsection (2) is a civil penalty provision (see section 1317E).

29 Note 2: Section 79 defines *involved*.

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (3) A person commits an offence if the person is involved in a CCIV's
2 contravention of section 1245E and the involvement is dishonest.

3 **Subdivision B—Additional protections for retail clients**

4 **1245G Subdivision does not apply to wholesale CCIVs**

- 5 The provisions in this Subdivision do not apply in relation to
6 wholesale CCIVs.

7 **1245H Additional requirements for redemption of redeemable** 8 **shares**

- 9 (1) A CCIV may redeem shares in the CCIV only if:
10 (a) the redemption is permitted by the CCIV's constitution; and
11 (b) the redemption is in accordance with this Subdivision.

12 Note: For the general requirements for redemption of redeemable shares, see
13 section 1245E.

- 14 (2) If a CCIV redeems shares in contravention of subsection (1), the
15 contravention does not affect the validity of the redemption or of
16 any contract or transaction connected with it.

17 *Court orders*

- 18 (3) If the Court is satisfied, on application under subsection (4), that
19 the consideration for a redemption of shares by a retail CCIV is not
20 in accordance with this Subdivision, the Court may make any
21 orders the Court considers appropriate.

- 22 (4) An application to the Court for an order under subsection (3) may
23 be made by any of the following:

- 24 (a) ASIC;
25 (b) the corporate director of the CCIV;
26 (c) the depositary of the CCIV;
27 (d) a member, or group of members, of the CCIV.

1 **1245J Liquid sub-fund—consideration must be based on net asset**
2 **value**

3 A redeemable share in a CCIV must be redeemable for a price
4 based on the net asset value, at the time of the redemption, of the
5 sub-fund to which the share is referable if the sub-fund is liquid.

6 **1245K When a sub-fund is liquid**

7 (1) A sub-fund of a CCIV is liquid if liquid assets account for at least
8 80% of the value of the assets of the sub-fund.

9 *Liquid assets*

10 (2) The following are liquid assets unless it is proved that the CCIV
11 cannot reasonably expect to realise them within the period
12 specified in the constitution for satisfying redemptions while the
13 sub-fund is liquid:

- 14 (a) money in an account or on deposit with a bank;
15 (b) bank accepted bills;
16 (c) marketable securities (as defined in section 9);
17 (d) property of a kind specified in CCIV rules made for the
18 purposes of this paragraph.

19 (3) Any other property is a liquid asset if the corporate director
20 reasonably expects that the property can be realised for its market
21 value within the period specified in the constitution for satisfying
22 redemptions while the sub-fund is liquid.

23 **1245L Non-liquid sub-funds—redemption offers**

24 (1) A CCIV may offer members an opportunity to redeem shares in the
25 CCIV if:

- 26 (a) the sub-fund to which the shares are referable is not liquid;
27 and
28 (b) the offer is made to the extent that particular assets of the
29 sub-fund are available and able to be converted to money in
30 time to satisfy redemption requests that members may make
31 in response to the offer; and

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (c) no other redemption offer is open in relation to the sub-fund.
- 2 (2) The redemption offer must be in writing and be made:
- 3 (a) if the constitution specifies procedures for making the
- 4 offer—in accordance with those procedures; or
- 5 (b) otherwise—by giving a copy of the offer to all members of
- 6 the CCIV who hold shares referable to the sub-fund.
- 7 (3) The redemption offer must specify:
- 8 (a) the period during which the offer will remain open (this
- 9 period must last for at least 21 days after the offer is made);
- 10 and
- 11 (b) the assets that will be used to satisfy redemption requests;
- 12 and
- 13 (c) the amount of money that is expected to be available when
- 14 those assets are converted to money; and
- 15 (d) the method for dealing with redemption requests if the money
- 16 available is insufficient to satisfy all requests.
- 17 The method specified under paragraph (d) must comply with
- 18 section 1245M.
- 19 (4) For joint members, a copy of the redemption offer need only be
- 20 given to the joint member named first in the register of members.
- 21 (5) As soon as practicable after making the redemption offer, the
- 22 CCIV must lodge a copy of the offer with ASIC.

23 **1245M Non-liquid sub-funds—satisfying redemption requests**

- 24 (1) A CCIV that makes a redemption offer under section 1245L must
- 25 ensure that redemption requests made in response to the offer are
- 26 satisfied within 21 days after the offer closes.
- 27 (2) No request made under the redemption offer may be satisfied while
- 28 the offer is still open.
- 29 (3) If an insufficient amount of money is available from the assets
- 30 specified in the offer to satisfy all requests, the requests are to be
- 31 satisfied proportionately in accordance with the formula:

EXPOSURE DRAFT

Main amendments **Schedule 1**

$$\text{Amount of money available} \times \frac{\text{Amount shareholder requested to redeem}}{\text{Total of all amounts shareholders request to redeem}}$$

1

2 **1245N Non-liquid sub-funds—cancellation of redemption offer**

- 3 (1) A CCIV that makes a redemption offer under section 1245L:
- 4 (a) may cancel a redemption offer before it closes if the offer
- 5 contains a material error; and
- 6 (b) must cancel a redemption offer before it closes if it is in the
- 7 best interests of the members of the sub-fund as a whole to
- 8 do so.
- 9 (2) The cancellation must be made:
- 10 (a) if the constitution specifies procedures for cancelling the
- 11 redemption offer—in accordance with those procedures; or
- 12 (b) otherwise—by notice in writing to the members to whom the
- 13 redemption offer was made.
- 14 (3) As soon as practicable after the cancellation, the CCIV must lodge
- 15 written notice of the cancellation with ASIC.

16 **Division 3—Redemption of redeemable preference shares**

17 **1245P Requirements for redemption to be met by sub-fund to which**

18 **redeemable preference shares are referable**

- 19 In determining under section 254K whether a CCIV may redeem
- 20 redeemable preference shares, paragraph 254K(b) applies as if:
- 21 (a) the reference to profits were a reference to profits of the
- 22 sub-fund to which the redeemable preference shares are
- 23 referable; and
- 24 (b) the reference to a new issue of shares were a reference to a
- 25 new issue of shares referable to the sub-fund.

EXPOSURE DRAFT

Schedule 1 Main amendments

1 **Division 4—Dividends**

2 **1245Q Circumstances in which a dividend may be paid**

- 3 (1) Section 254T does not apply to a CCIV.
- 4 (2) A CCIV must not pay a dividend unless:
- 5 (a) the dividend is paid to a member of a sub-fund of the CCIV;
- 6 and
- 7 (b) the assets of the sub-fund exceed the liabilities of the
- 8 sub-fund immediately before the dividend is declared and the
- 9 excess is sufficient for the payment of the dividend; and
- 10 (c) the payment of the dividend is fair and reasonable to the
- 11 members of the sub-fund as a whole; and
- 12 (d) the payment of the dividend does not materially prejudice the
- 13 CCIV's ability to pay its creditors.
- 14 Note 1: As an example, the payment of a dividend would materially prejudice
- 15 the CCIV's ability to pay its creditors if the sub-fund would become
- 16 insolvent as a result of the payment.
- 17 Note 2: For a director's duty to prevent insolvent trading on payment of
- 18 dividends, see section 588G.
- 19 (3) Assets and liabilities are to be calculated for the purposes of this
- 20 section in accordance with accounting standards in force at the
- 21 relevant time (even if the standard does not otherwise apply to the
- 22 financial year of some or all of the companies concerned).

23 **1245R Dividend rights**

- 24 Each share in a class of shares in a CCIV has the same dividend
- 25 rights unless:
- 26 (a) the CCIV's constitution provides for the shares to have
- 27 different dividend rights; or
- 28 (b) different dividend rights are provided for by special
- 29 resolution of the sub-fund to which the shares are referable.

1 **Division 5—Notice requirements**

2 **1245S Half-yearly report to ASIC about shares in a CCIV**

3 (1) Part 2H.6 does not apply to a CCIV.

4 (2) Within 28 days after the end of each reporting period, a CCIV must
5 lodge with ASIC a notice in the prescribed form that sets out the
6 following:

7 (a) the number of shares in each class of shares, referable to a
8 sub-fund of the CCIV, at the end of the reporting period;

9 (b) the number of shares in each class of shares, referable to a
10 sub-fund of the CCIV, that were issued during the reporting
11 period;

12 (c) the amount (if any) paid, or agreed to be considered as paid,
13 at the end of the reporting period on each of the shares
14 referred to in paragraph (b);

15 (d) the amount unpaid (if any) at the end of the reporting period
16 on each of the shares referred to in paragraph (b);

17 (e) the number of shareholders of the shares referred to in each
18 of paragraphs (a) and (b);

19 (f) if any of the shares referred to in paragraph (b) were issued
20 for non-cash consideration—the prescribed particulars about
21 the issue of the shares, unless the shares were issued under a
22 written contract and a copy of the contract is lodged with the
23 notice;

24 (g) if any shares in the CCIV were redeemed during the
25 reporting period:

26 (i) each class of shares to which those shares belonged; and

27 (ii) the number of those shares in each of those classes; and

28 (iii) any amount paid by the CCIV (in cash or otherwise) on
29 the redemption of those shares.

30 Note: The CCIV must lodge information when rights attached to the shares
31 change, or when the shares are divided or converted into new classes
32 (see section 246F).

EXPOSURE DRAFT

Schedule 1 Main amendments

1 (3) If any shares referred to in paragraph (2)(b) were issued during the
2 reporting period for non-cash consideration under a contract, the
3 CCIV must:

4 (a) prepare a certificate stating that all stamp duty payable on the
5 contract under any applicable law relating to stamp duty has
6 been paid; and

7 (b) lodge the certificate with ASIC with the subsection (2)
8 notice, or at a later time permitted by the regulations or by
9 ASIC.

10 (4) An offence based on subsection (2) or (3) is an offence of strict
11 liability.

12 Note: For strict liability, see section 6.1 of the *Criminal Code*.

13 (5) In this section:

14 *reporting period* means a period of 6 months starting on 1 January
15 or 1 July.

16 (6) A notice under subsection (2) is not required to set out information
17 about the issue of shares to a person on the registration of the
18 CCIV.

19 Note: Information about shares issued on the registration of a CCIV will
20 come to ASIC under subsections 5H(2) and 117(2) and section 1231B.

21 **Part 8B.8—Transactions affecting share capital**

22 **Division 1—Reductions in share capital and share** 23 **buy-backs**

24 **1246 Purpose**

25 In its application to a CCIV, the purpose of Part 2J.1, as modified
26 by this Division, is retained but adapted to:

27 (a) allow a return of capital on redeemable shares consistent with
28 the fact that CCIVs may be open-ended investment vehicles;
29 and

30 (b) preserve the segregated application of assets of sub-funds of
31 CCIVs.

1 **Subdivision A—Reductions in share capital not otherwise**
2 **authorised by law**

3 **1246A CCIV may make reduction not otherwise authorised**

4 (1) Section 256B applies to a CCIV. However, in determining for the
5 purposes of that section whether a reduction complies with
6 subsection 256B(1):

7 (a) subsection (2) of this section applies; and

8 (b) paragraphs 256B(1)(a), (b) and (c) are to be disregarded.

9 (2) A reduction of share capital by a CCIV is taken to comply with
10 subsection 256B(1) if:

11 (a) the reduction is permitted by the CCIV's constitution; and

12 (b) the reduction is fair and reasonable to the members of each
13 affected sub-fund; and

14 (c) each sub-fund that the reduction affects:

15 (i) is solvent immediately before the reduction; and

16 (ii) will not be insolvent immediately after the reduction;
17 and

18 (d) the reduction is approved by shareholders under section 256C
19 (but see section 1246B).

20 Note: The consequences of contravening subsection 256B(1) are set out in
21 section 256D.

22 *When a sub-fund is solvent and insolvent*

23 (3) A sub-fund is *solvent* if, and only if, the CCIV is able to pay all the
24 debts that are liabilities of the sub-fund, as and when they become
25 due and payable.

26 Note: The liabilities of a sub-fund can only be met from assets of the
27 sub-fund: see subsection 1233L(2).

28 (4) A sub-fund that is not solvent is *insolvent*.

29 **1246B Modified shareholder approval for affected sub-funds**

30 (1) Section 256C applies in relation to a share capital reduction by a
31 CCIV as if:

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (a) the members whose approval is required under that section
2 were the members of the sub-fund of the CCIV that would be
3 affected by the reduction; and
4 (b) that member approval were required to be given under
5 section 256C as modified by this section.

- 6 (2) If the share capital reduction would affect 2 or more sub-funds of
7 the CCIV, then the approval of each affected sub-fund must be
8 obtained under section 256C as modified by this section.

9 *References to meetings and resolutions*

- 10 (3) Section 256C applies in relation to a CCIV as if a reference to a
11 general meeting were instead a reference to a meeting of the
12 members of the affected sub-fund.

13 *No requirement to lodge documents with ASIC for equal reductions*

- 14 (4) Subsection 256C(5) does not apply if the reduction is an equal
15 reduction.

16 *Equal and selective reductions*

- 17 (5) In determining whether to apply the rules for an equal reduction or
18 a selective reduction, the reduction is treated as an ***equal reduction***
19 if, to the extent the reduction affects the sub-fund:

- 20 (a) it relates only to ordinary shares; and
21 (b) it applies to each holder of ordinary shares in proportion to
22 the number of ordinary shares they hold; and
23 (c) the terms of the reduction are the same for each holder of
24 ordinary shares.

25 Otherwise, the reduction is treated as a ***selective reduction***.

- 26 (6) In applying subsection (5), ignore differences in the terms of the
27 reduction that are:

- 28 (a) attributable to the fact that shares have different accrued
29 dividend entitlements; or
30 (b) attributable to the fact that shares have different amounts
31 unpaid on them; or

- 1 (c) introduced solely to ensure that each shareholder is left with
2 a whole number of shares.

3 **Subdivision B—Share buy-backs**

4 **1246C The CCIV’s power to buy back its own shares**

- 5 (1) Sections 257A to 257J do not apply to a CCIV.
- 6 (2) A CCIV may buy back its own shares. However, if the buy-back
7 involves a reduction of share capital, the reduction must be
8 authorised by law.
- 9 Note: A CCIV may buy back redeemable shares or redeemable preference
10 shares, and may do so on terms other than the terms on which they
11 could be redeemed. For the redemption of redeemable shares, see
12 Division 2 of Part 8B.7. For the redemption of redeemable preference
13 shares, see sections 254J to 254L and section 1245P.
- 14 (3) If a CCIV has entered into an agreement to buy back shares, all
15 rights attaching to the shares are suspended. The suspension is
16 lifted if the agreement is terminated.
- 17 (4) A CCIV must not dispose of shares it buys back. An agreement
18 entered into in contravention of this subsection is void.
- 19 (5) Immediately after the registration of the transfer to the CCIV of the
20 shares bought back, the shares are cancelled.

21 Note: ASIC must be notified of the cancellation under section 254Y.

22 **Subdivision C—Other share capital reductions**

23 **1246D Permitted reductions—redemptions of redeemable shares**

- 24 A CCIV may reduce its share capital if:
- 25 (a) the reduction is involved in the redemption of a redeemable
26 share; and
- 27 (b) the redemption complies with section 1245E; and
- 28 (c) for a retail CCIV—the redemption also complies with
29 section 1245H.

EXPOSURE DRAFT

Schedule 1 Main amendments

1 **1246E Permitted reductions—CCIV rules**

2 A CCIV may reduce its share capital in circumstances set out in
3 CCIV rules made for the purposes of this section.

4 **1246F Cancellation of forfeited shares**

5 Section 258D applies in relation to a CCIV as if a reference to a
6 general meeting were instead a reference to a meeting of the
7 members of each sub-fund of the CCIV to which the shares are
8 referable.

9 **1246G Other share capital reductions**

- 10 (1) Any reduction in share capital involved in the redemption by a
11 CCIV of redeemable preference shares out of the proceeds of a
12 new issue of shares made for the purpose of the redemption (see
13 sections 254K and 1245P) is authorised by this section.
- 14 (2) A CCIV may reduce its share capital under a court order.
- 15 (3) Sections 258E and 258F do not apply to a CCIV.

16 **Division 2—Self-acquisition and control of shares**

17 **1246H Directly acquiring own shares**

18 In applying section 259A to a CCIV:
19 (a) the reference in paragraph 259A(a) to section 257A is taken
20 to be a reference to section 1246C; and
21 (b) paragraph 259A(d) is to be disregarded.

22 Note: The consequences of contravening section 259A are set out in
23 section 259F.

24 **1246J Taking security over own shares**

25 Subsection 259B(3) (about special exemptions for financial
26 institutions) does not apply to a CCIV.

27 Note: The consequences of contravening subsection 259B(1) are set out in
28 section 259F.

1 **Division 3—Financial assistance**

2 **1246K No financial assistance for acquiring shares in a different**
3 **sub-fund**

4 Despite Part 2J.3, a CCIV may not financially assist a person to
5 acquire shares (or units of shares) in the CCIV if the sub-fund that
6 would be affected by the giving of the financial assistance is not
7 the sub-fund to which the shares are referable.

8 **1246L Financial assistance by a CCIV for acquiring shares in the**
9 **CCIV**

- 10 (1) Section 260A applies in relation to a CCIV as if:
- 11 (a) the shareholders whose approval is required under
12 paragraph 260A(1)(b) were the shareholders of the sub-fund
13 of the CCIV that would be affected by the giving of the
14 financial assistance; and
- 15 (b) that shareholder approval were required to be given under
16 section 260B as modified by subsection (3) of this section.
- 17 (2) If the financial assistance would affect 2 or more sub-funds of the
18 CCIV, then the approval of each affected sub-fund must be
19 obtained in the way mentioned in subsection (1).

20 Note: The consequences of contravening section 260A are set out in
21 section 260D.

22 *Shareholder approval*

- 23 (3) Section 260B applies in relation to a CCIV as if a reference to a
24 general meeting, in relation to the company giving the financial
25 assistance, were instead a reference to a meeting of the members of
26 the affected sub-fund.

27 **1246M Exempted financial assistance**

- 28 In applying subsection 260C(5) in relation to a CCIV:
- 29 (a) paragraph 260C(5)(b) is taken to refer to a share buy-back in
30 accordance with subsection 1246C(2); and

EXPOSURE DRAFT

Schedule 1 Main amendments

1 (b) paragraph 260C(5)(d) is taken to refer to a discharge on
2 ordinary commercial terms of a liability of the affected
3 sub-fund.

4 **Division 4—Interaction with other duties**

5 **1246N Other duties still apply**

6 To avoid doubt, for the purposes of section 260E, the duties of a
7 director under this Act include the duties of a corporate director
8 under this Act, including under a provision of this Chapter.

9 **Part 8B.9—Debentures**

10

11 **1247 Debentures can only be issued in respect of sub-funds**

12 (1) A CCIV can issue a debenture only if the debenture holder's rights
13 in respect of assets of the CCIV are restricted to rights in respect of
14 the assets of one (and only one) sub-fund of the CCIV. This is the
15 sub-fund to which the debenture is *referable*.

16 (2) Subsection (1) limits paragraph 124(1)(b) in relation to a CCIV.

17 (3) If a security interest is included in or created by a debenture or the
18 trust deed required by section 283AB, the security interest must not
19 be over property of the CCIV that forms part of the assets of a
20 different sub-fund of the CCIV.

21 **Part 8B.10—Financial reports and audit**

22 **Division 1—Application of Chapter 2M to CCIVs and** 23 **sub-funds**

24 **1248 Application of Chapter 2M to CCIVs**

25 (1) Subject to the modifications set out in this Division, Chapter 2M
26 (about financial reports and audit) applies to a CCIV as if

1 references in that Chapter to the directors of, or a director of, the
2 company were references to the corporate director of the CCIV.

3 (2) However, Chapter 2M does not apply to the CCIV, or any sub-fund
4 of the CCIV, if the CCIV is a wholesale CCIV.

5 **Division 2—Financial records**

6 **1248A Obligation to keep financial records for sub-funds**

7 (1) Without limiting the application of subsection 286(1) to the CCIV,
8 the CCIV must also, for each sub-fund of the CCIV, keep written
9 financial records that:

10 (a) correctly record and explain the transactions relating to the
11 sub-fund and the financial position and performance of the
12 sub-fund; and

13 (b) would enable true and fair financial statements to be prepared
14 and audited for the sub-fund.

15 The obligation to keep financial records of transactions relating to
16 the sub-fund extends to transactions undertaken as trustee.

17 Note: Section 9 defines *financial records*.

18 (2) The remaining provisions of Part 2M.2 apply in relation to the
19 financial records for the sub-fund as if the sub-fund were the
20 CCIV.

21 (3) This section does not apply if the CCIV has only one sub-fund.

22 **1248B Access to financial records of CCIVs and sub-funds**

23 Without limiting the application of subsection 290(1) or
24 section 1248A, a director of the corporate director of the CCIV has
25 the same rights as a director of the CCIV:

26 (a) under subsection 290(1) to access the financial records of the
27 CCIV; and

28 (b) under that subsection, as applied by section 1248A, to access
29 the financial records of a sub-fund of the CCIV.

EXPOSURE DRAFT

Schedule 1 Main amendments

1 **Division 3—Financial reporting**

2 **Subdivision A—Annual financial reports and directors' reports**

3 **1248C Reports by CCIVs**

4 Division 1 of Part 2M.3 applies to CCIVs as if subsection 292(1)
5 required all CCIVs to prepare a financial report and a directors'
6 report for each financial year.

7 **1248D Annual financial reports for sub-funds**

8 (1) Without limiting the application of subsection 292(1) to the CCIV,
9 the CCIV must also, for each sub-fund of the CCIV, prepare a
10 financial report for the sub-fund for each financial year.

11 (2) The remaining provisions of Division 1 of Part 2M.3 apply in
12 relation to the following documents relating to the sub-fund:

13 (a) a financial report prepared under subsection (1) of this
14 section;

15 (b) the documents of which the report consists under
16 subsection 295(1);

17 as if the sub-fund were the CCIV.

18 Note: The combined effect of subsection 1248(1) and this subsection is that
19 references in the remaining provisions of Division 1 of Part 2M.3 to
20 the company are, where appropriate, to be read as also referring to the
21 sub-fund.

22 (3) Despite subsection (2) of this section, paragraph 295(4)(c) applies
23 to a directors' declaration relating to the sub-fund as if the debts
24 mentioned in that paragraph were only the debts referable to the
25 sub-fund.

26 **1248E Annual directors' reports for CCIVs**

27 (1) Subsection 300(1) applies to the CCIV as if the requirements in
28 paragraph 300(1)(c) do not apply, and as if that paragraph instead
29 requires the directors' report for a financial year for the CCIV to
30 include details of:

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (a) the name of each corporate director of the CCIV at any time
2 during or since the end of the year, and the period for which
3 each was the corporate director; and
4 (b) the name of each director of the corporate director of the
5 CCIV at any time during or since the end of the year, and the
6 period for which each was a director of the corporate
7 director.
- 8 (2) Subsection 300(11) does not apply to the CCIV.
- 9 (3) Subsection 300(13) applies to the CCIV as if:
10 (a) the CCIV were a registered scheme; and
11 (b) the corporate director of the CCIV were the responsible
12 entity for the scheme; and
13 (c) references in that subsection to interests in the scheme were
14 references to shares in the CCIV.

15 **Subdivision B—Half-year financial reports and directors’** 16 **reports**

17 **1248F Half-year financial reports for sub-funds**

- 18 (1) Section 302 applies to the CCIV as if the requirement in
19 paragraph 302(a) also requires the CCIV to prepare, for each
20 sub-fund of the CCIV, a financial report for the sub-fund for each
21 half-year.
- 22 Note: The CCIV needs to be a disclosing entity for section 302 to apply.
- 23 (2) The remaining provisions of Division 2 of Part 2M.3 apply in
24 relation to the following documents relating to the sub-fund:
25 (a) a financial report prepared under paragraph 302(a) as applied
26 by subsection (1) of this section;
27 (b) the documents of which the report consists under
28 subsection 303(1);
29 as if the sub-fund were the CCIV.
- 30 Note: The combined effect of subsection 1248(1) and this subsection is that
31 references in the remaining provisions of Division 2 of Part 2M.3 to
32 the disclosing entity are, where appropriate, to be read as also
33 referring to the sub-fund.

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (3) Despite subsection (2) of this section, paragraph 303(4)(c) applies
2 to a directors' declaration relating to the sub-fund as if the debts
3 mentioned in that paragraph were only the debts referable to the
4 sub-fund.

5 **1248G Half-year directors' reports for CCIVs**

6 Subsection 306(1) applies to the CCIV as if the requirements in
7 paragraph 306(1)(b) do not apply, and as if that paragraph instead
8 requires the directors' report for a half-year for the CCIV to
9 include details of:

- 10 (a) the name of each corporate director of the CCIV at any time
11 during or since the end of the half-year, and the period for
12 which each was the corporate director; and
13 (b) the name of each director of the corporate director of the
14 CCIV at any time during or since the end of the half-year,
15 and the period for which each was a director of the corporate
16 director.

17 **Subdivision C—Audit and auditor's report**

18 **1248H Application of Division 3 of Part 2M.3 to sub-funds**

- 19 (1) Subject to the modifications set out in this Subdivision, Division 3
20 of Part 2M.3 applies in relation to the sub-fund, and in relation to
21 the following documents relating to a sub-fund of the CCIV:
22 (a) a financial report prepared under subsection 1248D(1);
23 (b) a financial report prepared under paragraph 302(a) as applied
24 by subsection 1248F(1);
25 as if the sub-fund were the CCIV.

26 Note: The combined effect of subsection 1248(1) and this subsection is that
27 references in the remaining provisions of Division 3 of Part 2M.3 to
28 the company are, where appropriate, to be read as also referring to the
29 sub-fund.

- 30 (2) Without limiting subsection (1), that Division so applies as if:
31 (a) references in that Division to members (other than references
32 to members of an audit firm) were references to members of
33 the sub-fund; and

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (b) references in that Division to an officer included references
2 to an officer of the corporate director of the CCIV.

3 **1248J Audit**

4 Section 307 applies in relation to the sub-fund as if the
5 requirements in paragraphs 307(c) and (d) do not apply, and as if
6 those paragraphs instead require the auditor to form an opinion
7 about whether the CCIV has kept:

- 8 (a) financial records, relating to the sub-fund, sufficient to enable
9 a financial report, relating to the sub-fund, to be prepared and
10 audited; and
11 (b) other records and registers, relating to the sub-fund, as
12 required by this Act.

13 **1248K Reporting to ASIC**

14 Section 311 applies in relation to the sub-fund as if the requirement
15 in paragraph 311(4)(b) were a requirement to have regard to the
16 effect that the contravention has, or may have, on:

- 17 (a) the overall financial position of either the CCIV or the
18 sub-fund, or both; or
19 (b) the adequacy of the information available about the overall
20 financial position of either the CCIV or the sub-fund, or both.

21 **Subdivision D—Annual financial reporting to members**

22 **1248L Annual financial reporting to members of sub-funds**

23 (1) Section 314 applies to the CCIV, in relation to each sub-fund of the
24 CCIV, as if the requirement in subsection 314(1) included a
25 requirement to report to members of the sub-fund for the year by
26 providing either of the following in accordance with
27 subsection 314(1AA), (1AE) or (1AF):

- 28 (a) both of the following reports:
29 (i) the financial report relating to the sub-fund for the year;
30 (ii) the auditor's report on the financial report;

EXPOSURE DRAFT

Schedule 1 Main amendments

1 (b) a concise report relating to the sub-fund for the year that
2 complies with subsection 314(2) (other than
3 paragraph 314(2)(b)).

4 (2) Division 4 of Part 2M.3 applies in relation to a report relating to
5 the sub-fund as if references in that Division to members were
6 references to members of the sub-fund.

7 **1248M Deadline for reporting to members of CCIVs or sub-funds**

8 Section 315 applies to the CCIV, including in relation to each
9 sub-fund of the CCIV, as if the CCIV were a registered scheme.

10 **1248N Member's choices for annual financial information relating** 11 **to sub-funds**

12 Section 316 applies to each sub-fund of the CCIV as if:

13 (a) the reference in paragraph 316(1)(b) to the directors' report
14 were omitted; and

15 (b) the reference in subsection 316(3) to a directors' report were
16 omitted.

17 **1248P Consideration of reports at AGM**

18 Section 317 does not apply in relation to the CCIV.

19 **1248Q Additional reporting by CCIVs that are debenture issuers**

20 (1) If the CCIV was a borrower in relation to debentures at the end of a
21 financial year, section 318 applies to the CCIV, in relation to each
22 sub-fund of the CCIV, as if:

23 (a) the requirement in subsection 318(1) included a requirement
24 to give to the trustee for debenture holders, by the deadline
25 for the financial year set by section 315 as applied by
26 section 1248M, a copy of each of the reports mentioned in
27 paragraph 1248L(1)(a); and

28 (b) the rights of a debenture holder under paragraph 318(2)(a)
29 included the right to ask the CCIV for copies of the last
30 reports provided to members under subsection 1248L(1); and

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (c) the rights of a debenture holder under paragraph 318(2)(b)
2 included the right to ask the CCIV for copies of:
3 (i) the full financial report prepared under
4 subsection 1248D(1) for the last financial year; and
5 (ii) auditor's report relating to the sub-fund for the last
6 financial year; and
7 (d) the requirement in subsection 318(4) included a requirement
8 to give to the trustee for debenture holders a copy of the
9 half-year financial report, prepared for the sub-fund under
10 section 302 as applied by subsection 1248F(1), within 75
11 days after the end of the half-year.

12 **Subdivision E—Lodging reports with ASIC**

13 **1248R Relodgment if financial statements relating to sub-fund** 14 **amended after lodgment**

15 Section 322 applies in relation to a financial report relating to a
16 sub-fund of the CCIV as if references in that section to a member
17 were references to a member of the sub-fund.

18 **Division 4—Appointment and removal of auditors**

19 **1248S Conflict of interest situation**

- 20 (1) Subsection 324CD(2), has effect as if the following item were
21 added to the table in that subsection:
- | | | |
|---|--------|--|
| 4 | a CCIV | the corporate director or a former corporate director of the CCIV; or a current or former director of the corporate director; or a person currently or formerly involved in the management of the CCIV; or a person currently or formerly involved in the management of the corporate director. |
|---|--------|--|

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (2) Section 1248(1) does not apply for the purposes of
2 subsection 324CD(2).

3 **1248T Auditor independence—specific requirements**

4 Subdivision B of Division 3 of Part 2M.4 applies in relation to the
5 CCIV as if references in the table in subsection 324CH(1) to the
6 audited body included references to the corporate director of the
7 CCIV.

8 **1248U People who are regarded as officers of a CCIV**

9 Section 324CL applies in relation to the CCIV as if references in
10 paragraph 324CL(1)(a) or (b) or subsection 324CL(2), (3) or (4) to
11 the company included references to the corporate director of the
12 CCIV.

13 **1248V Appointment, removal and fees of auditors for CCIVs**

- 14 (1) Division 6 of Part 2M.4 (about appointment, removal and fees of
15 auditors for companies) does not apply to a CCIV.
- 16 (2) Division 7 of Part 2M.4 (about appointment, removal and fees of
17 auditors for registered schemes) applies to a CCIV as if:
18 (a) the CCIV were a registered scheme; and
19 (c) the corporate director of the CCIV were the responsible
20 entity of that scheme.

21 **Part 8B.11—Updating ASIC information about** 22 **CCIVs** 23

24 **1249 Solvency resolutions**

- 25 (1) Part 2N.3 (about solvency resolutions) does not apply in relation to
26 a CCIV.
- 27 (2) Section 348C (about ASIC requiring a solvency resolution and
28 statement) does not apply in relation to a CCIV.

1 **Part 8B.12—CCIV rules**
2

3 **1269 ASIC may make CCIV rules**

- 4 (1) ASIC may, by legislative instrument, make rules (*CCIV rules*)
5 prescribing matters:
6 (a) required or permitted by this Act to be prescribed by the
7 CCIV rules; or
8 (b) necessary or convenient to be prescribed for carrying out or
9 giving effect to this Chapter.
- 10 (2) To avoid doubt, the CCIV rules may not do the following:
11 (a) create an offence or civil penalty;
12 (b) provide powers of:
13 (i) arrest or detention; or
14 (ii) entry, search or seizure;
15 (c) impose a tax;
16 (d) set an amount to be appropriated from the Consolidated
17 Revenue Fund under an appropriation in this Act;
18 (e) directly amend the text of this Act.
- 19 (3) CCIV rules that are inconsistent with the regulations have no effect
20 to the extent of the inconsistency, but CCIV rules are taken to be
21 consistent with the regulations to the extent that CCIV rules are
22 capable of operating concurrently with the regulations.

23 **1269A Matters to which ASIC has regard when making rules**

24 In considering whether to make a CCIV rule, ASIC:

- 25 (a) must have regard to:
26 (i) the objects of this Chapter; and
27 (ii) the likely regulatory impact of the proposed rule; and
28 (b) may have regard to any other matters that ASIC considers
29 relevant.

30 Note: Matters that ASIC may have regard to under paragraph (b) may, for
31 example, include any relevant international standards and international
32 commitments.

EXPOSURE DRAFT

Schedule 1 Main amendments

1 **1269B ASIC's power to make exemption and modification orders**

2 (1) ASIC may:

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

7 (2) The exemption or declaration may:

- 8 (a) apply to all or specified provisions of this Chapter; and
9 (b) apply to all persons, specified persons, or a specified class of
10 persons; and
11 (c) relate to all securities, specified securities or a specified class
12 of securities; and
13 (d) relate to any other matter generally or as specified.

14 *Imposition of conditions on exemption*

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

17 (4) A person to whom a condition specified in an exemption applies
18 must comply with the condition.

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

21 *Exemptions and declarations relating to all or a class of persons*

22 (6) An exemption or declaration that relates to all persons or a
23 specified class of persons must be made by legislative instrument.

24 *Exemptions and declarations relating to specified persons*

25 (7) An exemption or declaration that relates to a specified person must
26 be made by notifiable instrument.

27 (8) ASIC must also give a copy of an exemption or declaration that
28 relates to a specified person to the person. ASIC must do so as
29 soon as is reasonably practicable after the exemption or declaration
30 is made.

EXPOSURE DRAFT

Main amendments **Schedule 1**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

Definitions

(9) In this section:

provisions of this Chapter include:

- (a) regulations made for the purposes of this Chapter; and
- (b) CCIV rules; and
- (c) 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.

1269C Modification by regulations

The regulations may modify the operation of this Chapter or any other provisions of this Act in relation to:

- (a) a CCIV; or
- (b) all CCIVs of a specified class; or
- (c) all CCIVs.

EXPOSURE DRAFT

Schedule 2 Other amendments

1 **Schedule 2—Other amendments**
2

3 ***Corporations Act 2001***

4 **1 Section 9 (definition of assets)**

5 Repeal the definition, substitute:

6 ***assets:***

- 7 (a) in relation to a financial services licensee—means all the
8 licensee’s assets (whether or not used in connection with the
9 licensee’s Australian financial services licence); and
10 (b) in relation to a sub-fund of a CCIV—has the meaning given
11 by section 1233J.

12 **2 Section 9**

13 Insert:

14 ***ARFN*** (short for “Australian Registered Fund Number”) is the
15 number given by ASIC to a sub-fund of a CCIV on registration of
16 the sub-fund (see subsection 1233D(3)).

17 ***CCIV:*** see ***corporate collective investment vehicle***.

18 ***CCIV rule*** means a rule made by ASIC under section 1269.

19 **3 Section 9 (definition of class)**

20 Repeal the definition, substitute:

21 ***class*** has:

- 22 (a) in relation to shares in a CCIV—a meaning affected by
23 sections 57 and 1233B; and
24 (b) in relation to shares (other than shares in a CCIV) or interests
25 in a managed investment scheme—a meaning affected by
26 section 57; and
27 (c) when used in relation to securities for the purposes of
28 Chapter 6, 6A or 6C—a meaning affected by
29 subsection 605(2).

1 **4 Section 9**

2 Insert:

3 *corporate collective investment vehicle* or *CCIV* means a company
4 that is registered as a corporate collective investment vehicle under
5 this Act.

6 *corporate director* of a CCIV has the meaning given by
7 subsection 1238E(3).

8 **5 Section 9**

9 Insert:

10 *depository*, of a CCIV, has the meaning given by
11 subsection 1234B(5).

12 **6 Section 9 (definition of *entity*)**

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

14 **7 Section 9 (definition of *extraordinary resolution*)**

15 After “registered scheme”, insert “, a CCIV or a sub-fund of a CCIV”.

16 **8 Section 9 (definition of *financial benefit*)**

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

18 **9 Section 9 (definition of *insolvent*)**

19 Repeal the definition, substitute:

20 *insolvent*:

21 (a) in relation to a person—has the meaning given by
22 subsection 95A(2); and

23 (b) in relation to a sub-fund of a CCIV—has the meaning given
24 by section 1246A.

25 **10 Section 9**

26 Insert:

27 *liabilities*, in relation to a sub-fund of a CCIV, has the meaning
28 given by section 1233P.

EXPOSURE DRAFT

Schedule 2 Other amendments

1 **11 Section 9 (after paragraph (a) of the definition of *member*)**

2 Insert:

- 3 (b) in relation to a sub-fund of a CCIV—means a person who is
4 a member under section 1233C; or

5 **12 Section 9 (definition of *public company*)**

6 After “a proprietary company”, insert “or a CCIV”.

7 **13 Section 9**

8 Insert:

9 *redeemable share*, in a CCIV, has the meaning given by
10 section 1245A.

11 **14 Section 9**

12 Insert:

13 *referable*:

- 14 (a) in relation to a sub-fund, and a share in a CCIV—has the
15 meaning given by section 1245; or
16 (b) in relation to a sub-fund, and a class of shares in a CCIV—
17 has the meaning given by section 1233B; or
18 (c) in relation to a sub-fund, and a debenture issued by a
19 CCIV—has the meaning given by section 1247.

20 **15 Section 9 (paragraph (a) of the definition of *related party*)**

21 Repeal the paragraph, substitute:

- 22 (a) when used in Chapter 2E (other than in relation to a CCIV)
23 has the meaning given by section 228; and
24 (aa) when used in Chapters 2E and 8B, in relation to a CCIV, has
25 the meaning given by section 1242F; and

26 **16 Section 9**

27 Insert:

28 *retail CCIV* has the meaning given by section 1232F.

1 **17 Section 9 (definition of *solvent*)**

2 Repeal the definition, substitute:

3 *solvent*:

4 (a) in relation to a person—has the meaning given by
5 subsection 95A(1); and

6 (b) in relation to a sub-fund of a CCIV—has the meaning given
7 by section 1246A.

8 **18 Section 9 (paragraph (b) of the definition of *special***
9 ***resolution*)**

10 After “registered scheme”, insert “, a CCIV or a sub-fund of a CCIV”.

11 **19 Section 9**

12 Insert:

13 *sub-fund*, of a CCIV, has the meaning given by
14 subsection 1233(1).

15 **20 Section 9**

16 Insert:

17 *wholesale CCIV* has the meaning given by section 1232F.

18 **21 After subsection 57(1)**

19 Insert:

20 Note: A CCIV must have a minimum of 1 class of shares per sub-fund: see
21 section 1233B.

22 **22 Section 64A**

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

24 **23 At the end of subsection 117(2)**

25 Add:

26 Note 5: For modifications applicable to applications to register a CCIV, see
27 section 1231B.

EXPOSURE DRAFT

Schedule 2 Other amendments

1 **24 Subsection 118(1) (note)**

2 Omit “Note”, substitute “Note 1”.

3 **25 At the end of subsection 118(1)**

4 Add:

5 Note 2: For modifications applicable to applications to register a CCIV, see
6 section 1231D.

7 **26 At the end of subsection 120(1)**

8 Add:

9 Note: For the equivalent provision for a CCIV, see section 1231E.

10 **27 Subsection 124(1) (note)**

11 Omit “Note”, substitute “Note 1”.

12 **28 At the end of subsection 124(1)**

13 Add:

14 Note 2: A CCIV’s power to issue shares is affected by sections 1245 and
15 1245A.

16 **29 Subsection 127(1) (note)**

17 Omit “Note”, substitute “Note 1”.

18 **30 At the end of subsection 127(1)**

19 Add:

20 Note 2: Because a CCIV has no natural person directors and no company
21 secretary, it executes documents through the directors and company
22 secretary of its corporate director: see section 1232.

23 **31 Subsection 127(2) (note)**

24 Omit “Note”, substitute “Note 1”.

25 **32 At the end of subsection 127(2)**

26 Add:

EXPOSURE DRAFT

Other amendments **Schedule 2**

1 Note 2: Because a CCIV has no natural person directors and no company
2 secretary, it executes documents through the directors and company
3 secretary of its corporate director: see section 1232.

4 **33 At the end of subsection 135(1)**

5 Add:

6 Note 3: There are modifications for CCIVs: see section 1232A.

7 **34 Subsection 136(1) (note)**

8 Omit “Note”, substitute “Note 1”.

9 **35 At the end of subsection 136(1)**

10 Add:

11 Note 2: Section 1232B applies instead of this section in relation to the
12 constitution of a CCIV.

13 **36 At the end of subsection 169(3)**

14 Add:

15 Note 3: A CCIV’s register must also show the sub-fund to which each share is
16 referable: see section 1236.

17 **37 Division 2 of Part 2D.1 (after the heading)**

18 Insert:

19 Note: This Division applies in relation to CCIVs in a modified form: see
20 sections 1237G to 1237H.

21 **38 Subsection 198D(1) (note)**

22 Omit “Note”, substitute “Note 1”.

23 **39 At the end of subsection 198D(1)**

24 Add:

25 Note 2: If the company is a CCIV, section 1237K applies instead of this
26 section.

27 **40 Subsection 198F(1) (note)**

28 Omit “Note”, substitute “Note 1”.

EXPOSURE DRAFT

Schedule 2 Other amendments

1 **41 At the end of subsection 198F(1)**

2 Add:

3 Note 2: This section also applies to a director of a corporate director of a
4 CCIV: see section 1237L.

5 **42 At the end of subsection 199A(1)**

6 Add:

7 Note: This section has an extended operation in relation to officers and
8 auditors of the corporate director of a CCIV: see section 1238.

9 **43 At the end of subsection 199B(1)**

10 Add:

11 Note: This section has an extended operation in relation to CCIVs: see
12 section 1238A.

13 **44 At the end of subsection 201B(1)**

14 Add:

15 Note: The director of a CCIV must be a public company: see section 1238E.

16 **45 After subsection 246B(1)**

17 Insert:

18 Note: A CCIV must have a minimum of 1 class of shares per sub-fund: see
19 section 1233B.

20 **46 At the end of subsection 246F(3)**

21 Add:

22 Note: This subsection also applies to a CCIV: see section 1243D.

23 **47 After Part 2G.1 (heading)**

24 Insert:

25 Note: Section 1244 applies instead of this Part in relation to a CCIV.

26 **48 After Part 2G.2 (heading)**

27 Insert:

28 Note: This Part does not apply to a CCIV. Instead, section 1244A applies a
29 modified version of Part 2G.4.

1 **49 After Part 2G.3 (heading)**

2 Insert:

3 Note: This Part does not apply to a CCIV. Instead, section 1244A applies a
4 modified version of Part 2G.4.

5 **50 After Part 2G.4 (heading)**

6 Insert:

7 Note: Section 1244A applies a modified version of this Part in relation to a
8 CCIV. Section 1244B applies a modified version of this Part in
9 relation to a sub-fund of a CCIV.

10 **51 At the end of subsection 254B(1)**

11 Add:

12 Note 5: A CCIV may issue a share only if the share is referable to a sub-fund
13 of the CCIV (see section 1245).

14 **52 At the end of subsection 254T(1)**

15 Add:

16 Note 3: Section 1245Q applies to a CCIV, instead of this section.

17 **53 At the end of subsection 254W(1)**

18 Add:

19 Note: Section 1245R is about dividend rights in a CCIV.

20 **54 At the end of section 256A**

21 Add:

22 Note: A modified version of this Chapter applies to CCIVs: see Part 8B.8

23 **55 At the end of subsection 256B(1)**

24 Add:

25 Note 6: This section is modified for a CCIV: see section 1246A.

26 **56 Section 256E (at the end of the table)**

27 Add:

8 Part 8B.8 CCIVs

EXPOSURE DRAFT

Schedule 2 Other amendments

This Part deals with reductions of share capital by a CCIV.

1 **57 At the end of section 257A**

2 Add:

3 Note 3: This section does not apply to a CCIV: see section 1246C.

4 **58 Subsection 259B(1) (note)**

5 Omit “Note”, substitute “Note 1”.

6 **59 At the end of subsection 259B(1)**

7 Add:

8 Note 2: Subsection (3) does not apply to a CCIV: see section 1246J.

9 **60 Subsection 260A(1) (note)**

10 Omit “Note”, substitute “Note 1”.

11 **61 At the end of subsection 260A(1)**

12 Add:

13 Note 2: If the company is a CCIV, paragraph (b) instead requires the approval
14 of the shareholders of the affected sub-funds of the CCIV: see
15 section 1246L.

16 **62 At the end of section 285**

17 Add:

18 Note: Section 1248 applies a modified version of this Chapter to retail
19 CCIVs.

20 **63 Subsection 286(1) (note)**

21 Repeal the note, substitute:

22 Note 1: Section 9 defines *financial records*.

23 Note 2: Section 1248A extends this section to keeping financial records for
24 sub-funds of CCIVs, and applies this Division accordingly.

25 **64 At the end of subsection 290(1)**

26 Add:

EXPOSURE DRAFT

Other amendments **Schedule 2**

1 Note: Section 1248B extends this section to the directors of the corporate
2 director of a CCIV.

3 **65 Division 1 of Part 2M.3 (after the heading)**

4 Insert:

5 Note: This Division applies to all CCIVs: see section 1248C.

6 **66 Subsection 292(1) (note)**

7 Repeal the note, substitute:

8 Note 1: This Chapter only applies to disclosing entities incorporated or formed
9 in Australia (see subsection 285(2)).

10 Note 2: Section 1248D extends this section to preparing annual financial
11 reports for sub-funds of CCIVs, and applies this Division accordingly.

12 **67 At the end of subsection 295(5)**

13 Add:

14 Note: Section 1244 deals with directors' resolutions for CCIVs.

15 **68 At the end of subsection 298(2)**

16 Add:

17 Note: Section 1244 deals with directors' resolutions for CCIVs.

18 **69 At the end of subsection 300(1)**

19 Add:

20 Note: Section 1248E replaces the requirements of paragraph (1)(c) for
21 CCIVs.

22 **70 At the end of subsection 300(11)**

23 Add:

24 Note: This subsection does not apply to CCIVs: see section 1248E.

25 **71 At the end of subsection 300(12)**

26 Add:

27 Note: This subsection applies to CCIVs in a modified form: see
28 section 1248E.

EXPOSURE DRAFT

Schedule 2 Other amendments

1 **72 At the end of subsection 300(13)**

2 Add:

3 Note: This subsection applies to CCIVs in a modified form: see
4 section 1248E.

5 **73 Section 302 (after note 3)**

6 Insert:

7 Note 4: Section 1248F extends this section to preparing half-year financial
8 reports for sub-funds of CCIVs, and applies this Division accordingly.

9 **74 At the end of subsection 303(5)**

10 Add:

11 Note: Section 1244 deals with directors' resolutions for CCIVs.

12 **75 At the end of subsection 306(1)**

13 Add:

14 Note: Section 1248G replaces the requirements of paragraph (1)(b) for
15 CCIVs.

16 **76 At the end of subsection 306(3)**

17 Add:

18 Note: Section 1244 deals with directors' resolutions for CCIVs.

19 **77 Division 3 of Part 2M.3 (after the heading)**

20 Insert:

21 Note: This Division applies to sub-funds of CCIVs in a modified form: see
22 section 1248H.

23 **78 At the end of section 307**

24 Add:

25 Note: This section applies to sub-funds of CCIVs in a modified form: see
26 section 1248J.

27 **79 At the end of subsection 311(4)**

28 Add:

EXPOSURE DRAFT

Other amendments **Schedule 2**

1 Note: This subsection applies to sub-funds of CCIVs in a modified form: see
2 section 1248K.

3 **80 Division 4 of Part 2M.3 (after the heading)**

4 Insert:

5 Note: This Division applies to reports relating to sub-funds of CCIVs in a
6 modified form: see section 1248L.

7 **81 At the end of subsection 314(1)**

8 Add:

9 Note: This subsection applies to sub-funds of CCIVs in a modified form: see
10 section 1248L.

11 **82 At the end of subsection 315(3)**

12 Add:

13 Note: Section 1248M applies this subsection to CCIVs (and their sub-funds).

14 **83 At the end of subsection 316(1)**

15 Add:

16 Note: This section applies to sub-funds of CCIVs in a modified form: see
17 section 1248N.

18 **84 Subsection 317(1) (after note 3)**

19 Insert:

20 Note: This section does not apply to CCIVs: see section 1248P.

21 **85 At the end of subsection 318(1)**

22 Add:

23 Note: This section applies to sub-funds of CCIVs in a modified form: see
24 section 1248Q.

25 **86 At the end of subsection 322(1)**

26 Add:

27 Note: This section applies to sub-funds of CCIVs in a modified form: see
28 section 1248R.

EXPOSURE DRAFT

Schedule 2 Other amendments

1 **87 At the end of subsection 324CD(2)**

2 Add:

3 Note: This subsection applies in relation to CCIVs in a modified form: see
4 section 1248S.

5 **88 Subdivision B of Division 3 of Part 2M.4 (after the heading)**

6 Insert:

7 Note: This Division applies in relation to CCIVs in a modified form: see
8 section 1248T.

9 **89 At the end of subsection 324CL(1)**

10 Add:

11 Note: This section applies in relation to CCIVs in a modified form: see
12 section 1248U.

13 **90 Division 6 of Part 2M.4 (after the heading)**

14 Insert:

15 Note: This Division does not apply in relation to a CCIV. Instead,
16 section 1248V applies a modified version of Division 7.

17 **91 Division 7 of Part 2M.4 (after the heading)**

18 Insert:

19 Note: Section 1248V applies a modified version of this Part in relation to a
20 CCIV.

21 **92 Part 2N.3 (after the heading)**

22 Insert:

23 Note: This Part does not apply to CCIVs: see subsection 1249(1).

24 **93 After subsection 348C(1)**

25 Insert:

26 Note: This section does not apply to CCIVs: see subsection 1249(2).

1 **Schedule 3—Transitional provisions**
2

3 *Corporations Act 2001*

4 **1 In the appropriate position in Chapter 10**

5 Insert:

6 **Part 10.35—Transitional provisions relating to the**
7 **Treasury Laws Amendment (Corporate**
8 **Collective Investment Vehicle) Act 2018**
9

10 **1647 First reporting period for notice requirements**

11 The first reporting period for the purposes of section 1245S (as inserted
12 by the *Treasury Laws Amendment (Corporate Collective Investment*
13 *Vehicle) Act 2018*) is the period:

- 14 (a) starting at the commencement of that section; and
15 (b) ending at the next 30 June or 31 December, whichever is the
16 earlier.

17