Proposed FOFA reforms

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In Brief

The Assistant Treasurer, Senator the Hon Arthur Sinodinos has today announced reforms for the Future of Financial Advice (FOFA) legislation. The new reforms are expected to save the financial industry an estimated $90 million in implementation costs and reduce annual compliance burdens by an average of approximately $190 million per year.

What does this mean for your business?

Key areas in which the government will be amending the FOFA legislation include:

- Opt-in: Removing the opt-in requirements so that advisers no longer need to seek their client's agreement every two years.
- Annual fee disclosure: Removing the retrospective application of the fee disclosure requirement, so that advisers will not need to provide fee disclosure statements to clients who entered into a fee arrangement before the mandatory 1 July 2013 commencement date of FOFA.
- Catch-all: Removing the catch-all provision (section 961B(2)(g)) so that advisers can be certain they have satisfied their obligations under the best interests duty.
- Scaled advice: Clients and advisers will be explicitly allowed to agree on the scope of financial advice to be provided, whilst ensuring advice is still appropriate for the client.
- Life insurance inside super: The ban on conflicted remuneration will only apply to commissions on risk (life) insurance products inside superannuation in circumstances where no personal financial advice about these products has been provided, i.e., where automatic coverage is provided inside a default (MySuper) superannuation fund.
- General advice: Benefits relating to the provision of general advice will be exempted from the ban on conflicted remuneration.
- Execution-only exemption: Introducing a causal link into the exemption so that benefits are permitted where no advice has been provided to the client by the individual performing the execution service (as opposed to the licensee or authorised representative more broadly) in the previous 12 months.
- Training exemption: Broadening the existing training exemption, that provides for training in relation to providing financial product advice as a permitted non-monetary benefit, to include other forms of training that are relevant to conducting a financial services business.
- Volume-based shelf-space fees: Amending the drafting of the ban on volume-based shelf-space fees to clarify that incentive payments between fund managers and platform operators for preferential treatment of certain products on the platform "shelf" are banned.
- Define intra-fund advice: The definition of intra-fund advice will be referenced in the FOFA provisions.
- Grandfathering: Amending the existing grandfathering provisions, that exempt certain benefits under pre-existing arrangements from the ban on conflicted remuneration, to allow advisers to move between licensees and to continue to access grandfathered benefits in certain circumstances.

Amendments will also be made to clarify the operation of the grandfathering arrangements with respect to the sale of financial planning businesses, superannuation to pension switches under multi-product offerings, and employed advisers becoming self-employed advisers.
Conflicted remuneration: Amending the conflicted remuneration provisions to:
- allow for the payment of benefits under ‘balanced’ remuneration structures;
- expand the basic banking exemption to include all simple (i.e., “Tier 2”) banking products; and
- permit the payment of performance bonuses that are calculated by reference to remuneration which is exempt from the ban on conflicted remuneration.

Stockbroking: Amending the existing stockbroking-related exemptions to:
- clarify the application of the stamping fee exemption to initial purchasing offer arrangements; and
- clarify the application of the brokerage fee exemption to products traded on the ASX24.

Minor technical amendments: A number of minor amendments will be made to address technical issues including clarification of the client-pays exemption and consequential amendments to the application of the wholesale and retail client distinction under FOFA.

When will the reforms be effective?
Details have not yet been released for the timing of the implementation of these FOFA amendments and no draft legislation has been released.

ASIC’s response
ASIC in its media release 13-355MR has said that it will be taking a facilitative approach to the FOFA reforms until mid-2014. While continuing to take enforcement actions in respect of deliberate breaches of the new requirements or failure to make reasonable efforts to comply, ASIC’s focus during the facilitative period will continue to be on education and assistance. ASIC intends to continue to work closely with financial advisers and product providers to ensure understanding and compliance with the FOFA requirements.

In light of this approach, ASIC will not take enforcement action in relation to the specific FOFA provisions that the Government is planning to repeal. For example, ASIC have said it will not take action for breaches of the current section 962S of the Corporations Act 2001, which requires fee disclosure statements to be provided to retail clients with ongoing fee arrangements entered into before 1 July 2013.

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More Information
For information regarding possible implications for your business, contact a member of the FOFA team.

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