

## **DRAFT EXPLANATORY STATEMENT**

### **Issued by authority of the Minister for Financial Services and Superannuation**

*Corporations Act 2001*  
*Corporations Regulations 2001*

The *Corporations Act 2001* (the Act) provides for the regulation of corporations, financial markets, and products and services, including in relation to licensing, conduct, financial product advice and disclosure.

Subsection 1364(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 1368 provides that regulations may specify exemptions from Chapters 6D or 7 of the Act.

The *Corporations Amendment Regulation 2013 (No. M)* (the Regulation) amends the *Corporations Regulations 2001*. The Regulation provides that Part 7.7A of the Act does not have effect in relation to an Australian Financial Services Licensee or representative in respect of retail clients not in this jurisdiction.

In addition, consistent with existing Australian Securities and Investments Commission (ASIC) Class Order relief, the Regulation provides an exemption from the obligations in Division 2 of Part 7.7A of the Act (the best interests obligations) for financial advice providers in situations where the conditions in the following ASIC Class Orders are satisfied:

- ASIC Class Order 05/736 *Low value non cash payment facilities*;
- ASIC Class Order 05/1122 *Relief for providers of generic calculators*;
- ASIC Class Order 08/01 *Group purchasing bodies*; and
- ASIC Class Order 11/1227 *Relief for providers of retirement estimates*.

Details of the Regulation are set out in [Attachment A](#). A statement of the Regulation's compatibility with human rights is set out in [Attachment B](#).

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation commences on 1 July 2013.

**DRAFT ONLY**

**Details of the proposed Corporations Amendment Regulation 2013 (No. M)**

**Section 1 – Name of Regulation**

This section specifies the name of the Regulation as the *Corporations Amendment Regulation 2013 (No. M)*.

**Section 2 – Commencement**

This section specifies that the Regulation commences on 1 July 2013.

**Section 3 – Authority**

This section provides that the authority for making the Regulation is the *Corporations Act 2001* (the Act).

**Section 4 – Schedule(s)**

This section provides that Schedule 1 amends the *Corporations Regulations 2001*.

**Schedule 1 – Amendments**

Item 1 inserts new regulation 7.7A.40 to provide an exemption from Part 7.7A of the Act in respect of the provision of financial services to offshore retail clients.

The purpose of the regulation is to provide that Australian licensees or authorised representatives are not subject to the requirements introduced under the Future of Financial Advice reforms, where financial services are provided to retail clients who are not located in Australia.

The regulation serves to clarify the jurisdictional reach of financial services regulation to ensure licensees and authorised representatives are not subject to the requirements of multiple jurisdictions, consistent with the exemptions provided under the *Corporations Amendment Regulations 2005 (No. 5)*.

Item 2 inserts new regulation 9.12.04 to provide that Division 2 of Part 7.7A of the Act does not have effect in relation to a person to whom one of the following Australian Securities and Investments Commission (ASIC) Class Orders is stated to apply:

- ASIC Class Order 05/736 *Low value non cash payment facilities*;
- ASIC Class Order 05/1122 *Relief for providers of generic calculators*;
- ASIC Class Order 08/01 *Group purchasing bodies*; and
- ASIC Class Order 11/1227 *Relief for providers of retirement estimates*.

These ASIC Class Orders provide relief for Australian financial services licensees and authorised representatives from certain obligations under Chapter 7 of the Act if the conditions are satisfied.

The purpose of this regulation is to extend the relief provided in these Class Orders to the best interest duty obligations introduced as part of the Future of Financial Advice reforms to financial advice providers in situations where the conditions for relief in the existing Class Orders are satisfied. This is consistent with the policy intention underpinning the existing Class Order relief; however, ASIC does not have

the power to provide Class Order relief from obligations contained in Part 7.7A of the Act.

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**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Corporations Amendment Regulation 2013 (No. M)**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The *Corporations Amendment Regulation 2013 (No. M)* (the Regulation) amends the *Corporations Regulations 2001*.

The Regulation provides that Part 7.7A of the *Corporations Act 2001* does not have effect in relation to an Australian Financial Services Licensee or representative in respect of retail clients not in this jurisdiction.

In addition, consistent with existing Australian Securities and Investments Commission (ASIC) Class Order relief, the Regulation provide an exemption from the obligations in Division 2 of Part 7.7A of the *Corporations Act 2001* (the best interests obligations) for financial advice providers in situations where the conditions in the following ASIC Class Orders are satisfied:

- ASIC Class Order 05/736 *Low value non cash payment facilities*;
- ASIC Class Order 05/1122 *Relief for providers of generic calculators*;
- ASIC Class Order 08/01 *Group purchasing bodies*; and
- ASIC Class Order 11/1227 *Relief for providers of retirement estimates*.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.