

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Corporations Act 2001

Electronic Transactions Act 1999

Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024

Section 1364 of the *Corporations Act 2001* (Act) and section 16 of the *Electronic Transactions Act 1999* (ET Act) provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to those Acts.

The purpose of the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024* (the Regulations) is to support increased access to affordable financial advice by making amendments consequential to the passage of the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024* (the Amending Bill). The Amending Bill delivers the first tranche of the Government's response to the Quality of Advice Review (the Review). In particular, the Regulations:

- Support written information or documentation requirements for the purposes of section 99FA of the *Superannuation Industry (Supervision) Act 1993* to continue to be met electronically;
- Remove requirements related to Fee Disclosure Statements, update record keeping obligations for new consent requirements and remove references to civil penalties which are removed in the Amending Bill;
- Align requirements for Financial Services Guides and Website Disclosure Information and make other consequential amendments;
- Streamline the regulations for conflicted remuneration in line with the changes to the Amending Bill; and
- Ensure the informed consent requirements apply for benefits given in relation to a general insurance product where personal advice is provided.

The Regulations are part of the Government's Delivering Better Financial Outcomes reform package announced on 13 June 2023.

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

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act). The Regulations are subject to disallowance under section 42 of the Legislation Act and will be repealed automatically once they have commenced by section 48A of that Act.

Details of the Regulations, including commencement, are set out in [Attachment A](#).

Details of the Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024

Section 1 – Name

This section provides that the name of the regulations is the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024* (the Regulations).

Section 2 – Commencement

Sections 1 to 4 of the Regulations commenced the day after the Regulations were registered on the Federal Register of Legislation.

Each Part of the Schedule commenced on the later of the day after the Regulations were registered, and the time the corresponding Part in Schedule 1 of the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024* (the Amending Bill) commenced. However, if a Part of Schedule 1 to the Amending Bill did not commence, then the corresponding Part of the Schedule to the Regulations did not commence.

In terms of corresponding Parts of Schedules to the Regulations and Amending Bill:

- Part 1 of the Schedule corresponds to Division 1 of Part 1 of Schedule 1 to the Amending Bill, which commences the day after the Amending Bill receives Royal Assent.
- Part 2 of the Schedule corresponds to Part 2 of Schedule 1 to the Amending Bill, which commences the day after the Amending Bill receives Royal Assent.
- Part 3 of the Schedule corresponds to Part 3 of Schedule 1 to the Amending Bill, which commences the day after the Amending Bill receives Royal Assent.
- Part 4 of the Schedule corresponds to Part 4 of Schedule 1 to the Amending Bill, which commences immediately after Parts 2 and 3 of the Amending Bill.
- Part 5 of the Schedule corresponds to Part 5 of Schedule 1 to the Amending Bill, which commences the day after the end of the period of 12 months beginning on the day the Amending Bill receives Royal Assent.

Section 3 – Authority

The Regulations are made under the *Corporations Act 2001* (the Act) and the *Electronic Transactions Act 1999* (the ET Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments

Part 1 – Superannuation

Item 1 makes consequential amendments to the *Electronic Transactions Regulations 2020* (the ET Regulations) to ensure that written information or documentation requirements under section 99FA of the *Superannuation Industry (Supervision) Act 1993* (SIS Act), as repealed and replaced by item 2 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024* (Amending Bill), can continue to be given electronically.

The table in clause 1 of Schedule 1 of the ET Regulations specifies Commonwealth laws to which certain sections of the ET Act do not apply. The SIS Act is such a law, however table item 89 lists certain provisions of the SIS Act which remain subject to the ET Act. Paragraph (h) in table item 89 currently specifies subsection 99FA(1) of the SIS Act as a provision which is subject to the ET Act.

Item 1 of the Regulations repeals and replaces paragraph (h) of table item 89 to prescribe section 99FA in its entirety, rather than only subsection (1). This amendment reflects the expansion of section 99FA by the Amending Bill, and is necessary to ensure that actions under the amended section can be satisfied electronically, subject to the specific conditions set out in the relevant sections of the ET Act. For example:

- Electronic communication of information contemplated by section 99FA as amended can be done electronically (see subsection 8(1) of the ET Act);
- The requirement for a written consent or request for the purposes of section 99FA as amended can continue to be satisfied electronically (see subsection 9(1) of the ET Act);
- The trustee or trustees of the relevant superannuation fund can store copies of requests or consents electronically (see subsection 12(1) of the ET Act); and
- A written request or consent for the purposes of section 99FA will be attributed to a member if sent electronically by them or with their authority (see section 15 of the ET Act and subject to the conditions in that section).

Part 2 – Ongoing fee arrangements

Part 2 of Schedule 1 to the Amending Bill implements recommendation 8 of the Review by amending the Act to establish a consolidated and streamlined consent process for when a client enters or renews an ongoing fee arrangement and authorises ongoing advice fees to be deducted from a financial product. This includes removing the previous requirement for advisers to provide a fee disclosure statement to their clients as part of an ongoing fee arrangement, and removing disproportionate civil penalties attaching to a fee recipient's failure to provide certain notifications to their client.

Part 2 of Schedule 2 to the Regulations makes consequential amendments to remove redundant obligations relating to fee disclosure statements and ensures existing obligations are updated to reflect the Act as amended.

Items 2 and 3 repeal subregulations 7.6.02A(2)(a) (vi), (ix) and (x) of the *Corporations Regulations 2001* (Corporations Regulations). Subregulation 7.6.02A(2) provides that certain breaches of civil penalty provisions which are prescribed in the subparagraphs need not be notified to ASIC. The Amending Bill repeals the provisions prescribed in subregulations 7.6.02A(2)(a) (vi), (ix) and (x), so those provisions do not need to be specified in subregulation 7.6.02A(2) any longer.

Item 4 repeals regulation 7.7A.11, which relates to fee disclosure statements. Currently, subregulation 7.7A.11(1) provides that for the purposes of paragraph 962H(3)(a) of the Act information about product fees is not required to be included in fee disclosure statements, while subregulation 7.7A.11(2) contains historic transitional arrangements. The Amending Bill repeals the fee disclosure statement regime, so this regulation is no longer required.

Items 5 and 6 adjust regulation 7.7A.11AA, which prescribes certain compliance records which must be kept by a fee recipient for the purpose of section 962X of the Act.

Item 5 repeals subregulations 7.7A.11AA(2)(a) and (b), which require records relating to fee disclosure statements to be kept, as that regime is discontinued by the Amending Bill.

Item 6 adds subregulation 7.7A.11AA(2)(ca) to ensure that a fee recipient keeps a record of each consent given by the client to enter into or renew an ongoing fee arrangement for the purpose of section 962G of the Act, as amended. This amendment supports due diligence and proper record keeping by fee recipients, and leverages the requirements for valid consent to an ongoing fee arrangement set out in new section 962G(1) of the Act, as amended by the Amending Bill, which includes the fee recipient having the consent or a copy of it. Transitional arrangements supporting this change are made by item 9 and described below.

Items 7 and 8 adjust regulation 9.4AB.02, which prescribes civil penalty provisions that are subject to an infringement notice under section 1317DAN of the Act.

Item 7 changes the reference in subregulation 9.4AB.02(2)(e) from section 962P to section 962Z. This change reflects the change in numbering of the provision providing a civil penalty for a fee recipient that charges a fee purporting to be an ongoing fee after termination of the ongoing fee arrangement with the relevant client, by the Amending Bill.

Item 8 repeals subregulation 9.4AB.02(2)(f), which refers to when a fee recipient contravenes subsection 962U(3) of the Act, as that subsection is repealed by the Amending Bill.

Application and transitional arrangements

Item 9 inserts Part 10.52 and regulation 10.52.01 into the Corporations Regulations to set out how certain amendments in these regulations apply.

Regulation 10.52.01 provides application arrangements in relation to keeping compliance records that relate to fee disclosure statements. A fee recipient is currently required to keep records of each fee disclosure statement the fee recipient has given to a client, the date on which this occurred and the manner in which the statement was given by subregulations 7.7A.11AA(2)(a) and (b) of the Corporations Regulations. Once those subregulations are repealed by item 5 of the Regulations there will be no requirement to

keep or create new records, but a fee recipient must retain records created under previous requirements to demonstrate compliance with these, for the purposes of section 962X of the Act. This is consistent with the intent of section 962X to ensure fee recipients can demonstrate compliance with their various obligations over time.

This is consistent with the application provisions of the Act, as amended by the Bill.

Part 3 – Financial Services Guide

Part 3 of Schedule 1 to the Amending Bill amends Part 7.7 of the Act to address and expand on recommendation 10 of the Review, to make it easier for an AFS licensee or its authorised representative to provide a Financial Services Guide (FSG) to retail clients. The amendments mean a financial services licensee (AFS licensee) or its authorised representative that provides financial product advice (whether general advice or personal advice) can continue to give clients an FSG or, alternatively, can make information that would be required to be in that FSG available on their website as ‘website disclosure information’ in accordance with new Division 2A of Part 7.7. Website disclosure information is defined by section 943J of the Act as would be inserted by the Amending Bill to mean the same statements and information that are required to be in an FSG by sections 942B and 942C of the Act, including any modifications, additions or exclusions made by the Corporations Regulations under those sections. This ensures that a client accessing the information through a provider’s website has access to the same information as if they had been given an FSG.

Part 3 of Schedule 1 to the Regulations makes consequential amendments to the Corporations Regulations to clarify how certain regulations relating to an FSG apply in relation to website disclosure information and to adjust references to sections of the Act.

Explanatory note clarifying operation of subregulation 7.7.02(4A)

Item 11 inserts an explanatory note under subregulation 7.7.02(4A) of the Corporations Regulations. Subregulation 7.7.02(4A) provides that if general advice is provided during a telephone call and meets the requirements under subregulation 7.7.02(4), that the AFS licensee or authorised representative must tell the client that an FSG exists and that they will send out an FSG on request. Item 11 inserts an explanatory note under subregulation 7.7.02(4A) to clarify that an FSG is not required to be sent out under subregulation 7.7.02(4A) if website disclosure information is made available in accordance with Division 2A of Part 7.7 of the Act. If a client requests a FSG under subregulation 7.7.02(4A), and the AFS licensee or authorised representative has made website disclosure information available and therefore doesn’t need to send out an FSG, it is expected that the AFS licensee or authorised representative will assist the client in locating the website disclosure information on their website.

Explanatory notes clarifying statements and information to be included in website disclosure information

Items 12 to 14, 18 and 22 to 30 insert explanatory notes about website disclosure information into relevant regulations in the Corporations Regulations to clarify that the requirements that apply in relation to content of an FSG may be relevant to website disclosure information.

Items 12 and 27 insert explanatory notes under subregulations 7.7.03(1) and 7.7.06(1) of the Corporations Regulations, relating to an FSG given by an AFS licensee or authorised representative respectively. These regulations require an FSG to include a statement that describes the purpose and content of the FSG, which must draw the client's attention to certain matters, and if appropriate inform the client of other relevant documents. In an FSG, such information must be easy to understand, and prominently displayed. These information requirements are relevant to website disclosure information, which if made available must contain the required information and be easy to understand. Requirements in subregulations (5)(b) and (6), which specify how information is to be located in an FSG, are not relevant to website disclosure information, which is different to an FSG and agnostic as to form.

Items 13 and 29 insert explanatory notes under subregulations 7.7.03A(1) and 7.7.06B(1) of the Corporations Regulations, which require an FSG given by an AFS licensee or its authorised representative respectively to include statements about arrangements for compensation. These requirements are relevant to website disclosure information, which if made available must contain the information about compensation arrangements.

Items 14 and 30 insert explanatory notes under subregulations 7.7.04(1) and 7.7.07(1) of the Corporations Regulations, which require an FSG given by an AFS licensee or its authorised representative respectively to contain information about remuneration (including commission) and other benefits at the time the FSG is given to the client. The information required depends on the extent to which it is ascertainable at the time the FSG is given to the client, and whether personal advice will be given to the client. In brief, if certain particulars of remuneration are not ascertainable at that time, then a subset of remuneration information must be provided and either a statement about calculation of the information or that the client may request further information (depending whether personal advice will be given). The notes clarify that these requirements are relevant to website disclosure information, which if made available must contain the relevant information about remuneration and statements. Further, the Amending Bill contains a requirement that website information be kept up to date, in new section 943L. This means that if website disclosure information is made available that contains a subset of remuneration information as particulars could not be ascertained, if those particulars later become ascertainable the website disclosure information would need to be updated in accordance with the requirements for ascertainable remuneration information.

Items 18 and 22 insert new explanatory notes at the end of regulations 7.7.04AA and 7.7.04AB. These regulations provide that information about a non-monetary benefit that is not conflicted remuneration is not required to be included in an FSG given by an AFS licensee or an authorised representative, respectively. The new notes clarify that these provisions are relevant to website disclosure information, which if made available would likewise not need to include that information.

Items 16 and 20 make consequential changes in regulations 7.7.04AA and 7.7.04AB to renumber the existing notes as 'Note 1', as the new notes inserted by items 18 and 22 are 'Note 2'.

Items 23 and 28 insert a note at the end of subregulation 7.7.05A(1) and regulation 7.7.06A of the Corporations Regulations. These regulations require an FSG given by an authorised representative to include the authorised representative number given by ASIC to the authorised representative (except when the FSG is a personalised FSG to which regulation

7.7.05B applies) and the AFS licensee's license number. The notes clarify that each requirement is relevant to website disclosure information, which if made available by the representative on their website must include those numbers.

Item 24 inserts a note at the end of subregulation 7.7.05B(1) of the Corporations Regulations. Regulation 7.7.05B applies if an AFS licensee or its authorised representative authorises an individual to provide financial services on behalf of the licensee. In this situation, an FSG given by the authorised individual does not have to include certain information or statements specified in the regulation. The note clarifies these modifications to FSG requirements are relevant to website disclosure information, if made available by the authorised individual.

Items 25 and 26 insert notes at the end of subregulations 7.7.05C(1) and (2) of the Corporations Regulations. Subregulation 7.7.05C(1) exempts an AFS licensee from having to provide certain information (about financial services to which subsection 941C(6) of the Act applies, namely services relating to basic deposit products) in an FSG. This exemption is carried through to an authorised representative of the licensee by subregulation 7.7.05C(2). The notes clarify that these modifications to FSG requirements are relevant to website disclosure information, if made available by the relevant entity.

Statements that clients can request records of further advice

Under section 943N of the Act to be inserted by Amending Bill, an AFS licensee or its authorised representative who makes website disclosure information available must comply with a client's request to give the client a record of further market-related advice or advice to which subsection 946B(7) applies (that being advice that does not recommend the purchase or sale of products), where the advice has been provided but not a record of that advice. An AFS licensee or authorised representative commits an offence if it fails to comply with the request.

Item 32 inserts a new regulation 7.7.10ADA into Division 3, which substitutes a new section 943N of the Act to replace section 943N inserted by the Amending Bill. This is done under paragraph 951(1)(c) of the Act, which provides the regulations may modify the operation of Part 7.7 of the Act (dealing with financial services disclosure including FSGs) by specifying provisions being modified and the way in which they are omitted, modified or varied. Once modified, the Act will have effect consistent with the modifications in the Regulations rather than the effect it would have on its face.

New regulation 7.7.10ADA modifies the new section 943N such that an AFS licensee or authorised representative must comply with a client's request for a copy of "further advice", rather than limiting this request to the two types of advice specified by the original section 943N in the Amending Bill.

This replicates modifications in adjacent regulations which currently apply to FSG disclosure and ensure consumer protections are maintained irrespective of the form of disclosure. The modification ensures that a client's right to request a copy of a record of further advice is preserved if the advice provider meets their FSG obligations by making website disclosure information available.

Replicating the modification of this provision through the regulations aligns with the existing modifications for the FSG regime and provides consistency across the two

disclosure regimes. This will support consistent application of any future updates or amendments.

Items 31 and 33 of the Regulations make consequential amendments to the note under regulation 7.7.10AAA and note 2 under subregulation 7.7.10AE(3A) of the Corporations Regulations, respectively. Both notes refer to the client's existing right to request a record of further advice under subsections 942B(8) and 942C(8) of the Act. The items add a reference to the similar right created by section 943N of the Act, as modified above, where the statement referring to that right is in website disclosure information.

Penalty provisions: exemption from notification requirements

Item 10 amends subregulation 7.6.02A(2) of the Corporations Regulations by inserting new subregulations 7.6.02A(2)(va), (vb), (vc) and (vd). The effect of this amendment is that a breach of one of the penalty provisions which are prescribed in those new subregulations does not need be reported to ASIC. The relevant penalty provisions, subsections 943G(3), 943H(4), 943K(2) and 943L(2) of the Act, are inserted by the Amending Bill to give effect to the website disclosure information regime. These penalties apply where an AFS licensee or its authorised representative, as the case may be, does not where required:

- Make website disclosure information available on their website (subsections 943G(3) for financial services licensees and 943H(4) for authorised representatives);
- Have authorisation to distribute website disclosure information (subsection 943H(4));
- Ensure website disclosure information, or something purporting to be website disclosure information, is readily accessible (subsection 943K(2)); or
- Keep website disclosure information, or something purporting to be website disclosure information, up to date including specifying the day on which it was prepared or last updated (subsection 943L(2)).

Penalty provisions: subject to infringement notices

Item 34 amends subregulation 9.4AB.02(2) of the Corporations Regulations to prescribe additional penalty provisions of the Act which are subject to the infringement notice regime in Part 9.4AB of the Act. The relevant penalty provisions, subsections 943G(3), 943H(4), 943K(2) and 943L(2) of the Act, are inserted by the Amending Bill to give effect to the website disclosure information regime and are described above.

In brief, an infringement notice is an alternative to court-based action issued by the regulator for a minor alleged contravention of an offence or civil penalty provision. The person to whom the notice is issued has the option to pay the fine specified in the notice in full, or elect to have the matter heard by a court.

Part 4 – Conflicted remuneration

Part 4 of Schedule 1 to the Amending Bill amends Subdivision B of Division 4 of Part 7.7A of the Act to address recommendation 13.1 of the Review. The current definition of conflicted remuneration in section 963A is repealed and replaced with a new definition,

to ensure that monetary and non-monetary benefits given by a retail client are not conflicted remuneration. The new definition provides that a benefit will not be conflicted remuneration if it is given by a retail client to an AFS licensee or its authorised representative in relation to a financial product or financial service provided by the licensee or authorised representative. The new definition of conflicted remuneration clarifies the law to achieve the intended outcome of the conflicted remuneration provisions: to ban benefits given by a product issuer or seller which could reasonably influence financial product advice.

Subdivision 1 of Division 4 of Part 7.7A of the Corporations Regulations provides a range of exceptions to conflicted remuneration in relation to benefits given by a retail client. These exceptions are no longer required given the amendments to section 963A and other provisions by the Amending Bill. Consequently, the regulations repeal the following exceptions:

- Item 36 repeals paragraph 7.7A.11C(1)(d), which provides that a monetary benefit is not conflicted remuneration if it is given by a retail client in relation to information that is given in the course of providing a life risk insurance product to the client.
- Item 38 repeals paragraph 7.7A.11C(2)(e), which provides that a non-monetary benefit is not conflicted remuneration if it is given by a retail client in relation to information that is given in the course of providing a life risk insurance product to the client.
- Item 39 repeals paragraph 7.7A.11D(1)(d), which provides that a monetary benefit is not conflicted remuneration if it is given by a retail client in relation to dealing in a life risk insurance product with the client.
- Item 41 repeals paragraph 7.7A.11D(2)(e), which provides that a non-monetary benefit is not conflicted remuneration if it is given by a retail client in relation to dealing in a life risk insurance product with the client.

Items 37 and 40 make typographical changes to subparagraphs 7.7A.11C(2)(d)(ii) and 7.7A.11D(2)(d)(ii) respectively to reflect the repeals made by items 38 and 41.

Item 42 repeals note 2 to regulation 7.7A.12, which provides that a reference in Division 4 of Part 7.7A of the Corporations Regulations to giving a benefit includes a reference to causing or authorising it to be given, as per the former definition of doing in section 52 of the Act (now repealed). As the Amending Bill updates subsection 963A(2) of the Act to clarify that a reference in Subdivision B of Division 4 of Part 7.7A of the Act to giving a benefit includes a reference to causing or authorising the benefit to be given, which will also apply to Division 4 of Part 7.7A of the Corporations Regulations, the note is no longer necessary.

Item 42 also repeals note 3 to regulation 7.7A.12. This ensures consistency with the amendments made by the Amending Bill which removed a broadly equivalent note to subsection 963B(1)(e) of the Act because of the repeal of paragraph 963B(1)(d) of the Act.

Item 44 repeals regulation 7.7A.12H, which provides an exception to conflicted remuneration in relation to benefits given to an agent or employee of an Australian authorised deposit-taking institution (ADI) for financial product advice about basic banking products, general insurance products or consumer credit insurance. The repeal of regulation 7.7A.12H is consistent with the repeal of section 963D of the Act by the

Amending Bill and implements recommendation 13.5 of the Review, that the conflicted remuneration provisions should operate consistently by placing agents and employees of Australian ADI's in the same position as employees of other financial institutions. Transitional arrangements relating to this repeal are described at the end of this section.

Item 45 updates the prescribed provisions for the purposes of regulation 7.7A.12I of the Corporations Regulations. Regulation 7.7A.12I provides that a benefit given in the circumstances in the prescribed provisions does not become conflicted remuneration purely because it is paid with another benefit. Item 45 removes references to paragraphs 963B(1)(c) and 963B(1)(d) as prescribed provisions as these provisions have been repealed by the Amending Bill. Item 45 adds paragraph 963B(1)(ba) as a prescribed provision, which relates to benefits given to the AFS licensee or authorised representative in relation to consumer credit insurance. This corrects a missed consequential amendment resulting from amendments of section 963B of the Act by the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017*.

Items 15, 17, 19, 21, 35, 43 and 46 to 59 correct cross-references in the Corporations Regulations by replacing references to various paragraphs of section 963C of the Act with references to paragraphs of subsection 963C(1). These changes correct existing errors resulting from amendments of section 963C of the Act by the *Corporations Amendment (Financial Advice Measures) Act 2016*.

Application and transitional arrangements

Item 60 adds regulation 10.52.02 into the Corporations Regulations, to set out how and when the amendments made by item 44 (repeal of regulation 7.7A.12H) apply.

The repeal of regulation 7.7A.12H applies to a benefit given to an employee of an ADI (i.e. an authorised deposit-taking institution) on or after the day that is 6 months after the commencement of Part 4 of Schedule 1 to these Regulations (the deferred start day), where the benefit was given:

- Under an arrangement that was entered into on or after the deferred start day; or
- Under an arrangement that was varied on or after the deferred start day, where the variation relates to giving of benefits under the arrangement;
- In other circumstances (that is, not under a formal arrangement).

Put simply, the repeal of regulation 7.7A.12H applies to a benefit given to an employee of an ADI under a formal arrangement entered into or varied, or in other circumstances, from the day that is 6 months after commencement of Part 4 of Schedule 1 to these Regulations.

From that time, an ADI employee can no longer rely on regulation 7.7A.12H to accept a benefit given in relation to basic banking and certain insurance products, and must instead use the amended provisions of the Act and Corporations Regulations to determine whether a benefit is conflicted remuneration.

Inclusion of this application provision relating to ADI employee benefits reflects the possible existence of employment contracts with remuneration based on volume of sales that rely on the exception currently in regulation 7.7A.12H, or other existing contractual arrangements that relate to monetary or non-monetary benefits permitted under that regulation. It is not the intention of this measure to extinguish existing benefits, rights or entitlements on commencement; therefore, it will apply to arrangements entered into on or

after commencement of these provisions. Further, the 6 month transitional period allows ADIs time to adjust existing remuneration structures before the commencement of the repeal of regulation 7.7A.12H.

Regulation 10.52.02 aligns with section 1708D of the Act, as inserted by the Amending Bill, to provide consistent arrangements.

Part 5 – Insurance commissions

Item 61 is a minor amendment to insert paragraph referencing into regulation 7.7A.12G. This amendment gives the existing text of the regulation the reference paragraph (1), to reflect the addition of paragraph (2) by item 62.

Item 62 adds new paragraph 7.7A.12G(2) to clarify how regulation 7.7A.12G interacts with new section 963BB of the Act, introduced by the Amending Bill, and relates to informed consent to insurance commissions and conflicted remuneration.

Regulation 7.7A.12G provides that a benefit is not conflicted remuneration if the benefit is given in relation to a general insurance product.

Section 963BB inserted by the Amending Bill provides that where an AFS licensee or its authorised representative provides or is likely to provide financial product advice to a retail client that is personal advice (not general advice), a monetary benefit given in connection to the issue or sale of relevant products is exempt from the ban on conflicted remuneration under paragraphs 963B(1)(a), (b) and (ba), only when the client's informed consent has been obtained. Relevant products covered by those paragraphs are a general insurance product, a certain life risk insurance product, and consumer credit insurance.

New paragraph 7.7A.12G(2) clarifies that section 963BB applies to regulation 7.7A.12G in the same way as it does to section 963B(1)(a) of the Act (which is similar to, but narrower than, regulation 7.7A.12G). That is – a benefit given to an AFS licensee or its representative in relation to the issue or sale of a general insurance product to a retail client, where personal advice is provided to the client, will not be conflicted remuneration if the client gives informed consent. This means that, where a retail client receives personal advice, an AFS licensee or its authorised representative can receive commissions when the client purchases a general insurance product if the client provides informed consent before the issue or sale of the product.

The application of regulation 7.7A.12G to benefits given to an AFS licensee or its representative in relation to the issue or sale of a general insurance product where general advice is provided is not altered. That is, where an AFS licensee or its authorised representative provides financial product advice to a retail client that is general advice, a benefit given in relation to the issue or sale of general insurance products will continue to be exempt from the ban on conflicted remuneration under paragraphs 963B(1)(a). Informed consent of the client is not required to be obtained under these circumstances.

Item 63 corrects a paragraph reference in paragraph 9.4AB.02(2)(j).

Paragraph 9.4AB.02(2) provides certain civil penalty provisions of the Act are subject to an infringement notice, including section 963K as prescribed by paragraph 9.4AB.02(2)(j). The general prohibition of conflicted remuneration is found in section 963K, specifically in subsection 963K(1) once the Amending Bill inserts a new subsection 963K(2) to provide

an exception to subsection 963K(1). The amendment in item 63 reflects this numeric change, and ensures that contravention of the prohibition continues to be subject to an infringement notice.

Application and transitional arrangements

Item 64 adds regulation 10.52.03 to the Corporations Regulations to provide application arrangements for the amendments made by items 61 and 62 to regulation 7.7A.12G. The amendments to regulation 7.7A.12G will apply to benefits given in relation to the issue or sale of general insurance products on or after the end of the commencement of Part 5 of the Regulations (as described above). This effectively provides a 12 month transition period, to assist AFS licensees and authorised representatives to develop a workable approach to obtaining consent.

The amendments do not apply to benefits given in connection with a general insurance product that was issued or sold (including renewal of a product) before the commencement of Part 5 of the Regulations. This approach takes into account for the fact that it is common for general insurance providers to renew a client's cover on an annual basis without necessarily meeting with the client, so reduces the risk that a client could be left uninsured if the provider was in fact required to wait for that consent from the client prior to renewal.

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