



**AUSTRALIAN BANKERS'
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Ms Irene Sim
General Manager, Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600
irene.sim@treasury.gov.au

Dear Ms Sim,

Future of Financial Advice - Stockbroking Regulations

The Australian Bankers' Association (ABA) welcomes the opportunity to provide comments on the proposed Regulation to deal with stockbroking issues and to clarify the scope of the existing stockbroking exemptions under the FOFA reforms.

The ABA understands that the Financial Services Council (FSC) and the Australian Financial Markets Association (AFMA) have made similar comments about the proposed Regulation.

Opening comments

The ABA believes that a number of technical amendments are needed, and that these amendments are consistent with the policy intent and are intended to ensure industry can confidently comply with the FOFA reforms.

The ABA makes the following comments:

- The Regulation currently only exempts payments made by "trading participants" to "non-trading participants". We suggest amending to make the exemption reciprocal (i.e. to also deal with situations where the "non-trading participant" charges or collects the brokerage fee and remits a portion of the brokerage fee onto the trading participant).
- The "specified service" is usually provided by both the non-trading participant and trading participant. Clearing and settlement services which are provided to clients through these specified services are not provided by the non-trading participant but are provided by the trading participant as a "Clearing Participant", "Market Participant", "Trading Participant" and a "Settlement Participant" (as those terms are defined in the ASIC Market Integrity Rules (ASX Market) 2010).
- While trades in the specified service are primarily conducted online, there is a small subset of clients that make trades over the telephone. ("Telephone trades" represent approximately less than 1.2% of the trades made through these specified services, but nevertheless are a valuable facility for clients that may not always have access to Internet facilities or who live/work in remote areas where Internet connectivity is unreliable.) Furthermore, this service is also valuable for those clients that would usually trade online, but temporarily may find themselves in a circumstance where they are unable access the Internet (such as when they are travelling), but want to make a trade. Additionally, from a business continuity management perspective, should there be a problem with the online services, clients can continue to trade by using the telephone trading facility (i.e. to ensure no disadvantage of clients with situations where the trading platform is disrupted unexpectedly). A higher premium is charged for placing trades by telephone reflecting the fact that white label share trading platforms are positioned as an online offering, and the service requires additional administration to complete the trade. However, it should be noted that personal advice is never provided over the telephone by either the trading participant or the non-trading participant and there are compliance controls and systems in place to ensure that personal advice is never provided (i.e. staff training, process and procedure manuals, monitoring and supervision (all telephone based trade lines are recorded), and audit controls).

- The Regulation currently defines a “specified service” too broadly. The provider of the specified service is unable to determine whether the client has received personal advice from other advisers (e.g. other licensees or authorised representatives). Therefore, we suggest amending to prohibit the provision of personal advice from the trading participant and non-trading participant.
- The Regulation should define a “brokerage fee” consistently.

The ABA understands that ASIC has concerns that this Regulation may be used to provide alternate forms of remuneration to advisers or dealer groups. Accordingly, we have suggested that the Regulation prohibits the passing of any brokerage fees to parties outside the white label arrangement. We consider this addresses concerns of brokerage fees being used as remuneration for the provision of personal advice. We note the trading participant and non-trading participant are unable to provide personal advice when relying on this Regulation. Additionally, the trading and non-trading participant are also unable to pass a portion of the brokerage fee on to other parties that may be providing financial product advice.

The ABA notes that the Regulation will be subject to a review two years after the time it is made.

Specific comments – Proposed amendments to the Regulation

Sub-regulation 7.7A.12D(1A)

The ABA supports this Regulation where the intention is to exempt a benefit payment (fee) being paid by a trading participant to a non-trading participant within limited parameters. However, the exemption should be reciprocal to ensure practical operation of the exemption.

“(1A) A monetary benefit is not conflicted remuneration if:

- (a) the benefit is a fee paid between a financial services licensee that is a trading participant of a prescribed financial market (the **trading participant**) and a financial services licensee that is not a trading participant (the **non-trading participant**) in respect of trades undertaken by a retail client through a specified service ; and
- (b) each of those trades is executed by the trading participant on behalf of a retail client; and
- (c) the fee is a proportion of the brokerage fee paid directly or indirectly by the retail client.
- (d) the benefit or a portion of the benefit is not paid to any other party other than the trading participant and non-trading participant.”

Sub-regulation 7.7A.12D(2)

The ABA believes that the definition of a specified service should be clearer and prohibit the provision of personal advice.

“**Specified service**” means a broking service which:

- (a) is provided under the name or brand name of:
 - (i) the non-trading participant; or
 - (ii) both the non-trading participant and the trading participant; and
- (b) relates to the dealing, on behalf of the client, in a financial product traded on:
 - (i) a prescribed financial market; or
 - (ii) a prescribed foreign financial market; and
- (c) is made available primarily by direct electronic access; and
- (d) is provided in circumstances in which the client does not receive personal advice, in relation to the trades undertaken, from the non-trading participant or the trading participant.

Regulations 7.7A.17 and 7.7A.18

The ABA believes that the definition of a brokerage fee should be clearer and consistent.

Specifically, each proposed new Regulation should have a similar "**brokerage fee**" definition (which is contained in Regulation 7.7A.12D(2)). Alternatively, a "**brokerage fee**" definition which applies to all of Chapter 7 of the Corporations Regulations should be inserted.

Yours sincerely,

A handwritten signature in black ink that reads "Diane Tate". The signature is written in a cursive, flowing style.

Diane Tate