



Corporations Amendment Regulation 2013 (No. 4)

Select Legislative Instrument No. 115, 2013

I, Professor Marie Bashir AC CVO, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Corporations Act 2001*.

Dated 13 June 2013

Marie Bashir
Administrator

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 2013* (No. 4).

2 Commencement

This regulation commences on the day after it is registered.

3 Authority

This regulation is made under the *Corporations Act 2001*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Corporations Regulations 2001

1 Regulation 7.7A.12D (heading)

Omit “given to representatives”.

2 After subregulation 7.7A.12D(1)

Insert:

- (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 and a financial services licensee that is not a trading participant in respect of dealings undertaken by a retail client through a specified service; and
 - (b) each of those trades is executed by the trading participant on behalf of the retail client; and
 - (c) the fee is a percentage, not exceeding 100%, of a brokerage fee paid directly or indirectly by the retail client; and
 - (d) no portion of the benefit is paid to a person other than the trading participant or the licensee that is not a trading participant.

3 Subregulation 7.7A.12D(2) (at the end of the definition of *brokerage fee*)

Add:

Note: Subregulations 7.7A.17 and 7.7A.18 relate to exemptions in relation to the charging of asset-based fees on borrowed amounts.

4 Subregulation 7.7A.12D(2)

Insert:

specified service means a service which:

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- (a) is provided for retail clients under the name or brand name of:
 - (i) the financial services licensee that is not a trading participant; or
 - (ii) the trading participant and the financial services licensee that is not a trading participant; and
- (b) relates to the dealing, on behalf of the retail client, in a financial product traded on:
 - (i) a prescribed financial market; or
 - (ii) a prescribed foreign financial market; and
- (c) is provided in either or both of the following ways:
 - (i) by direct electronic access;
 - (ii) by telephone, but only if:
 - (A) direct electronic access is not available for a temporary period, or the retail client expresses a preference that the service be provided by telephone; and
 - (B) neither the trading participant nor the financial services licensee that is not a trading participant is to provide financial product advice to the retail client by telephone in relation to the dealing undertaken on the retail client's behalf; and
- (d) is provided in circumstances in which neither the trading participant nor the financial services licensee that is not a trading participant provides personal advice to the retail client in relation to the dealing undertaken on the retail client's behalf.

5 At the end of Division 4 of Part 7.7A

Add:

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Subdivision 3—Asset-based fees on borrowed amounts

7.7A.17 Financial services licensees

For subsection 964D(4) of the Act, a circumstance in which subsections 964D(1) and (2) of the Act do not apply is that the asset-based fee being charged is a brokerage fee within the meaning of regulation 7.7A.12D.

7.7A.18 Authorised representatives

For subsection 964E(3) of the Act, a circumstance in which subsection 964E(1) of the Act does not apply is that the asset-based fee being charged is a brokerage fee within the meaning of regulation 7.7A.12D.

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