



# Corporations Amendment Regulation 2012 (No. 10)

**Select Legislative Instrument 2012 No. 268**

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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 22 November 2012

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

WILLIAM RICHARD SHORTEN  
Minister for Financial Services and Superannuation

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**1 Name of regulation**

This regulation is the *Corporations Amendment Regulation 2012 (No. 10)*.

**2 Commencement**

This regulation commences as follows:

- (a) on the day after it is registered—regulations 1 to 3 and Schedule 1;
- (b) Schedule 2 commences on 1 July 2013.

**3 Amendment of *Corporations Regulations 2001***

Schedules 1 and 2 amend the *Corporations Regulations 2001*.

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## Schedule 1      Amendments commencing on day after registration

(section 3)

### [1]      Subregulation 7.7.09B (1)

*omit*

, except a statement or information that is required by sections 945B and 947D of the Act,

### [2]      Regulation 7.7.09B

*insert*

- (6) The exemption in subregulation (1) does not apply to a statement or information that is required by section 947D of the Act.
- (7) The exemption in subregulation (1) does not apply to a statement or information that is required by section 945B of the Act.
- (8) However, if a licensee lodges a notice under subsection 967 (1) of the Act, the following do not apply to financial services licensee, or representative of the financial services licensee, beginning on the day specified in the notice:
  - (a) subregulation (7);
  - (b) the exemption in subregulation (1), in relation to a statement or information that is required by section 961H of the Act.

**[3] Part 7.7A***insert***Division 2 Best interests obligations****Subdivision 1 Duty to act in client's best interests****7.7A.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) of the Act to satisfy the duty to act in the best interests of the client, in relation to advice about the following products:
    - (i) a basic banking product;
    - (ii) a general insurance product.
- (2) A provider is not required to prove it has taken those steps if:
  - (a) the provider is:
    - (i) an agent or an employee of an Australian ADI; or
    - (ii) otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI; and
  - (b) any personal advice that is provided relates only to:
    - (i) a basic banking product; or
    - (ii) a general insurance product; or
    - (iii) a combination of those products.

*Note* The definition of *personal advice* is in subsection 766B (3) of the Act.
- (3) A provider is not required to prove the provider has taken those steps in relation to advice about a general insurance product, even if the provider, at the same time, provides other advice (whether or not personal advice).

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**[4] Regulation 7.7A.12**

*substitute*

**Subdivision 1 Monetary benefits****7.7A.12 What subdivision is about**

This subdivision:

- (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 financial product advice to persons as retail clients is not conflicted remuneration.

*Note* The definition of *financial product advice* is in subsection 766B (1) of the Act.

**7.7A.12A Life risk insurance products**

A monetary benefit is not conflicted remuneration if the benefit is given in relation to 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.

*Note 1* The definitions of *group life policy for members of a superannuation entity* and *life policy for a member of a default superannuation fund* are in section 963B of the Act.

*Note 2* 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.

**7.7A.12B Stamping fees**

- (1) A monetary benefit is not conflicted remuneration:
  - (a) if the benefit is given to a provider by or on behalf of an entity in relation to the provider dealing in an approved financial product issued by the entity, on behalf of a retail client; or

(b) if:

- (i) the benefit is given to a provider by or on behalf of an entity in relation to the provider dealing in an approved financial product issued by the entity, on behalf of a retail client; and
- (ii) the provider gives the benefit, directly or indirectly, to a representative of the provider.

(2) However, subregulation (1) does not apply if the entity is an investment entity.

(3) In this regulation:

***approved financial product*** means:

- (a) debentures, stocks or bonds that are, or are proposed to be, issued by a government; or
- (b) shares in, or debentures of, a body that are, or are proposed to be, listed on a prescribed financial market; or
- (c) interests in a managed investment scheme that is, or is proposed to be, listed on a prescribed financial market; or
- (d) a right to acquire, by way of issue, shares, debentures or interests mentioned in paragraph (b) or (c).

***infrastructure entity*** means an entity that provides a return to its shareholders or members mainly from owning or operating any of the following:

- (a) airports;
- (b) electricity generation, transmission or distribution facilities;
- (c) gas transmission or distribution facilities;
- (d) hospitals;
- (e) ports;
- (f) railways;
- (g) roads;
- (h) sewerage facilities;
- (i) telecommunication facilities;
- (j) water supply facilities.

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**investment entity** means an entity, when taken together with any subsidiaries or other entities that are the subject of a joint venture to which the entity is a party, that:

- (a) provides a return to its shareholders or members mainly from either or both of the following:
  - (i) investments in financial products;
  - (ii) owning real property, other than for the purpose of developing the property; and
- (b) is not an infrastructure entity.

**joint venture** means an agreement under which 2 or more persons undertake an activity that is subject to joint control.

### 7.7A.12C Time-sharing schemes

A monetary benefit is not conflicted remuneration if the benefit is given for advice that relates to an interest in a time-sharing scheme.

### 7.7A.12D Brokerage fees given to representatives

- (1) A 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 trading participant of a prescribed financial market; and
  - (b) the provider, directly or indirectly, gives the benefit to a representative of the provider.

*Note* The definition of **prescribed financial market** is in regulation 1.0.02A.

- (2) In this regulation:

**brokerage fee** means a fee that a retail client pays to a provider in relation to a transaction in which the provider, on behalf of the retail client, deals in a financial product that is traded on:

- (a) a prescribed financial market; or
- (b) a prescribed foreign financial market.

**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 Organization of Securities Commissions' Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information of May 2002.

*trading participant* of a prescribed financial market means a person who:

- (a) is a participant of the market admitted under the market's operating rules; and
- (b) is allowed, under the market's operating rules, to deal in one or more of the financial products that are able to be traded on the market.

#### **7.7A.12E Fees paid by clients for dealing services**

A monetary benefit is not conflicted remuneration if the benefit is given to the provider by a retail client in relation to the provider dealing in a financial product on behalf of the client.

### **Subdivision 2 Monetary or non-monetary benefits**

#### **7.7A.12F What subdivision is about**

This subdivision:

- (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 financial product advice to persons as retail clients is not conflicted remuneration.

*Note* The definition of *financial product advice* is in subsection 766B (1) of the Act.

#### **7.7A.12G General insurance**

A benefit is not conflicted remuneration if the benefit is given in relation to a general insurance product.



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*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.

#### **7.7A.12H Basic banking and general insurance products**

A benefit is not conflicted remuneration if:

- (a) to the extent that the benefit is given in relation to financial product advice, the benefit only relates to the following financial products:
  - (i) a basic banking product;
  - (ii) a general insurance product;
  - (iii) a combination of those financial products; and
- (b) the provider does not, at the same time, provide advice about any other financial products; and
- (c) the provider is:
  - (i) an agent or an employee of an Australian ADI; or
  - (ii) otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI.

#### **7.7A.12I Mixed benefits**

- (1) A benefit that is given in one or more of the circumstances set out in the prescribed provisions is not conflicted remuneration even if:
  - (a) the benefit also relates to other activities, but only to the extent that the part of the benefit that relates to the other activities is not conflicted remuneration; or
  - (b) the provider, at the same time, provides other services (whether or not financial services).
- (2) However, subregulation (1) does not apply to the extent that the prescribed provisions under which the benefit is given provide that:
  - (a) the benefit may only relate to particular financial products or services; or
  - (b) the provider must not receive the benefit if the provider is, at the same time, providing other specified financial services.

(3) In this regulation:

*prescribed provision* means:

- (a) paragraph 963B (1) (a), (b), (c) or (d) of the Act, or a regulation made under paragraph 963B (1) (e) of the Act;  
or
- (b) paragraph 963C (a), (b), (c), (d) or (e) of the Act, or a regulation made under paragraph 963C (f) of the Act.

## **Schedule 2      Amendment commencing on 1 July 2013**

(section 3)

### **[1]      Subregulations 7.7.09B (6) to (8)**

*substitute*

- (6) The exemption in subregulation (1) does not apply to a statement or information that is required by section 947D or 961H of the Act.
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