

# EXPOSURE-DRAFT



EXPOSURE DRAFT (27/02/2013)

## **Corporations Amendment Regulation 2013 (No. F)**

Select Legislative Instrument No. , 2013

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## **1 Name of regulation**

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

## **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Each legislative instrument that is specified in a Schedule to this legislative instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this legislative instrument has effect according to its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 of financial advice business**

A monetary benefit is not conflicted remuneration if:

- (a) the benefit is given by a financial services licensee to a representative of the licensee; and
- (b) the benefit is paid as part of the purchase by the licensee of the representative's financial advice business; and
- (c) the purchase price is calculated using a formula:
  - (i) which is based, in whole or in part, on the number or value of the financial products held by 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 financial products.

#### **2 Regulation 7.7A.16**

Repeal the regulation, substitute:

#### **7.7A.16 Application of ban on conflicted remuneration—platform operator**

- (1) This regulation:
  - (a) is made for the purposes of 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.
- (2) The circumstance is that the benefit:
  - (a) is given by a platform operator; and

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## Schedule 1 Amendments

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- (b) 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) relates to a regulated acquisition, within the meaning of subsection 1012IA(1) of the Act, under a custodial arrangement provided by the platform operator on the instructions of a person who had given an instruction for a regulated acquisition under the custodial arrangement before 1 July 2014.

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

### *Continuity of arrangement*

- (3) For the purposes of 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.

Note: Examples of a change of party are:

- (a) the party assigns its rights under the arrangement; and
- (b) the party is a corporation that has been restructured.

### **7.7A.16A Application of ban on conflicted remuneration—person other than platform operator**

- (1) This regulation:
  - (a) is made for the purposes of 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.
- (2) The circumstance is that the benefit:
  - (a) is not given by a platform operator; and
  - (b) is given under an arrangement entered into before the application day, within the meaning of subsection 1528(4) of the Act; and
  - (c) is given in relation to the acquisition of a financial product by a retail client who did not have an interest in the financial product immediately before 1 July 2014.

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

### *Continuity of arrangement*

- (3) For the purposes of 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.

Note: Examples of a change of party are:

- (a) the party assigns its rights under the arrangement; and
- (b) the party is a corporation that has been restructured.

### *Managed investment schemes*

- (4) For the purposes of subregulation (2), if a retail client:
- (a) had an interest in a managed investment scheme before the application day; and
  - (b) acquires a further interest in the managed investment scheme on or after the application day;
- the acquisition of the further interest is taken not to be the acquisition of a financial product.

### *Contributions to superannuation scheme*

- (5) For the purposes of subregulation (2), if a retail client:
- (a) made contributions to a superannuation scheme (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) before the application day; and
  - (b) makes further contributions to the superannuation scheme on or after the application day;
- the making of the further contributions is taken not to be the acquisition of a financial product.

## **7.7A.17 Application of Division 4 of Part 7.7A of Chapter 7 of the Act—effect on terms and conditions of arrangement**

For the purposes of subsection 1101H(3) of the Act, if:

- (a) a term or condition of an arrangement provides for the payment of remuneration; and
- (b) the remuneration would be conflicted remuneration to which Division 4 of Part 7.7A of Chapter 7 of the Act applies;

a failure to comply with a requirement of the Act referred to in that Division in relation to the conflicted remuneration does not affect the validity or enforceability of the term or condition.

