

Fee Disclosure Statement

Fact Sheet

Fee Disclosure Statements

From 1 July 2013, fee recipients must give a fee disclosure statement (FDS) to certain new and existing retail clients who enter into or have entered into an ongoing fee arrangement.

An FDS details the fees paid and the services received by the retail client for the past year.

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 (there is additional guidance at point 2 in this Fact Sheet.)

Note: You may have clients that will need to be provided with an FDS as early as July 2013.

Here are some simple steps to prepare for the requirement to give an FDS:

1. Collate a list of all retail only clients

The requirement to provide an FDS only applies to retail clients who are given personal advice. Fee recipients can exclude wholesale only clients and execution only clients.

Fee recipients must remember that an FDS must be given to existing retail clients as well as new clients. New clients are clients who enter into an ongoing fee arrangement from 1 July 2013. In preparation for provision of the FDS, licensees should be focusing on collating a list of existing clients. That is, clients who received personal advice before 1 July 2013.

Note: Remember, the obligation to provide an FDS also applies to licensees to whom rights under an ongoing fee arrangement have been assigned.

2. Exclude clients who are not subject to an ongoing fee arrangement

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

An ongoing fee arrangement is an arrangement between the licensee (or representative) and the client, under the terms of which the client is to pay *any* fee (except for a product fee) during a period of more than 12 months. A product fee is charged by a product issuer for the management and operation of a financial product issued to a client.

The following are not ongoing fee arrangements:

- Payment plan arrangements where:
 - the total fees payable are fixed and specified when the arrangement is entered into;
 - the fees are payable by instalments over a fixed period;
 - no fee is dependent on the amount invested or advised about; and
 - the client cannot opt out of any of the fees payable under the arrangement.
- Insurance premium arrangements where the only fees payable are insurance premiums.

Typically, commissions that are paid to an adviser under an arrangement between the product issuer and the adviser would not trigger the need for an FDS although they have been disclosed in the SoA. However, if the fee arrangement with the client is one whereby the client consents to, or specifically directs the payment by the product provider to the adviser (eg in a dial up/dial down scenario), ASIC says this fee arrangement should be disclosed in an FDS.

Note: An arrangement under which a client received 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 ([see RG245.25](#)).

Now, you should be left with a list of existing retail clients who are subject to an ongoing fee arrangement (FDS recipients).

When in doubt, disclose!

3. Determine the first disclosure day

The disclosure day is the anniversary of the date that the ongoing fee arrangement was entered into. For new clients (post 1 July 2013) this is simple.

For existing clients, the situation may not be so straightforward. Fee recipients will need to determine when they first entered into an ongoing fee arrangement with the existing clients. Depending on the circumstances, this may be the date an Authority to Proceed (ATP) was signed or a financial product was acquired by the client ([RG245.59](#)). Depending on the licensee's data recording capabilities, this may involve trawling through client files and searching for this date. Fee recipients will also need to consider:

- Has a new arrangement terminated an old arrangement?
- Are there two or more ongoing fee arrangements for the one client?
- Ongoing fee arrangements that have been assigned to the licensee – an assignment does not generally mean the creation of a new ongoing fee arrangement ([RG245.58](#)). It will depend on the circumstances.

Where it is impossible or unreasonably *difficult* to identify the date an ongoing fee arrangement was first entered into, you should adopt a common sense approach (RG245.61). For example, you could make the disclosure day for all existing clients 1 July 2013. That means the FDS must be provided before 1 August 2013.

Where it is impossible or unreasonably *onerous* to determine the date an ongoing fee

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arrangement was first entered into, you can notify existing clients in writing of a nominal disclosure day between 1 July 2013 and 31 January 2014 (RG245.62). ASIC's no-action position above gives licensees some flexibility to pick a suitable disclosure day.

In our view, it is unclear when something is unreasonably *difficult* as compared to unreasonably *onerous*. We think the most common examples of this will be if, after making reasonable inquiries, you cannot ascertain the day that the arrangement was entered into i.e. if there is no dated, signed Customer Services Agreement (CSA) or ATP on the client's file, or if a reasonable inquiry has been made and a dated, signed CSA cannot be located. Other examples may be where there is a signed CSA on the file, but there have been financial services provided to the client before that date, so it does not reflect the date the arrangement was first entered in to, and the initial start date cannot be located.

Examples of reasonable inquiries includes accessing the physical file or, in the case of a paperless office, accessing the online client data and conducting a simple search. It is not enough to say it is unreasonably onerous or unreasonably difficult to determine the day of ongoing fee arrangements. There must be solid reasons to justify this stance.

Note: Whatever approach you decide to take to identify the disclosure day, make sure that it is documented and consistent across your client book (RG245.60).

4. Diarise the first FDS due date

Fee recipients must provide new clients with an FDS *before* the end of period of 30 days beginning on the disclosure day. Fee recipients must give existing clients an FDS due date *within* a period of 30 days beginning on the disclosure day.

Therefore, if the disclosure day for a new client is 1 June, the FDS can be given *at any time* before 30 June. If the disclosure day for an existing client is 1 June, the FDS must be given between 1 June and 30 June.

The wording of the legislation in this regard provides more flexibility to fee recipients to provide the FDS to new clients at a time that is more administratively suitable to them.

To address this inconsistency between existing clients and new clients, ASIC has set out a no-action position in relation to the FDS due date. It will not take action where a fee recipient provides an FDS to an existing client *before* the end of period of 30 days beginning on the disclosure day.

What this might mean is illustrated by the following example.

The date of commencement of the ongoing fee arrangement is established by the fee recipient as being 1/9/11.

Accordingly, the first disclosure date is 1/9/13. The legislation requires that the first FDS be provided within 30 days of this date ie by 30/9/13.

For administration reasons, the fee recipient would like to treat the disclosure date for this ongoing fee arrangement to be 1/7/13 and intends to provide the first FDS on or before 30/7/13.

If so, the content of the FDS should cover the period 1/7/12 to 30/6/13.

ASIC would not take enforcement action in relation to the technical breach of the *within 30 days* (as explained above) as the FDS is being given to the client before it is actually due.

Regardless of whether the FDS is provided early, it must relate to a period of 12 months that ends on a day no more than 30 days before the FDS is given.

Note: make the most of ASIC's no-action position when it comes to determining the FDS due date and treat all FDS recipients as new clients for this purpose.

5. Consider the content of your fee disclosure statement

An FDS must include:

- the amount of each ongoing fee paid by a client in the previous year, expressed in dollars; not as a percentage;
- the services the client was entitled to receive in the previous year; and
- the services the client actually received in the previous year.

It is unclear the level of detail that ASIC is expecting in an FDS. The level of detail in an FDS is not prescribed by the legislation. ASIC's commentary on this matter is that 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 (RG245.32).

Note: remember this includes services the client was entitled to receive, and actually received, from any previous fee recipient.

For some licensees, it is challenging to capture some of the fees paid, particularly from third party providers, where information is only reported to the fee recipient periodically.

Note: In our view, the FDS should include what information is readily available. Set out in the FDS an estimate of the amount accrued in the final month that is not fully available, and separated from the actual fees charged. A warning could explain that the final amount is an estimate only, and further detail can be provided upon request, because it will be available within 30 days.

Commission payments are generally not required in an FDS, except if it is too difficult to determine the breakdown of commission and advice fees in which case ASIC considers that they should disclose all of the fees in the FDS (RG245.39). Despite this, some fee recipients have voluntarily decided to include all information regarding fees and commissions in an FDS, in the interests of full disclosure and also using the opportunity to engage inactive clients. It also may assist in "reconciling" the

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remuneration and benefits disclosed in the SoA and the fees in the FDS.

Note: when considering the content of your FDS, be sure to consider the impact on the client of receiving an FDS with certain financial information, and other disclosure documents such as a statement of advice, with differing financial information. Will this be confusing?

Note: you may consider amending the wording of your ongoing fee arrangement documents for new clients to ensure it is worded in a way that is easy to report against.

6. Notify clients

An FDS must be provided to a client in writing. That means you can provide it to a client personally, by post, email or via secure online portal (RG245.47).

ASIC encourages fee recipients to agree to an appropriate form of communication of the FDS with their clients (RG245.48). In light of this, you may choose to take the opportunity to warn clients that an FDS will be provided to them and explain what this means.

Is there a pro-forma FDS we can use?

The way you disclose fees to your clients will be different depending on what services you offer and how you offer those services.

An FDS could be as simple as a three column table in a letter to your client.

Further information

ASIC's Regulatory Guide, [Fee Disclosure Statements \(RG245\)](#) provides guidance on the whos, whens, whats and hows of giving an FDS.

Source: *Holley Nethercote Commercial & Financial Services Lawyers* -May 2013