





# **Corporations Amendment (Crowd-sourced Funding) Act 2017**

**No. 17, 2017**

**An Act to amend the *Corporations Act 2001*, and for  
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Corporations Amendment (Crowd-sourced Funding) Act 2017

No. 17, 2017

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## An Act to amend the *Corporations Act 2001*, and for related purposes

[Assented to 28 March 2017]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Corporations Amendment (Crowd-sourced Funding) Act 2017*.

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 March 2017
2. Schedules 1 and 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 3	The day after this Act receives the Royal Assent.	29 March 2017

Note: This table relates only to the provisions of this Act as originally enacted.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.

- (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.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Main amendments**

### **Part 1—Amendment of the Corporations Act 2001**

#### *Corporations Act 2001*

##### **1 Section 9**

Insert:

***application facility***, in relation to a CSF offer, has the meaning given by subsection 738ZA(3).

***closed***, in relation to a CSF offer, has the meaning given by subsection 738N(3).

***communication facility***, in relation to a CSF offer, has the meaning given by subsection 738ZA(5).

***complete***, in relation to a CSF offer, has the meaning given by subsection 738N(7).

***CSF*** is short for crowd-sourced funding.

Note: Crowd-sourced funding is dealt with in Part 6D.3A.

***CSF intermediary*** has the meaning given by section 738C.

***CSF offer*** has the meaning given by section 738B.

***CSF offer document***, in relation to a CSF offer, has the meaning given by subsection 738J(1).

***defective***, in relation to a CSF offer document, has the meaning given by subsection 738U(1).

***eligible CSF company*** has the meaning given by section 738H.

***general CSF risk warning*** has the meaning given by subsection 738ZA(2).

***hosting arrangement***, in relation to a CSF offer, has the meaning given by subsection 738L(2).

*made*, in relation to a CSF offer, has the meaning given by subsection 738N(1).

## 2 Section 9 (after paragraph (ma) of the definition of *managed investment scheme*)

Insert:

(mb) the provision of a crowd-funding service (as defined in section 766F);

## 3 Section 9

Insert:

*maximum subscription amount*, in relation to a CSF offer, has the meaning given by subsection 738L(7).

*minimum subscription amount*, in relation to a CSF offer, has the meaning given by subsection 738L(8).

*offer platform*, in relation to a CSF offer, has the meaning given by subsection 738L(6).

*open*, in relation to a CSF offer, has the meaning given by subsection 738N(2).

*platform* includes a website or other electronic facility.

## 4 Section 9 (definition of *related party*)

Repeal the definition, substitute:

*related party*:

- (a) when used in Chapter 2E, has the meaning given by section 228; and
- (b) when used in Part 6D.3A, has the meaning given by subsection 738G(3).

## 5 Section 9

Insert:

*responsible intermediary*, in relation to a CSF offer, has the meaning given by subsection 738L(5).

*retail client*, when used in Part 6D.3A, has the meaning given by section 738D.

*suspended*, in relation to a CSF offer, has the meaning given by subsection 738N(6).

## **6 Section 611 (table items 12 and 13)**

Repeal the items, substitute:

### *Initial public offering (IPO) fundraising*

- 12 An acquisition that results from an issue, under a disclosure document or a CSF offer document, of securities in the company in which the acquisition is made if:
- (a) the issue is to a promoter; and
  - (b) the document disclosed the effect that the acquisition would have on the promoter's voting power in the company; and
  - (c) no other disclosure document or CSF offer document has previously been issued or published by or on behalf of the company.

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### *Underwriting of fundraising*

- 13 An acquisition that results from an issue, under a disclosure document or a CSF offer document, of securities in the company in which the acquisition is made if:
- (a) the issue is to a person as underwriter to the issue or sub-underwriter; and
  - (b) the document disclosed the effect that the acquisition would have on the person's voting power in the company.

## **7 Part 6D.2 (heading)**

Repeal the heading, substitute:

## **Part 6D.2—Disclosure to investors about securities (other than for CSF offers)**

## **8 Before section 704**

Insert:

### **703B Part generally does not apply in relation to CSF offers**

Part 6D.3A (Crowd-sourced funding) contains a separate regime for the making of CSF offers. The provisions in this Part do not apply in relation to CSF offers, except as expressly provided in this Part or in Part 6D.3A.

Note: The fact that a company makes a CSF offer of securities does not prevent the company from also making an offer of securities of the same class in reliance on a provision of section 708 (see section 738E).

### **9 Section 704**

After “an offer of securities”, insert “, other than a CSF offer,”.

### **10 Section 706**

After “An offer of securities for issue”, insert “, other than a CSF offer,”.

### **11 Part 6D.3 (heading)**

Repeal the heading, substitute:

## **Part 6D.3—Prohibitions, liabilities and remedies (other than for CSF offers)**

### **12 Before Division 1 of Part 6D.3**

Insert:

### **Division 1A—Introduction**

### **725A Part generally does not apply in relation to CSF offers**

Part 6D.3A (Crowd-sourced funding) contains a separate regime for the making of CSF offers. The provisions in this Part do not apply in relation to CSF offers, except as expressly provided in this Part or in Part 6D.3A.

Note: The fact that a company makes a CSF offer of securities does not prevent the company from also making an offer of securities of the same class in reliance on a provision of section 708 (see section 738E).

### **13 Subparagraph 734(7)(c)(i)**

Before “an annual report”, insert “a CSF offer document that has been published on a platform of a CSF intermediary,”.

### **14 After Part 6D.3**

Insert:

## **Part 6D.3A—Crowd-sourced funding**

### **Division 1—Introduction**

#### **738A Object**

The object of this Part is to provide a disclosure regime that can be used for certain offers of securities for issue in small unlisted companies, instead of complying with the requirements of Part 6D.2.

#### **738B Meaning of *CSF offer***

A *CSF offer* is an offer that is:

- (a) eligible to be made under this Part (see Division 2); and
- (b) expressed to be made under this Part.

#### **738C Meaning of *CSF intermediary***

A *CSF intermediary* is a financial services licensee whose licence expressly authorises the licensee to provide a crowd funding service.

Note 1: Section 766F defines when a person provides a *crowd-funding service*.

Note 2: Because a CSF intermediary is a financial services licensee, the intermediary must (in addition to complying with this Part) comply with the provisions of Chapter 7 that apply to financial services licensees.

#### **738D Meaning of *retail client* in relation to a CSF offer**

If a person (not being the company making the CSF offer) is a retail client for the purposes of Chapter 7 in relation to the

provision of a crowd-funding service that relates to a particular CSF offer, then, for the purposes of this Part, the person is a *retail client* in relation to that CSF offer.

**738E Offer of the securities may also be made in reliance on section 708**

The fact that a company makes a CSF offer of securities does not prevent the company from also making an offer, in reliance on a provision of section 708, of securities that are of the same class as those offered under the CSF offer.

**738F Application of provisions of Chapter 7 relating to how obligations etc. apply to different kinds of persons**

- (1) Subject to subsections (2) and (3), the following provisions of Chapter 7 (the *applied provisions*) have effect for the purposes of this Part as if references in the provisions to that Chapter were instead references to this Part:
  - (a) section 761F (meaning of person—generally includes a partnership);
  - (b) section 761FA (meaning of person—generally includes multiple trustees);
  - (c) section 769B (people are generally responsible for the conduct of agents, employees etc.).
- (2) Subsection (1) does not apply to provisions of the sections mentioned in subsection (1) that are expressed to relate only to specific provisions of Chapter 7 or to specific Parts, Divisions or Subdivisions of Chapter 7.
- (3) The regulations may provide that one or more of the applied provisions have effect for specified purposes subject to modifications specified in the regulations. The regulations have effect accordingly.

## **Division 2—Offers that are eligible to be made under this Part**

### **738G Offers that are eligible to be made under this Part**

- (1) An offer is eligible to be made under this Part if:
  - (a) it is an offer by a company for the issue of securities of the company; and
  - (b) the company is an eligible CSF company (see section 738H) at the time when the offer is made; and
  - (c) the securities are of a class specified in the regulations; and
  - (d) the offer complies with the issuer cap (see subsection (2) of this section); and
  - (e) the funds sought to be raised by the offer are not intended by the company to be used, to any extent, by the company or a related party of the company, to invest in securities or interests in other entities or schemes; and
  - (f) any other requirements specified in the regulations are satisfied in relation to the securities or the offer.

Note: If an offer of securities is expressed to be made under this Part but is not eligible to be made under this Part, ASIC may make a stop order under section 739.

#### *The issuer cap*

- (2) For the purpose of this section, an offer of securities for issue in a company (the **new offer**) complies with the issuer cap if the total of:
  - (a) the maximum amount sought to be raised by the new offer; and
  - (b) all amounts raised, in the period of 12 months before the time when the new offer is made, pursuant to CSF offers that were made in that period by the company or by related parties of the company; and
  - (c) all amounts raised, in the period of 12 months before the time when the new offer is made, pursuant to offers made by the company, or by related parties of the company, that did not need disclosure because of subsection 708(1) or (10);does not exceed:
  - (d) \$5 million; or

- (e) if the regulations prescribe a different amount—the prescribed amount.

Note: Amounts raised by CSF offers that were made before the start of the 12 month period referred to in paragraph (2)(b) are not to be counted. For when a CSF offer is *made*, see subsection 738N(1).

*Meaning of related party*

- (3) For the purposes of this Part, each of the following is a *related party* of a company:
- (a) a related body corporate of the company;
  - (b) an entity controlled by:
    - (i) a person who controls the company; or
    - (ii) an associate of that person.

**738H** *Meaning of eligible CSF company*

- (1) A company is an *eligible CSF company* at a particular time (the *test time*) if all of the following conditions are satisfied in relation to the company at the test time:
- (a) the company is a public company limited by shares;
  - (b) the company's principal place of business is in Australia;
  - (c) a majority of the company's directors (not counting alternate directors) ordinarily reside in Australia;
  - (d) the company complies with the assets and turnover test (see subsection (2));
  - (e) neither the company, nor any related party of the company, is a listed corporation;
  - (f) neither the company, nor any related party of the company, has a substantial purpose of investing in securities or interests in other entities or schemes.

*The assets and turnover test*

- (2) The company complies with the assets and turnover test at the test time if:
- (a) the value of the consolidated gross assets of the company, and of all its related parties is less than:
    - (i) \$25 million; or

- (ii) if the regulations prescribe a different amount—the prescribed amount; and
- (b) the consolidated annual revenue of the company, and of all its related parties, is less than:
  - (i) \$25 million; or
  - (ii) if the regulations prescribe a different amount—the prescribed amount.

### **Division 3—Making offers under this Part**

#### **738J CSF offer document to be prepared**

- (1) A document (a *CSF offer document*) must be prepared for a CSF offer.
- (2) A CSF offer document for a CSF offer must contain the information required by the regulations. The document may also set out the CSF offer.

Note: See also subsections 738W(8) and (9) about the effect of supplementary or replacement CSF offer documents.

#### **738K Other requirements for CSF offer document**

The information in a CSF offer document must be worded and presented in a clear, concise and effective manner. The document must also comply with any other requirements prescribed by the regulations.

Note 1: If this section is contravened, ASIC may make a stop order under section 739.

Note 2: See also subsections 738W(8) and (9) about the effect of supplementary or replacement CSF offer documents.

#### **738L CSF offer document to be published on platform of a single CSF intermediary**

- (1) A CSF offer of a company's securities must be made by publishing, on a platform of a single CSF intermediary, a CSF offer document that complies with section 738J. If the CSF offer document does not set out the CSF offer, the CSF offer must be published together with the offer document.

## Schedule 1 Main amendments

### Part 1 Amendment of the Corporations Act 2001

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Note 1: Section 1309 creates offences for providing false or misleading information to CSF intermediaries.

Note 2: See also section 738Q (gatekeeper obligations of CSF intermediaries).

- (2) The arrangement (the *hosting arrangement*) between the company and the CSF intermediary for the publication of the CSF offer document must require all applications made in response to the offer, and all application money in respect of such applications, to be sent or paid to the intermediary and dealt with by the intermediary in accordance with this Part.

Note: See also section 738ZB (which deals with the responsible intermediary's obligations in relation to application money).

- (3) The company must not make the CSF offer otherwise than in accordance with subsections (1) and (2).

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

- (4) This section does not prevent the CSF offer from being advertised or publicised in a way that does not contravene subsection 738ZG(1).

- (5) The *responsible intermediary* for the CSF offer is the CSF intermediary referred to in subsection (1).

- (6) The *offer platform* for the CSF offer is the platform on which the CSF offer document is published as referred to in subsection (1).

- (7) The *maximum subscription amount* for the CSF offer is the amount specified in the CSF offer document as the maximum amount sought to be raised by the offer.

- (8) The *minimum subscription amount* for the CSF offer is the amount specified in the CSF offer document as the minimum amount sought to be raised by the offer.

#### **738M Consents needed for publication of CSF offer document**

- (1) The company making a CSF offer must not arrange for a CSF offer document to be published on a platform of a CSF intermediary unless each of the following persons has consented in writing to the publication of that CSF offer document on a platform of that CSF intermediary:

- (a) each director of the company;
- (b) each person named in the CSF offer document as a proposed director of the company.

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

- (2) If the CSF offer document for a CSF offer includes a statement by a person, or a statement said in the document to be based on a statement by a person, the company making the offer must not arrange for the document to be published on a platform of a CSF intermediary unless:
- (a) the person has consented in writing to the statement being included in the document in the form and context in which it is included; and
  - (b) the document states that the person has given this consent; and
  - (c) the person has not withdrawn this consent before the company arranges for the document to be published on a platform of that CSF intermediary.

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

- (3) A company that makes a CSF offer must keep a consent required by subsection (1) or (2) for 7 years after the consent was given.

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

- (4) An offence based on subsection (1), (2) or (3) is an offence of strict liability.

### **738N When a CSF offer is *made, open, closed, suspended and complete***

#### *When a CSF offer is **made***

- (1) A CSF offer is **made** at the time when a CSF offer document for the offer is first published on a platform of the responsible intermediary.

*When a CSF offer is open*

- (2) A CSF offer is **open** during the period starting at the time when the offer is made and ending at the time when the offer is closed, but not including any part of that period while the offer is suspended.

*When a CSF offer is closed*

- (3) Subject to subsections (4) and (5), the responsible intermediary for a CSF offer may close the offer at any time by giving notice on the offer platform that the offer is closed. If the intermediary does so, the offer is **closed** from the time when notice is so given on the offer platform.

Note: See also section 738P (which deals with removal of a CSF offer document from the offer platform) and section 738ZB (which deals with the responsible intermediary's obligations in relation to application money).

- (4) The responsible intermediary for a CSF offer must close the offer as soon as practicable after the first of the following occurs:
- (a) the period of 3 months starting from when the offer was made ends;
  - (b) if the CSF offer document specifies a period during which the offer is to be open, or a date after which the offer is no longer to be open—that period ends or that date occurs;
  - (c) the responsible intermediary considers that the offer is fully subscribed to the maximum subscription amount for the offer;
  - (d) the company making the offer notifies the responsible intermediary under section 738S that the company wants the offer withdrawn;
  - (e) section 738Q prohibits the continued publication of the CSF offer document on the offer platform.

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

Note 2: See also subsection 738X(2), which requires the responsible intermediary to either close or suspend the CSF offer if the intermediary becomes aware that the CSF offer document is defective.

- (5) The hosting arrangement for a CSF offer may impose limits on the responsible intermediary's power to close the offer otherwise than in circumstances when the intermediary:

- (a) is required by subsection (4) to close the offer; or
- (b) is required by subsection 738X(2) to either close or suspend the offer because the CSF offer document is defective.

*When a CSF offer is **suspended***

- (6) A CSF offer is **suspended** during the period of any suspension of the offer under section 738X (responsible intermediary's obligations on becoming aware that CSF offer document is defective).

*When a CSF offer is **complete***

- (7) A CSF offer is **complete** if:
  - (a) the offer is closed because of paragraph (4)(a), (b) or (c); and
  - (b) all periods within which people could withdraw applications made pursuant to the offer have ended; and
  - (c) the applications that have been received by the responsible intermediary and that have not been withdrawn or rejected represent at least the minimum subscription amount for the offer.

Note: For when applications can be withdrawn, see section 738T.

**738P CSF offer document to be removed from offer platform if offer closes in certain circumstances**

- (1) If a CSF offer is closed otherwise than because of paragraph 738N(4)(a), (b) or (c), the responsible intermediary must remove the CSF offer document from the offer platform.

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

Note 2: For removal of the CSF offer document for a CSF offer if the offer is suspended, see subsection 738X(2).

- (2) If a CSF offer is closed because of paragraph 738N(4)(a), (b) or (c), the responsible intermediary may (but is not required to) remove the CSF offer document from the offer platform.

### 738Q Gatekeeper obligations of CSF intermediaries

*CSF intermediary to conduct checks before publishing CSF offer document*

- (1) A CSF intermediary must not publish a CSF offer document (or a document that purports to be a CSF offer document) on a platform of the intermediary unless the intermediary has, before starting to publish the document, conducted the checks prescribed by the regulations to a reasonable standard.

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

- (2) For the purposes of this section, the regulations may prescribe what constitutes a reasonable standard in relation to all or any of the checks.
- (3) An offence based on subsection (1) is an offence of strict liability.
- (4) For the purpose of a provision of this Part that refers to a matter that a CSF intermediary knows, has reason to believe or is satisfied or not satisfied, if:
- (a) a CSF intermediary contravenes subsection (1) by not conducting a check (or by not conducting a check to a reasonable standard); and
  - (b) had the intermediary conducted the check (or conducted it to a reasonable standard), the intermediary would have known or had reason to believe the matter, or would have been satisfied or not satisfied in relation to the matter;
- then the matter is taken to be one that the intermediary knows or has reason to believe, or in relation to which the intermediary is satisfied or not satisfied (as the case requires).

*CSF intermediary not to publish CSF offer document if not satisfied of certain matters etc.*

- (5) A CSF intermediary must not publish a CSF offer document (or a document that purports to be a CSF offer document) on a platform of the intermediary, or continue to publish such a document while the offer is open, if:

- (a) the intermediary is not satisfied as to the identity of the company making the offer, or of any of the directors or other officers of the company; or
- (b) the intermediary has reason to believe that any of the directors or other officers of the company are not of good fame or character; or
- (c) subject to subsection (6)—the intermediary has reason to believe that the company, or a director or other officer of the company, has, in relation to the offer, knowingly engaged in conduct that is misleading or deceptive or likely to mislead or deceive; or
- (d) the intermediary has reason to believe that the offer to which the document relates is not eligible to be made under this Part.

Note 1: The CSF intermediary must close the offer (see paragraph 738N(4)(e)).

Note 2: The question whether a CSF intermediary is not satisfied in relation to a matter, or has reason to believe a matter, is affected by subsection (4) of this section.

Note 3: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (6) In the case of a CSF offer document that has already started to be published on a platform of a CSF intermediary, paragraph (5)(c) does not apply in relation to there being a misleading or deceptive statement, an omission, or a new circumstance, that renders the document defective (as defined in section 738U).

Note: The consequences of a CSF offer document being defective are dealt with in Division 4. If the responsible intermediary becomes aware that the document is defective, they must remove the document from the offer platform and either close or suspend the offer (see subsection 738X(2)).

*CSF intermediary to have adequate arrangements to ensure compliance with gatekeeper obligations*

- (7) A CSF intermediary must have in place adequate arrangements, recorded in writing, to ensure compliance with its obligations under subsections (1) and (5).

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

**738R Company and related parties not to have more than one CSF offer open at any one time**

- (1) A company must not make a CSF offer at a time when another CSF offer previously made by the company, or by a related party of the company, is open or suspended.

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

- (2) A company must not make a CSF offer at the same time as the company, or a related party of the company, makes another CSF offer.

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

**738S Company may notify responsible intermediary that it wants CSF offer withdrawn**

The company making a CSF offer may, at any time before the offer is complete, notify the responsible intermediary that the company wants the offer withdrawn.

Note: The responsible intermediary must close the offer (see subsection 738N(4)).

**738T Withdrawal of applications made pursuant to CSF offer**

A person who has made an application pursuant to a CSF offer may withdraw the application:

- (a) as permitted by section 738X (responsible intermediary's obligations on becoming aware that CSF offer document is defective) or 738ZD (cooling-off rights for retail clients); or  
(b) in any other circumstances allowed by the responsible intermediary, and in accordance with any requirements of the intermediary for withdrawal in those circumstances.

Note: If an applicant withdraws their application, the responsible intermediary must return the application money (see section 738ZB).

## **Division 4—Defective etc. CSF offer documents**

### **738U When a CSF offer document is *defective***

- (1) A CSF offer document is *defective* if:
  - (a) the CSF offer document contains a misleading or deceptive statement; or
  - (b) there is an omission from the CSF offer document of information required by section 738J; or
  - (c) since the document was first published on a platform of a CSF intermediary, a new circumstance has arisen that would have been required by section 738J to be included in the document if it had arisen before the document was so published.
- (2) For the purposes of this section, a person is taken to make a misleading statement about a future matter (including the doing of, or refusing to do, an act) if the person does not have reasonable grounds for making the statement. This subsection does not limit the meaning of a reference to a misleading statement.

### **738V Obligation to notify company making offer, and responsible intermediary, if CSF offer document is defective**

- (1) If, while a CSF offer is open, the company making the offer becomes aware that the CSF offer document is defective, the company must notify the responsible intermediary as soon as practicable.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (2) If, while a CSF offer is open, the responsible intermediary becomes aware that the CSF offer document is defective, the intermediary must notify the company making the offer as soon as practicable.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (3) If, while a CSF offer is open, any other person referred to in the table in subsection 738Y(5) becomes aware that the CSF offer document is defective, the person must notify the company making the offer, and the responsible intermediary, as soon as practicable.

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

- (4) An offence based on subsection (1), (2) or (3) is an offence of strict liability.

**738W Company may provide replacement or supplementary CSF document in certain circumstances**

*When company may provide a replacement or supplementary CSF offer document*

- (1) The company making a CSF offer may provide the responsible intermediary with a supplementary CSF offer document, or a replacement CSF offer document, to supplement or replace the CSF offer document (the ***affected offer document***) as provided for in the following paragraphs:
- (a) if the company becomes aware that the affected offer document is defective, the company may provide a supplementary CSF offer document, or a replacement CSF offer document, that corrects the defect;
  - (b) if the company becomes aware that the affected offer document does not comply with section 738K (other requirements for CSF offer documents), the company may provide a supplementary CSF offer document, or a replacement CSF offer document, that corrects the non-compliance;
  - (c) the company may provide a supplementary CSF offer document, or a replacement CSF offer document, in any other circumstances permitted by the regulations, and in accordance with any conditions prescribed by those regulations.

Note 1: Defective CSF offer documents give rise to liabilities under section 738Y.

Note 2: Regulations for the purpose of paragraph (c) may (for example) limit the kinds of changes that may be incorporated into a supplementary or replacement CSF offer document provided under that paragraph.

Note 3: This section applies to a CSF offer document that has already been previously supplemented or replaced.

- (2) A supplementary CSF offer document or a replacement CSF offer document:
-

- (a) must not be provided otherwise than as permitted by subsection (1); and
- (b) if it is provided as permitted by paragraph (1)(a) or (b)—must not incorporate any changes made otherwise than:
  - (i) for the purpose of correcting a defect or non-compliance as mentioned in that paragraph; or
  - (ii) as permitted by the regulations; and
- (c) if it is provided as permitted by paragraph (1)(c)—must comply with any conditions imposed by regulations made for the purpose of that paragraph.

*Form of supplementary or replacement CSF offer document*

- (3) At the beginning of a supplementary CSF document, there must be:
  - (a) a statement that it is a supplementary CSF offer document; and
  - (b) an identification of the affected offer document it supplements; and
  - (c) a statement that it is to be read together with the affected offer document.
- (4) At the beginning of a replacement CSF offer document, there must be:
  - (a) a statement that it is a replacement CSF offer document; and
  - (b) an identification of the affected offer document it replaces.

*Responsible intermediary may publish supplementary or replacement CSF offer document on offer platform*

- (5) If, in accordance with this section, the company making a CSF offer provides the responsible intermediary with a supplementary CSF offer document or a replacement CSF offer document, then subject to subsection (6), the intermediary may:
  - (a) in the case of a supplementary CSF offer document—publish the supplementary CSF offer document on the offer platform (together with the affected offer document); or
  - (b) in the case of a replacement CSF offer document—substitute the replacement offer document for the affected offer document on the offer platform.

Note: The responsible intermediary is not required to publish the supplementary or replacement CSF offer document. See also the

provisions of section 738X relating to suspension or closure of CSF offers.

- (6) The following provisions apply in relation to a supplementary CSF offer document or a replacement CSF offer document in the same way as they apply to any CSF offer document:
- (a) section 738M (consents needed for publication of CSF offer document);
  - (b) section 738Q (gatekeeper obligations of CSF intermediaries).
- (7) However, subsection 738M(2) does not apply so as to require a fresh consent to be obtained in relation to a statement if the supplementary CSF offer document, or replacement CSF offer document, does not make any material change to either the form of the statement as it was included in the affected offer document, or the context in which it was included.

*Consequences of publication of a supplementary CSF offer document*

- (8) If a supplementary CSF offer document for a CSF offer is published on the offer platform, then, for the purposes of the application of this Chapter to events that occur after that document is first published on the platform, the CSF offer document is taken to be the affected offer document together with the supplementary CSF offer document.

*Consequences of publication of a replacement CSF offer document*

- (9) If a replacement CSF offer document for a CSF offer is published on the offer platform, then, for the purposes of the application of this Chapter to events that occur after that document is first published on the platform, the CSF offer document is taken to be the replacement CSF offer document.

**738X Responsible intermediary's obligations on becoming aware that CSF offer document is defective**

*When this section applies*

- (1) This section applies if the responsible intermediary for a CSF offer becomes aware, while the offer is open, that the CSF offer document is defective.

Note: See also section 738V, which imposes notification obligations in relation to defective CSF offer documents.

*Responsible intermediary must suspend or close the CSF offer*

- (2) The responsible intermediary must, as soon as practicable:
- (a) remove the CSF offer document from the offer platform; and
  - (b) either:
    - (i) close the offer; or
    - (ii) suspend the offer by giving notice on the offer platform that the offer is suspended.

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

Note 2: See also section 738N, which deals with closure of CSF offers.

- (3) If the responsible intermediary suspends the offer, the notice required by subparagraph (2)(b)(ii) must continue to appear on the offer platform until the suspension ends (see subsection (6)) or the offer closes.

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

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

*Consequences of publication of supplementary or replacement CSF offer document*

- (5) Subsections (6) and (7) apply if:
- (a) for the purpose of correcting the defect in the CSF offer document, the company making the CSF offer provides the responsible intermediary with a supplementary CSF offer document or a replacement CSF offer document; and
  - (b) the responsible intermediary publishes the supplementary CSF offer document or replacement CSF offer document on the offer platform.
- (6) If the CSF offer has been suspended, the suspension of the CSF offer ends when the supplementary CSF offer document or replacement CSF offer document is first published on the offer platform.

- (7) The responsible intermediary must, as soon as practicable after the supplementary CSF offer document or replacement CSF offer document is first published on the offer platform, give each person who has already applied pursuant to the CSF offer a written notice, accompanied by that document, advising the person that they may, within one month after the date of the notice, withdraw their application and be repaid.

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

Note 2: If the suspension does not end under this subsection, the responsible intermediary must return the application money when the offer closes (see section 738ZB).

- (8) An offence based on subsection (7) is an offence of strict liability.
- (9) A person who is given a notice under subsection (7) may, within one month after the date of the notice, withdraw their application. The withdrawal must be by notice in writing to the responsible intermediary.

Note: If an applicant withdraws their application, the responsible intermediary must return the application money (see section 738ZB).

### **738Y Other liabilities relating to defective CSF offer documents**

#### *Obligations giving rise to liabilities*

- (1) A company must not offer securities under a CSF offer document if the document is defective.

Note 1: A defect may be corrected by a supplementary CSF offer document or a replacement CSF offer document (see section 738W).

Note 2: If this subsection is contravened, ASIC may make a stop order under section 739.

- (2) For the purposes of subsection (1), a company is taken to offer securities under a CSF offer document at all times, before the offer is closed, when the offer document is published on a platform of a CSF intermediary.
- (3) A CSF intermediary must not publish (or continue to publish) a CSF offer document on a platform of the intermediary if:
- (a) the document is defective; and
  - (b) the intermediary knows that the document is defective.

Note 1: A defect may be corrected by a supplementary CSF offer document or a replacement CSF offer document (see section 738W).

Note 2: The question whether a CSF intermediary knows that a document is defective is affected by subsection 738Q(4).

*Criminal liability*

- (4) A person commits an offence if:
- (a) the person contravenes subsection (1) or (3) in relation to a defective CSF offer document; and
  - (b) the statement, omission or new circumstance because of which the document is defective is materially adverse from the point of view of an investor.

Note: For exceptions to liability, see section 738Z.

*Right to recover loss or damage*

- (5) A person who suffers loss or damage because an offer of securities under a CSF offer document contravenes subsection (1) may recover the amount of the loss or damage from a person referred to in the following table if the loss or damage is one that the table makes the person liable for. This is so even if the person did not commit, and was not involved in, the contravention.

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**People liable on disclosure document**

Item	These people ...	are liable for loss or damage caused by ...
1	the company making the CSF offer	any contravention of subsection (1) in relation to the CSF offer document
2	each director of the company making the CSF offer	any contravention of subsection (1) in relation to the CSF offer document
3	a person named in the CSF offer document with their consent as a proposed director of the company	any contravention of subsection (1) in relation to the CSF offer document
4	an underwriter (but not a sub-underwriter) to the issue named in the CSF offer document with their consent	any contravention of subsection (1) in relation to the CSF offer document
5	a person named in the CSF	the inclusion of the statement in the

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**Schedule 1** Main amendments  
**Part 1** Amendment of the Corporations Act 2001

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**People liable on disclosure document**

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<b>Item</b>	<b>These people ...</b>	<b>are liable for loss or damage caused by ...</b>
	offer document with their consent as having made a statement: (a) that is included in the CSF offer document; or (b) on which a statement made in the CSF offer document is based	CSF offer document
6	a person who contravenes, or is involved in the contravention of, subsection (1)	that contravention
7	a CSF intermediary that publishes the CSF offer document on a platform of the intermediary	a contravention of subsection (1) in relation to the CSF offer document, but only if paragraph (3)(b) is satisfied

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Note: For exceptions to liability, see section 738Z.

- (6) An action under subsection (5) may be begun at any time within 6 years after the day the cause of action arose.

**738Z Exceptions to liability under section 738Y**

*Lack of knowledge*

- (1) A person:
- (a) does not commit an offence against subsection 738Y(4) in respect of a contravention of subsection 738Y(1) that relates to a CSF offer document; and
  - (b) is not liable under subsection 738Y(5) in respect of a contravention of subsection 738Y(1) that relates to a CSF offer document;
- if the person did not know that the CSF offer document was defective.

Note: In a prosecution for an offence, a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (2) Subsection (1) does not apply to a liability of a CSF intermediary that is covered by item 7 of the table in subsection 738Y(5).

*Reasonable reliance on information given by someone else—  
statements and omissions*

- (3) A person does not commit an offence against subsection 738Y(4) in respect of a contravention of subsection 738Y(1), and is not liable under subsection 738Y(5) in respect of a contravention of subsection 738Y(1), because of a misleading or deceptive statement in, or an omission from, a CSF offer document if the person placed reasonable reliance on information given to them by:
- (a) if the person is a body—someone other than a director, employee or agent of the body; or
  - (b) if the person is an individual—someone other than an employee or agent of the individual.

Note: In a prosecution for an offence, a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (3) does not apply to a liability of a CSF intermediary that is covered by item 7 of the table in subsection 738Y(5).
- (5) For the purposes of subsection (3), a person is not the agent of a body or individual merely because they perform a particular professional or advisory function for the body or individual.

*Withdrawal of consent—statements and omissions*

- (6) A person who is named in a CSF offer document as:
- (a) being a proposed director or underwriter; or
  - (b) making a statement included in the document; or
  - (c) making a statement on the basis of which a statement is included in the document;

does not commit an offence against subsection 738Y(1), and is not liable under subsection 738Y(5) in respect of a contravention of subsection 738Y(1), because of a misleading or deceptive statement in, or an omission from, a CSF offer document if the person publicly withdrew their consent to being named in the document in that way.

Note: In a prosecution for an offence, a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

## Division 5—Other obligations of CSF intermediaries

### 738ZA General obligations of CSF intermediaries relating to their platforms etc.

#### *The general CSF risk warning*

- (1) The responsible intermediary for a CSF offer must ensure that the general CSF risk warning appears prominently on the offer platform at all times while the offer is open or suspended.

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

- (2) The **general CSF risk warning** is a statement in the terms specified in the regulations.

#### *Providing a facility for the making of applications*

- (3) The responsible intermediary for a CSF offer must ensure that:
  - (a) at all times while the offer is open, a facility (the **application facility**) is provided for the making of applications pursuant to the CSF offer; and
  - (b) a retail client cannot make an application pursuant to the CSF offer by means of the application facility unless the person completes an acknowledgement that complies with the requirements of the regulations; and
  - (c) a person cannot make an application pursuant to the CSF offer by means of the application facility while the offer is suspended or after it has closed.

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

- (4) The responsible intermediary for a CSF offer must reject any application for the issue of securities pursuant to the offer if the application is made otherwise than by means of the application facility.

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

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*Providing a communication facility*

- (5) The responsible intermediary for a CSF offer must, at all times while the offer is open or suspended, provide a facility (the **communication facility**) that can be used for the following purposes:
- (a) for people who access the CSF offer document through the offer platform:
    - (i) to make posts relating to the offer; and
    - (ii) to see posts relating to the offer made by others; and
    - (iii) to ask the company making the offer, or the intermediary, questions relating to the offer;
  - (b) for the company or the intermediary to make posts responding to questions and posts.

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

Note 2: A statement made in good faith on the communication facility for a CSF offer does not contravene subsection 738ZG(1) (restrictions on advertising and publicity) (see subsection 738ZG(8)).

- (6) If a person who makes a post using the communication facility is an officer, employee or agent of:
- (a) the company making the CSF offer, or a related party of the company; or
  - (b) the responsible intermediary, or an associate of the intermediary;
- the person must clearly disclose that fact in the post that they make.

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

- (7) The regulations may make provision in relation to the operation, management or use of the communication facility.

Note: For example, regulations may prohibit, or require, the removal of material from the communication facility.

*Cooling-off rights*

- (8) The responsible intermediary for a CSF offer must ensure that the following appear prominently on the offer platform at all times while the offer is open or suspended:

- (a) a statement drawing attention to the rights of persons under section 738ZD to withdraw applications;
- (b) a statement specifying a method by which a person may exercise a right under that section to withdraw an application.

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

*Disclosure of fees and interests*

- (9) The responsible intermediary for a CSF offer must ensure that the following appear prominently on the offer platform at all times while the offer is open or suspended:
  - (a) the fees the intermediary charges the company making the offer;
  - (b) a disclosure of any direct or indirect pecuniary interest that the intermediary, or an associate of the intermediary, has or expects to acquire in the company or a related party of the company.

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

**738ZB Responsible intermediary's obligations relating to application money**

*Usual obligations of financial services licensees apply subject to this section*

- (1) Subdivision A of Division 2 of Part 7.8, and the other relevant provisions in Part 7.8, apply in relation to money (**application money**) that is received by the responsible intermediary for a CSF offer in respect of applications made pursuant to the offer, subject to the following provisions of this section.

*Obligation to pay application money to company if offer is complete and securities have been issued*

- (2) If the CSF offer is complete and the company making the offer has issued securities pursuant to the offer, the responsible intermediary must, as soon as practicable, pay to the company the application money it received for the issue of those securities, less any amount that the intermediary is entitled to retain under the hosting arrangement.

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

*Obligation to repay application money to applicants in certain circumstances*

- (3) If:
- (a) the CSF offer is closed otherwise than because of paragraph 738N(4)(a), (b) or (c); or
  - (b) the CSF offer is closed because of paragraph 738N(4)(a), (b) or (c) and the following conditions are met:
    - (i) all periods within which people could withdraw applications made pursuant to the offer have ended;
    - (ii) the applications that have been received by the intermediary and that have not been withdrawn or rejected do not represent at least the minimum subscription amount for the offer;

the responsible intermediary must, as soon as practicable, return to the applicants who made applications that have not been withdrawn or rejected all application money received in respect of those applications.

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

Note 2: For when applications can be withdrawn, see section 738T.

- (4) If:
- (a) a person who has made an application pursuant to the CSF offer withdraws that application; or
  - (b) an application made by a person pursuant to the CSF offer is rejected, or is unsuccessful, for any other reason;

the responsible intermediary must, as soon as practicable, return to the applicant the application money received in respect of the application.

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

Note 2: For when applications can be withdrawn, see section 738T.

- (5) An offence based on subsection (2), (3) or (4) is an offence of strict liability.

## Division 6—Additional protections for retail clients

### 738ZC Caps on investment by retail clients pursuant to CSF offers

- (1) The responsible intermediary for a CSF offer must reject an application made by a person pursuant to the offer if:
  - (a) the person is a retail client in relation to the offer; and
  - (b) having regard only to CSF offers for which the intermediary is the responsible intermediary, the application would result in the total amount paid or payable by the person in respect of applications made by the person, in any period of 12 months, pursuant to CSF offers made by the same company, exceeding:
    - (i) \$10,000; or
    - (ii) if the regulations prescribe a different amount—the prescribed amount.

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

- (2) If 2 or more persons (the *joint applicants*) make a joint application for the issue of securities pursuant to a CSF offer, then, unless the regulations provide otherwise, this section applies in relation to the joint application as if each of the joint applicants had instead made a separate application for a number of securities worked out by dividing the number of securities applied for in the joint application by the number of joint applicants.

### 738ZD Cooling-off rights for retail clients

- (1) If a person who is a retail client in relation to a CSF offer makes an application pursuant to the offer, the person may withdraw the application within 5 business days after the application is made.

Note: If an applicant withdraws their application, the responsible intermediary must return the application money (see section 738ZB).
- (2) A withdrawal of an application pursuant to subsection (1) can only be made by a method specified on the offer platform as required by paragraph 738ZA(8)(b).

**738ZE Company making CSF offer or CSF intermediary etc. must not financially assist retail client to acquire securities**

- (1) This section applies to the following persons in relation to a CSF offer made by a company or that a company intends to make:
- (a) the company;
  - (b) a related party of the company;
  - (c) a CSF intermediary that is or intends to be the responsible intermediary in relation to the CSF offer;
  - (d) an associate of such a CSF intermediary.
- (2) A person to whom this section applies must not:
- (a) financially assist a person who is a retail client in relation to the CSF offer to acquire securities pursuant to the offer; or
  - (b) arrange financial assistance for such a person to acquire securities pursuant to the CSF offer.
- Note 1: This subsection applies to financial assistance provided by the company even if that assistance does not contravene section 260A.
- Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (3) Without limiting subsection (2), the prohibition on financial assistance:
- (a) applies whether the financial assistance is provided or arranged before or after the acquisition of securities pursuant to the CSF offer; and
  - (b) extends to the provision of financial assistance in the form of a dividend.
- (4) In this section, *financially assist* and *financial assistance* have the same meanings as they have in section 260A.

**Division 7—Other matters**

**738ZF Offering securities of a company that does not exist**

A person must not make an offer that:

- (a) is expressed to be made under this Part; and
- (b) relates to a company that has not been formed or does not exist.

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

## **738ZG Restrictions on advertising and publicity**

### *Prohibition*

- (1) A person must not:
- (a) advertise a CSF offer or an intended CSF offer; or
  - (b) publish a statement that:
    - (i) directly or indirectly refers to a CSF offer or an intended CSF offer; or
    - (ii) is reasonably likely to induce people to apply for securities pursuant to a CSF offer or an intended CSF offer.

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

- (2) None of the following constitutes advertising a CSF offer, or publishing a statement, as mentioned in subsection (1):
- (a) the publication of a CSF offer or a CSF offer document (or both), or any other information relating to a CSF offer, on a platform of the responsible intermediary;
  - (b) an advertisement or publication that does not refer to any particular CSF offer or intended CSF offer, and that does either or both of the following:
    - (i) identifies a person as being a CSF intermediary;
    - (ii) provides general material about the services provided by a CSF intermediary.

Paragraph (a) does not apply to statements made on the communication facility for a CSF offer.

Note: Subsection (8) deals with statements made on the communication facility for a CSF offer. For the meaning of *communication facility*, see subsection 738ZA(5).

- (3) In deciding for the purposes of subsection (1) whether a statement:
- (a) indirectly refers to a CSF offer, or intended CSF offer, of securities; or
  - (b) is reasonably likely to induce people to apply for securities pursuant to a CSF offer or an intended CSF offer;
- have regard to whether the statement:

- (c) forms part of the normal advertising of a body's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; and
  - (d) communicates information that materially deals with the affairs of the body; and
  - (e) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a CSF offer document.
- (4) Subsection (1) does not apply if any of subsections (6) to (9) provide that the advertisement or publication does not contravene subsection (1).

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

- (5) An offence based on subsection (1) is an offence of strict liability.

*Exception for publicising CSF offer or intended CSF offer*

- (6) An advertisement or publication that refers to a CSF offer or an intended CSF offer does not contravene subsection (1) if the advertisement or publication states that a person should, in deciding whether to make an application pursuant to the offer, consider the CSF offer document for the offer and the general CSF risk warning (whether or not the advertisement or publication also contains other material).

Note: If an advertisement or publication of a kind referred to in this subsection is defective (as defined in subsection 739(6)), ASIC may make a stop order under section 739.

*Exception for publishers*

- (7) A person does not contravene subsection (1) by publishing an advertisement or statement if the person:
- (a) publishes it in the ordinary course of a media business; and
  - (b) did not know, and had no reason to suspect, that its publication would amount to a contravention of subsection (1).

*Exception for statements made on communication facility for CSF offer*

- (8) A statement made in good faith on the communication facility for a CSF offer does not contravene subsection (1).

*Other general exceptions*

- (9) An advertisement or publication does not contravene subsection (1) in relation to a CSF offer, or an intended CSF offer, if it:
- (a) consists solely of a notice or report of a general meeting of the company making, or intending to make, the offer; or
  - (b) consists solely of a report about the company making, or intending to make, the CSF offer that is published by the company and:
    - (i) does not contain information that materially affects affairs of the company, other than information previously made available in a CSF offer document that has been published on a platform of a CSF intermediary, a disclosure document that has been lodged, an annual report or a report referred to in paragraph (a); and
    - (ii) does not refer (whether directly or indirectly) to the CSF offer or intended CSF offer; or
  - (c) is a news report or is genuine comment, in the media, relating to:
    - (i) a CSF offer document for the CSF offer that has been published on a platform of a CSF intermediary, or information contained in such a document; or
    - (ii) a notice or report covered by paragraph (a) or (b); or
  - (d) is a report about securities of the company (or proposed company) making, or intending to make, the CSF offer that is published by someone who is not:
    - (i) the company; or
    - (ii) acting at the instigation of, or by arrangement with, the company; or
    - (iii) a director of the company; or
    - (iv) a CSF intermediary that is or will be the responsible intermediary for the offer; or
    - (v) any other person who has an interest in the success of the issue of the securities.
-

Paragraphs (c) and (d) do not apply if anyone gives consideration or another benefit for publishing the report.

*Meaning of media*

- (10) For the purposes of this section, the *media* consists of:
- (a) newspapers and magazines; and
  - (b) radio and television broadcasting services; and
  - (c) electronic services (including services provided through the internet) that:
    - (i) are operated on a commercial basis; and
    - (ii) are similar to newspapers, magazines or radio or television broadcasts.

**738ZH Liabilities under other laws not affected**

This Part does not affect any liability that a person has under any other law.

**738ZI Companies eligible for limited governance requirements**

A company is covered under this section at a particular time if:

- (a) the company:
  - (i) was registered as a public company limited by shares under Part 2A.2; or
  - (ii) was converted from a proprietary company to a public company limited by shares under Part 2B.7; and
- (b) the application made in relation to the company's registration or conversion stated that:
  - (i) the company will be covered under this section on registration or when the company's registration is altered to reflect its conversion; and
  - (ii) the company intends to make a CSF offer after its registration or conversion; and
- (c) the company is an eligible CSF company at that time; and
- (d) the time is within 5 years after the company's registration as, or conversion to, a public company limited by shares; and
- (e) if the time is at or after the end of a financial year that ends later than 12 months after the company's registration as, or

- conversion to, a public company limited by shares—the company has completed a CSF offer at that time; and
- (f) the company has been covered under this section at all times since its registration as, or conversion to, a public company limited by shares; and
  - (g) as at that time, the company has not made any offers of securities for issue or sale that need disclosure to investors under Part 6D.2.

**738ZJ Regulations relating to how CSF intermediaries are to deal with applications**

The regulations may make provision relating to how CSF intermediaries are to deal with applications made pursuant to CSF offers, including (but not limited to) the following:

- (a) the order in which applications are to be dealt with;
- (b) circumstances in which applications must or may be rejected;
- (c) when applications are to be counted towards the maximum subscription amount, or the minimum subscription amount, in relation to a CSF offer.

**15 At the end of subsection 739(1)**

Add:

- ; or (d) an offer of securities under a CSF offer document, or the publication of a CSF offer document on a platform of a CSF intermediary, contravenes subsection 738Y(1) (which relates to defective CSF offer documents); or
- (e) a CSF offer document does not comply with section 738K (other requirements for CSF offer documents); or
- (f) an advertisement or publication of a kind referred to in subsection 738ZG(6) is defective (see subsection (6) of this section); or
- (g) an offer of securities that is expressed to be made under Part 6D.3A is not eligible to be made under that Part.

**16 Paragraph 739(1A)(a)**

Omit “paragraph (1)(a) or (b)”, substitute “paragraph (1)(a), (b), (d), (e) or (g)”.

**17 Paragraph 739(1A)(b)**

After “paragraph (1)(c)”, insert “or (f)”.

**18 Subsection 739(6)**

After “subsection 734(5) or (6)”, insert “, or 738ZG(6)”.

**19 Paragraph 739(6)(c)**

Omit “if the advertisement or publication”, substitute “in the case of an advertisement or publication of a kind referred to in subsection 734(5) that”.

**20 After paragraph 740(1)(b)**

Insert:

; and (c) for the purpose of subsection 738H(2), assets or revenue of any of the bodies are taken also to be assets or revenue of each of the other bodies.

**21 After paragraph 740(2)(d)**

Insert:

; and (e) for the purpose of subsection 738H(2), assets or revenue of the body are taken also to be assets or revenue of the controller.

**22 Section 761A**

Insert:

*crowd-funding service* that a person provides has the meaning given by section 766F.

**23 Subsection 761G(8)**

After “this Chapter”, insert “or Part 6D.3A”.

**24 Section 761GA**

After “traditional trustee company service”, insert “or a crowd-funding service”.

**25 After paragraph 766A(1)(e)**

Insert:

(ea) provide a crowd-funding service (see section 766F); or

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## 26 After subsection 766C(2)

Insert:

- (2A) Despite subsections (1) and (2), providing a crowd-funding service does not constitute *dealing* in a financial product.

## 27 At the end of Division 4 of Part 7.1

Add:

### 766F Meaning of provides a crowd-funding service

#### *Meaning of provides a crowd-funding service*

- (1) A person provides a *crowd-funding service* if:
- (a) a CSF offer document for a CSF offer of securities of a company is published on a platform operated by the person; and
  - (b) applications may be made to the person for the issue, by the company, of securities pursuant to the offer.

Note: CSF offers are dealt with in Part 6D.3A (Crowd-sourced funding).

- (2) The financial service constituted by providing a *crowd-funding service* is taken to include (in addition to the matters mentioned in subsection (1)), performing all other aspects of the role of a CSF intermediary under Part 6D.3A.

#### *To whom, and when, a crowd-funding service is provided*

- (3) A person who uses the application facility for the CSF offer to make an application pursuant to the offer is a person to whom the crowd-funding service is provided. The time at which the crowd-funding service is provided to the person is the time when the person first uses the application facility to make an application pursuant to the offer.

Note: For the meaning of *application facility*, see subsection 738ZA(3).

- (4) The company making the CSF offer is a person to whom the crowd-funding service is provided. The time at which the crowd-funding service is provided to the company is the time when the company enters into the hosting arrangement for the offer.

Note: For the meaning of *hosting arrangement*, see subsection 738L(2).

**28 Subparagraph 1018A(4)(c)(i)**

Omit “or disclosure document that has been lodged with ASIC,”,  
substitute “, a disclosure document that has been lodged with ASIC, a  
CSF offer document that has been published on a platform of a CSF  
intermediary,”.

**29 Subparagraph 1018A(4)(d)(i)**

Omit “or disclosure document that has been lodged with ASIC”,  
substitute “, a disclosure document that has been lodged with ASIC or a  
CSF offer document that has been published on a platform of a CSF  
intermediary”.

**30 After subparagraph 1041H(3)(a)(ii)**

Insert:

(ia) section 738Y (other liabilities relating to defective CSF  
offer documents); or

**31 After subparagraph 1041K(1)(a)(ii)**

Insert:

(ia) section 738Y (other liabilities relating to defective CSF  
offer documents); or

**32 After paragraph 1309(1)(c)**

Insert:

or (ca) a CSF intermediary;

**33 After paragraph 1311(1A)(da)**

Insert:

(da) Part 6D.3A;

**34 Schedule 3 (after table item 245)**

Insert:

245A	Subsection 738L(3)	300 penalty units or imprisonment for 5 years, or both.
245B	Subsection 738M(1), (2) or (3)	5 penalty units.
245C	Subsection 738N(4)	30 penalty units or imprisonment for 6 months, or both.

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**Schedule 1** Main amendments**Part 1** Amendment of the Corporations Act 2001

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245D	Subsection 738P(1)	30 penalty units or imprisonment for 6 months, or both.
245E	Subsection 738Q(1)	50 penalty units.
245F	Subsection 738Q(5)	60 penalty units or imprisonment for 1 year, or both.
245G	Subsection 738Q(7)	30 penalty units or imprisonment for 6 months, or both.
245H	Subsection 738R(1) or (2)	300 penalty units or imprisonment for 5 years, or both.
245J	Subsection 738V(1), (2) or (3)	50 penalty units.
245K	Subsection 738X(2) or (3)	50 penalty units.
245L	Subsection 738X(7)	30 penalty units.
245M	Subsection 738Y(4)	300 penalty units or imprisonment for 5 years, or both.
245N	Subsection 738ZA(1), (3), (4), (5), (6), (8) or (9)	60 penalty units or imprisonment for 1 year, or both.
245P	Subsection 738ZB(2), (3) or (4)	50 penalty units.
245Q	Subsection 738ZC(1)	30 penalty units.
245R	Subsection 738ZE(2)	300 penalty units or imprisonment for 5 years, or both.
245S	Section 738ZF	300 penalty units or imprisonment for 5 years, or both.
245T	Subsection 738ZG(1)	30 penalty units.

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## **Part 2—Amendments of other Acts**

### *Australian Securities and Investments Commission Act 2001*

#### **35 Subsection 5(1)**

Insert:

*crowd-funding service* has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

#### **36 After subsection 12BAB(1B)**

Insert:

*Meaning of provides a crowd-funding service*

- (1C) Subject to paragraph (2)(b), the provision by a person of a crowd-funding service constitutes the provision, by the person, of a financial service for the purposes of this Division.
- (1D) For the purposes of this Division, the persons to whom, and time when, a crowd-funding service is provided are as specified in subsections 766F(3) and (4) of the *Corporations Act 2001*.

#### **37 At the end of paragraphs 12DA(1A)(a) and 12DB(2)(a)**

Add:

- (iii) section 738Y of the Corporations Act (other liabilities relating to CSF offer documents); or

## **Schedule 2—Related amendments of corporate governance requirements**

### ***Corporations Act 2001***

#### **1 After paragraph 117(2)(mb)**

Insert:

- (mc) for a public company limited by shares—whether the company will be covered under section 738ZI on registration and intends to make a CSF offer after registration;

#### **2 At the end of paragraph 163(2)(d)**

Add:

- ; and (iii) a statement as to whether the company will be covered under section 738ZI when the company’s registration is altered and intends to make a CSF offer after that time.

#### **3 At the end of section 250N**

Add:

- (5) A company need not comply with subsection (1) if it is covered under section 738ZI at the end of the most recent financial year ending earlier than 18 months after its registration.
- (6) A company need not comply with subsection (2) if it is covered under section 738ZI at the end of the financial year mentioned in subsection (2).

#### **4 Subsection 298(1AA)**

After “company limited by guarantee”, insert “or a company covered under subsection (1AC)”.

#### **5 After subsection 298(1AB)**

Insert:

- (1AC) This subsection covers a company if:
  - (a) the company is covered under section 738ZI at the end of the relevant financial year; and

- (b) the company has not had its financial report for the financial year audited because subsection 301(5) exempts it from the requirement to do so under subsection 301(1).

(1AD) In the case of a company covered under subsection (1AC), the report must include:

- (a) the general information required by section 299; and
- (b) the specific information required by section 300.

## **6 At the end of section 301**

Add:

- (5) A company need not comply with subsection (1) if:
  - (a) it is covered under section 738ZI at the end of the financial year mentioned in subsection (1); and
  - (b) as at the end of that financial year, the company has raised less than \$1 million from all CSF offers that it has made at any time.

## **7 Subsection 314(1)**

Omit “(1AA) or (1AE)”, substitute “(1AA), (1AE) or (1AF)”.

## **8 After subsection 314(1AE)**

Insert:

- (1AF) If a company is covered under section 738ZI at the end of the financial year mentioned in subsection (1):
  - (a) it may provide the reports, or the concise report, for the financial year by making a copy of the reports, or the concise report, readily accessible on a website; and
  - (b) it need not comply with subsection (1AB).

## **9 After subsection 314(2)**

Insert:

- (2A) If the company is covered under section 738ZI at the end of the financial year mentioned in subsection (1), apply subsection (2) to the company in relation to that financial year with the following modifications:
  - (a) omit paragraphs (2)(c) and (d);

- (b) omit the words “and that the full financial report and auditor’s report will be sent to the member free of charge if the member asks for them” in paragraph (2)(e).

### **10 Subsection 324CA(1A) (note 2)**

Repeal the note, substitute:

- Note 2: If the audited body is a public company or a registered scheme, the audit appointment will be terminated at the end of the period of 21 days (or a longer period that has been approved by ASIC) from the day a notice under this subsection is given if the notice is not followed up by a notice under:
- (a) subsection 327B(2A) or (2C) (public company); or
  - (b) subsection 328E(3) or (5) (public company with crowd-sourced funding); or
  - (c) subsection 331AAA(2A) or (2C) (registered scheme).

### **11 Subsection 324CB(1A) (note 2)**

Repeal the note, substitute:

- Note 2: If the audited body is a public company or a registered scheme, the audit appointment will be terminated at the end of the period of 21 days (or a longer period that has been approved by ASIC) from the day a notice under this subsection is given if the notice is not followed up by a notice under:
- (a) subsection 327B(2B) (public company); or
  - (b) subsection 328E(4) (public company with crowd-sourced funding); or
  - (c) subsection 331AAA(2B) (registered scheme).

### **12 Subsection 324CC(1A) (note 2)**

Repeal the note, substitute:

- Note 2: If the audited body is a public company or a registered scheme, the audit appointment will be terminated at the end of the period of 21 days (or a longer period that has been approved by ASIC) from the day a notice under this subsection is given if the notice is not followed up by a notice under:
- (a) subsection 327B(2C) (public company); or
  - (b) subsection 328E(5) (public company with crowd-sourced funding); or
  - (c) subsection 331AAA(2C) (registered scheme).

### **13 Subsection 324CE(1A) (note)**

Repeal the note, substitute:

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- Note: If the audited body is a public company or a registered scheme, the audit appointment will be terminated at the end of the period of 21 days (or a longer period that has been approved by ASIC) from the day a notice under this subsection is given if the notice is not followed up by a notice under:
- (a) subsection 327B(2A) (public company); or
  - (b) subsection 328E(3) (public company with crowd-sourced funding); or
  - (c) subsection 331AAA(2A) (registered scheme).

#### **14 Subsection 324CF(1A) (note)**

Repeal the note, substitute:

- Note: If the audited body is a public company or a registered scheme, the audit appointment will be terminated at the end of the period of 21 days (or a longer period that has been approved by ASIC) from the day a notice under this subsection is given if the notice is not followed up by a notice under:
- (a) subsection 327B(2B) (public company); or
  - (b) subsection 328E(4) (public company with crowd-sourced funding); or
  - (c) subsection 331AAA(2B) (registered scheme).

#### **15 Subsection 324CG(1A) (note)**

Repeal the note, substitute:

- Note: If the audited body is a public company or a registered scheme, the audit appointment will be terminated at the end of the period of 21 days (or a longer period that has been approved by ASIC) from the day a notice under this subsection is given if the notice is not followed up by a notice under:
- (a) subsection 327B(2C) (public company); or
  - (b) subsection 328E(5) (public company with crowd-sourced funding); or
  - (c) subsection 331AAA(2C) (registered scheme).

#### **16 Subsection 324CG(5A) (note)**

Repeal the note, substitute:

- Note: If the audited body is a public company or a registered scheme, the audit appointment will be terminated at the end of the period of 21 days (or a longer period that has been approved by ASIC) from the day a notice under this subsection is given if the notice is not followed up by a notice under:
- (a) subsection 327B(2C) (public company); or
  - (b) subsection 328E(5) (public company with crowd-sourced funding); or

(c) subsection 331AAA(2C) (registered scheme).

**17 At the end of subsection 327A(1A)**

Add:

; or (c) the company is covered under section 738ZI just after it is registered as a company.

**18 At the end of Subdivision A of Division 6 of Part 2M.4**

Add:

**328C Public company auditor (appointment of auditor when crowd-sourced funding concession ends)**

- (1) If a public company stops being covered under section 738ZI at a time, the directors of the company must appoint an auditor of the company within 1 month after that time, unless the company at a general meeting has appointed an auditor.
- (2) An auditor appointed under subsection (1) holds office until the company's first AGM.
- (3) A director of a company must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

**328D Public company auditor (appointment of auditor when \$1 million raised using crowd-sourced funding)**

- (1) If the directors of a public company that is covered under section 738ZI become aware that the company has raised \$1 million or more from all CSF offers, the directors of the company must appoint an auditor of the company within 1 month after becoming so aware, unless the company at a general meeting has appointed an auditor.
- (2) An auditor appointed under subsection (1) holds office in accordance with section 328E.
- (3) A director of a company must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

### **328E Crowd-sourced funding—period of office**

- (1) This section applies to an auditor appointed as auditor of a company, if the company was covered under section 738ZI at the time the auditor was appointed.

Note: This section applies to an auditor appointed under section 327C, 327D, 327E, 327F or 328D if the company was covered under section 738ZI at the time the auditor was appointed.

- (2) The auditor holds office until the auditor:
- (a) dies; or
  - (b) is removed, or resigns, from office in accordance with section 329; or
  - (c) ceases to be capable of acting as auditor because of Division 2 of this Part; or
  - (d) ceases to be auditor under subsection (3), (4) or (5); unless the company's first AGM occurs first.
- (3) An individual auditor ceases to be auditor of a company under this subsection if:
- (a) on a particular day (the **start day**), the individual auditor:
    - (i) informs ASIC of a conflict of interest situation in relation to the company under subsection 324CA(1A); or
    - (ii) informs ASIC of particular circumstances in relation to the company under subsection 324CE(1A); and
  - (b) the individual auditor does not give ASIC a notice, before the notification day (see subsection (6) of this section), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the **remedial period**) of 21 days, or such longer period as ASIC approves in writing, from the start day.
- (4) An audit firm ceases to be auditor of a company under this subsection if:
- (a) on a particular day (the **start day**), ASIC is:
    - (i) informed of a conflict of interest situation in relation to the company under subsection 324CB(1A); or
    - (ii) informed of particular circumstances in relation to the company under subsection 324CF(1A); and

- (b) ASIC has not been given a notice on behalf of the audit firm, before the notification day (see subsection (6) of this section), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the *remedial period*) of 21 days, or such longer period as ASIC approves in writing, from the start day.
- (5) An audit company ceases to be auditor of a company under this subsection if:
- (a) on a particular day (the *start day*), ASIC is:
- (i) informed of a conflict of interest situation in relation to the company under subsection 324CB(1A) or 324CC(1A); or
- (ii) informed of particular circumstances in relation to the company under subsection 324CF(1A) or 324CG(1A) or (5A); and
- (b) ASIC has not been given a notice on behalf of the audit company, before the notification day (see subsection (6) of this section), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the *remedial period*) of 21 days, or such longer period as ASIC approves in writing, from the start day.
- (6) The *notification day* is:
- (a) the last day of the remedial period; or
- (b) such later day as ASIC approves in writing (whether before or after the remedial period ends).
- (7) If an audit firm ceases to be the auditor of a company under subsection (2) at a particular time, each member of the firm who:
- (a) is taken to have been appointed as an auditor of the company under subsection 324AB(1) or 324AC(4); and
- (b) is an auditor of the company immediately before that time; ceases to be an auditor of the company at that time.

### 19 Schedule 3 (after table item 116MB)

Insert:

116MC	Subsection 328C(3)	25 penalty units or imprisonment for 6 months, or both.
116MD	Subsection 328D(3)	25 penalty units or imprisonment for 6

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months, or both.

## Schedule 3—Exemption powers

### *Corporations Act 2001*

#### **1 Section 791C**

Repeal the section, substitute:

#### **791C Exemptions by Minister**

- (1) The Minister may exempt a particular financial market, or a class of financial market, from all or specified provisions of this Part. An exemption may be unconditional, or subject to conditions specified in the exemption.

Note: The provisions of this Part include regulations made for the purposes of this Part (see section 761H).

- (2) The Minister may, at any time:
- (a) vary an exemption to:
    - (i) impose conditions, or additional conditions, on the exemption; or
    - (ii) vary or revoke any of the conditions on the exemption; or
  - (b) revoke an exemption.
- (3) However, the Minister may only take action under subsection (2) after:
- (a) giving notice, and an opportunity to make submissions on the proposed action, to the operator of each financial market known by the Minister to be covered by the exemption; and
  - (b) if the exemption covers a class of financial markets—a notice has been published on ASIC’s website allowing a reasonable period within which the operator of each financial market covered by the exemption may make submissions on the proposed action, and that period has ended.
- (4) If an exemption is expressed to apply in relation to a class of financial markets (whether or not it is also expressed to apply in relation to one or more financial markets otherwise than by reference to membership of a class), then the exemption, and any

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variation or revocation of the exemption, is a legislative instrument.

- (5) If subsection (4) does not apply to an exemption, then the exemption, and any variation or revocation of the exemption, must be in writing and the Minister must publish notice of it in the Gazette.

## **2 Saving of exemptions**

If, immediately before the commencement of this item, an exemption is in force under section 791C of the *Corporations Act 2001*, that exemption has effect after that commencement as if it had been made in accordance with section 791C as substituted by item 1.

## **3 At the end of Part 7.2A**

Add:

### **798M Exemptions by Minister**

- (1) The Minister may exempt a particular financial market, or class of financial markets, from all or specified provisions of this Part. An exemption may be unconditional, or subject to conditions specified in the exemption.

Note: The provisions of this Part include regulations made for the purposes of this Part (see section 761H).

- (2) The Minister may, at any time:
- (a) vary an exemption to:
    - (i) impose conditions, or additional conditions, on the exemption; or
    - (ii) vary or revoke any of the conditions on the exemption; or
  - (b) revoke an exemption.
- (3) However, the Minister may only take action under subsection (2) after:
- (a) giving notice, and an opportunity to make submissions on the proposed action, to the operator of each financial market known by the Minister to be covered by the exemption; and
  - (b) if the exemption covers a class of financial markets—a notice has been published on ASIC’s website allowing a reasonable

period within which the operator of each financial market covered by the exemption may make submissions on the proposed action, and that period has ended.

- (4) If an exemption is expressed to apply in relation to a class of financial markets (whether or not it is also expressed to apply in relation to one or more financial markets otherwise than by reference to membership of a class), then the exemption, and any variation or revocation of the exemption, is a legislative instrument.
- (5) If subsection (4) does not apply to an exemption, then the exemption, and any variation or revocation of the exemption, must be in writing and the Minister must publish notice of it in the Gazette.

#### **4 Section 820C**

Repeal the section, substitute:

#### **820C Exemptions by Minister**

- (1) The Minister may exempt a particular clearing and settlement facility, or class of clearing and settlement facilities, from all or specified provisions of this Part. An exemption may be unconditional, or subject to conditions specified in the exemption.

Note: The provisions of this Part include regulations made for the purposes of this Part (see section 761H).

- (2) The Minister may, at any time:
  - (a) vary an exemption to:
    - (i) impose conditions, or additional conditions, on the exemption; or
    - (ii) vary or revoke any of the conditions on the exemption; or
  - (b) revoke an exemption.
- (3) However, the Minister may only take action under subsection (2) after:
  - (a) giving notice, and an opportunity to make submissions on the proposed action, to the operator of each clearing and settlement facility known by the Minister to be covered by the exemption; and

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- (b) if the exemption covers a class of clearing and settlement facilities—a notice has been published on ASIC’s website allowing a reasonable period within which the operator of each clearing and settlement facility covered by the exemption may make submissions on the proposed action, and that period has ended.
- (4) If an exemption is expressed to apply in relation to a class of clearing and settlement facilities (whether or not it is also expressed to apply in relation to one or more clearing and settlement facilities otherwise than by reference to membership of a class), then the exemption, and any variation or revocation of the exemption, is a legislative instrument.
- (5) If subsection (4) does not apply to an exemption, then the exemption, and any variation or revocation of the exemption, must be in writing and the Minister must publish notice of it in the Gazette.

## **5 Saving of exemptions**

If, immediately before the commencement of this item, an exemption is in force under section 820C of the *Corporations Act 2001*, that exemption has effect after that commencement as if it had been made in accordance with section 820C as substituted by item 4.

## **6 At the end of Division 6 of Part 7.5**

Add:

### **893B Exemptions by Minister**

- (1) The Minister may exempt a particular financial market, or class of financial markets, from all or specified provisions of this Part. An exemption may be unconditional, or subject to conditions specified in the exemption.

Note: The provisions of this Part include regulations made for the purposes of this Part (see section 761H).

- (2) The Minister may, at any time:
- (a) vary an exemption to:
- (i) impose conditions, or additional conditions, on the exemption; or

- (ii) vary or revoke any of the conditions on the exemption;  
or
  - (b) revoke an exemption.
- (3) However, the Minister may only take action under subsection (2) after:
  - (a) giving notice, and an opportunity to make submissions on the proposed action, to the operator of each financial market known by the Minister to be covered by the exemption; and
  - (b) if the exemption covers a class of financial markets—a notice has been published on ASIC’s website allowing a reasonable period within which the operator of each financial market covered by the exemption may make submissions on the proposed action, and that period has ended.
- (4) If an exemption is expressed to apply in relation to a class of financial markets (whether or not it is also expressed to apply in relation to one or more financial markets otherwise than by reference to membership of a class), then the exemption, and any variation or revocation of the exemption, is a legislative instrument.
- (5) If subsection (4) does not apply to an exemption, then the exemption, and any variation or revocation of the exemption, must be in writing and the Minister must publish notice of it in the Gazette.

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*[Minister’s second reading speech made in—  
House of Representatives on 24 November 2016  
Senate on 8 February 2017]*

(179/16)

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