

EXPOSURE DRAFT



EXPOSURE DRAFT (28/01/2014)

Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014

Select Legislative Instrument No. , 2014

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 2014

Quentin Bryce
Governor-General

By Her Excellency's Command

DRAFT ONLY—NOT FOR SIGNATURE

Arthur Sinodinos AO
Assistant Treasurer

EXPOSURE DRAFT

EXPOSURE DRAFT

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Name of regulation	1
2	Commencement	1
3	Authority	1
4	Schedule(s)	1
Schedule 1—Amendments		2
	<i>Corporations Regulations 2001</i>	2

EXPOSURE DRAFT

1 Name of regulation

This regulation is the *Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

EXPOSURE DRAFT

2TSchedule 12T Amendments

Schedule 1—Amendments

Corporations Regulations 2001

1 Regulation 7.6.02AB (after table item 2)

Insert:

2A subsection 1364(1) Part 7.7A

2 Regulation 7.6.02AC (after table item 2)

Insert:

2A subsection 1364(1) Part 7.7A

3 Regulation 7.6.02AD (after table item 2)

Insert:

2A subsection 1364(1) Part 7.7A

4 Regulation 7.6.02AE (after table item 2)

Insert:

2A subsection 1364(1) Part 7.7A

5 Regulation 7.6.02AF (after table item 2)

Insert:

2A subsection 1364(1) Part 7.7A

6 Paragraph 7.7A.12B(1)(a)

Omit “provider dealing in”, substitute “the initial issue or sale of”.

7 Subparagraph 12(B)(1)(b)(i)

Omit “provider dealing in”, substitute “the initial issue or sale of”.

8 Subregulation 7.7A.12B(2)

Repeal.

9 Subregulation 7.7A.12B(3)

Repeal the following definitions:

- (a) definition of *infrastructure entity*;
- (b) definition of *investment entity*;
- (c) definition of *joint venture*.

10 Paragraph 7.7A.12D(1)(a)

After “financial market”, insert “or the market known as the ASX24”.

11 Subregulation 7.7A.12D(1) (note)

Repeal the note, substitute:

- Note 1: The definition of *prescribed financial market* is in regulation 1.0.02A.
- Note 2: The ASX24 is the financial market operated by Australian Securities Exchange Limited that was formerly known as the Sydney Futures Exchange.

12 Subregulation 7.7A.12D(2) (after paragraph (a) of the definition of *brokerage fee*)

Insert:

- (aa) the market known as the ASX24; or

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

Repeal the note, substitute:

- Note 1: Regulations 7.7A.17 and 7.7A.18 relate to exemptions in relation to the charging of asset-based fees on borrowed amounts.
- Note 2: The ASX24 is the financial market operated by Australian Securities Exchange Limited that was formerly known as the Sydney Futures Exchange.

EXPOSURE DRAFT

2TSchedule 12T Amendments

14 Subregulation 7.7A.12D(2) (definition of *trading participant*)

After “financial market”, insert “or the market known as the ASX24”.

15 Subregulation 7.7A.12D(2) (at the end of the definition of *trading participant*)

Add:

Note: The ASX24 is the financial market operated by Australian Securities Exchange Limited that was formerly known as the Sydney Futures Exchange.

16 At the end of Subdivision 1 of Division 4 of Part 7.7A

Add:

7.7A.12EB Performance bonuses based on volume

- (1) A monetary benefit is not conflicted remuneration if:
 - (a) it relates to a financial product to which none of the following applies:
 - (i) paragraph 963B(1)(a) of the Act;
 - (ii) paragraph 963B(1)(b) of the Act;
 - (iii) a regulation made for the purposes of paragraph 963B(1)(e) of the Act (other than this regulation);
 - (iv) section 963D of the Act;
 - (v) a regulation made for the purposes of section 1529 of the Act; and
 - (b) the requirements in subregulation (2) are met.
- (2) The requirements are that:
 - (a) the benefit is given to, or for, a provider who is an employee of an employer; and
 - (b) the benefit is an element of the employee’s remuneration; and
 - (c) access to the benefit, or the value of the benefit, or both, is partly dependent on the total value of financial products of a particular class, or particular classes, that:
 - (i) the employee recommends to retail clients or a class of retail clients; or

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- (ii) are acquired by retail clients, or a class of retail clients, to whom the employee has provided financial product advice; and
 - (d) the benefit is low in proportion to the employee's total remuneration; and
 - (e) in calculating the benefit, the weighting attributed to the total value of financial product as described in paragraph (c) is outweighed or balanced by the weighting attributed to other matters; and
 - (f) if the benefit, or part of the benefit, relates to personal advice provided to a retail client, that part of the benefit is given in circumstances that are likely to encourage the giving of personal advice that is in the client's best interest.

17 After regulation 7.7A.12H

Insert:

7.7A.12HA Benefits calculated by reference to another benefit that is not conflicted remuneration or grandfathered

A benefit is not conflicted remuneration if the amount or value of the benefit is calculated by reference to another benefit:

- (a) that is not conflicted remuneration; or
- (b) to which Division 4 of Part 7.7A of the Act does not apply.

18 Regulation 7.7A.12I

Repeal the regulation, substitute:

7.7A.12I Mixed benefits

A benefit that is not conflicted remuneration does not become conflicted remuneration only because it is given with another benefit.

19 After subregulation 7.7A.16A(5)

Insert:

- (5A) A person who purchases a business has the same rights under this regulation that the seller of the business would have had if the seller had not sold the business.

EXPOSURE DRAFT

2TSchedule 12T Amendments

20 After subregulation 7.7A.16B(4)

Insert:

- (4A) A person who purchases a business has the same rights under this regulation that the seller of the business would have had if the seller had not sold the business.

21 After subregulation 7.7A.16B(5)

Insert:

Pension switches

- (5A) For subregulation (2), if a retail client:
- (a) has a superannuation interest in the growth phase before 1 July 2014; and
 - (b) elects to receive a pension from the superannuation interest, or part of the interest;
- do not treat the receipt of the interest as an acquisition occurring on or after 1 July 2014.
- (5B) For paragraph (5A)(a):
- growth phase* has the meaning given by regulation 1.03AB of the SIS Regulations.

22 Regulation 7.7A.16F

Before “A benefit”, insert “(1)”.

23 At the end of regulation 7.7A.16F

Add:

- (2) However, paragraph 7.7A.16F(b) does not apply to the following arrangements:
- (a) an arrangement by which an authorised representative of a financial services licensee becomes an authorised representative of another financial services licensee after the application day, within the meaning of subsection 1528(2) of the Act;

EXPOSURE DRAFT

Amendments 2T Schedule 12T

- (b) an arrangement by which a representative of a financial services licensee becomes an authorised representative of the same licensee.

EXPOSURE DRAFT