



**Australian Securities  
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4 March 2021

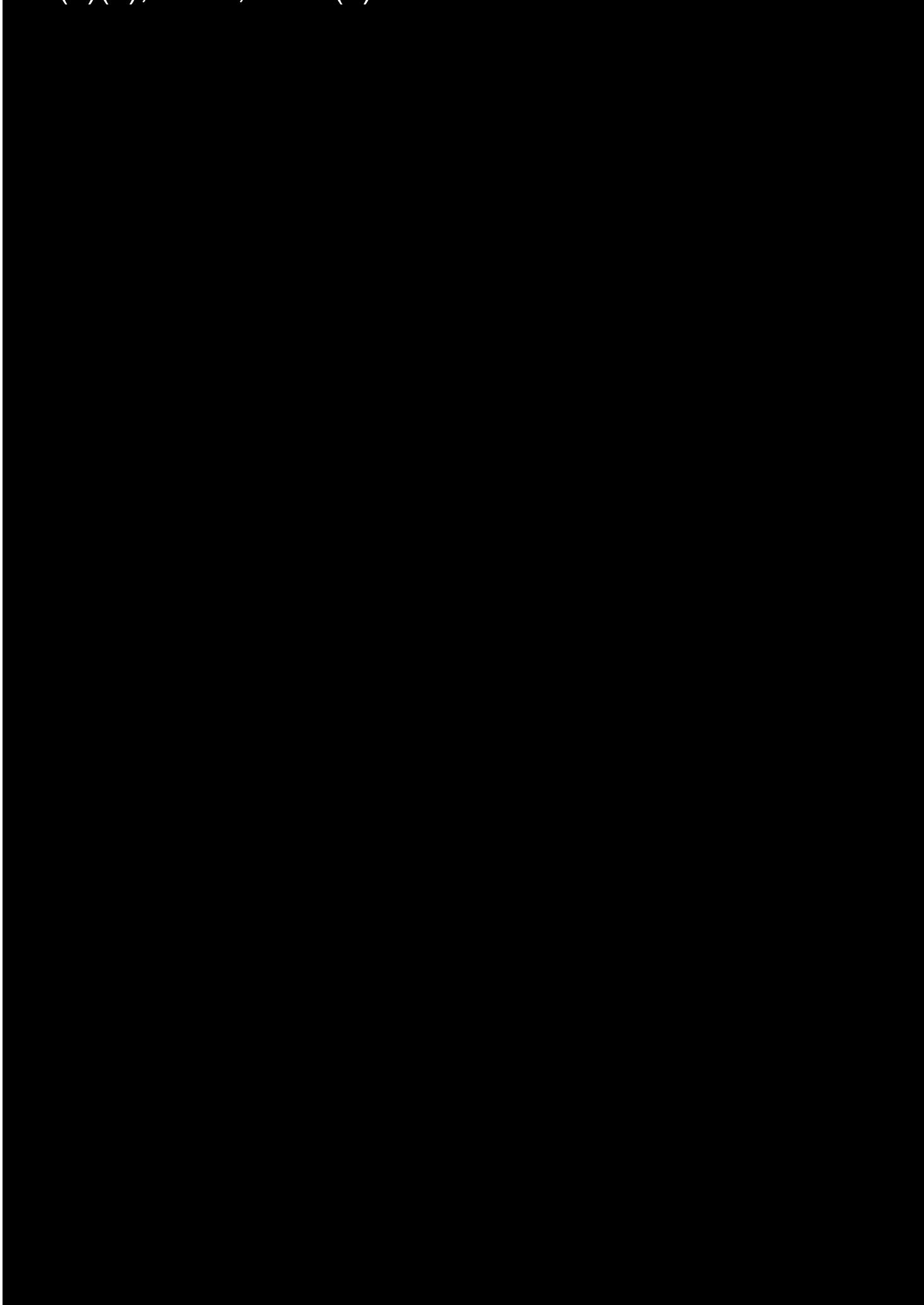
Dear Sir / Madam,

**ACT OF GRACE APPLICATIONS SUBMITTED BY s22(1)(a)(i) – SFSGLOBAL GROUP  
PTY LTD**

1. We refer to your request of 11 December 2020 for additional information concerning applications for act of grace payments lodged by the s22(1)(a)(i) in relation to s22(1)(a)(ii) and SFSGlobal Group Pty Ltd (**Applications**).
2. In summary, ASIC repeats its submissions of 7 December 2020 and submits that the Applications do not identify any special circumstances. As detailed below, ASIC's conduct in this matter was appropriate and reasonable in light of the information received by ASIC and the enquiries it made at the relevant time.

**s37(2)(b), s47C, s47E(d)**

s37(2)(b), s47C, s47E(d)



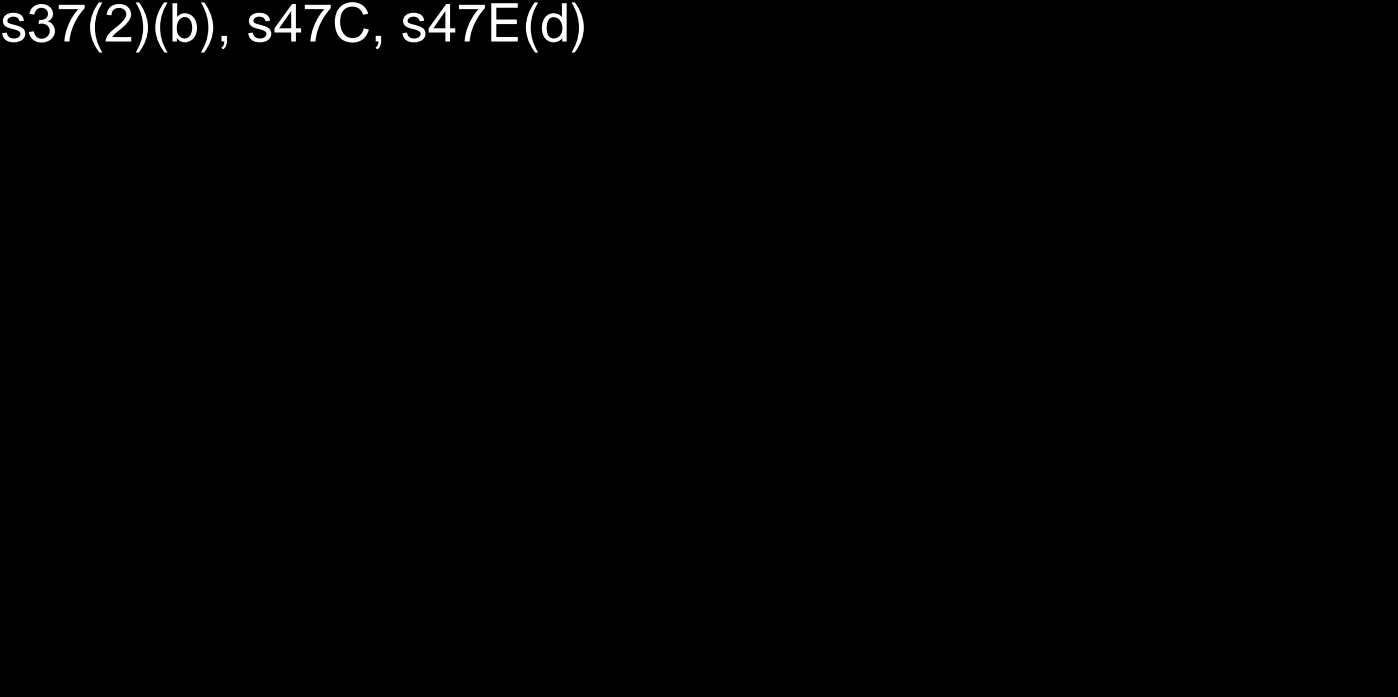
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s37(2)(b), s47C, s47E(d)



s37(2)(b), s47C, s47E(d)



33. We would be happy to discuss the contents of this submission or provide any further information you consider necessary to resolve the applications.

Yours faithfully,

**Australian Securities and Investments Commission**

s37(2)(b), s47C, s47E(d)



## **ANNEXURE A**

### **Relevant Legislation**

#### **Section 911A(1) Corporations Act 2001 (Cth)**

##### **Need for an Australian financial services licence**

- 1) Subject to this section, a person who carries on a financial services business in this jurisdiction must hold an Australian financial services licence covering the provision of the financial services.

#### **Section 911B(1) Corporations Act 2001 (Cth)**

##### **Providing financial services on behalf of a person who carries on a financial service business**

- 1) A person (the **provider**) must only provide a financial service in this jurisdiction on behalf of another person (the **principal**) who carries on a financial services business if one or more of the following paragraphs apply:
  - a) these conditions are satisfied:
    - i) the principal holds an Australian financial services licence covering the provision of the service; and
    - ii) the provider is an employee or director of the principal or of a related body corporate of the principal; and
    - iii) the provider is not an employee or director, or authorised representative, of any other person who carries on a financial services business and who is not a related body corporate of the principal; and
    - iv) the provider is not an employee or director, or authorised representative, of a related body corporate of a person of the kind mentioned in subparagraph (iii);
  - b) these conditions are satisfied:
    - i) the principal holds an Australian financial services licence covering the provision of the service; and
    - ii) the provider is an authorised representative of the principal; and
    - iii) the authorisation covers the provision of the service by the provider; and
    - iv) in the case of a provider who is an employee or director of any other person (the **second principal**) who carries on a financial services business, or of a related body corporate of such a second principal— if the provider provides any financial services in this jurisdiction on behalf of the second principal, the

- provider does so as an authorised representative of the second principal;
- c) these conditions are satisfied:
    - i) the principal holds an Australian financial services licence covering the provision of the service; and
    - ii) the provider is an employee of an authorised representative of the principal; and
    - iii) the authorisation covers the provision of the service by the authorised representative; and
    - iv) the service is the provision of a basic deposit product or of a facility for making non-cash payments (see section 763D) that is related to a basic deposit product, or is the provision of a financial product of a kind prescribed by regulations made for the purposes of this subparagraph;
  - d) the provider holds their own Australian financial services licence covering the provision of the service;

### **Section 763B Corporations Act 2001 (Cth)**

#### **When a person makes a financial investment**

For the purposes of this Chapter, a person (the **investor**) makes a financial investment if:

- a) the investor gives money or money's worth (the **contribution**) to another person and any of the following apply:
  - i) the other person uses the contribution to generate a financial return, or other benefit, for the investor;
  - ii) the investor intends that the other person will use the contribution to generate a financial return, or other benefit, for the investor (even if no return or benefit is in fact generated);
  - iii) the other person intends that the contribution will be used to generate a financial return, or other benefit, for the investor (even if no return or benefit is in fact generated); and
- b) the investor has no day-to-day control over the use of the contribution to generate the return or benefit.

Note Examples of actions that constitute making a financial investment 1: under this subsection are:

(a) a person paying money to a company for the issue to the person of shares in the company (the company uses the money to generate dividends for the person and the person, as a shareholder, does not have control over the day-to-day affairs of the company); or

(b) a person contributing money to acquire interests in a registered scheme from the responsible entity of the scheme (the scheme uses the money to generate financial or other benefits for the person and



the person, as a member of the scheme, does not have day-to-day control over the operation of the scheme).

Note Examples of actions that do not constitute making a financial investment under this subsection are:

(a) a person purchasing real property or bullion (while the property or bullion may generate a return for the person, it is not a return generated by the use of the purchase money by another person); or

(b) a person giving money to a financial services licensee who is to use it to purchase shares for the person (while the purchase of the shares will be a financial investment made by the person, the mere act of giving the money to the licensee will not of itself constitute making a financial investment).

### **Section 601ED Corporations Act 2001 (Cth)**

#### **When a managed investment scheme must be registered**

- 1) Subject to subsections (2) and (2A), a managed investment scheme must be registered under section 601EB if:
  - a) it has more than 20 members; or
  - b) it was promoted by a person, or an associate of a person, who was, when the scheme was promoted, in the business of promoting managed investments schemes; or
  - c) a determination under subsection (3) is in force in relation to the scheme and the total number of members of all of the schemes to which the determination relates exceeds 20.
- 2) A managed investment scheme does not have to be registered if all the issues of interests in the scheme that have been made would not have required the giving of a Product Disclosure Statement under Division 2 of Part 7.9 if the scheme had been registered when the issues were made.
- 3) ASIC may, in writing, determine that a number of managed investment schemes are closely related and that each of them has to be registered at any time when the total number of members of all of the schemes exceeds 20. ASIC must give written notice of the determination to the operator of each of the schemes.

## **Section 1012E Corporations Act 2001 (Cth)**

### **Small scale offerings of managed investment and other prescribed financial products (20 issues or sales in 12 months)**

- 1) This section applies only to financial products that are:
  - a) managed investment products; or
  - b) financial products of a kind prescribed by regulations
  
- 2) Personal offers of financial products do not need a Product Disclosure Statement under this Part if:
  - a) all of the financial products are issued by the same person (*the issuer*); and
  - b) none of the offers results in a breach of the 20 purchasers ceiling (see subsections (6) and (7)); and
  - c) none of the offers results in a breach of the \$2 million ceiling (see subsections (6) and (7)).