

Responses to discussion document questions

1 Will the proposed record-keeping requirement be workable in practice?

We support the requirement that financial advice providers (FAPs) be able to demonstrate they've met the disclosure obligations. However, a requirement that a specific record be kept for each disclosure could be impractical and may not be future proofed for technology advances. As drafted the regulation seems to require an actual copy is kept of each disclosure. Automated systems won't necessarily store individual copies of what was produced but will enable you to determine what has been received by the customer.

2 Do you have any comments on the drafting of the Regulations that will require information to be made publicly available?

For Schedule 21A section 4(1)(j) we suggest clarifying it is only commission paid relating to the disclosing FAP's advice that must be disclosed. We understand this is the intention. The current phrasing of

"...any commission or other incentive will or may be given in relation to advice given to P's clients,..."

could be interpreted as commission for any advice given to the FAP's customer regardless of whether it was given by the disclosing FAP.

3 Do you have any comments on the draft Regulations that will require the disclosure of information when the nature and scope of the advice is known?

- Is disclosure expected where a FAP has advertising material published on their website or elsewhere recommending their products? It has been indicated the intention is this advertising is subject to the regime. The draft regulations refer to disclosure being given to the client at the time the person giving advice knows or ought to reasonably know the general nature and scope of the advice the client is seeking. As this would not be known at the time the FAP is advertising, the obligation is unlikely to apply but it would be good to have clarity.
- In Schedule 21A section 5(1)(c) what is meant by "the types of advice"? What are the different types of advice being contemplated?
- In respect of Schedule 21A section 5(1)(d) "types of financial advice products" what level of detail is contemplated? For example, would the type simply be insurance or life insurance or the specific products?
- Where Schedule 21A section 5(1)(h) states:

"...for each reliability event that has happened to P or to A ..."

Is it intended the reliability events of both the FAP and the adviser be disclosed as opposed to one or the other?

4

Do you have any comments on the draft Regulations that will require the disclosure of information when the financial advice is given?

Is it intended that any conflicts of interest or commissions or other incentives be disclosed again at the time of giving of the advice, even where they have already been disclosed in the initial information disclosure? Schedule 21A section 6(1)(d) states:

“to the extent not already given under clause 5(2)(d)”

But neither 6(1)(e) or (f) do. While regulation 229E (1) refers to additional information being disclosed, clause 229E(6) says that the additional information is that required in clause 6 of Schedule 21A.

5

Do you have any comments on the draft Regulations that will require the disclosure of a provider’s complaints handling and dispute resolution processes when a complaint is received?

6

Do you have any comments on the draft Regulations that set the manner in which information must be disclosed?

7

Are there instances in your business when regulation 229D might apply to someone who is not the one to give advice to the client? Please give examples and provide any comments on how the draft Regulations apply in such scenarios.

8

Do you have any further comments on new regulation 229A to 229H of the draft Regulations?

9

Do you have any further comments on new Schedule 21A in the draft Regulations?

- In Schedule 21A clause 2(2) the meaning of ‘commission or other incentive’ refers to

“..benefit, or other incentive (whether monetary or non-monetary and whether direct or indirect)..”

What is contemplated by the words “benefit, or other incentive”? Would the potential to be invited for training and social events qualify? Could there be examples added to indicate the type of benefits a reasonable client would not expect to influence the advice– such as training sessions on product or a relationship meeting over coffee.

- In respect of disclosure relating to commissions it would be helpful if there were some working examples showing different scenarios.

As the finalised regulations for the disclosure obligations won't be released until the new year there will be less than six until the regime applies. This limited time frame makes it difficult for FAPs to be confident the new systems and processes would be fully operational. Because the information to be made publicly available and disclosed at the time of complaint is generic, this will not require the same level of process and systems changes as the other disclosures. We are comfortable with regulation 229C and 229F applying from 29 June 2020 but suggest that there be transitional relief to allow a further 12 months before regulations 229D and 22E apply.