



17 May 2013

General Manager
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: futureofadvice@treasury.gov.au

Dear Ms Sim,

Future of Financial Advice: *Corporations Amendment Regulations 2013 (No. N)*

The FSC thanks the Treasury for the opportunity to provide comments on the proposed regulations to extend the scope of the existing stockbroking-related exemptions provided in the Corporations Act as part of FoFA.

The Financial Services Council represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and Public Trustees. The Council has over 130 members who are responsible for investing more than \$1.9 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

This submission provides Treasury with a number of technical amendments intended to work within the policy intent and to enable the industry to more efficiently implement and comply with FoFA. The FSC is happy to assist and discussing the contents of this submission and any drafting concerns Treasury may have. If you have any questions regarding the FSC's submission, please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cecilia StornioLO', written in a cursive style.

CECILIA STORNILO
SENIOR POLICY MANAGER

FSC SUBMISSION**1. Regulation 7.7A.12D (heading)**

The FSC supports this amendment.

2. Regulation 7.7A.12D(1)

We understand the intent of the proposed 7.7A.12(1A) is to exempt a benefit payment (fee) being paid by a trading participant to a non-trading participant within limited parameters. We support the inclusion of this proposed regulation.

However, we note that in practice the payment may flow in reverse, that is, from the non-trading participant to the trading participant (given the client is placing the trade on the non-trading participants service and thus collection of the fee may be made by the non-trading participant). On this basis we propose the following amendments to regulation 7.7A.12(1A) to cater for the scenario where the non-trading participant charges the brokerage fee and pays a portion of the brokerage fee onto the trading participant. We submit that these amendments do not expand the scope or intent of the regulation.

Proposed Sub-regulation 7.7A.12D(1A):

"(1A) A monetary benefit is not conflicted remuneration if:

- (a) the benefit is a fee paid ~~by~~ **between** a financial services licensee that is a trading participant of a prescribed financial market (the **trading participant**) ~~to~~ **and** a financial services licensee that is not a trading participant (the **non-trading participant**) in respect of trades undertaken by a retail client through a specified service ~~provided by the non-trading participant;~~ and
- (b) each of those trades is executed by the trading participant on behalf of a retail client; and
- (c) the fee is a proportion of the brokerage fee paid ~~to the trading participant directly or indirectly~~ by the retail client. ~~of the non-trading participant.~~
- (d) The benefit or a portion of the benefit is not paid to any other party other than the trading participant and the non-trading participant."

3. Regulation 7.7A.12D(2)

The FSC makes no comments with regard to this proposed amendment.

4. Regulation 7.7A.12D(2)

The *specified service* is usually provided by both the non-trading participant and trading participant. In particular, clearing and settlement services which are provided to clients through these portals are provided by the trading participant.

While trades in the specified service are usually conducted online, a small subset of clients make trades over the phone. Further, from a Business Continuity Management perspective, should there be a problem with the online services, clients revert back to telephone trading. In all these circumstances no personal advice would be provided via the telephone.

We submit that the current wording of subsection (e) under the definition of '*Specified Service*' is too broad. The provider of the *Specified Service* is unable to determine whether the client has received personal advice from other advisers (i.e. licensees or authorised representatives). Our proposed amendments narrow the subsection to prohibit the provision of personal advice from the trading participant and non-trading participant.

Accordingly, we submit that the proposed draft be amended as follows:

"specified service means a broking service which:

- ~~(a) is provided for retail clients by a financial services licensee that is not a trading participant; and~~
- ~~(b)~~ (a) is provided under the name or brand name of:
 - (i) ~~that financial services licensee~~ the non-trading participant; or
 - (ii) both the non-trading participant and the trading participant; and
- ~~(b e)~~ relates to the dealing, on behalf of the client, in a financial product traded on:
 - (i) a prescribed financial market; or
 - (ii) a prescribed foreign financial market; and
- ~~(c d)~~ is made available ~~only~~ primarily by direct electronic access; and
- ~~(d e)~~ is provided in circumstances in which the client does not receive personal advice, in relation to the trades undertaken, ~~from the non-trading participant or the trading participant. on the client's behalf by any licensee or authorised representative associated with those trades.~~

5. After Subdivision 2 of Division 4 of Part 7.7A

The FSC submits that each proposed new regulation should have a similar "**brokerage fee**" definition (which is contained in Regulation 7.7A.12D(2)) inserted. Alternatively, a "**brokerage fee**" definition which applies to all of Chapter 7 of the Corporations Regulations should be inserted. If such definition is not inserted, there may be a technical argument that the "brokerage fee" definition in Regulation 7.7A.12D(2) may not apply to these new proposed regulations.