Answers to your FoFA questions

**IMPORTANT:**
These frequently asked questions have been designed to provide financial advisers and AFS licensees with a better understanding of the FoFA reforms and to clarify how the changes will affect your business and your clients. This information is based on the FoFA legislation and associated regulations that have been released, as well as ASIC policy. It is current as at 28 June 2013. This is provided for your use only, as a recipient of this email, and is not intended for wider distribution or use by other third parties. It contains general information about FoFA and provides an insight into how our IOOF group products and services will be affected as well as the initiatives we are taking to comply with the reforms. We encourage you to ask specific questions about your needs as a financial adviser, so please speak to your IOOF business development manager if you require any further assistance.

**Key dates**

**When does FoFA actually start?**
Although the commencement date of the FoFA legislation was 1 July 2012, it does not actually start until 1 July 2013 (the application date) at which time the following reforms will apply:

- The best interests duty
- Annual disclosure and opt-in to ongoing advice fees (such as adviser service fees)
- Conflicted remuneration ban
- Ban on volume-based shelf space fees
- Ban on asset-based fees where borrowed funds are used to invest.

Although the start date is 1 July 2013, ASIC will be taking a facilitative approach to enforcement in the first year.

**Is it possible to opt-in to FoFA earlier?**
Yes, by applying to ASIC, it is possible for an AFS licensee to opt-in to FoFA before the application date. To do so, you will need to opt-in to every component of FoFA, including those parts of the reforms that still require further clarity from ASIC (such as conflicted remuneration).

**What parts of FoFA have already commenced?**
The anti-avoidance provisions officially commenced on 1 July 2012. This means that, if a licensee entered into an arrangement after 1 July 2012, with the intention of avoiding the FoFA ban on conflicted remuneration (that comes into effect from 1 July 2013) ASIC could take action against the licensee if it has reason to do so. However ASIC has said that it is not likely to use the anti-avoidance provisions if the scheme has a commercial purpose other than avoiding the conflicted remuneration ban and is in the ordinary course of business.

If licensees are considering entering into an arrangement before 1 July 2013 and you are concerned that it could potentially be construed as conflicted remuneration it is advisable to seek legal advice to ensure you are not at risk of breaching the anti-avoidance provisions.

**Conflicted remuneration**

**What is conflicted remuneration?**
Conflicted remuneration is any benefit given to a licensee, or its representative, that could reasonably be expected to influence the recommendation of a financial product or the financial product advice given to clients.

ASIC’s view on the nature and application of the ban on conflicted remuneration is explained in ASIC Regulatory Guide 246: Conflicted remuneration (RG 246). In considering the ban on conflicted remuneration, ASIC will look at the substance of a benefit over its form and the overall circumstances in which the benefit is given. Relevant factors include:

- How does the AFS licensee or representative gain access to the benefit?
- Who is giving the benefit?
- When is the benefit given?
- Why is the benefit being given?
- How is the value of the benefit determined?
- What are the details of the benefit and its features?

To be conflicted remuneration, a benefit does not need to relate to a specific financial product. For example, the benefit could be one that means you are more likely to recommend only a particular issuer’s financial products.
Are salaries paid to financial advisers considered conflicted remuneration?

Salaries paid to financial planners are not conflicted remuneration but performance bonuses if it is calculated by reference to the number or value of financial products recommended by the employee to clients and could therefore be seen as conflicted remuneration.

In the earlier Consultation Paper, ASIC had taken a harder line on performance bonuses and advised that if the volume based component of the bonus exceeded 5 -7 per cent, it would be conflicted remuneration. Since then, ASIC has taken a more reasonable approach in the final RG 246, and removed any reference to a fixed percentage. The factors for evaluating performance bonuses (such as a balanced score card) are set out in Table 3 on page 28 of RG 246. Payments based on total profitability of the business unit would not be treated as conflicted remuneration if the size of the business unit is sufficiently large.

Note: Existing arrangements to pay bonuses (and/or other benefits) for existing staff as at 1 July 2013 will be grandfathered if the payment of the bonus (and/or other benefits) to the employee is specified in the employment arrangement and no material change is made to the arrangement after 1 July 2013. ASIC considers that if a bonus (or a benefit) paid to an employee is discretionary, it will not be grandfathered.

Conflicted remuneration – soft dollar benefits

What soft dollar benefits will be allowed under FoFA?

There will be a ban on soft dollar benefits, however, the following types of benefits will be allowed:

- **Benefits under $300 (including monetary and non-monetary benefits)** – the details of all benefits over $100 but less than $300 must still be recorded. If benefits under $300 are given on a frequent or regular basis, and the combined value of all benefits received by an adviser is greater than $300, then it is likely to be considered conflicted remuneration. ASIC will consider a benefit is given on a frequent or regular basis if it is given to the same adviser at least three times over a one-year period.

- **Training and development** – Education and training activities that are relevant to the provision of financial product advice to clients, are not considered to be conflicted remuneration. Education and training activities for a particular course (for example, a conference or a professional development day) must at least take up the lesser of six hours a day or 75 per cent of the time spent on the course.

This exclusion also applies to the written material such as the tax implications of a product or a class of products on which you provide advice and as well as any research that furthers your knowledge about these products. This allows product providers and platforms to provide materials to participants at professional development days or conferences.

Note that the participant, their employer or the licensee must pay for travel and accommodation relating to the course and/or development days/conferences as well as any events and functions held in conjunction with it. There is no geographic restriction on the locations of these events, however, you must keep a record of the education and training benefits you receive.

Often, when the dominant purpose of a conference or professional development day is training and education, a non-monetary benefit is provided. A dominant purposes test is typically a but for test. Therefore, licensees and fund managers need to ask: ‘But for the training and education purpose, would the non-monetary benefit be provided?’

- **Information technology software and support** – The provision of information technology software or support is not considered to be conflicted remuneration if it is related to the provision of financial product advice about our IOOF financial products to retail clients. For example:
  - software for an administration platform
  - access to an information technology help desk for problems that you may experience when using administration platform software
  - access to a website to place client orders.

Dealer groups must keep records of information technology software or support that they or their advisers receive.

What types of benefits will IOOF provide advisers?

FoFA will only enhance our commitment to continuing to support you through the provision of quality training, education and technical services. Our new adviser service offering, IOOF AdviserConnect, provides you (and your licensee) with a range of services and support that meet the post 1 July 2013 FoFA requirements. We can provide all the appropriate details you need in order to record any benefits you receive from us.
Grandfathering

How does grandfathering affect existing payment arrangements?

The grandfathering provisions ensure that if there is an existing arrangement to pay conflicted remuneration, this can continue after 1 July 2013. However payments under new arrangements will be banned. A grandfathered arrangement includes:

- Contractual rights to on-going commission that arise when a client has signed an application for a financial product before 1 July 2013 (for example a personal superannuation product issued before 1 July 2013). Although the dollar amount of commission under the arrangement can vary, the rate of commission cannot be changed (such as dialed up) by the adviser after 1 July 2013 as this would be a new arrangement.
- Volume based payments (or rebates) from platforms to dealer groups (AFS licensees) that have been set up under agreements entered into before 1 July 2013. Rebates paid to dealers after 1 July 2013 in relation to investments on the platform for that dealer group can continue. However there are proposals to restrict this to investments relating to existing investors on the platform on 30 June 2014.
- Volume based payments from dealers to individual advisers under arrangements set up before 1 July 2013. An adviser can sell his/her business after 1 July 2013 to another adviser, including the rights to the grandfathered revenue stream, and this can continue to be paid to the new adviser. This is because the arrangement hasn’t changed, just the parties to it.

An important point to note is that volume based payments from platforms to dealer groups, and the streaming of those payments from the dealer to the adviser are separate arrangements. Where a new adviser joins a practice after 1 July 2013, the rebates paid from the platform to the dealer may be grandfathered as an existing arrangement, however, this does not necessarily mean they can streamed to the new adviser (unless that adviser has taken over a previous adviser’s pre 1 July 2013 rights).

What are the practical implications of grandfathering for financial advisers?

For a financial product issued before 1 July 2013, the ban on conflicted remuneration will not apply and the arrangement to pay commission will be grandfathered. The determinant is the issue date. This means that, if a new or existing client applies for a new financial product before 1 July 2013, but the financial product/interest is not issued by the product provider until after 1 July 2013, then the conflicted remuneration ban will apply. Grandfathering would also not apply to a strategy that was put in place before 1 July 2013 to acquire a financial product that was not actually acquired until after 1 July 2013.

The following table outlines the impact of grandfathering arrangements on the different types of clients you may have:

<table>
<thead>
<tr>
<th>Category</th>
<th>Existing client / New client</th>
<th>Issue date of financial product</th>
<th>Adviser remuneration</th>
<th>Annual fee disclosure statement applies*?</th>
<th>Opt-in applies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grandfathered</td>
<td>Existing client</td>
<td>Before 1 July 2013</td>
<td>Commission</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Grandfathered</td>
<td>Existing client</td>
<td>Before 1 July 2013</td>
<td>Commission and Fee-for-service (Adviser Service Fee)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Not grandfathered</td>
<td>Existing client</td>
<td>A new product issued after 1 July 2013</td>
<td>Fee-for-service (Adviser Service Fee)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Not grandfathered – FoFA client</td>
<td>New client</td>
<td>After 1 July 2013</td>
<td>Fee-for-service (Adviser Service Fee)</td>
<td>Yes</td>
<td>Yes, unless subject to code of conduct</td>
</tr>
</tbody>
</table>

* Commission payments (for example adviser trail commissions) paid by a product issuer (including a platform) and product fees are not deemed to be ongoing advice fees and are therefore not subject to annual disclosure.

Important: For financial products issued before 1 July 2013, if you have agreed an Adviser Service Fee with your client, is not classified as conflicted remuneration. You should anticipate 1 July 2013 as the change over date and consider the length of time it takes to complete the advice process. It may be worthwhile changing to a fee for service regime before 1 July 2013 and considering a FoFA ready product such as IOOF Pursuit.
Is it possible to have an advice strategy that is partially grandfathered?

Yes. If a strategy was put together before 1 July 2013, but one of the financial products was not issued until after 1 July 2013, then the grandfathering will not apply to the whole arrangement. For example, a transition to retirement strategy set up before 1 July 2013 may comprise an existing personal superannuation account issued before 1 July 2013 into which the client makes salary sacrifice contributions, and an account-based pension that commences after 1 July 2013. The conflicted remuneration ban does not apply to the existing (pre 1 July 2013) superannuation account, even in respect of salary sacrifice contributions made after 1 July 2013, however the ban will apply to the account-based pension account issued after 1 July 2013.

Does grandfathering of commission cease if there are changes made to an existing financial product after 1 July 2013?

If additional contributions/investments are made into an existing (pre 1 July 2013) financial product, grandfathering will continue because the actual arrangement to pay commission has not changed. This applies even though the adviser may be receiving more commission in dollar terms as a result.

Also, where a client signs a platform application providing for commission before 1 July 2013, any switches or new investments on the platform after 1 July 2013 are not deemed to be a new arrangement. This is because the actual arrangement to pay commission comes from the platform contract and not the financial products on it.

ASIC has also said that minor changes to existing arrangements may be allowed after 1 July 2013 without affecting grandfathering if the contract allows for it and it doesn’t have a material effect on the arrangement.

What impact does grandfathering have on the sale of a business?

The grandfathering provisions allow any existing contractual rights to commissions/benefits (as at 1 July 2013) to be sold/transferred to another adviser. You can, therefore, include an existing client base as part of the sale of a financial planning business. However, the adviser who acquires the book of business should understand that the existing arrangement is only grandfathered until a new financial product is issued or the rate of commission payable is increased. In practical terms, this means if an adviser acquires a book of business after 1 July 2013 and then transitions the clients to a new platform, this would be a new arrangement and grandfathering would cease.

Do the new draft regulations cover exemption for buyer of last resort arrangements?

Yes, under the re-drafted regulations released in early March, the purchase price under a buyer of last resort arrangement between a licensee and a representative will not be treated as conflicted remuneration, even though the purchase price may be based wholly or partly on the number or value of financial products under advice. This will apply as long as there is no special weighting given to products issued by a particular provider (including the licensee). At this stage this grandfathering only applies to the licensee purchasing the business, and does not extend to the licensee on-selling the business to another adviser.

How will current arrangements for dealer group rebates and volume-based platform payments be affected?

ASIC has confirmed that volume based-payments from platforms to licensees, such as platform rebates, are conflicted remuneration (unless proven otherwise). However, existing arrangements as at 1 July 2013 will be grandfathered under the FoFA reforms (this includes any arrangements commenced between 1 July 2012 and 30 June 2013 that are not subject to the anti-avoidance provisions).

The grandfathering arrangements cater for market movements of the underlying funds as well as the addition of new amounts to the platform – which includes (currently) the investments of pre and post FoFA clients within the drafted regulations released early March 2013.

What does the new draft regulations mean for platform rebates?

Under the current regulations issued late 2012, grandfathering of payments from platforms is very wide and covers any arrangement that exists on 1 July 2013. However the Government has recently indicated this open ended grandfathering will be wound back and restricted to investments (including future additions) of existing member/investors on the platform as at 30 June 2014.

The Government released re-drafted regulations early March 2013. Under the draft regulations, volume based payments and rebates in respect of new investors on the platform from 1 July 2014 will be banned. Volume based payments and rebates in respect of pre 1 July 2014 investors, including any additional investments they make, will be grandfathered. The draft regulations cover not only payments from platforms to dealer groups, but also the streaming of those payments from the dealer group/licensee to the adviser.

The re-drafted regulations have been released for discussion with final regulations due prior to the end of financial year.
What volume-based arrangements are not classified as conflicted remuneration?

A volume-based payment will not be treated a conflicted remuneration if:

1. It has been made on the understanding that it will be passed through to the client and is passed through to the client within three months of being received. Agreements to pass on to the client will need to be in writing or the payer (e.g., the platform) will not be able to pay the rebate; and/or

2. It is unlikely to influence the advice given or the selection of product/platform. The dealer group/licensee may choose to use the payments to cover operating expenses of the dealer/licensee and/or adviser. However both payer and recipient must prove it would not influence the advice given, and this can be difficult. The types of controls that ASIC would expect to be in place include:
   - No portion of the benefit is to be passed on to an adviser who provides financial product advice to clients.
   - The platforms and products that a licensee's advisers can recommend to clients cannot be based on the potential value of any benefit that the licensee receives from the platform operator or product issuer. For example, the licensee can implement and maintain robust policies around platform and product selection to support the decision to recommend a product.
   - There is no promotion of specific platforms or products to individual advisers or clients.
   - A diverse range of platforms, offering an extensive list of products, are available for advisers to recommend to clients.

Grandfathering – insurance arrangements

Can insurance arrangements be grandfathered?

Commissions provided through group insurance policies in superannuation are treated as conflicted remuneration. Many superannuation funds (including IOOF) provide individually underwritten insurance through a group policy, and therefore future risk commissions will be banned, even in personal super. However, existing commission arrangements will be grandfathered if the cover is taken out before 1 July 2013.

Grandfathering will not apply to new insurance arrangements issued after 1 July 2013, even if it is provided through a personal superannuation product taken out before 1 July 2013.

Note: commissions on single risk insurance policies are not treated as conflicted remuneration and can be paid whether the policy commenced before or after 1 July 2013. Consequently retail insurance provided on the IOOF platforms through TAL can continue to pay commissions.

Why is commission on new insurance provided through IOOF personal super products banned as conflicted remuneration? Doesn’t this only apply to group insurance in corporate super?

The ban on commission applies to any new cover if written under a group insurance policy in super. It doesn’t matter the actual cover is provided to an individual member (in personal super) or to a group of members (in a corporate super plan). If it is provided under the group (master) insurance policy it is banned.

IOOF personal super platforms provide individually underwritten life insurance via a master group insurance policy that covers all IOOF super products. Therefore new risk commission is banned under FoFA. However, if an IOOF personal super member takes out retail life insurance through TAL Accelerated Protection, adviser commissions are not banned because this provided through an individual insurance policy.

Although the Government may have intended that the ban on risk commission should only apply to group insurance under corporate super (default super), the legislation was not written that way. Even though this was pointed out to the Government at the time, the Government did not make any changes and the legislation passed as is.

Note: Grandfathering applies to existing risk commissions provided under IOOF personal super products issued before 1 July 2013.

The Government has recently released new draft grandfathering regulations that cover grandfathering for platforms. Will they affect risk commission provided through a super platform?

Draft grandfathering regulations were issued for comment early March 2013. The draft regulations provide that if an arrangement to pay conflicted remuneration exists on 1 July 2013, grandfathering will extend to a new financial product issued to person who is a member of a super platform on 30 June 2014.

However, at this stage these draft regulations do not extend to individual insurance cover under a group policy, because this is not a separate financial product. The industry is therefore lobbying to have insurance included in this grandfathering. If included, this will mean advisers will be able to write new insurance cover in personal super with commission up until 1 July 2014. The final regulations are due by the end of April 2013.

As currently written the draft regulations provide an uneven playing field between super platforms and non-platforms. A non-platform super fund may continue to pay commission on new risk cover after 1 July 2013, whereas a super platform with the same arrangement cannot. We understand this is not the intention of the draft regulations and therefore we expect some changes will be made through the final regulations to be released in April 2013.
What commissions can be paid on IOOF risk insurance after 1 July 2013?

Commissions will only be allowed on individual policies and group policies held outside superannuation. However, existing arrangements as at 1 July 2013 will be grandfathered unless the arrangement changes and/or new insurance is taken out after 30 June 2013.

If your client was individually underwritten under a pre 1 July 2013 insurance arrangement, and decides to acquire a new type of cover (for example the addition of income protection insurance to an existing death and TPD cover within their personal superannuation), then this is likely to be considered a new arrangement and commission payments will not be grandfathered. IOOF offers risk insurance via our superannuation platforms that is structured under a master (group) insurance policy, such as group insurance for corporate super and individual insurance for personal super. Individual risk insurance policies are available through the insurance partner for our IOOF Pursuit products.

IOOF also offers risk insurance to self-managed superannuation funds, IOOF SMSF Insurance, is also structured under a group life insurance policy however because the insurance is provided to an SMSF, commission is NOT treated conflicted remuneration. Therefore commission is payable on new SMSF risk arrangements after 1 July 2013.

The following table provides details about our product offering:

<table>
<thead>
<tr>
<th>Type of risk insurance payable</th>
<th>Product</th>
<th>Is risk commission payable</th>
<th>Commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail risk insurance policy issued before and after 1 July 2013.</td>
<td>• Pursuit Select, Core and Focus Personal Super</td>
<td>Yes</td>
<td>These are individual policies and risk commission can continue under FoFA.</td>
</tr>
</tbody>
</table>
| Individually underwritten insurance through IOOF personal superannuation platforms taken out on or before 30 June 2013 | • Pursuit Select, Core and Focus Personal Super  
• IPS and LifeTrack Personal Super  
• Spectrum Personal Super  
• AustChoice Personal Super | Yes | Although written via a group insurance policy, these are existing arrangements as at 1 July 2013 and are subject to grandfathering under FoFA. |
| Individually underwritten insurance through IOOF personal superannuation platforms taken out after 1 July 2013 | • Pursuit Select, Core and Focus Personal Super  
• IPS and LifeTrack Personal Super  
• Spectrum Personal Super  
• AustChoice Personal Super | No | Although individually underwritten, these arrangements are provided via a group (master) policy and commission is therefore banned. You can use the new adviser service fee (insurance)* for the ongoing advice you provide to your client under the fee-for-service regime post 1 July 2013 |
| Individually underwritten insurance provided to SMSFs               | • IOOF SMSF Insurance                          | Yes                       | Although provided through a group policy, commission on insurance to an SMSF is excluded from conflicted remuneration. |
| If provided to a Small APRA fund (SAF)                             | • IOOF SMSF Insurance                          | Yes                       | The exclusion applies to both SMSFs and SAFs.                                |

* Excludes Pursuit Core, LifeTrack and AustChoice at this stage.

Will IOOF platforms provide alternative remuneration options to risk commission?

Yes, we have introduced a new type of fee for the IOOF Pursuit Select and IOOF Pursuit Focus platforms. The new Member Advice Fee – Insurance will be available for insurance through personal superannuation that is individually underwritten.

Annual fee disclosure and Opt into on-going advice fees

From 1 July 2013, all clients (including pre 1 July 2013 clients) who are charged on-going advice fees must be provided with an annual fee disclosure statement by the adviser, setting out the on-going fees paid in the past 12 months and the services provided for those fees. In addition, the FoFA laws require that new clients who receive advice from 1 July 2013 must opt-into the on-going advice fee every two years, unless the adviser is a party to a code of conduct that obviates the need to for opting-into on-going advice fees.

2 Commission on individual risk policies in corporate superannuation are also banned but this situation would be very rare as most corporate super (IOOF included) have insurance under group policies.

3 Note this date may be pushed out to 30 June 2014 if the Government amends proposed platform grandfathering regulations to include insurance commissions provided through platforms.
Annual fee disclosure statement

Who is the fee recipient?

Answer: A fee recipient may be the licensee or an adviser. The fee recipient is the party who entered into the ongoing fee arrangement with the client. The requirement is that they issue the FDS.

Who needs to receive a FDS?

Answer: The following clients must receive a FDS:

• All new clients with whom a licensee or adviser enters into an ongoing fee arrangement on or after 1 July 2013.
• All existing clients, as at 1 July 2013, who have received personal advice and have an ongoing fee arrangement with a licensee or adviser (either before or after 1 July 2013).

What is an ongoing fee arrangement?

Answer: An ongoing fee arrangement is where a licensee or adviser gives personal financial advice to a client, and that person enters into an arrangement with the licensee or adviser, and under the terms of the arrangement the fee is to be paid during a period of more than 12 months.

Under what circumstances may a FDS not be required to be issued to clients?

Answer: There is no requirement to issue a FDS if a client enters into a payment plan. That is, it must be a contractual arrangement whereby they are not able to opt-out of payment of the fees under the arrangement and if the fees payable under the arrangement are to be paid by instalments over a fixed period specified in the arrangement.

If a client receives financial advice for a specific need or a short period of time, is that an ongoing fee arrangement?

Answer: No, ASIC has confirmed unrelated separate pieces of advice do not necessarily constitute an ongoing fee arrangement, even where the client uses the same adviser over a period longer than 12 months.

If the client enters into an arrangement for a six month period, this does not constitute an ongoing fee arrangement. An ongoing fee arrangement exists only where a client is given personal advice and charged an ongoing fee during a period of more than 12 months.

What needs to be included in a FDS?

Answer: For the previous 12-month period, the FDS must contain information about the:

• amount of fees paid by the client in Australian dollars;
• services the client was entitled to receive; and
• services that the client actually received.

Do commissions need to be included in a FDS?

Answer: It depends on the circumstances.

ASIC considers that commissions generally do not need to be disclosed in the FDS, on the basis that the commission is generally paid under a commercial arrangement between a product issuer or platform operator and a licensee or an adviser. However, any commission arrangements that were entered into with the clear consent of the client, or at the direction of the client, will need to be included in the FDS.

Do transactional fees or plan preparation fees need to be included in the FDS?

Answer: No, transactional fees (such as share broking fees or plan preparation fees) are not ongoing fees as defined by the legislation. An ongoing fee arrangement exists where a client is given personal advice and charged an ongoing fee during a period of more than 12 months.

If the term used to describe ‘ongoing commission’ is renamed as an ‘ongoing adviser fee’, does this need to be included in the FDS?

Answer: No, not if the nature of the fee itself has not changed. For example, where a commission is a standard ongoing trail commission payable from the cost of the product and is renamed as an ongoing adviser fee.

If ongoing fees are invoiced directly to clients, what amount needs to appear on the FDS?

Answer: The fees paid by the client (not invoiced to the client) during the previous 12 month period need to appear on the FDS. To ensure the FDS is clear and concise, it is suggested that the invoiced fee should be excluded from the fees section of the FDS. If fees are paid in advance by the client, these fees need to be included on the FDS for the previous 12 month period.
Do administration or product fees need to be included in the fee section of a FDS?

**Answer:** No, these fees are not included within the definition of an ongoing fee for purposes of an ongoing fee arrangement.

Does the FDS need to be a separate document?

**Answer:** Yes, the FDS needs to be separate from other documents (such as a Record of Advice) which are provided at the client’s annual review.

How should the information in the FDS be displayed?

**Answer:** The information contained in the FDS should be consumer friendly, concise and easy to read. It should be accurate to allow clients to make an informed decision about whether the arrangement should continue. Advisers should also ensure the FDS cannot be construed as misleading or deceptive nor make any false or misleading representations.

How is the FDS provided to clients?

**Answer:** The FDS must be provided in writing, however can be provided using a range of media and technologies depending on the client’s preference. ASIC has confirmed the FDS can be given to the client personally, mailed to their postal address, emailed or provided via a secure online portal. The FDS must be given to the client before the end of a period of 30 days beginning on the disclosure date.

Can the FDS be provided to the client at the time of the annual review?

**Answer:** Yes, on the basis that the disclosure date coincides with the annual review date, the FDS can be provided to the client at the same time whilst complying with the rules.

Example 1

Joe provides advice to a new client, Simon, on 26 September 2013 and charges him an ongoing advice fee. The timeline to provide the FDS to Simon is outlined within the following table.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>26 Sept 2013</td>
<td>Joe, the adviser, enters into ongoing fee arrangement with his client, Simon.</td>
</tr>
<tr>
<td></td>
<td>The anniversary date for the disclosure date will be 26 September each year.</td>
</tr>
<tr>
<td>26 Sept 2014</td>
<td>First disclosure date for Simon.</td>
</tr>
<tr>
<td>26 Oct 2014</td>
<td>First FDS can be given to Simon on or before this date.</td>
</tr>
</tbody>
</table>

Example 2

Joe is an adviser who wants to email a FDS for all his new clients on the same day. He believes that most of his clients will be claiming a tax deduction for the ongoing fees they pay and will therefore appreciate receiving this information on a timely basis each year.

How can Joe achieve this for his client, Simon?

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 July 2014</td>
<td>As permitted, Joe gives Simon the FDS before the actual disclosure date.</td>
</tr>
<tr>
<td></td>
<td>Joe gives the first FDS to his client Simon in respect of the period 1 July 2013 to 30 June 2014. (Note: Joe didn’t provide advice (eg the ongoing fee arrangement was not entered into) during the period 1 July 2013 and 25 September 2013, but the fee notice must still include this period)</td>
</tr>
<tr>
<td></td>
<td>The anniversary date for the disclosure date will be reset to 1 July each year.</td>
</tr>
<tr>
<td></td>
<td>Joe actually sends the FDS to Simon on 20 July 2014 which is within 30 days from the disclosure date.</td>
</tr>
<tr>
<td>15 July 2015</td>
<td>Joe sends Simon the second FDS in respect of the period 1 July 2014 to 30 June 2015 which is within 30 days from the disclosure date of 1 July.</td>
</tr>
<tr>
<td></td>
<td>Unless Joe is a party to a code of conduct, the second FDS will also include a provision for Simon to opt-into the ongoing advice fee.</td>
</tr>
</tbody>
</table>

Does an adviser need to know and check if the client has received the FDS?

**Answer:** No, an adviser can assume that they have received the FDS, unless you receive notification through returned mail or bounced emails. If an adviser becomes aware that a client has not received the FDS they should make reasonable attempts to contact the client by other means in order to give them the FDS.

Does a FDS need to be signed by the client and returned to the adviser?

**Answer:** No, there is no requirement for the client to sign the FDS or return any signed acknowledgement to the adviser after receiving the FDS via mail, email etc.

What are advisers’ FDS requirements for existing clients pre 1 July 2013?

**Answer:** The FDS must be given to existing clients within 30 days of the disclosure date. The disclosure date (when the ongoing fee arrangement was entered into) may be difficult to determine because:

- records may not be available; or
- there may be more than one disclosure date attributable to a particular client as they may have acquired a number of financial products with ongoing advice fees that commenced on different days.
Where it is difficult or unreasonable to identify the relevant date, ASIC provides two options to the adviser:

- They can provide the first FDS to all their existing clients within 30 days from 1 July 2013, or
- They can select a date between 1 July 2013 and 31 January 2014 and inform each client individually via a letter, or all clients together, that this is the date deemed to be the anniversary of the date of the ongoing fee arrangement. Then the adviser needs to provide them with a FDS before the end of a period of 30 days beginning on that date.

In subsequent years, for both existing and new clients, the disclosure date is the anniversary of the last day that is covered by the previous FDS.

What is ASIC’s no action position in relation to issuing a FDS?

**Answer:** Where it is difficult or unreasonable to identify the relevant disclosure date, if an adviser follows one of ASIC’s two options for issuing the FDS (see question “What is ASIC’s approach to taking enforcement action likely to be in respect of issuing an FDS?”), ASIC has advised that it will not take enforcement action against the fee recipient. This approach is referred to as the “ASIC no-action position”. Advisers will be required 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. ASIC understands that advisers might need to take different approaches for different categories of client.

**Example – No Action Position**

Steve is unable to determine the disclosure date for his existing clients. He completes reviews across the financial year and he decides to use the ‘no action’ position. Consequently, Steve groups his clients into two categories:

- **Category 1 clients:** Where the annual review occurs between 1 February 2014 and 30 June 2014
- **Category 2 clients:** Where the annual review occurs between 1 July 2013 to 1 January 2014

For **category 2 clients**, Steve writes a letter to his clients setting the disclosure date as 1 October 2013 and provides the FDS by 30 October 2013. During February to June 2014 Steve completes the annual review and provides another FDS to the clients. This means the disclosure date will be reset to the date the annual review is completed.

**Note:** The date selected for category 2 clients of 30 October 2013 is for illustrative purposes only. The date chosen can be between 1 July 2013 to 31 January 2014.

What happens if an adviser purchases the rights to an ongoing fee arrangement?

**Answer:** An adviser may have acquired the rights to an ongoing fee arrangement because they have purchased another advice business. The purchasing adviser then becomes the fee recipient. The FDS requirements apply and advisers should be aware of the implications of purchasing a book of business which includes pre and post FoFA clients.

The purchasing adviser needs to obtain the information from the previous adviser about the key elements of the FDS including the disclosure date for each client. This will allow the purchasing adviser to produce the client’s FDS when they are due and include all of the information for the previous 12 month period.

When can a client terminate the ongoing fee arrangement?

**Answer:** A client may elect to terminate the ongoing fee arrangement with their adviser at any time if they wish to cease their association with them.

What does an adviser need to do if a client terminates an ongoing fee arrangement?

**Answer:** An adviser needs to have procedures in place to ensure the ongoing fees can be terminated and to cater for direct approaches from the client or via the product provider. Advisers are not required to produce a FDS if a client terminates their arrangement within 12 months from the last FDS disclosure date. Advisers should also consider what documentation should be sent to the client to inform them that the ongoing advice arrangement has ceased.

Who is responsible for future events after the ongoing advice arrangement is terminated?

**Answer:** The client is responsible. Once the client terminates the ongoing advice arrangement, the adviser is not responsible for future events (for example, a fall in the investment markets or a reduction in the superannuation contribution cap to $25,000 per annum). However, the adviser needs to ensure that they have acted in the client’s best interests.
Can an adviser charge termination fees as part of an ongoing fee arrangement?

**Answer:** No, advisers are prohibited from applying an ‘exit’ or ‘penalty’ fee to clients that choose to exercise their right to terminate an ongoing fee arrangement. However, this would not prevent an adviser from recovering monies already owed by the client (for example, for services already rendered).

**Note:** A cost-recovery fee is allowable, but it must be a condition of the ongoing fee arrangement which has been consented to by the client.

Does the FDS and opt-in notice need to be provided on the same anniversary date?

**Answer:** Yes, but the opt-in notice applies only to new clients post 1 July 2013 and the client must opt-in to adviser service fees every 2 years starting from 1 July 2015.

Opt – in rules

New clients from 1 July 2013 who enter into on-going advice fee arrangements must opt into these advice fees every two years, unless the adviser is a party to an ASIC approved code of conduct. Where opt-in applies, the annual FDS will include a renewal notice. Clients have 30 days to respond to the renewal notice.

ASIC may grant relief from the opt-in requirements for on-going advice fees if it is satisfied that you are bound by an ASIC approved code of conduct. The code must demonstrate that the content addresses the key policy issues of client engagement, service delivery and value for money. ASIC has released RG 183 that sets out its requirements for approval of codes of conduct.

What are the requirements for ASIC approval of a code of conduct for opt-in purposes?

The code must obviate the need for opt-in. ASIC will approve both broad ranging codes that cover financial services conduct generally, or limited codes that cover on the conduct required to cover opt-in. ASIC will not approve individual dealer/licensee codes.

Codes will require:

- Wide consumer consultation with regular reviews
- An independent administration body will be responsible for ensuring compliance with the code and maintaining a public register of subscribing members who are exempt from the opt-in requirement
- Be contractually binding and provide for service standards.

Provision for commensurate fees with mutually agreed renewal of fees at least every three years.

What is IOOF doing to help advisers with opt-in and annual fee disclosure requirements?

We are planning to provide the appropriate data feeds to Xplan, as well as other planning software, to help you meet your requirements from 1 July 2013 and 1 July 2014. One of the options we are investigating is the introduction of an online functionality that allows you to generate your own statements. We are awaiting further guidance from ASIC about opt-in and annual disclosure requirements before we can fully implement these solutions for you.

Best interests duty

A key plank of FoFA is the duty to act in the best interests of your client, and to put your client’s interest ahead of your own and that of your licensee. Although up until now a great deal of the discussion about FoFA has centred on conflicted remuneration, going forward it is the application of the best interest duty that will probably have the most profound impact across the industry.

How does the best interests duty apply?

ASIC re-issued RG 175 in December 2012, updating its guidance on conduct and disclosure to include the best interest’s duty.

In applying the best interests duty, ASIC will consider whether it is reasonable to believe that the advice would leave your client in a better position. The phrase in a ‘better position’ does not necessarily mean monetary improvement, but may include protection from risks, preparedness for the future, or access to product features.

In assessing whether you have complied with the best interests duty when providing advice to your client, ASIC will consider whether you believe that your client is likely to be in a better position if they follow your advice. ASIC has stated that you do not need to give perfect advice to establish that your client is likely to be in a better position as a result of your advice.

The best interest’s duty relates to what occurred at the time the advice was given and not future outcomes with the benefit of hindsight. ASIC has stated that there will be no retrospective testing for poor investment performance.

As an adviser, you must prioritise the interests of your clients if you know, or reasonably ought to know, that there is a conflict between you, the licensee and any associates of the licensee (referred to as related parties). You must not recommend products or services of a related party if you cannot demonstrate any additional benefits. If you should have reasonably known about the conflict, then using information barriers to avoid awareness of a conflicting interest of a related party would be in breach of the conflicts priority rule.

Using the safe harbour rule, the best interest’s duty can be satisfied by meeting the list of requirements set out in the legislation.
ASIC has stressed the importance of strategic advice that better suits your client’s objectives, financial situation and needs, over product specific advice. Advice that is not product specific may include advice not to make an investment decision (i.e. do nothing). You also need to formulate a strategy before you recommend a financial product. A one size fits all advice approach is unlikely to meet the best interest’s duty because it does not take into account your client’s particular circumstances.

**How will the best interests duty effect approved product lists?**

ASIC’s guidance in RG 175 indicates that the best interest duty neither requires nor prohibits the use of approved product lists (APLs) and that an adviser can conduct a reasonable investigation by investigating only the financial products on the APL. However an adviser may need to investigate products outside the APL in order to meet the best interest duty. Examples where further investigation may be required include, where the client’s current products were not on the APL, where the class of product required was not on the APL or the client requested a product not on the APL.

In recent FoFA workshops around Australia, ASIC indicated the role of APLs under FoFA was still not clear and they were working to clarify this.

**How does the best interests duty interact with the ban on conflicted remuneration?**

When advising a client from 1 July 2013, an adviser must act in the best interests of the client and not put the adviser/ licensees interests first. ASIC will be looking to see whether the client is better off under the current advice provided compared with other products available. In most situations it won’t be an issue because conflicted remuneration is banned from 1 July 2013. However some commissions still remain, such as risk commission on individual policies in super. If an adviser recommends individual (retail) insurance in super after 1 July 2013, it must be because it is the appropriate product for the client, and not because it is the one that pays commission.

**What obligations does an adviser have if they provide advice to an existing client after 1 July 2013 who currently in a platform product that pays grandfathered commission? Is the adviser required to advise the client to change to an unbundled advice fee platform with comparable services that doesn’t pay commission?**

A number of advisers have asked the question whether they are obliged by the best interests duty to take an active stance on the existing platform and look at advising on switching products/platforms. Or can the advice be scaled so it considers say investment products on the platform and not the platform itself?

This issue was discussed at the recent ASIC workshop in Melbourne. ASIC’s view was that advisers are not obliged to look back and review previous advice per se. The best interest duty applies to advice at the time and not to past advice. ASIC also advised that this doesn’t have to be the best advice and therefore it is not obligatory to recommend switching to a product/platform. The ASIC attendees at the workshop pointed out that the Government has expressly allowed existing conflicted remuneration to be grandfathered. Having taken that policy position, ASIC therefore can’t then negate this via the back door by applying the best interests test retrospectively. It is up to the adviser (and their licensee) to make a judgement call whether the advice they are giving is appropriate and whether it is impacted by the existing product/platform the client is in. Licensees may need to determine their own compliance requirements and the impact this will have to the advice process.

**Asset-based fees on borrowed amounts**

From 1 July 2013, AFS licensees and their representatives are prohibited from charging asset-based fees on geared or borrowed amounts that are to be used to acquire financial products. Borrowed amounts include credit facilities (for example personal loan or credit card), margin lending facilities, and the debt component of an instalment warrant.

The prohibition does not apply where the AFS licensee or representative does not know that the client has borrowed funds to purchase a financial product, or where products are issued under a dividend or distribution reinvestment plan because these products are not acquired with borrowed amounts.

ASIC has stated that you cannot separate this ban from the obligations under the best interests duty. By making reasonable enquiries, you will have the information you need to determine whether or not borrowed monies have been used for investing. The onus is on you, the adviser, to ensure that you do not charge an asset-based fee on borrowed money. However, the ban on charging asset-based fees will not apply if it is not reasonably apparent that the amount used by your client, or on behalf of your client, has been borrowed.

Where a loan arrangement has been entered into prior to 1 July 2013 and amounts have been drawn down from the loan account to purchase a financial product prior to 1 July 2013, the prohibition on asset based fees will not apply to those borrowed amounts. If, however, further drawdowns from the loan account are made on or after 1 July 2013 to purchase another financial product, or increase the amount invested in a financial product, an asset based fee is not permitted to be charged on those new borrowed amounts.
How can IOOF help in relation to asset-based fees?

Although it is your responsibility to determine when asset-based fees are charged, we have modified some of our products and platforms to help. Our IOOF platforms4 and IOOF WealthBuilder will allow you to charge a dollar-based advice fee, and to switch off asset-based advice fees where appropriate.

Adviser remuneration within IOOF products

What changes have been made to IOOF Pursuit Select5 and IOOF Pursuit Focus6?

Because of the unbundled fee structure, these platforms are already FoFA compliant. However, to provide greater flexibility, the following changes and enhancements were made on 1 December 2012:

- You have the ability to charge either an ongoing advice fee based on a fixed dollar amount or a percentage amount, or a combination of both.
- The once off advice fee was changed to a one off fee that can be applied multiple times.
- Introduction of a new separate licensee advice fee gives you the opportunity to identify the portion of the total advice fee that the licensee will receive to cover their costs.
- A new insurance advice fee can be applied to group insurance provided through the platforms.
- Controls have been put in place to prevent the application of asset-based advice fees on geared accounts.

What changes are being made to IOOF Pursuit Core5?

Because IOOF Pursuit Core has a bundled administration fee (that pays commission), the platform is FoFA non-compliant. As a result, IOOF Pursuit Core will close to new business on 1 July 2013. For all existing arrangements, grandfathering rules will apply so commission can continue to be paid. However, should you choose to dial down the commission and charge fee for service, IOOF Pursuit Core already offers a range of advice fees that can be charged on a one-off dollar basis, an ongoing percentage or a flat dollar basis.

What changes are being made to Spectrum4 and AustChoice6?

Spectrum and AustChoice have a bundled contribution and administration fee component. No changes will apply to account holders of Spectrum Super and AustChoice as at 1 July 2013, because commissions and bundled fee structures will be grandfathered. However, you will have the option to dial down the commission component for existing accounts. Under existing arrangements, the insurance commission in personal super will continue to apply past 1 July 2013. However, as insurance for Spectrum and AustChoice members is provided under a group policy, no commission will be paid on new arrangements from 1 July 2013.

What changes are being made to IOOF Portfolio Service (IPS) and LifeTrack?

As bundled contribution and administration fees that include commission are FoFa non-compliant from 1 July 2013, we have made the following changes to IPS and LifeTrack.

- New disclosure documents for IPS Personal Superannuation, Allocated Pension and Investments were issued on 1 April 2013 to introduce unbundled advice fees. The new advice fees include upfront, ongoing, one-off, insurance and licensee fees. The ongoing fee can be charged based on a fixed dollar or a percentage amount, or a combination of both.
- Controls have been put in place for IPS Investments to prevent percentage based advice fees from being charged where there is a margin loan attached to the account (unless under a pre FoFA fee arrangement).
- As IPS products retain bundled contribution and administration fees including commission, which make them FoFA non-compliant:
  - IPS Term Allocated pension closed for new business on 31 March 2013
  - IPS Personal Superannuation, Allocated Pension and Investments will close for new business on 1 July 2013
- LifeTrack Cashback Pension – a new disclosure document was issued on 1 April 2013 to introduce changes to the fee structure that removed the Contribution Fee and the commission component from the Administration Fee, making the product FoFA compliant.
- LifeTrack Employer Super and Corporate Super – on 1 July new disclosure documents will be issued to similarly remove the Contribution Fee and commission component from the Administration Fees for new members, making these products FoFA compliant.

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4 Excludes LifeTrack and AustChoice
5 Includes personal super, pension and investment service.
6 Includes personal super and pension.
For IPS and LifeTrack members who hold accounts under a bundled fee structure on 1 July 2013, no changes will apply as existing commissions will be grandfathered.

Important note: For new IPS accounts established after 1 April 2013, the Deferred Entry Fee Option will no longer be available. As a result of the new FoFA and Stronger Super rules, any transfers from a deferred entry fee product to one of our other IOOF products will not be able to utilise the exit fee portability feature. Therefore, if a deferred entry fee client transfers to another IOOF product any outstanding exit fees will be deducted before the transfer.

What changes are being made to IOOF WealthBuilder?

- IOOF WealthBuilder is an investment insurance bond that already provides the opportunity for an Adviser Service Fee to be attached to the product.
- Existing upfront and ongoing commissions are currently bundled, however, you can request a full rebate of commission on existing policies.
- On 28 February 2013, IOOF WealthBuilder was re-released incorporating the following enhancements to make it FoFA ready:
  - all commission on new IOOF WealthBuilder policies issued effective 28 February 2013 will be unbundled. This includes the removal of the contribution fee (which funded in-built up front commission) and the ongoing trail commission (paid out of the management costs) which will be automatically rebated to the client.
  - Changes to the naming convention of the advice service fees to Investor Advice Fees – up front, ongoing and one-off.
- As grandfathering rules will apply in respect of existing clients with accounts established before 28 February 2013, whereby commission will continue to be paid on these existing IOOF WealthBuilder policies.

What changes have been made to The Portfolio Service?

The Portfolio Service (TPS) has an unbundled fee structure so is already FoFA compliant. To provide greater flexibility, however, the following changes were introduced on 13 May 2013:

- You now have the ability charge either an advice fee based on a fixed dollar amount, a percentage amount or a combination of both.
- Where a margin loan is attached to a TPS Personal Investment Plan or Investment Essentials account, controls have been put in place to prevent percentage based advice fees being charged.

New disclosure documents for TPS were issued on 13 May 2013 that include these changes as well as changes to the naming convention of the advice fees to:

- Member/Investor Advice Fee – Upfront
- Member/Investor Advice Fee – Transaction
- Member/Investor Advice Fee – Transfer
- Member/Investor Advice Fee – One-off
- Member/Investor Advice Fee – Ongoing

Please speak to your IOOF business development manager if you require further assistance with preparing for the FoFA requirements.