



# Conflict of Interests Policy (Adviser)

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### **References**

Regulatory Guide 181: Licensing: Managing conflicts of interest

Regulatory Guide 246: Conflicted and other banned remuneration

Financial Planners and Advisers Code of Ethics

# 1 Background and purpose of document

## 1.1 Background

- (a) Under s912A(1)(aa) of the Corporations Act, an Australian Financial Services Licensee (**AFSL**) is required to have in place adequate arrangements for managing conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the AFSL or its representatives in providing financial services.
- (b) An AFSL is required to take reasonable steps to:
  - (i) ensure that its representatives comply with the financial services laws (s912A(1)(ca)); and
  - (ii) ensure that representatives of the licensee comply with sections 961B, 961G, 961H and 961J (s961L).
- (c) Under Div 2 of Pt 7.7A of the Corporations Act, financial advisers providing personal advice must:
  - (i) act in the best interests of the client (s961B);
  - (ii) provide the client with appropriate advice (s961G); and
  - (iii) prioritise the client's interests over their own interests or those of a related party (s961J).
- (d) The Corporations Act also prohibits:
  - (i) an AFSL and its representatives (including authorised representatives) from accepting conflicted remuneration (see s963E, 963G and 963H);
  - (ii) product issuers and sellers from giving conflicted remuneration to an AFSL and its representatives (see s963K); and
  - (iii) an employer of an AFSL or representative from giving its licensee or representative employees conflicted remuneration for work they carry out as an employee (see s963J).
- (e) Standard 3 of the Financial Planners and Advisers Code of Ethics (Code of Ethics) prohibits authorised representatives from advising or acting in any other manner where they have a conflict of interest or duty.

## 1.2 Purpose and framework

This policy (**Policy**) is developed by IFP (**Licensee**) for the purposes of:

- (a) enabling the Licensee to meet its obligations under the Corporations Act, ASIC guidance and Code of Ethics;
- (b) enabling the representatives of the Licensee to meet their obligations under the Corporations Act, ASIC guidance and Code of Ethics .
- (c) The following documents are the key documents to the Licensee's management of conflicts of interest:
  - (i) Conflict of interests policy (AFSL);
  - (ii) Conflict of interests policy (Advisers);
  - (iii) Conflicts declaration (AFSL);

- (iv) Conflicts declaration (Adviser);
- (v) Conflicts management plan;
- (vi) Adviser Conduct Policy;
- (vii) Representative monitoring and supervision policy; and
- (viii) Continuous Professional Development policy.

**(Relevant Documents)**

### **1.3 Responsibility**

- (a) A Responsible Manager (or a delegate with appropriate experience and seniority) will be responsible for ensuring that the Licensee and its authorised representatives meet requirements of the law and the Relevant Documents.
- (b) A Responsible Manager will assess the accuracy of the Relevant Documents by:
  - (i) reviewing the above documents on an annual basis (unless more immediate updates are required due to legislative or regulatory change);
  - (ii) monitoring the representatives' compliance with the Licensee's conflicts framework; and
  - (iii) reviewing the business operations of the Licensee to identify new conflicts or existing conflicts not previously identified.
- (c) The Responsible Managers are responsible for ensuring that all representatives of the Licensee are aware of and are trained on the Relevant Documents as they apply to them.

## **2 What is a conflict of interest?**

### **2.1 What is a conflict of interest?**

- (a) A conflict of interest is defined as 'Circumstances where some or all of the interests of people (clients) to whom a licensee (or its representative) provides financial services are inconsistent with, or diverge from, some or all of the interests of the licensee or its representative.' (RG 181.15).
- (b) Conflicts of interest can be actual, apparent or potential.

### **2.2 Management approach**

- (a) The conflicts management obligation does not prohibit all conflicts of interest. It does not provide that an AFSL can never provide financial services if a conflict of interest exists. Rather, the conflicts management obligation requires that all conflicts of interest be adequately managed and recorded (RG 181.27).
- (b) To adequately carry out its conflicts management obligation, the Licensee will:
  - (i) identify the conflicts of interest;
  - (ii) assess and evaluate those conflicts;
  - (iii) decide upon, and implement, an appropriate response to those conflicts;
  - (iv) periodically review the effectiveness of the management approach; and
  - (v) require its representatives to comply with the requirements of the conflict of interests policy (Adviser) as it applies to them.

## 3 What is Banned and what is Not Banned

### 3.1 Summary

Banned	Not Banned
Benefits based on value of products sold or recommended (e.g. volume bonus)	Non-monetary benefits under \$300
Benefits based on volume of products sold or recommended (e.g. volume bonus)	Benefits paid by the clients
Benefits that because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence the choice of financial product recommended to clients	Benefits with an educational or training purpose
Benefits that because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence the advice given to clients	Benefits for information technology software and support
Asset-based fees on borrowed amounts (e.g. Asset-based fees for geared/ margin lending portfolio)	Benefits paid where advice is given to wholesale clients

For more information on benefits that are not banned, please refer to Appendix 1 of RG 246. (<https://download.asic.gov.au/media/5885872/rg246-published-10-december-2020.pdf>)

## 4 Conflict management methods

### 4.1 Summary

- (a) Depending on the circumstances and the nature of any given conflict, it may be appropriate, in accordance with RG 181 to:
  - (i) control the conflicts of interest;
  - (ii) avoid the conflicts of interest; or
  - (iii) disclose the conflicts of interest: (see RG 181.20).
- (b) Many conflicts of interest can be managed by a combination of internal controls and disclosure. However, not all conflicts can be managed in this way.
- (c) To identify the key conflicts faced by the adviser, the adviser (and the corporate authorised representative) is required to complete the conflicts declaration.
- (d) To manage the key conflicts identified by the representatives, the Licensee has prepared this policy for its representatives.

### 4.2 Controlling the conflict

- (a) Controlling a conflict of interest involves the adviser identifying any conflicts of interest relating to its business, assessing and evaluating those conflicts and deciding on, and implementing, an appropriate response to those conflicts.

- (b) This may include putting in place a procedures framework for the representative and its business so advisers can operate within the boundaries of the Licensee's expectations. The Licensee will periodically monitor the controls put in place and assess the effectiveness of such controls.

#### **4.3 Disclosing the conflict**

- (a) As part of managing conflicts, the Licensee may determine that the appropriate measure is to 'disclose' the conflict to the client so the client can make an informed decision.
- (b) Disclosure helps clients to assess the service they are being offered considering the advisers' and Licensee's own interests and to decide on the extent (if any) to which they will rely on the service. Having adequate arrangements in place to manage conflicts of interest includes ensuring that there is adequate disclosure of conflicts to investors, who can then consider their impact before making investment decisions.
- (c) Adequate disclosure means providing enough detail in a clear, concise and effective form to allow clients to make an informed decision about how the conflict may affect the service being provided to them. Managing conflicts by disclosure should be focused on material conflicts.
- (d) The Licensee and representative will ensure that disclosure about conflicts of interest:
  - (i) is timely, prominent, specific and meaningful to the client;
  - (ii) occurs before or when the financial service is provided, but in any case, at a time that allows the client a reasonable time to assess its effect; and
  - (iii) refers to the specific service to which the conflict relates.
- (e) For this reason, the Licensee and the representatives disclose the conflicts they may have in the financial services guides (FSG) and Statement of Advice (SOA) and has a process in place to ensure that the FSG and SOA are provided to a client during the financial planning process.

#### **4.4 Avoiding the conflict**

- (a) Some conflicts of interest have such a serious potential impact on the representative or its clients that the only way to adequately manage those conflicts will be to avoid them. In such cases merely disclosing them and imposing internal controls will be inadequate.
- (b) In such instances, the Licensee will specify the conflicts that need to be avoided have in place processes to ensure they are avoided.

## 5 Examples: What conflicts can be controlled?

### 5.1 Examples of conflicts that can be controlled

Conflicts that can be controlled		
	Conflict	Control Framework
1.	Referral arrangements (referral fees payable)	Subject to: <ul style="list-style-type: none"> <li>• advice being appropriate to and in the best interest of the client</li> <li>• service provider being competent</li> <li>• fees are reasonable compared to market</li> <li>• referral fees/relevant interests being disclosed</li> <li>• periodic checks and controls</li> <li>• arrangement is through the Licensee or the Corporate Authorised Representative, not through the individual Authorised Representative</li> <li>• an individual authorised representative must not benefit directly from the referral arrangement, however referral fees can be paid to AFSL or CAR and disbursed for general operational costs.</li> <li>• all agreements with referral partners are to be reviewed by the Licensee prior to entering into a new arrangement or for existing arrangements, as requested by the Licensee</li> </ul>
2.	Recommending related party services	
3.	Third party authority	Subject to: <ul style="list-style-type: none"> <li>• notification and consent prior to taking action</li> <li>• client verification during execution</li> <li>• periodic checks and controls</li> <li>• limitation (cap) on transaction</li> <li>• risks being disclosed to client</li> </ul>
4.	Power of attorney or executor	Subject to: <ul style="list-style-type: none"> <li>• notification and consent prior to taking action</li> <li>• third party verification/approval (for decisions relating to financial matters and payment of service fees)</li> <li>• periodic checks and controls</li> </ul>

		<ul style="list-style-type: none"> <li>risks being disclosed</li> </ul>
5.	<p>Recommending related party products</p> <p><b>or</b></p> <p>Recommending products where benefits are provided or received (note that you cannot receive a direct benefit for recommending a product e.g. if you recommend product A, provider A will take you out for dinner or provide any type of gift or financial reward)</p>	<p>Subject to:</p> <ul style="list-style-type: none"> <li>advice being appropriate to and in the best interest of the client</li> <li>product issuer being reputable</li> <li>periodic benchmarking to ensure: <ul style="list-style-type: none"> <li>fees are reasonable compared to market</li> <li>features and benefits being comparable to market</li> <li>performance of the product</li> </ul> </li> <li>relevant interests and benefits being disclosed</li> <li>relevant benefit is recorded on the Alternative Remuneration register</li> <li>periodic checks and controls</li> </ul>

## 6 Examples: What conflicts must be avoided?

### 6.1 Examples of conflicts that must be avoided

Situations which adviser must avoid	
1.	Charging ongoing service fees but failing to provide reviews to the client.
2.	Charging fees that are not commensurate with the services to be delivered.
3.	Charging fees that a client cannot afford or will result in the client being in a 'worse off' situation overall.
4.	<p>Recommending a product to create extra revenue for themselves or their related party, where additional benefits for the client cannot be demonstrated.</p> <p><b>Example 1:</b> Recommending the client take out an insurance policy with a higher premium (and no substantial benefit for the client) or a policy with a higher level of insurance (eg recommend Life of \$500,000 but client only requires \$250,000), so that the adviser receives more commission</p> <p><b>Example 2:</b> Churning insurance policy premiums</p>
5.	Over-service the client to generate more revenue for themselves or their related party (recommending and charging for a service that is not commensurate with the client's needs).
6.	Charging fees from the client's superannuation that do not meet the sole purpose test.

7.	Assisting client to gain early access to their superannuation unless a condition of release has been met, for the purpose of remunerating the adviser where the client does not have access to other funds.
8.	Acting for both partners in a relationship breakdown.
9.	Borrowing funds from clients.
10.	Recommending the client invest in business ventures of the adviser or a related party.

## 7 Adviser's duty to prioritise interests of the client (conflicts priority rule)

### 7.1 Summary of the conflicts priority rule

- (a) An adviser is required under s961J of the Corporations Act to prioritise the interests of the client if the adviser knows, or reasonably ought to know, when they give the advice that there is a conflict between the interests of the client and the interests of any of the following parties:
- (i) the adviser themselves;
  - (ii) an associate of the adviser;
  - (iii) the adviser's AFSL;
  - (iv) an associate of the adviser's AFSL;
  - (v) the authorised representative of the AFSL (e.g. the corporate authorised representative that employs the adviser); or
  - (vi) an associate of the corporate authorised representative that employs the adviser.
- (‘referred to as related parties’).

### 7.2 Complying with the conflicts priority rule

- (a) Section 961J(1) requires that an adviser should not act to further their interests or those of one of their related parties over those of the client when giving the client advice.
- (b) In complying with this obligation, advisers should consider what a reasonable adviser without a conflict of interest would do. ASIC expects that the more material the conflict of interest between the client and the adviser (and their related party), the more the adviser will need to do to prioritise the client's interests.
- (c) For the purposes of complying with the conflicts priority rule, in the event where an adviser/Licensee uses an approved product list that only has products issued by a related party on it, the adviser must not recommend a product on the approved product list, unless a reasonable adviser would be satisfied that it is in the client's interests to recommend a related party product rather than another product with similar features and costs.
- (d) Note that the conflicts priority rule will not always prohibit an adviser from recommending the client acquire the services or interests in a product issued by a related party. The conflicts priority rule also does not prohibit an adviser from accepting remuneration from a source other than the client (e.g. a fee from a

referral partner). However, if an adviser gives priority to maximising or receiving the non-client source of remuneration over the interests of the client, the adviser will be in breach of the conflicts priority rule.

## 8 Conflicted remuneration

### 8.1 Understanding conflicted remuneration

- (a) The conflicted and other banned remuneration provisions primarily aim to more closely align the interests of those who provide advice with the interests of their clients and improve the quality of advice these clients receive (RG 246.1).
- (b) The Corporations Act prohibits:
  - (i) an AFSL and its representatives (including authorised representatives) from accepting conflicted remuneration (see s963E, 963G and 963H);
  - (ii) product issuers and sellers from giving conflicted remuneration to a licensee and its representatives (see s963K); and
  - (iii) an employer of a licensee or representative from giving its licensee or representative employees conflicted remuneration for work they carry out as an employee (see s963J).

### 8.2 What is conflicted remuneration?

- (a) Conflicted remuneration is (unless an exclusion applies) any benefit given to a Licensee or its representatives who provide advice to clients that, because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence:
  - (i) the choice of financial product recommended to clients by the licensee or its representatives; or
  - (ii) the advice given to clients by the licensee or its representatives (see s963A).
- (b) A benefit is not conflicted remuneration if it only influences advice provided to wholesale clients (RG 246.8).
- (c) The ban on conflicted remuneration applies to a range of benefits, including those that are received by:
  - (i) the Licensee;
  - (ii) an authorised representative or other representative of the licensee, which includes benefits passed on by:
    - (A) the Licensee on whose behalf the representative acts; or
    - (B) an authorised representative employing a representative, where they both act on behalf of the same licensee.

### 8.3 Volume based benefits presumed to be conflicted remuneration

- (a) There is a presumption that volume-based benefits are conflicted remuneration: see s963L. A benefit is volume-based if access to the benefit or the value of the benefit is wholly or partly dependent on the total number or value of financial products:
  - (i) recommended to clients by an AFSL or its representatives; or

- (ii) acquired by clients to whom a licensee or its representatives provide advice.
- (b) A benefit may be a volume-based benefit if, for example, it is:
  - (i) calculated as a fixed percentage (e.g. 1%) of all client funds invested in financial products based on the recommendations of a representative;
  - (ii) calculated based on a sliding scale, such as:
    - (A) 1.0% for the first \$10 million in client funds invested based on the recommendations of a representative;
    - (B) 0.75% for amounts over \$10 million and less than \$20 million; and
    - (C) 0.5% for amounts over \$20 million; or
  - (iii) a flat fee which will only be paid if a threshold based on the number or value of financial products recommended by an AFSL or its representatives or acquired by their clients is met—for example, a \$12,000 bonus that is only paid if client funds in a particular financial product exceed \$20 million.
- (c) In these cases, either the value of or access to the benefit is dependent on the total value of financial products acquired, based on the recommendations of an AFSL or its representatives.
- (d) The presumption above could be rebutted by showing that, for example:
  - (i) the value of the benefit is not significant enough that it could reasonably be expected to influence the advice given to a client; or
  - (ii) how the benefit is accessed could not reasonably be expected to influence the advice given to a client.

#### **8.4 Ban applies to monetary or non-monetary benefits**

The ban on conflicted remuneration applies to a range of benefits that may be monetary or non-monetary. Non-monetary benefits could take a number of forms, including the following:

- (a) free or subsidised business equipment or services;
- (b) hospitality-related benefits (e.g. tickets to sporting events or concerts and subsidised travel);
- (c) shares or other interests in a product issuer or AFS licensee;
- (d) marketing assistance; and
- (e) promotion or other ways of recognising an employee based on product recommendations or sales.

## **9 Ban on asset-based fees on borrowed amounts**

### **9.1 General ban on asset-based fees on borrowed amounts**

- (a) The Licensee and its authorised representatives that provide advice to clients are generally prohibited from charging asset-based fees on borrowed amounts that are to be used to acquire financial products by or on behalf of a client: see s964D and 964E. The purpose of this ban is to prevent advisers from artificially increasing the size of their advice fees by ‘gearing up’ their clients.

- (b) The ban applies regardless of how the amount is borrowed. An amount could be borrowed through secured or unsecured means, including through a credit facility, such as a personal loan or a credit card, or a margin lending facility see s964G(1).

## **9.2 Asset-based fees and portfolio of products**

- (a) If a client has a portfolio of products purchased with a combination of borrowed and non-borrowed amounts, in order to charge an asset-based fee, the net value of the portfolio should be determined, and the amount borrowed (less any amount repaid) should then be deducted from this net value. Asset-based fees should only be charged on the resulting value of the portfolio after borrowed amounts are deducted.
- (b) If the proportion of borrowed and non-borrowed assets changes over time - for example, if a client borrows additional amounts to add to their portfolio, the fee arrangements should be adjusted to reflect this.

## **9.3 What if the adviser did not know the amount was borrowed?**

- (a) While the ban applies regardless of how the amount is borrowed, the ban does not apply if it is not reasonably apparent that an amount has been borrowed: see s964D(3) and 964E(2). This is an objective standard based on whether something would be apparent to a person with a reasonable level of expertise in the subject matter of the advice sought by the client, who has exercised care and objectively assessed the information given by the client to AFSL or its representatives: see s964H.
- (b) This means that the ban on charging asset-based fees will not apply to the Licensee or its authorised representative if they do not know that an amount used to acquire financial products by or on behalf of a client has been borrowed, as long as this fact is not reasonably apparent.

# **10 Performance benefits for employees**

## **10.1 Performance benefits for employees**

- (a) Performance benefits for employees may include:
  - (i) bonuses;
  - (ii) pay rises;
  - (iii) promotion or other forms of recognition;
  - (iv) reward-focused entertainment or travel; and
  - (v) shares or options in the employer's business (see RG 246.133– RG 246.138).
- (b) If the bonus is based on the value of financial products recommended or invested, it is likely this portion of the benefit will be conflicted remuneration.
- (c) If the bonus is based on other factors that could not reasonably be expected to influence advice, it is less likely that these benefits will constitute conflicted remuneration. For example, if a financial adviser who is an employee representative of the Licensee receives a \$5,000 bonus in recognition of:
  - (i) high levels of customer satisfaction;
  - (ii) an increase in customer referrals;

- (iii) an outstanding compliance rating; and
- (iv) developing referral networks with other professional services firms.

the bonus is unlikely to be conflicted remuneration because it would not reasonably be expected to influence the advice given by the adviser.

- (d) The Licensee will observe the guidance provided by ASIC in RG 246 in relation to evaluating performance benefits payable to employees.

## 11 Anti-avoidance

- (a) A person must not enter into or carry out a scheme to avoid the application of the conflicted remuneration provisions.
- (b) The effect of the anti-avoidance provision is that, from 1 July 2012, a person must not, either alone or with other people, enter into or carry out a scheme if:
  - (i) it would be concluded that they did so for the sole or non-incidental purpose of avoiding the application of any of the conflicted remuneration provisions; and
  - (ii) the scheme or part of the scheme has achieved the purpose of avoiding the conflicted remuneration provisions.
- (c) A person may be liable for a civil penalty if they are found to have breached the anti-avoidance provisions.