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Dear Sir/Madam,

We wish to lodge a submission in relation to the Corporations Amendment Regulation 2013 (No N) containing limited exemptions for stockbroking-related activities which was released on 7 May 2013. We note that the Stockbrokers Association of Australia (SAA) has lodged a similar response of behalf of the industry.

In particular, we wish to address the second part of the proposed exemption:

“Fees can be paid by licensees that execute trades on behalf of the retail clients of other licensees, where those trades are requested by the client through the non-executing licensee’s online trading service, under circumstances where clients do not receive personal advice.”

This statement gives the impression that there will now be two rules when dealing with a non-trading licensee – one for white label arrangements and one for non-white label arrangements. This exemption appears to benefit the large banks. Where a benefit is being passed on from the trading to non-trading licensee, it is now our understanding that white label arrangements will be exempt from conflicted remuneration but non-white label arrangements may not be.

Many licensees provide non-white labelled share trading services to non-trading participants. These services are similar to white label arrangements and involve outsourcing trading, clearing and settlement participation of licensed markets to a participant. This service is provided on a managed execution rather than an on-line execution basis without the provision of personal advice by the market participant.

Many broking licensees have relationships with non-trading licensees where trades are executed on behalf of the non-trading licensee without the broker having any contact with the client. In these instances no personal advice is provided by the broker to the client. For these non-trading licensees, stockbroking is not their core business focus and they have come to the trading participant because the service is being requested by their end clients.

To assist in covering the costs, the trading participant will take a portion of the brokerage fee paid by the client and rebate the remainder to the non-trading licensee. This is fair as both parties contribute to the overall service to the end client. We would see this as a legitimate arrangement that extends the reach of share trading services to a greater range of customers through non-trading licensees who do not possess the infrastructure to offer these services in their own right.

In these instances there is no incentive to provide biased advice, bonuses or other payments so as to achieve specific volumes. The procedure is very transparent with the client being made fully aware that the share trading execution service is being provided by the market participant (contract notes outlining the service provided and brokerage charged by the market participant are provided to the client). The scope for influence in these instances is extremely remote. This is supported by Example 1.1 in the Revised Explanatory Memorandum (RG 246.98) where the guide specifically states for a very similar white label arrangement that “as the scope for influence in this case is remote, the product provider and promoter are likely to be able to establish that the payment is not conflicted remuneration.”

If the exemption is not extended to non-white label services using other than just direct on-line access, the reality is that every new client who comes to a non-white label non-trading licensee will have to sign a consent agreement to approve the sharing of brokerage before any service can be provided. Given the high volume of trading we provide for non-trading licensees, there will clearly be an impact on the service we can provide. We do not see any material difference in the service provided by a white label and a non-white label arrangement and believe the same exemption should apply for both cases. The principle in RG246.98 supports this.

Finally, the brokerage carve-out allows licensees to receive brokerage for share trading when providing personal advice. The service provided to non-trading licensees is essentially the same process with the one exception being that a third party is being brought in to facilitate the trading, clearing and settlement. Personal advice may be provided by the non-trading licensee and general advice in the form of provision of research material may be provided by the trading participant to the non-trading licensee. However, we believe that the principle and end result is the same as envisaged in the brokerage carve-out and it should apply to both execution and advice clients in respect of the second exemption.

To summarise, we do not see any material difference in the service provided by a white label and a non-white label arrangement and believe the same exemption should apply for both cases. The principle in RG246.98 supports this. Moreover, we believe that the principle and end result is the same as envisaged in the brokerage carve-out and it should apply to both execution and advice clients in respect of the second exemption.

Yours faithfully,



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