



Corporations Amendment Regulation 2012 (No.)¹

Select Legislative Instrument 2012 No.

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Corporations Act 2001*.

Dated 2012

Governor-General

By Her Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]
Minister for Financial Services and Superannuation

CONSULTATION DRAFT

1 Name of regulation

This regulation is the *Corporations Amendment Regulation 2012 (No.)*.

2 Commencement

This regulation commences immediately after the commencement of Schedule 1 to the *Corporations Amendment (Future of Financial Advice) Act 2012*.

3 Amendment of *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

Schedule 1 Amendments

(section 3)

[1] After regulation 7.7.04A

insert

7.7.04A Financial Services Guide given by financial services licensee: benefit that is not conflicted remuneration

For paragraph 942B (4) (c) of the Act, information about a monetary benefit that, in accordance with paragraph 963B (1) (e) of the Act, is not conflicted remuneration is required by paragraph 942B (2) (e) of the Act.

7.7.04AB Financial Services Guide given by authorised representative: benefit that is not conflicted remuneration

For paragraph 942C (4) (c) of the Act, information about a monetary benefit that, in accordance with paragraph 963B (1) (e) of the Act, is not conflicted remuneration is required by paragraph 942C (2) (f) of the Act.

[2] Subregulation 7.7.09B (1)

omit

945B

insert

961H

[3] After regulation 7.7.09BB

insert

7.7.09BC Statement of Advice given by financial services licensee: benefit that is not conflicted remuneration

For paragraph 947B (4) (c) of the Act, information about a monetary benefit that, in accordance with paragraph 963B (1) (e) of the Act, is not conflicted remuneration is required by paragraph 947B (2) (d) of the Act.

7.7.09BD Statement of Advice given by authorised representative: benefit that is not conflicted remuneration

For paragraph 947C (4) (c) of the Act, information about a monetary benefit that, in accordance with paragraph 963B (1) (e) of the Act, is not conflicted remuneration is required by paragraph 947C (2) (e) of the Act.

[4] Part 7.7A

insert

Division 1 Preliminary

7.7A.1.1 Definitions

In this Part:

agent of an Australian ADI includes a person acting by arrangement with an Australian ADI, under the name of the Australian ADI.

Division 2 Best interests obligations

7.7A.2.1 Duty if advising on combination of products

- (1) This regulation:
 - (a) is made for paragraph 961B (5) (b) of the Act; and
 - (b) prescribes the circumstances in which a provider is not required to prove he or she has taken the steps mentioned in paragraphs 961B (2) (d) to (g) to satisfy the duty to act in the best interests of the client when:
 - (i) providing advice about a basic banking product; or
 - (ii) providing advice about a general insurance product.
- (2) The provider is not required to prove he or she has taken the steps if:
 - (a) the subject matter of the advice sought by the client is about more than one of the following:
 - (i) a basic banking product;
 - (ii) a general insurance product;
 - (iii) a product that is not a financial product; and
 - (b) the provider is an agent or employee of an Australian ADI.

[5] Regulation 7.7A.12

substitute

7.7A.4.12 Conflicted remuneration—monetary benefit

- (1) This regulation:
 - (a) is made for paragraph 963B (1) (e) of the Act; and
 - (b) prescribes the circumstances in which a monetary benefit given to a financial services licensee, or representative of a financial services licensee, (the *provider*) who provides advice is not *conflicted remuneration*.

General insurance or life risk insurance

- (2) The monetary benefit is not conflicted remuneration if the benefit is given in relation to more than one of the following:
- (a) a general insurance product;
 - (b) a life risk insurance product, other than:
 - (i) a group life policy for members of a superannuation entity; or
 - (ii) a life policy for a member of a default superannuation fund;
 - (c) a product that is not a financial product.

Note If a benefit is given in relation to a financial product that consists of both general insurance and life risk insurance, the benefit is to be treated as relating to a general insurance product and a life risk insurance product.

- (3) The monetary benefit is not conflicted remuneration if:
- (a) the benefit is given in relation to one or more of the following:
 - (i) a general insurance product;
 - (ii) a life risk insurance product, other than:
 - (A) a group life policy for members of a superannuation entity; or
 - (B) a life policy for a member of a default superannuation fund;
 - (iii) a product that is not a financial product; and
 - (b) the provider, at the same time, provides advice about another financial product.

Note If a benefit is given in relation to a financial product that consists of both general insurance and life risk insurance, the benefit is to be treated as relating to a general insurance product and a life risk insurance product.

Stamping fees

- (4) The monetary benefit is not conflicted remuneration if:
- (a) the benefit is given by a company to a provider, for the provider, on behalf of a retail client, dealing in any of the following financial products that are issued by the company, and are or will be admitted for quotation on a prescribed financial market:
 - (i) a share in the company;
 - (ii) a right to acquire, by way of issue, a share in the company;
 - (iii) a debenture of the company; or
 - (b) the benefit mentioned in paragraph (a) is given by the provider to a representative of the provider.
- (5) However, subregulation (4) does not apply if the company has the primary purpose of investing in financial products.

Brokerage fees given to representatives

- (6) The monetary benefit is not conflicted remuneration if:
- (a) the benefit consists of a percentage, of no more than 100%, of a brokerage fee that is given to a provider who is a participant in a licensed market; and
 - (b) the provider gives the benefit to a representative of the provider; and
 - (c) the provider has anti-churning arrangements in place.

- (7) In this regulation:

anti-churning arrangements means arrangements to ensure that the size or frequency of transactions entered into by a provider for a retail client is appropriate, having regard to the investment objectives, financial situation and needs of the client.

brokerage fee means a fee:

- (a) that a retail client gives to a provider for the provider, on behalf of the retail client, dealing in a financial product that is or will be admitted for quotation on a prescribed financial market or a prescribed foreign financial market; and

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- (b) that is based on the value of the financial product dealt with.

Note For the definition of *prescribed financial market*, see regulation 1.0.02A.

prescribed foreign financial market means a financial market that:

- (a) has its principal place of business in a foreign country; and
- (b) has been authorised by an authority in that country that is a signatory to the International Organisation of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information of May 2002.

7.7A.4.13 Conflicted remuneration—monetary or non-monetary benefits

- (1) This regulation:
- (a) is made for paragraphs 963B (1) (e) and 963C (f) of the Act; and
- (b) prescribes the circumstances in which a monetary or non-monetary benefit given to a financial services licensee, or representative of a financial services licensee, (the *provider*) who provides advice is not conflicted remuneration.
- (2) The benefit is not conflicted remuneration if:
- (a) the benefit is given in relation to one or more of the following:
- (i) a basic banking product;
- (ii) a general insurance product;
- (iii) a product that is not a financial product; and
- (b) the provider does not, at the same time, give advice on a financial product other than:
- (i) a basic banking product; or
- (ii) a general insurance product; and
- (c) the provider is acting in their capacity as an agent or employee of an Australian ADI.

7.7A.4.14 Conflicted remuneration—non-monetary benefits

- (1) This regulation:
 - (a) is made for paragraph 963C (f) of the Act; and
 - (b) prescribes the circumstances in which a non-monetary benefit given to a financial services licensee, or representative of a financial services licensee, (the *provider*) who provides advice is not conflicted remuneration.
- (2) The benefit is not conflicted remuneration if the benefit relates to more than one of the paragraphs in section 963C of the Act.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.