



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 245

# Fee disclosure statements

March 2013

### About this guide

This is a guide for persons who provide personal advice to retail clients, and their professional advisers (such as lawyers).

This guide explains the fee disclosure statement (FDS) obligations in Div 3 of Pt 7.7A of the *Corporations Act 2001* (Corporations Act) and the obligations they create for persons who provide personal advice to retail clients under an ongoing fee arrangement.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This version was issued in March 2013 and is based on legislation and regulations as at the date of issue. The only change is in RG 245.62, which has been amended to clarify the operation of ASIC's no-action position.

Previous versions:

- Superseded Regulatory Guide 245, issued 25 January 2013

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

Australian financial services (AFS) licensees and representatives of AFS licensees who enter into or have an ongoing fee arrangement with retail clients must provide their retail clients with a fee disclosure statement (FDS) on an annual basis.

The FDS obligations must be met for both new and existing retail clients who enter into or have entered into an ongoing fee arrangement.

This guide explains the FDS obligations in Div 3 of Pt 7.7A of the *Corporations Act 2001* (Corporations Act). In particular, it provides guidance on:

- how to prepare an FDS; and
- how and when an FDS should be given.

It also sets out limited no-action positions adopted by ASIC in relation to the FDS obligations. These no-action positions only apply in relation to existing clients.

In addition to the obligation to give an FDS, other fee and remuneration disclosure and conduct obligations apply to AFS licensees and their authorised representatives. These obligations include the disclosure of certain information in the Financial Services Guide (FSG) and in any Statements of Advice (SOAs).

- RG 245.1 Division 3 of Pt 7.7A of the Corporations Act requires AFS licensees and representatives of AFS licensees who have ongoing fee arrangements with retail clients (fee recipients) to comply with FDS obligations: see RG 245.16 for the definition of a ‘fee recipient’. These obligations are designed to help clients ascertain whether they are receiving a service from their fee recipient commensurate with the ongoing fees that they are paying.

Note: In this guide, ‘client’ refers to ‘retail client’ as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations 2001 (Corporations Regulations).

- RG 245.2 This guide explains how the FDS obligations work. It also sets out how we will administer the obligations, including certain no-action positions we have adopted. Fee recipients must obtain their own legal advice and determine how they will comply with their legal obligations, including those arising Div 3 of Pt 7.7A.

- RG 245.3 This guide should be read in conjunction with other guidance we have provided, including:
- (a) Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104);
  - (b) Regulatory Guide 108 *No-action letters* (RG 108);
  - (c) Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175);
  - (d) Regulatory Guide 221 *Facilitating online financial services disclosures* (RG 221); and
  - (e) Regulatory Guide 244 *Giving information, general advice and scaled advice* (RG 244).
- RG 245.4 We have also consulted on and are finalising guidance on related issues. Please see:
- (a) Consultation Paper 189 *Future of Financial Advice: Conflicted remuneration* (CP 189); and
  - (b) Consultation Paper 191 *Future of Financial Advice: Approval of codes of conduct for exemption from opt-in requirement* (CP 191).

## FDS obligations

- RG 245.5 The FDS obligations were introduced as part of the Future of Financial Advice (FOFA) provisions under the *Corporations Amendment (Future of Financial Advice Measures) Act 2012* (FOFA Act No. 1).
- RG 245.6 Fee recipients must give retail clients an FDS, which discloses information about the previous 12 months of their ongoing fee arrangement. An ongoing fee arrangement exists where a retail client is given personal advice and charged an ongoing fee during a period of more than 12 months.
- RG 245.7 The FDS obligations apply to both new and existing clients: see Table 1.

**Table 1: Definition of new and existing client**

<b>New client</b>	<p>A person who enters into an ongoing fee arrangement with an AFS licensee or their representative:</p> <ul style="list-style-type: none"> <li>• after the FDS obligations apply to that AFS licensee or representative; and</li> <li>• who has not been provided with personal advice as a retail client before that time by that AFS licensee or representative.</li> </ul>
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<b>Existing client</b>	<p>A person who has received personal advice as a retail client from an AFS licensee or their representative:</p> <ul style="list-style-type: none"> <li>• before the obligations apply to that AFS licensee or representative; and</li> <li>• who enters into an ongoing fee arrangement with that AFS licensee or representative, either before or after the obligations apply.</li> </ul>
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## Requirements in relation to FDSs

RG 245.8 In Section B, this guide explains how to prepare an FDS, including:

- (a) who must give an FDS;
- (b) when the obligation to give an FDS arises; and
- (c) what must be included in an FDS.

It also explains that where a fee recipient is unable to comply with content requirements for the FDS because they are unable to obtain essential information from an assignor of the ongoing fee arrangement with an existing client, we will not take enforcement action for any consequential breach of the content requirements. See RG 245.19 for the definition of assignor.

RG 245.9 Section C explains how and when a fee recipient should give an FDS. It also sets out no-action positions we have adopted to:

- (a) help fee recipients determine when to give an FDS; and
- (b) streamline the timing of fee recipients' FDS obligations.

RG 245.10 We have adopted these limited no-action positions to:

- (a) help fee recipients who have made a good-faith attempt to comply with the FDS obligations but are unable to do so; and
- (b) make the FDS obligations easier and more cost effective for fee recipients to administer.

We do not consider that these limited no-action positions will undermine the purpose of the FDS obligations. In giving no-action positions, we have been mindful of both the purpose of the FDS obligations and the fact that ASIC has no power to give an exemption or modification under the FOFA provisions.

Note: An ASIC no-action position merely states ASIC's current intention to not take regulatory action in relation to a particular state of affairs or conduct. It does not preclude third parties from taking legal action in relation conduct covered by the ASIC no-action position: see RG 108, especially RG 108.33.

## Timing and implementation

- RG 245.11 The FOFA Act No. 1 commenced on 1 July 2012. All AFS licensees and their representatives must comply with the obligations in Pt 7.7A (including the FDS obligations) from 1 July 2013. However, AFS licensees can elect to comply with Pt 7.7A before 1 July 2013 by notifying ASIC under s967: see Form FS92 *Notification of intention to comply with Future of Financial Advice provisions*.
- RG 245.12 This means that the FDS obligations apply to all fee recipients from 1 July 2013, unless an AFS licensee elects to comply with Pt 7.7A before this date. If an AFS licensee elects to comply before 1 July 2013, the FDS obligations apply from the date specified in the notice lodged with ASIC under s967.

## Other fee and remuneration disclosure and conduct obligations

- RG 245.13 In addition to the FDS obligations, the Corporations Act also imposes other fee and remuneration disclosure and conduct obligations on AFS licensees and their authorised representatives who provide financial product advice to retail clients. These obligations include:
- (a) preparing and providing an FSG under s941–943 (see RG 175 for guidance on this obligation);
  - (b) where personal advice is provided, preparing and providing an SOA under s946–947 (see RG 175 for guidance on this obligation);
  - (c) complying with the renewal notice and opt-in requirements under s962K–962Q, unless granted an exemption by ASIC under s962CA (see CP 191); and
  - (d) provisions on conflicted remuneration and other banned remuneration in Divs 4 and 5 of Pt 7.7A (see CP 189).
- RG 245.14 AFS licensees and their representatives must determine and comply with all their legal obligations in relation to fee and remuneration disclosure and conduct.

## B Preparing an FDS

### Key points

The obligation to provide an FDS falls on the fee recipient or their assignee.

An FDS must contain information from the previous 12-month period about:

- the amount of fees paid by the retail client;
- the services that they were entitled to receive; and
- the services that they did receive.

When the rights under an ongoing fee arrangement of an AFS licensee or representative have been assigned to another person during the period covered by an FDS, the FDS must contain information about the fees paid and the services received (or that were entitled to be received) during the 12-month period from both the assignor and the current fee recipient (i.e. the assignee).

In limited circumstances, we will not take enforcement action if rights under an ongoing fee arrangement with an existing client are assigned and the current fee recipient is unable to obtain information from the assignor necessary to meet the requirements of s962H.

### Who must give an FDS?

RG 245.15 An FDS must be provided by the 'fee recipient': see s962C.

RG 245.16 A fee recipient is:

- (a) the AFS licensee or their representative who enters into the ongoing fee arrangement with the client; or
- (b) if the rights of the person who entered into the ongoing fee arrangement have been assigned, the person who currently holds those rights (the assignee).

RG 245.17 A representative of an AFS licensee includes an authorised representative of the licensee, an employee or director of the licensee, or an employee or director of a related body corporate of the licensee.

RG 245.18 When a representative is responsible for giving an FDS, the AFS licensee must monitor the representative's compliance with the FDS obligations, in accordance with the licensee's general obligations under s912A(1)(ca).

RG 245.19 An assignee is an AFS licensee or their representative who is assigned the rights under an ongoing fee arrangement of another AFS licensee or their representative. An assignor is the AFS licensee or their representative who assigns their rights.



RG 245.20 A fee recipient may outsource some of its administrative or compliance functions under a commercial arrangement with a third-party agent. For example, a fee recipient may engage an administration provider to generate and provide FDSs on its behalf. However, the fee recipient cannot transfer the actual obligation or liability itself, and will remain responsible for ensuring that its obligations are met: see RG 104.34–RG 104.36.

## When does the obligation to give an FDS arise?

RG 245.21 The obligation to give an FDS only arises if an ongoing fee arrangement exists between the client and the AFS licensee or their representative.

RG 245.22 An ongoing fee arrangement exists when an AFS licensee or their representative gives personal advice to a retail client and the retail client enters into an arrangement with the AFS licensee or representative, the terms of which provide for the payment of a fee during a period of more than 12 months.

RG 245.23 For the purposes of the definition of ‘ongoing fee arrangement’, a fee is *any* fee (however described or structured) that is paid under the terms of the ongoing fee arrangement between the AFS licensee or representative and the client: see s962B.

RG 245.24 As stated at para 1.18 of the Replacement Explanatory Memorandum to the Corporations Amendment (Future of Financial Advice) Bill 2012 (Replacement Explanatory Memorandum), the intent is to capture those ongoing fee arrangements where ‘ongoing fees’ are received by the fee recipient for personal advice (including where the client is paying ongoing fees despite not actually receiving ongoing advice).

RG 245.25 An arrangement under which a client receives unrelated separate pieces of advice does not necessarily constitute an ongoing fee arrangement, even where the client uses the same adviser over a period longer than 12 months.

Note: An AFS licensee or representative cannot enter into a scheme for the sole or dominant purpose of avoiding the FDS obligations: s965.

RG 245.26 The following are not ongoing fee arrangements:

- (a) a payment plan meeting prescribed requirements—for example, an upfront advice fee paid in instalments (this is excluded under s962A(3));
- (b) an arrangement under which the only fee payable is an insurance premium (this is excluded under s962A(4)); and
- (c) an arrangement to the extent that the fee payable is a product fee (this is excluded under s962A(5) and reg 7.7A.10).

## What must be included in an FDS?

- RG 245.27 The content of an FDS is the same for new and existing clients.
- RG 245.28 For the purposes of Div 3 of Pt 7.7A, an FDS is a statement in writing that includes information related to the previous 12-month period of an ongoing fee arrangement: s962H. That 12-month period must end no more than 30 days before the statement is given to the client.
- RG 245.29 The following information must be included in the FDS:
- (a) the amount (in Australian dollars) of each ongoing fee paid by the client under the ongoing fee arrangement in the previous year. An 'ongoing fee' is any fee payable under an ongoing fee arrangement: see s962B. The requirement to express the amount of each ongoing fee in Australian dollars (s962H(2)(a)) means that the fees must be stated as dollar amounts, rather than, for example, as a percentage of funds under advice;
  - (b) information about the services that the client was entitled to receive under the ongoing fee arrangement in the previous year (including from any previous AFS licensee or representative under the client's ongoing fee arrangement); and
  - (c) information about the services that the client actually received under the ongoing fee arrangement in the previous year (including from any previous AFS licensee or representative under the client's ongoing fee arrangement).

## How should the information be presented?

- RG 245.30 We consider that the policy intent of the obligations is that the FDS should be consumer friendly, concise and easy to read.
- RG 245.31 The purpose of the FDS is to help clients work out what services they are paying for, what services they have received and how much those services cost, in order to enable clients to make an informed decision about whether the arrangement should continue.
- RG 245.32 The Corporations Act does not prescribe the level of detail required in an FDS. Fee recipients will need to determine the level of detail needed to communicate the required information clearly and effectively, including how services and fees should be described and presented in the statement.
- RG 245.33 Fee recipients should be careful to comply with the general obligations in the Corporations Act and the *Australian Securities and Investments Commission Act 2001*. In particular, it is important to comply with the provisions that deal with misleading or deceptive conduct and false or misleading representations.

- RG 245.34 Fee recipients will need to decide how to describe the services actually provided under the ongoing fee arrangement. For example, a fee recipient could describe whether a client received personal advice on a particular topic or whether they received a standardised brochure containing general advice on that topic. To ensure that the client is not misled, the fee recipient will need to clearly distinguish between the services actually provided and the services that the client was entitled to receive.
- RG 245.35 The Corporations Act does not prohibit the inclusion of additional information in the FDS. However, additional information should generally be kept separate from the prescribed information, to ensure that the additional information does not affect the client's ability to determine whether the services they are receiving are commensurate to the ongoing fees they are paying. For example, any information included about future services (additional information) should be clearly separate from information about services provided or services that the client was entitled to receive over the 12 months covered by the FDS (prescribed information).
- RG 245.36 Likewise, fee recipients are not prohibited from including details of fees and services payable under multiple ongoing fee arrangements with the one client in a single document. But again, it is important to ensure that the information is set out clearly and that the way in which information about the multiple ongoing fee arrangements is presented does not affect the client's ability to easily assess the services they are receiving and the fees they are paying under each arrangement. Fee recipients will also need to be careful to provide the FDS within the time specified for the various arrangements: see RG 245.54 for further information.

### **Do commissions need to be disclosed?**

- RG 245.37 The Replacement Explanatory Memorandum notes at para 1.13 that an ongoing fee paid by a third party to an AFS licensee or a representative (which would include a commission) will generally not constitute an ongoing fee for the purposes of s962A(1)(c) and s962A(2)(c), unless the fee is paid with the clear consent of or at the direction of the client.

Note: Commissions are generally banned under the conflicted remuneration provisions in Pt 7.7A unless they are grandfathered arrangements—that is, arrangements entered into before the application day under s1528(1) or explicitly permitted (e.g. under s963B or 963C). These provisions also do not apply to benefits, including commissions, that would result in an acquisition of property otherwise than on just terms.

- RG 245.38 We therefore consider that commissions generally do not need to be disclosed in the FDS, on the basis that they are paid under a commercial arrangement between a product issuer or platform operator and an AFS licensee or a representative. However, fee recipients should consider whether any commissions were entered into with the clear consent of or at the direction of the client and therefore need to be disclosed. We would not generally consider

that a commission was entered into with the clear consent of or at the direction of the client merely because it has been disclosed in the SOA.

- RG 245.39 If it is too difficult for a fee recipient to determine the breakdown of the commission and advice fees, we consider that they should disclose all of the fees in the FDS.
- RG 245.40 If commissions are not disclosed in the FDS, the fee recipient should be careful to ensure that the wording of the FDS does not mislead clients by implying or suggesting that the fees disclosed are the only payments received by the fee recipient.

### **When the ongoing fee arrangement is assigned**

- RG 245.41 If the ongoing fee arrangement has been assigned during the 12-month period covered by the FDS, the FDS must include information about the fees paid to the assignor and the services received (or entitled to be received) from the assignor, as well as the fees paid to the current fee recipient (i.e. the assignee) and the services received and entitled to be received from the current fee recipient during that 12-month period: s962H.
- RG 245.42 When an ongoing fee arrangement is assigned, the assignee should consider whether their agreement with the assignor requires the assignor to furnish them with the required information to be included in the next FDS.
- RG 245.43 When a fee recipient is unable to comply with content requirements for the FDS in s962H in relation to an existing client (as defined in Table 1) because they are unable to obtain essential information from an assignor of the ongoing fee arrangement (e.g. in circumstances where the assignor has died), we will not take enforcement action for any consequential breach of the content requirements in s962H, provided the fee recipient has made a reasonable effort to comply with the content requirements in s962H (including by seeking to obtain the information from the assignor or its licensee).
- RG 245.44 ASIC's no-action position in RG 245.43 does not extend to new clients (as defined in Table 1), on the basis that failure to comply with the content requirements for the FDS for a new client will result in the termination of the ongoing fee arrangement: s962F. A civil penalty may arise if the fee recipient charges an ongoing fee after an arrangement has terminated: s962P and 1317E.
- RG 245.45 Accordingly, when a fee recipient is unable to comply with the content requirements for the FDS for a new client, following assignment of the client's ongoing fee arrangement, the fee recipient should enter into a new ongoing fee arrangement with the client to avoid termination of the ongoing fee arrangement. In these circumstances, fee recipients would only need to include information about the new ongoing fee arrangement in the FDS.

## C Giving an FDS

### Key points

We consider that the FDS can be given to the client using a range of media and technologies.

The FDS must relate to a period of 12 months ending no more than 30 days before the statement is given to the client. This means that the disclosure day will remain the same each year, so long as the annual statement relates to the same 12-month period.

For the purposes of the first FDS, the disclosure day will be the anniversary of the date that the ongoing fee arrangement was entered into.

For all subsequent FDSs, the disclosure day is the anniversary of the day immediately after the end of the 12-month period that the previous FDS covered.

An FDS must be given to the client no later than 30 days after the disclosure day. For new clients, the legislation is drafted in a way that gives fee recipients the flexibility to give an FDS earlier than the actual disclosure day. The drafting of s962S in relation to existing clients does not give this flexibility. However, we have adopted a no-action position to extend this flexibility to ongoing fee arrangements with existing clients. This will help fee recipients who wish to reset the disclosure day to streamline the timing of their FDS obligations.

We expect fee recipients to take a common sense approach to determining the disclosure day for existing clients.

We have adopted a no-action position to assist those fee recipients who are unable to determine the disclosure day for existing clients.

### How must an FDS be given?

RG 245.46 An FDS must be provided in writing (see s962H(1)); however, the term ‘writing’ is broadly defined under the *Acts Interpretation Act 1901*, and encompasses facsimile, email or through a secure online facility.

RG 245.47 Therefore, we consider that the FDS can be given to the client using a range of media and technologies. For example, a fee recipient can provide a client with an FDS by:

- (a) giving the client a paper FDS personally;
- (b) sending a paper FDS to the client’s postal address;
- (c) sending an electronic FDS via an email, either in the body of the email or through an attachment; or

- (d) sending correspondence with a reference to a secure online portal where the FDS can be found.

RG 245.48 We encourage fee recipients to agree to an appropriate form of communication with their clients, taking into account their clients' apparent technological know-how and access to the necessary equipment (e.g. access to the internet). We also encourage fee recipients to take into consideration our good practice guidance in RG 221 if they deliver FDSs online.

## When does an FDS need to be given?

- RG 245.49 Under s962G, fee recipients must provide new clients with an FDS *before* the end of a period of 30 days beginning on the disclosure day: see RG 245.54 for more information on the disclosure day. That is, if the disclosure day is 1 June, the FDS can be given at any time before 30 June.
- RG 245.50 Section 962S, which applies to existing clients, is expressed differently. Fee recipients must provide existing clients with an FDS *within* a period of 30 days beginning on the disclosure day. That is, if the disclosure day is 1 June, the FDS must be given between 1 June and 30 June (inclusive).
- RG 245.51 This means that for new clients, the legislation is drafted in a way that gives fee recipients the flexibility to give an FDS at a time that is administratively convenient for the fee recipient. This flexibility does not disadvantage clients. The drafting of s962S in relation to existing clients does not give this flexibility.
- RG 245.52 We intend to administer the FDS obligations as if s962S were in the same terms as s962G—that is, as if s962S provided that fee recipients must give existing retail clients an FDS *before* the end of a period of 30 days beginning on the disclosure day.
- RG 245.53 This means we will not take enforcement action where a fee recipient breaches s962S solely because they provided the FDS earlier than the disclosure day.

Note: For further information on how to use the flexibility to reset the disclosure day, see RG 245.64–RG 245.71.

## What is the 'disclosure day'?

- RG 245.54 Section 962J defines 'disclosure day' for the purposes of Pt 7.7A. The rules for identifying the disclosure day are the same for new and existing clients:
- (a) For the purposes of the first FDS, the disclosure day will be the anniversary of the date that the ongoing fee arrangement was entered into.

- (b) For all subsequent FDSs, the disclosure day is the anniversary of the day immediately after the end of the 12-month period that the previous FDS covered.

### Example 1: Identifying the dates for disclosure

XYZ Licensee enters into an ongoing fee arrangement with Alex Lee on 1 September 2013. XYZ Licensee provides an FDS to Alex on 15 September 2014. The statement must relate to a period of 12 months, ending no more than 30 days before the date that the statement is given. To ensure that the disclosure day remains the same each year, XYZ's statement covers the period 1 September to 31 August each year, making the disclosure day 1 September in each subsequent year.

The relevant dates for Alex's FDS are set out in Table 2.

**Table 2: FDSs for Alex Lee**

Event	Date
First disclosure day	1 September 2014
First FDS must be given on or before	30 September 2014
Date first FDS is actually given by XYZ Licensee	15 September 2014
Period covered by first FDS	1 September 2013–31 August 2014
Second disclosure day	1 September 2015

### How to determine the disclosure day

- RG 245.55 In most cases it will be easy to determine the disclosure day. However, we understand that in some cases it will be more difficult.
- RG 245.56 Fee recipients should consider the following factors when determining the day that the arrangement was entered into for the purposes of identifying the first disclosure day:
- (a) If a new arrangement terminated an earlier arrangement, the disclosure day will be the anniversary of the date the new arrangement was entered into.
  - (b) If there are two or more separate ongoing fee arrangements, there will be multiple disclosure days and the disclosure obligations will apply to each ongoing fee arrangement separately.
- RG 245.57 When an ongoing fee arrangement has been assigned to a fee recipient, the fee recipient will need to determine the disclosure day by:
- (a) identifying whether an FDS has previously been provided to the client and the period covered by the previous statement; or

- (b) if an FDS has not previously been provided to the client under the ongoing fee arrangement, identifying when the arrangement was first entered into.

RG 245.58 An assignment or transfer of rights under an ongoing fee arrangement will not usually trigger the creation of a new ongoing fee arrangement with the client, if the character of the arrangement does not change. However, as stated in the Replacement Explanatory Memorandum at para 1.61, it will depend on the circumstances of each assignment or transfer. The fee recipient should determine whether the transfer results in the arrangement changing character to such a degree that it essentially becomes a new arrangement with a new disclosure day (e.g. there is a change in the fundamental services provided and/or fees received under the arrangement). In certain circumstances, the fee recipient might decide that it would be administratively easier to enter into a new arrangement with the client.

#### **Disclosure day for existing clients**

RG 245.59 For existing clients, fee recipients will need to determine (e.g. by reviewing client files) when they (or a previous fee recipient under the ongoing fee arrangement) first entered into an ongoing fee arrangement with each existing client. Depending on the circumstances, this may, for example, be the date an authority to proceed was signed or a financial product was acquired by the client.

Note: Under s1101C, the financial records that an AFS licensee is required to keep under s988A must generally be kept for seven years after the transactions covered by the record. Other records required by Ch 7 must be kept for five years after the day on which the last entry was made in the record.

RG 245.60 We expect fee recipients to document the approach taken to identify the date that ongoing fee arrangements were entered into with existing clients and to apply that approach consistently across their client book. We accept that they might take different approaches for different categories of client.

RG 245.61 Where it is impossible or unreasonably difficult to identify the actual date that an ongoing fee arrangement was entered into with an existing client, we think fee recipients should adopt a common sense approach. For example, they could give the first FDS to all existing clients within 30 days of 1 July 2013.

RG 245.62 Alternatively, if it is impossible or unreasonably onerous to determine the day an ongoing fee arrangement was entered into with an existing client, we will not take enforcement action against a fee recipient (for failing to provide the FDS to an existing client within a period of 30 days beginning on the first disclosure day) if the fee recipient:



- (a) notifies the client in writing of a date between 1 July 2013 and 31 January 2014 that they will treat as the anniversary of the day on which the ongoing fee arrangement was entered into;
- (b) explains to the client the significance of that date for the purposes of the FDS obligations; and
- (c) provides the client with an FDS before the end of a period of 30 days beginning on that date.

RG 245.63 The fee recipient may send the notification and explanation referred to in RG 245.62(a)–RG 245.62(b) at the same time as they send the FDS.

### Streamlining disclosure days

RG 245.64 As noted at RG 245.49–RG 245.53, fee recipients will have some flexibility to provide FDSs early to clients, even though each statement must cover a 12-month period.

### New clients

RG 245.65 A fee recipient can meet its FDS obligations for new clients before the disclosure date, if it is convenient to do so. For example, a fee recipient can give a new client their first FDS before the expiration of the first 12 months of the ongoing fee arrangement in order to reset the disclosure day to another time of year that better suits the fee recipient's business needs.

#### Example 2: Resetting the disclosure day for new clients

ABC Licensee wishes to streamline the production and dispatch of its FDSs. To facilitate this, ABC Licensee decides that they will send the first FDS on the same day to all new clients who first entered into an ongoing fee arrangement with ABC Licensee during preceding 12-month period.

Each statement will contain information about the ongoing fee arrangement between ABC Licensee and the client over the given 12-month period, even though for some clients the duration of the arrangement would be less than 12 months at the time the statement is given.

ABC Licensee decides that they will send FDSs to all new clients on 15 July 2014, covering the period from 1 July 2013 to 30 June 2014. ABC Licensee has met its obligation to provide FDSs to its new clients and the disclosure day for ABC Licensee's new clients is now reset to 1 July.

RG 245.66 In this situation the FDS will still have to cover a 12-month period, but the fee recipient should make it clear in the FDS that the ongoing fee arrangement only existed for a certain part of that 12-month period and that the fees provided and services received only relate to that part of the 12-month period.

**Existing clients**

- RG 245.67 As set out in RG 245.49–RG 245.53, the provisions of the Corporations Act relating to existing clients do not give the same flexibility in relation to the timing of the FDS.
- RG 245.68 However, fee recipients could still reset the disclosure day for existing clients after 1 July 2013 if they choose to rely on the ASIC no-action position set out in RG 245.53.
- RG 245.69 Alternatively, fee recipients could rely on our no-action position in RG 245.62 and, subject to the conditions set out in that paragraph, notionally nominate the anniversary of the day that the arrangement was entered into to suit their business needs. This may mean there is no need reset the disclosure day.
- RG 245.70 We consider that a fee recipient can only reset the disclosure date for existing clients by issuing an FDS before 1 July 2013 if they or, in the case of a representative, their AFS licensee have elected to comply with Pt 7.7A before 1 July 2013 by notifying ASIC under s967: see RG 245.11–RG 245.12. An FDS issued before Pt 7.7A applies to the fee recipient will have no legal status.
- RG 245.71 If a fee recipient chooses to reset the disclosure date sometime after it has given the initial FDS by giving an FDS before the disclosure day (a ‘resetting FDS’), the resetting FDS will cover a 12-month period that overlaps with the period covered by the previous FDS. In this situation, the fee recipient should make this clear in the resetting FDS so that clients can fully understand the fees they have paid, the services they received and the services they were entitled to receive.

## Key terms

Term	Meaning in this document
advice	Personal advice
assignee	An AFS licensee or their representative who is assigned the rights under an ongoing fee arrangement of another AFS licensee or their representative
assignor	An AFS licensee or their representative who assigns their rights under an ongoing fee arrangement to an assignee
ASIC	Australian Securities and Investments Commission
authorised representative	A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee  Note: This is a definition contained in s761A.
client	A retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
disclosure day	The rules for identifying the disclosure day are the same for new and existing clients: <ul style="list-style-type: none"> <li>For the purposes of the first FDS, the disclosure day will be the anniversary of the date that the ongoing fee arrangement was entered into.</li> <li>For all subsequent FDSs, the disclosure day is the anniversary of the day immediately after the end of the 12-month period that the previous FDS related to.</li> </ul> Note: See s962J for the exact definition.
existing client	Retail clients who have received personal advice as a retail client of the AFS licensee or their representative before the obligations apply and who enter into an ongoing fee arrangement, either before or after the obligations apply
fee disclosure statement (FDS)	A document required by s962G to be given in accordance with Div 3 of Pt 7.7A of the Corporations Act. Specifically, it is a statement in writing provided by a fee recipient to their client about the previous 12 months of their ongoing fee arrangement, including information about the amount of fees paid by the client, the services received by the client, and the services that the client was entitled to receive

Term	Meaning in this document
fee recipient	<p>A fee recipient is:</p> <ul style="list-style-type: none"> <li>• the AFS licensee or their representative who enters into the ongoing fee arrangement with the client; or</li> <li>• if the rights of the person who entered into the ongoing fee arrangement have been assigned, the person who currently holds those rights</li> </ul> <p>Note: See s962C for the exact definition.</p>
financial product	<p>A facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> <li>• makes a financial investment (see s763B);</li> <li>• manages financial risk (see s763C);</li> <li>• makes non-cash payments (see s763D)</li> </ul> <p>Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.</p>
financial product advice	<p>A recommendation or a statement of opinion, or a report of either of these things, that:</p> <ul style="list-style-type: none"> <li>• is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or</li> <li>• could reasonably be regarded as being intended to have such an influence.</li> </ul> <p>This does not include anything in an exempt document</p> <p>Note: This is a definition contained in s766B of the Corporations Act.</p>
Financial Services Guide (FSG)	<p>A document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act</p> <p>Note: This is a definition contained in s761A.</p>
FOFA	Future of Financial Advice
FOFA Act No. 1	<i>Corporations Amendment (Future of Financial Advice Measures) Act 2012</i>
new client	<p>A retail client who enters into an ongoing fee arrangement with an AFS licensee or their representative after the FOFA obligations apply and who has not been provided with personal advice as a retail client before that time</p>

Term	Meaning in this document
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> <li>the person giving the advice has considered one or more of the client's objectives, financial situation and needs; or</li> <li>a reasonable person might expect the person giving the advice to have considered one or more of these matters</li> </ul> <p>Note: This is a definition contained in s766B(3) of the Corporations Act.</p>
Pt 7.7 (for example)	A part of the Corporations Act (in this example, numbered 7.7)
reg 7.7A.10 (for example)	A regulation of the Corporations Regulations (in this example, numbered 7.7A.10)
representative or representative of an AFS licensee	<p>Means:</p> <ul style="list-style-type: none"> <li>an authorised representative of the licensee;</li> <li>an employee or director of the licensee;</li> <li>an employee or director of a related body corporate of the licensee; or</li> <li>any other person acting on behalf of the licensee</li> </ul> <p>Note: This is a definition contained in s910A of the Corporations Act.</p>
resetting FDS	An FDS given to the client before the disclosure day in order to reset the disclosure day to the anniversary of the day immediately after the end date of the period covered by the resetting FDS
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations
Replacement Explanatory Memorandum	Replacement Explanatory Memorandum to the Corporations Amendment (Future of Financial Advice) Bill 2012
RG 108 (for example)	An ASIC regulatory guide (in this example numbered 108)
s967 (for example)	A section of the Corporations Act (in this example numbered 967), unless otherwise specified
Statement of Advice (SOA)	<p>A document that must be given to a client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>

## Related information

### Headnotes

assignee, assignor, disclosure day, existing client, FDS, fee disclosure statement, fee recipient, Future of Financial Advice reforms, new client, ongoing fee, ongoing fee arrangement, personal advice, retail client

### Regulatory guides

RG 104 *Licensing: Meeting the general obligations*

RG 108 *No-action letters*

RG 175 *Licensing: Financial product advisers—Conduct and disclosure*

RG 221 *Facilitating online financial services disclosures*

RG 244 *Giving information, general advice and scaled advice*

### Legislation

*Acts Interpretation Act 1901*

*Australian Securities and Investments Commission Act 2001*

Corporations Act, Ch 7, Pt 7.7A, Div 1, Div 3, Div 6, s960, 962, 962A, 962B, 962C, 962CA, 962D, 962E, 962F, 962G, 962H, 962J, 962P, 962Q, 962R, 962S, 963B, 963A, 965, 988A, 1101C, 1317E, 1528

Corporations Regulations, Div 3 of Pt 7.7A

FOFA Act No. 1

Replacement Explanatory Memorandum to the Corporations Amendment (Future of Financial Advice) Bill 2012

### Consultation papers and reports

CP 189 *Future of Financial Advice: Conflicted remuneration*

CP 191 *Approval of codes of conduct for exemption from opt-in requirement*

### ASIC forms

Form FS92 *Notification of intention to comply with Future of Financial Advice provisions*