# EXPLANATORY STATEMENT

**Select Legislative Instrument 2012 No. 170**

## Issued by authority of the Minister for Financial Services and Superannuation

*Corporations Act 2001*

*Corporations Amendment Regulation 2012 (No. 4)*

Section 1364(1) of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Corporations Amendment Regulation 2012 (No. 4)* makes a number of amendments to the *Corporations Regulations 2001* (the Principal Regulations). The amendments are in respect of the provisions relating to charging ongoing fees to clients and conflicted remuneration as introduced by the *Corporations Amendment (Future of Financial Advice) Act 2012* and the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012*.

Specifically, the amendments to the Principal Regulations:

* exclude product fees from the definition of an ‘ongoing fee arrangement’;
* delay the application date to 1 July 2013 for the ban on conflicted remuneration with respect to benefits that relate to group life risk insurance inside superannuation funds and all life risk insurance policies in default superannuation funds;
* exclude benefits given for advice relating to interests in time-sharing schemes from the ban on conflicted remuneration;
* further detailing the scope of the exemptions from the ban on conflicted remuneration for certain non-monetary (‘soft-dollar’) benefits and introduce record keeping requirements in relation to those benefits.

A draft of the Regulation was subject to public consultation for a two week period from 23 May 2012.

Details of the Regulation are set out in Attachment A.

A statement of the Regulation’s compatibility with human rights is set out in Attachment B.

This Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

This Regulation commences the day after it is registered.

**ATTACHMENT A**

**Details of the *Corporations Amendment Regulation 2012 (No. 4)***

Section 1 – Name of Regulation

This section specifies the name of the Regulation as the *Corporations Amendment Regulation 2012 (No. 4)*.

Section 2 – Commencement

This section specifies that this Regulation commences the day after it is registered.

Section 3– Amendment of the *Corporations Regulations 2001*

This section provides that Schedule 1 amends the *Corporations Regulations 2001* (the Principal Regulations).

**Schedule 1 – Amendments**

Schedule 1 makes regulations for Part 7.7A of the *Corporations Act 2001* (the Act).

Item 1 inserts new regulations 7.7.04AA and 7.7.04AB which provide that a non‑monetary benefit that is not conflicted remuneration under paragraph 963C(b) of the Act, does not need to be disclosed in a Financial Services Guide given by a financial services licensee or an authorised representative. Paragraph 963C(b) of the Act provides that a non-monetary benefit under a prescribed amount will not be conflicted remuneration if identical or similar benefits are not given on a frequent or regular basis. Regulation 7.7.A.13 prescribes $300 as the prescribed amount for the purposes of paragraph 963C(b).

Item 2 inserts new regulations 7.7.09BC and 7.7.09BD which provide that a non‑monetary benefit that is not conflicted remuneration under paragraph 963C(b) of the Act, does not need to be disclosed in a Statement of Advice given by a financial services licensee or an authorised representative. Paragraph 963C(b) of the Act provides that a non-monetary benefit under a prescribed amount will not be conflicted remuneration if identical or similar benefits are not given on a frequent or regular basis. Regulation 7.7.A.13 prescribes $300 as the prescribed amount for the purposes of paragraph 963C(b).

The intention to make such regulations was set out in paragraph 2.49 of the Replacement Explanatory Memorandum to the *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012.*

Item 3 inserts new Part 7.7A relating to the best interests obligation and remuneration.

Regulations 7.7A.10 and 7.7A.11 relate to charging ongoing fees to clients.

Subregulations 7.7A.10(1) and (2) prescribe arrangements which are not ongoing fee arrangements for the purposes of subsection 962A(5) of the Act. An arrangement described in subsections 962A(1) and (2) will not be an ongoing fee arrangement to the extent that a fee payable under the arrangement is a product fee. For example, where an arrangement includes more than one fee to be paid including a product fee, the arrangement only extends to fees which are not product fees.

Subregulation 7.7A.10(3) defines a product fee as a fee that the issuer of a financial product charges a retail client for the management and operation of a financial product issued to the client. For example, a monthly account-keeping fee charged by the provider of a basic deposit product.

Regulation 7.7A.11 clarifies that information about an ongoing fee which is a product fee is not required to be disclosed in a fee disclosure statement under paragraph 962H(2) of the Act.

Regulations 7.7A.12 and 7.7A.15 prescribe circumstances when a benefit is not conflicted remuneration.

Regulation 7.7A.12 provides that a benefit given to a financial services licensee or a representative of a financial services licensee, for advice that relates to an interest in a time-sharing scheme is a prescribed benefit. That is, such a benefit is not conflicted remuneration. A ‘time-sharing scheme’ is defined in section 9 of the Act.

Regulation 7.7A.13 prescribes the amount of $300 for subparagraph 963C(b)(i) of the Act. That is, a non-monetary benefit of less than $300 is not conflicted remuneration if identical or similar benefits are not given on a frequent or regular basis. The $300 amount applies for each financial services licensee or each representative of a financial service licensee who is the final recipient of the non-monetary benefit. For example, if a benefit over $300 is received by a licensee but distributed to a number of the licensee’s representatives so that the value of the benefit each representative receives is under $300, the benefit will not be conflicted remuneration because it is assessed at the representative level as the final recipient of the benefit.

Regulation 7.7A.14 and 7.7A.15 prescribe additional requirements with which education or training benefits must comply for those benefits not to be conflicted remuneration under section 963C(c) of the Act.

Regulation 7.7A.14 applies to a non-monetary benefit to which subparagraphs 963C(c)(i) and (ii) apply and which is the provision of an education or training course. Under regulation 7.7A.14, a benefit which is the provision of an education or training course must meet two requirements:

* at least 75 per cent of the time spent on the course or six hours a day (whichever is the lesser) must be spent on education or training activities for the professional development of the participants in the course; and
* the participant or their employer or licensee must pay for the costs of travel and accommodation relating to the course and events and functions held in conjunction with the course.

Alternatively, under regulation 7.7A.15, if a non-monetary benefit to which subparagraphs 963C(c)(i) and (ii) apply is not an education or training course, the dominant purpose of the benefit must be education and training.

Item 4 inserts new regulation 7.8.11A which requires a financial services licensee to keep records of each non-monetary benefit given to the licensee or a representative of the licensee which will be conflicted remuneration under section 963A but is either:

* not conflicted remuneration in accordance with paragraph 963C(b) of the Act and is over $100; or
* not conflicted remuneration in accordance with paragraph 963C(c) or (d) of the Act.

Non-monetary benefits which are not conflicted remuneration under section 963A are not required to be recorded.

The table in subregulation 7.8.11A(2) sets out the categories of information which must be shown in the records kept by a financial services licensee in relation to these non-monetary benefits.

Subregulations 7.8.11A(3) and (6) provide that some particulars contained in the records must be made available to a person on request as soon as practicable but no later than one month after the person makes the request to the licensee. The particulars in the records that must be made available to persons on request are those relating to matters in items 1 to 4 of the table in subregulation 7.8.11A(2) for the financial year preceding the request.

Subregulations 7.8.11A(4) and (5) provide that the licensee may require the person making the request to pay a charge for obtaining the particulars but the amount of the charge must not exceed the reasonable costs that the licensee incurs in providing the particulars.

The intention to make regulations requiring the disclosure of such non-monetary benefits was set out in paragraph 2.47 to 2.50 of the Replacement Explanatory Memorandum to the *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012.*

Item 5 inserts new regulation 10.18.01 which provides a delayed application date of 1 July 2013 for the ban on conflicted remuneration with respect to benefits relating to a group life policy for members of a superannuation entity or a life policy for a member of a default superannuation fund. A ‘group life policy for members of a superannuation entity’ and ‘a life policy for a member of a default superannuation fund’ are defined in section 963B of the Act.

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Corporations Amendment Regulation 2012 (No. 4)**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the Legislative Instrument

The purpose of the Legislative Instrument is to support the measures introduced by the *Corporations Amendment (Future of Financial Advice) Act 2012* and the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012,* specifically by:

* excluding product fees from the definition of an ‘ongoing fee arrangement’;
* introducing a delayed application date of 1 July 2013 for the ban on conflicted remuneration with respect to group life risk insurance inside choice superannuation funds and all life risk insurance policies in default superannuation funds;
* excluding benefits given for advice relating to interests in time-sharing schemes from the ban on conflicted remuneration;
* further detailing the scope of the exemptions from the ban on conflicted remuneration for certain non-monetary (‘soft-dollar’) benefits and introducing record keeping requirements in relation to those benefits.

#### Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.