



Corporations Amendment Regulation 2013 (No. 5)

Select Legislative Instrument No. 151, 2013

I, Quentin Bryce AC CVO, 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 28 June 2013

Quentin Bryce
Governor-General

By Her Excellency's Command

William Richard Shorten
Minister for Financial Services and Superannuation

OPC50338 - B

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1 Name of regulation

This regulation is the *Corporations Amendment Regulation 2013* (No. 5).

2 Commencement

This regulation commences on 1 July 2013.

3 Authority

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

4 Schedule(s)

Each legislative instrument that is specified in a Schedule to this legislative instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this legislative instrument has effect according to its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

Schedule 1—Amendments

Corporations Regulations 2001

1 After regulation 7.7A.12E

Insert:

7.7A.12EA Application of ban on conflicted remuneration— purchase or sale of financial advice business

A monetary benefit is not conflicted remuneration to the extent that:

- (a) the benefit is given to a financial services licensee or a representative of the licensee; and
- (b) the benefit is paid as part of:
 - (i) the purchase or sale of all or part of the licensee's financial advice business; or
 - (ii) the purchase or sale of all or part of the representative's financial advice business; and
- (c) the price is calculated using a formula:
 - (i) which is based, in whole or in part, on the number or value of all or part of the financial products held by the licensee's clients or the representative's clients; and
 - (ii) in which the weighting attributed to the financial products issued by the licensee or a related body corporate or other person is the same as the weighting attributed to other similar financial products.

2 Regulation 7.7A.16

Repeal the regulation, substitute:

7.7A.16 Application of ban on conflicted remuneration—platform operator (Division 4 of Part 7.7A of Chapter 7 of the Act does not apply)

- (1) This regulation:
 - (a) is made for subsection 1528(2) of the Act; and
 - (b) prescribes a circumstance in which Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit.

Note: Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.

- (2) The circumstance is that the benefit is given:
 - (a) by a platform operator; and
 - (b) under an arrangement that was entered into before the application day, within the meaning of subsection 1528(4) of the Act.
- (3) For subregulation (2), if a party to an arrangement changes, the arrangement is taken to have continued in effect, after the change, as the same arrangement.
- (4) If this regulation and regulation 7.7A.16A or 7.7A.16B are able to apply in relation to the benefit, disregard this regulation.

7.7A.16A Application of ban on conflicted remuneration—platform operator (Division 4 of Part 7.7A of Chapter 7 of the Act applies)

- (1) This regulation:
 - (a) is made for subsection 1528(2) of the Act; and
 - (b) prescribes circumstances in which Division 4 of Part 7.7A of Chapter 7 of the Act applies to a benefit; and
 - (c) does not apply in relation to a benefit to which regulation 7.7A.16C applies.

Note: Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.

- (2) The circumstance is that:
 - (a) the benefit is given by a person acting in the capacity as a platform operator; and
 - (b) the benefit is given under an arrangement that was entered into before the application day, within the meaning of subsection 1528(4) of the Act; and
 - (c) the benefit:

- (i) relates to an acquisition (including a regulated acquisition, within the meaning of subsection 1012IA(1) of the Act) of a financial product on the instructions of a person who had not given an instruction to the person acting in the capacity of a platform operator to open an account on the platform before 1 July 2014; or
 - (ii) does not relate to a person who opened an account on the platform before 1 July 2014.
- (3) For subregulation (2), treat a benefit as having been given by a person acting in the capacity as a platform operator if it:
 - (a) is given by a platform operator; and
 - (b) relates to activities undertaken in connection with the platform as a result of instructions to the platform operator from a client who has set up, or is setting up, an account on the platform.
- (4) For subregulation (2), if a retail client has an interest in a financial product before 1 July 2014, treat a benefit as relating to an acquisition of the financial product whether it is paid in relation to the initial acquisition of the financial product or the subsequent holding of the financial product.
- (5) For subregulation (2), if a party to an arrangement changes, the arrangement is taken to have continued in effect, after the change, as the same arrangement.
- (6) If this regulation and regulation 7.7A.16 are able to apply in relation to the benefit, disregard regulation 7.7A.16.

7.7A.16B Application of ban on conflicted remuneration—person other than platform operator (Division 4 of Part 7.7A of Chapter 7 of the Act applies)

- (1) This regulation:
 - (a) is made for subsection 1528(2) of the Act; and
 - (b) prescribes a circumstance in which Division 4 of Part 7.7A of Chapter 7 of the Act applies to a benefit; and
 - (c) does not apply in relation to a benefit to which regulation 7.7A.16C applies.

Note: Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to

a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.

- (2) The circumstance is that:
- (a) the benefit is given by a person who is not acting in the capacity of a platform operator; and
 - (b) the benefit is given under an arrangement that was entered into before the application day, within the meaning of subsection 1528(4) of the Act; and
 - (c) the benefit:
 - (i) is given in relation to the acquisition, on or after 1 July 2014, of a financial product, for the benefit of a retail client; or
 - (ii) does not relate to a financial service provided, before 1 July 2014, for the benefit of a retail client; and
 - (d) the client did not have an interest in the product before 1 July 2014.

Note: For the definition of *platform operator*, see subsection 1526(1) of the Act.

- (3) For subregulation (2), treat a benefit as having been given by a person acting in the capacity as a platform operator if it:
- (a) is given by a platform operator; and
 - (b) relates to activities undertaken in connection with the platform as a result of instructions to the platform operator from a client who has set up, or is setting up, an account on the platform.

Continuity of arrangement

- (4) For subregulation (2):
- (a) if a party to an arrangement changes, treat the arrangement as having continued in effect, after the change, as the same arrangement; and
 - (b) if a retail client has an interest in a financial product before 1 July 2014, treat a benefit as relating to an acquisition of the financial product whether it is paid in relation to the initial acquisition of the financial product or the subsequent holding of the financial product.

Managed investment schemes

- (5) For subregulation (2), if a retail client:
- (a) had an interest in a managed investment scheme before 1 July 2014; and
 - (b) acquires a further interest in the managed investment scheme on or after 1 July 2014;
- do not treat the acquisition of the further interest as having occurred on or after 1 July 2014.

Multi product offerings

- (6) For subregulation (2), if:
- (a) more than one financial product is marketed and offered together under one product disclosure statement (a **multi-product offering**) in a way in which:
 - (i) a retail client receives a consolidated report on a periodic basis listing the client's holdings in all of those financial products; and
 - (ii) there is a facility which allows a retail client to choose between, acquire, switch or transfer an interest in one or more of those financial products; and
 - (b) the benefit is to be paid by the issuer of the product disclosure statement; and
 - (c) a retail client opened an account on the multi-product offering before 1 July 2014; and
 - (d) the retail client acquires an interest or a further interest in any one or more of the financial products available in the multi-product offering on or after 1 July 2014;
- do not treat the acquisition of the interest, or further interest, mentioned in paragraph (d) as having occurred on or after 1 July 2014.

Relationship with regulation 7.7A.16

- (7) If this regulation and regulation 7.7A.16 are able to apply in relation to the benefit, disregard regulation 7.7A.16.

7.7A.16C Application of ban on conflicted remuneration—employer and employee (Division 4 of Part 7.7A of Chapter 7 of the Act does not apply)

- (1) This regulation:
- (a) is made for subsection 1528(2) of the Act; and
 - (b) prescribes circumstances in which Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit.

Note: Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.

Remuneration arrangement relating to enterprise agreement or collective agreement-based transitional instrument

- (2) A circumstance is that:
- (a) the benefit is paid under a remuneration arrangement between an employer and an employee; and
 - (b) the benefit is paid in accordance with an enterprise agreement (including its associated documents), or a collective agreement-based transitional instrument (including its associated documents), that was entered into before the application day, within the meaning of subsection 1528(4) of the Act.

When subregulation (2) ceases to apply

- (3) If:
- (a) an enterprise agreement referred to in paragraph (2)(b) was in force immediately before the application day; and
 - (b) the nominal expiry date of the agreement had not passed immediately before the application day;
- the circumstance in subregulation (2) ceases to apply at the end of 6 months after the nominal expiry date of the agreement.
- (4) If:
- (a) an enterprise agreement referred to in paragraph (2)(b) was in force immediately before the application day; and
 - (b) the nominal expiry date of the agreement passed before the application day;

the circumstance in subregulation (2) ceases to apply on 1 July 2014.

Remuneration arrangement not relating to enterprise agreement or collective agreement-based transitional instrument

- (5) A circumstance is that:
- (a) the benefit is paid under a remuneration arrangement between an employer and an employee; and
 - (b) the benefit is not paid in accordance with an enterprise agreement (including its associated documents) or a collective agreement-based transitional instrument (including its associated documents); and
 - (c) the benefit is payable in relation to a period that ends before 1 July 2014.

Definitions

- (6) In this regulation:

collective agreement-based transitional instrument has the meaning given by subitem 2(5) of Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

enterprise agreement has the same meaning as in the *Fair Work Act 2009*.

7.7A.16D Application of ban on conflicted remuneration—new arrangement entered into on or after application day (Division 4 of Part 7.7A of Chapter 7 of the Act does not apply)

- (1) This regulation:
- (a) is made for subsection 1528(2) of the Act; and
 - (b) prescribes a circumstance in which Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit.

Note: Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.

- (2) The circumstance is that:
- (a) the benefit is paid under an arrangement (the ***new arrangement***) that was entered into on or after the application day, within the meaning of subsection 1528(4) of the Act; and
 - (b) the new arrangement is on the same terms as an arrangement (the ***previous arrangement***) that was in place immediately before the application day, except that the new arrangement does not provide for the giving of remuneration that would not be permissible under section 1528 of the Act or regulations made for that section; and
 - (c) the previous arrangement was terminated as a result of the application of Division 4 of Part 7.7A of Chapter 7 of the Act.

7.7A.16E Application of ban on conflicted remuneration—change of party to an arrangement (Division 4 of Part 7.7A of Chapter 7 of the Act does not apply)

- (1) This regulation:
- (a) is made for subsection 1528(2) of the Act; and
 - (b) prescribes a circumstance in which Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit.

Note: Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.

- (2) The circumstance is that:
- (a) the benefit is given under an arrangement that was entered into before the application day, within the meaning of subsection 1528(4) of the Act; and
 - (b) a party to the arrangement changes.

7.7A.16F Application of ban on conflicted remuneration—benefit is a pass through of a grandfathered benefit (benefit is not conflicted remuneration)

A benefit is not conflicted remuneration to the extent that:

- (a) the benefit is a pass through of a benefit (a ***grandfathered benefit***) to which Division 4 of Part 7.7A of Chapter 7 of the Act does not apply because of subsection 1528(1) or (3) of the Act or a regulation made for subsection 1528(2) of the Act; and
- (b) the benefit, as passed through, was given under an arrangement that was entered into before the application day, within the meaning of subsection 1528(4) of the Act; and
- (c) the benefit, as passed through, is consistent with purposes of the arrangement under which the grandfathered benefit was paid; and
- (d) the total amount of the benefit, as passed through, does not exceed 100 per cent of the grandfathered benefit.