



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 179

# Managed discretionary accounts

September 2016

### About this guide

This is a guide for Australian financial services (AFS) licensees and their representatives who provide managed discretionary accounts (MDAs) or other MDA services to retail clients, and their professional advisers.

It sets out how we regulate MDAs provided to retail clients under the *Corporations Act 2001* (Corporations Act).

Note: From 27 July 2020, applications for relief should be submitted through the [ASIC Regulatory Portal](#). For more information, see [how you apply for relief](#).

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This guide was issued in September 2016 and is based on legislation and regulations as at the date of issue. The note on the front page was inserted on 27 July 2020.

Previous versions:

- Superseded Policy Statement 179, issued March 2004, rebadged as a regulatory guide 5 July 2007

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

This guide sets out how we regulate managed discretionary accounts (MDAs) provided to retail clients under the *Corporations Act 2001* (Corporations Act). It explains:

- how we define an MDA;
- the relief we have given to MDA providers from some of the managed investment scheme, fundraising and financial product disclosure requirements in the Corporations Act;
- the additional requirements that apply to MDA providers under our relief; and
- how we regulate the different arrangements that may be involved in providing MDA services.

A staged implementation of the requirements in this guide applies: see Table 2.

## What is a managed discretionary account?

RG 179.1 An MDA means a facility, other than a registered managed investment scheme (registered scheme) or an interest in a registered scheme, with the following features:

- (a) a person (MDA client) makes contributions;
- (b) the client portfolio assets are managed on an individual basis by another person (MDA provider) at the MDA provider's discretion, subject to any agreed limitation; and
- (c) the client and the MDA provider intend that the MDA provider will use the client portfolio assets to generate a financial return or other benefit for the client.

Note: For more details about what we consider to be the key features of an MDA, see Section B.

RG 179.2 There are a wide variety of arrangements that can constitute an MDA. Industry uses different terminology to refer to services that may have the relevant features of an MDA. For example, products commonly known by industry and investors as a separately managed account, individually managed account, investment advisory program or a managed discretionary portfolio service may fall within the definition of an MDA.

- RG 179.3 We consider that an MDA generally falls within the definition of both a ‘managed investment scheme’ in s9 of the Corporations Act and a ‘facility for making a financial investment’ in s763B of the Corporations Act.

Note: Instead of offering an MDA under our relief, you may provide these services through a registered scheme.

## Purpose of this guide

- RG 179.4 This guide sets out how we will regulate MDAs provided to retail clients under the Corporations Act.
- RG 179.5 Our overriding objectives when regulating MDAs are to help promote investor and financial consumer trust and confidence in the provision of MDAs, and to apply the minimum appropriate regulation to the provision of MDAs by MDA providers. This is consistent with the framework for the regulation of financial products and services under the Corporations Act.
- RG 179.6 To achieve these objectives, we require:
- (a) adequate disclosure about MDAs, including an investment program that is prepared in accordance with the Corporations Act requirements for preparing a Statement of Advice (SOA);
  - (b) reliable investor reporting;
  - (c) effective compliance controls;
  - (d) custodial and transactional integrity; and
  - (e) appropriate and compliant personal advice about MDAs.
- RG 179.7 Our regulatory approach seeks to allow for flexibility in the structuring of MDAs by ensuring that our requirements for MDA providers are appropriate and therefore tailored to take into account the nature of the financial products and services involved in providing the MDA.

## Who does this guide apply to?

- RG 179.8 Providing an MDA involves a range of functions and services, such as offering and trading in financial products, operating a custodial or depository service, and giving personal advice. This guide applies to:
- (a) MDA providers; and
  - (b) persons who provide services and functions relating to an MDA, either as an agent of the MDA provider or by entering into a direct contract with the MDA client.

Note 1: When we refer to an ‘MDA service’ in this guide, we are referring to some or all of the services and functions involved in providing an MDA.

Note 2: An ‘MDA client’, in this guide, means a person to whom MDA services are provided, or are to be provided, by an MDA provider.

RG 179.9 This guide does not apply to:

- (a) other types of managed investment schemes, such as investor-directed portfolio services (IDPSs) and IDPS-like schemes; and
- (b) MDA services offered only to wholesale clients, as defined in s761G of the Corporations Act (see RG 179.10), other than wholesale clients that are acting under a custodial arrangement.

Note 1: We do not consider that you could provide an MDA as an IDPS because an MDA involves the MDA provider making investment decisions about financial products acquired for the client's portfolio. In an IDPS, the client (rather than the provider) makes the investment decisions. There are also other differences between IDPS services and MDA services. In particular, under our relief, an MDA provider is not permitted to pool different MDA clients' funds and assets for investment purposes (e.g. to access wholesale investments): see RG 179.37.

Note 2: For our policy on IDPS and IDPS-like schemes, see [Regulatory Guide 148 Platforms that are managed investment schemes](#) (RG 148) and [Regulatory Guide 149 Nominee and custody services](#) (RG 149).

### **MDA services provided only to wholesale clients**

RG 179.10 We provide relief for MDAs offered or issued to retail clients in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968.

Note: To benefit from this relief, you must comply with certain conditions and requirements: see RG 179.41–RG 179.42.

RG 179.11 However, if you offer or issue an MDA only to wholesale clients, you do not need to rely on our relief to provide these services because the managed investment scheme provisions in Ch 5C of the Corporations Act and the disclosure requirements in Pt 7.9 of the Corporations Act only apply when financial products and services are offered or issued to retail clients.

Note 1: When we refer to 'MDA client' or 'client' in this guide, we are referring to a retail client unless otherwise specified.

Note 2: Regulation 7.1.27 of the Corporations Regulations 2001 (Corporations Regulations) provides that, when a client is a wholesale client in relation to a financial product, the client remains a wholesale client in relation to that product. The effect of reg 7.1.27 is that the MDA provider can continue to treat a client as a wholesale client in relation to the MDA. For example, when a client contributes at least \$500,000 to an MDA, the client is a wholesale client for any dealing provided on behalf of that client by the MDA provider as part of the operation of the MDA, such as any custodial or depository service, or any financial product advice.

### **MDA services provided to both retail and wholesale clients**

RG 179.12 If you issue an MDA to both retail and wholesale clients, you will need to rely on our relief because the exemptions in the Corporations Act from the requirement to register a managed investment scheme may not apply—that is:

- (a) the exemption under s601ED(2)—because this requires that all clients are persons to whom a Product Disclosure Statement (PDS) is not required to be issued; and
- (b) the exemption under s601ED(1)—because you may have, or be taken to have, more than 20 members; or you may qualify as a person who is in the business of promoting managed investment schemes.

RG 179.13 If this is the case, and you issue an MDA to both retail and wholesale clients under our main relief (as set out in RG 179.41), you do not need to comply with certain requirements for the MDAs that you provide to wholesale clients.

RG 179.14 Some of the Corporations Act requirements, which are modified by our relief or on which the conditions of our relief are based (e.g. the requirements relating to the Financial Services Guide (FSG)), do not apply to financial services provided to wholesale clients. Therefore, these conditions do not apply to MDAs issued to wholesale clients.

RG 179.15 The conditions and modified provisions under our relief that have a general application will apply to MDA services provided to wholesale clients because they cannot be separated from the conditions that otherwise apply to MDA services provided to retail clients. For example, you must have a specific Australian financial services (AFS) licence authorisation to issue an interest in a managed investment scheme limited to MDA services, or miscellaneous financial investment products limited to MDA services. You must also maintain adequate documented compliance measures for all MDA services.

Note 1: For information on the conditions that apply to you when you provide an MDA under our relief, see Sections C and D.

Note 2: Our relief does not prevent you from voluntarily entering into a contract with your wholesale clients to provide MDA services on conditions that are similar to those required for the MDAs you provide to retail clients. However, by not doing so, you will not breach the conditions of our relief, which only apply in relation to retail clients.

## Our approach to regulating MDAs

RG 179.16 An MDA is generally both a managed investment scheme and a facility for making a financial investment under the definitions in the Corporations Act. We regulate an interest in an MDA as a financial product. If you enter into a contract with a client to provide an MDA, we treat you as the issuer of a financial product.

RG 179.17 However, we recognise that MDAs also involve a range of functions and services, such as offering and trading in financial products, operating a custodial or depository service, and giving personal advice.

RG 179.18 To achieve our objectives, as set out in RG 179.5, we apply a tailored regulatory approach to MDAs. This includes:



- (a) giving MDA providers relief from some of the managed investment scheme, fundraising, financial product disclosure and other requirements in the Corporations Act (see RG 179.41);
- (b) requiring MDA providers to comply with certain requirements set out in this regulatory guide and ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (see Sections C and D); and
- (c) giving relief from the FSG requirements and some of the PDS disclosure requirements as far as they apply to persons providing dealing services (i.e. execution of trades) relating to client portfolio assets or issuing their financial products to MDA clients where the client holds the legal title to those client portfolio assets (see RG 179.180); and
- (d) expecting financial product advice about MDAs to comply with the financial product advice provisions in the Corporations Act.

RG 179.19 We have given MDA providers relief in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 because they have more limited functions than responsible entities of registered schemes. However, we generally apply a regulatory approach to MDAs that is similar to our approach to registered schemes to the extent that the transactional and custodial functions undertaken by MDA providers are similar to those of responsible entities.

### MDA services with different arrangements

RG 179.20 We recognise that not all MDAs are the same. Our policy is flexible enough to accommodate different arrangements that may be involved in providing an MDA. Table 1 summarises these different arrangements.

**Table 1: Summary of different arrangements for the operation of an MDA**

| Arrangement                        | Description   | Location of guidance      |
|------------------------------------|---|---------------------------|
| MDA with an external MDA custodian | <p>Another AFS licensee (an external MDA custodian) enters into a direct contract with the MDA clients to provide custody services relating to the MDA. In this case, the external MDA custodian is responsible to the client for the custody services.</p> <p>Note: If an MDA provider engages another AFS licensee to obtain custody services relating to the MDA services it operates, that licensee is not an external MDA custodian but is an agent of the MDA provider.</p> | See RG 179.160–RG 179.166 |

| Arrangement  | Description   | Location of guidance       |
|--|---|----------------------------|
| MDA with an external MDA adviser                               | <p>Another AFS licensee (an external MDA adviser) deals directly with the client and is directly responsible to the client for providing personal advice relating to the MDA services by preparing or reviewing the investment program included in the MDA contract.</p> <p>Note: If an MDA provider uses its own in-house adviser to prepare or review the investment program included in the MDA contract, that adviser is not an external MDA adviser but is an agent of the MDA provider.</p> | See RG 179.167–RG 179.176  |
| MDA with external administration support                       | The MDA provider outsources some or all of the administrative functions of an MDA.  | See RG 179.177–RG 179.179  |
| MDA where the client holds the legal title to portfolio assets | Another AFS licensee provides dealing services to MDA clients by issuing its own financial products or by providing execution of trades. This would technically occur if the legal title to financial products in the client's portfolio is held by the client and not by the MDA provider (or external MDA custodian). Because the MDA provider, and not the client, makes the relevant investment decisions, we give some relief to the other licensee for certain dealing services.            | See: RG 179.180–RG 179.184 |
| MDA on a regulated platform                                    | An MDA provider provides an MDA on a regulated platform.  | See RG 179.185–RG 179.200  |
| AFS licensees who provide MDA services to family members only  | An AFS licensee who is a market participant provides MDA services to a family member of the licensee or a family member of a representative of the licensee.  | See RG 179.201–RG 179.207  |

Note: An MDA may have one or a combination of any of the above variations.

## When do the requirements apply?

RG 179.21 A staged implementation of the requirements applies: see Table 2.

Note: If you are providing an MDA on a regulated platform, you should refer to the transitional requirements in RG 179.200.

### Transitional requirements

RG 179.22 As a transitional measure, you can continue to provide your existing MDA services under our relief in [Class Order \[CO 04/194\] Managed Discretionary Accounts](#) until 1 October 2017.

Note: For our guidance on the requirements in [CO 04/194], see the appendix to this guide.

RG 179.23 If you are a new MDA provider with an MDA specific AFS licence authorisation to deal or provide financial product advice in relation to an MDA on or after 1 October 2016, you must comply with the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968.

**Table 2: When the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 apply**

| Authorisation date   | Requirements that apply  | When the requirements apply  |
|--|--|--|
| Before 1 October 2016  | The requirements in [CO 04/194]  | Until 1 October 2017 (or earlier if you opt in to the new regime—see row below)                            |
| Before 1 October 2016, and you have published a notice on your website that you will rely on ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 in relation to the MDA | The requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 | From the date you publish a notice on your website (i.e. a date between 1 October 2016 and 1 October 2017) |
| Before 1 October 2016  | The requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 | From 1 October 2017  |
| From 1 October 2016  | The requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 | From the authorisation date  |

Note 1: 'Authorisation date' means the date on which you were first authorised to deal in or provide financial product advice in relation to an MDA.

Note 2: For the transitional requirements that apply, see the appendix to this guide.

## B How we define an MDA

### Key points

An MDA generally falls within the definition of a ‘managed investment scheme’ in s9 of the Corporations Act and a ‘facility for making a financial investment’ in s763B of the Corporations Act. We regulate an MDA as a financial product.

There are a wide variety of arrangements that can constitute an MDA. In this section, we provide guidance about what we consider to be the key features of an MDA.

### Key features of an MDA

RG 179.24 The definition of an MDA in RG 179.1 comprises the key features set out in Table 3.

**Table 3: Key features of an MDA**

| Feature                            | Description   |
|------------------------------------|---|
| <b>MDA provider</b>                | An MDA provider is a person who enters into a contract with a client to provide an MDA: see RG 179.25.  |
| <b>Client contributions</b>        | Clients give the MDA provider (or grant the MDA provider access to) contributions of money or money’s worth: see RG 179.27.   |
| <b>Trading discretion</b>          | The MDA provider has the discretion to invest in financial products using client contributions without prior reference to the client for each transaction, subject to any limitation that may be agreed between the client and the MDA provider: see RG 179.29. |
| <b>Client portfolio management</b> | The client’s portfolio assets are managed as a discrete portfolio belonging to that client: see RG 179.35.  |
| <b>Benefits for clients</b>        | The client and the MDA provider intend that the MDA provider will use the client contributions to generate a financial return or other benefit for the client (even if this does not ultimately occur): see RG 179.39.  |
| <b>Retail clients</b>              | Clients of the MDA include retail clients, as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations.   |

Note: Any person engaged by an MDA provider to carry out any of the functions of the MDA provider is an agent of the provider (e.g. a custodian appointed by the provider). However, external MDA custodians and external MDA advisers enter into a direct contract with the clients to provide these financial services and are directly responsible to the client—they are not agents of the MDA provider: see Section E for details of how our policy applies to these persons.

## MDA provider

RG 179.25 An MDA provider is a person who enters into a contract with a client to provide an MDA. The MDA provider must hold an AFS licence authorisation to:

- (a) deal by issuing a financial product in respect of:
  - (i) interests in managed investment schemes limited to MDA services; or
  - (ii) miscellaneous financial investment products limited to MDA services;

Note 1: In this guide, we refer to this as the ‘AFS licence authorisation to issue a financial product limited to MDA services’.

Note 2: You must have this authorisation to benefit from the relief for MDA providers in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968.

- (b) deal in all the financial products that are acquired with client portfolio assets under the MDA contract;
- (c) provide personal advice to clients in relation to the MDA—except where an external MDA adviser enters into a direct contract with each MDA client to provide financial product advice about the investment program; and
- (d) provide custodial or depository services in relation to the client portfolio assets—except where an external MDA custodian enters into a direct contract with each MDA client to provide the custodial or depository services.

RG 179.26 The MDA provider may also provide administrative services relating to the MDA, or outsource these services.

## Client contributions

RG 179.27 A client can make contributions in two ways:

- (a) by giving the MDA provider money or other assets that can be converted to funds for investment purposes (e.g. the client transfers to the provider the legal title to the assets); or
- (b) by giving the MDA provider access to, and control of, these funds and assets (i.e. the client retains the legal title to the assets and the provider is given access to or control of the assets for trading purposes through a power of attorney or other authorisation such as a signatory arrangement).

Note 1: Cash management accounts and trust accounts operated for providing non-discretionary trading services (e.g. those operated by brokers) are not MDA services because they are not used for services involving discretionary trading by the MDA provider.

Note 2: For MDAs provided by persons dealing in derivatives, we permit clients’ funds and assets to be held in brokers’ segregated accounts.

- RG 179.28 When a client gives access to, and control of, client contributions to an MDA provider, the provider has the ability to use these funds or assets to produce benefits for the client in the same way as if the provider held the legal title. We consider that these arrangements meet s9(a)(i) of the definition of a managed investment scheme in the Corporations Act that deals with how people make contributions to the scheme: see RG 179.32 and RG 179.39 for how the other elements of this definition are met.

### Trading discretion

- RG 179.29 For an arrangement to be treated as an MDA, the MDA provider must have the discretion to make investments without prior reference to the client for each transaction.
- RG 179.30 For this to occur, the client authorises the MDA provider to exercise trading discretion in relation to the client's portfolio assets. Under the requirements for our relief, the nature and scope of the trading discretion must be clearly set out in the MDA contract that is given to each MDA client.

Note: For more details about the MDA contract and investment program, see Section D.

- RG 179.31 The trading authority may allow the MDA provider to exercise its discretion under either:
- (a) a detailed investment program that identifies particular financial products or classes of financial product in which the client contributions and assets, derived directly or indirectly from the client contributions, will be invested; or
  - (b) an investment program that contains only a broad investment strategy or an objective.
- RG 179.32 Trading discretions of this nature give the MDA provider the power to convert or dispose of the funds and assets representing that client's contributions when operating the MDA. We consider that these arrangements meet the requirement in s9(a)(iii) of the definition of a managed investment scheme in the Corporations Act because the client has no day-to-day control over their portfolio assets (even if the client has the legal title to those assets and the discretionary trading is carried out under a power of attorney or other authorisation).
- RG 179.33 Although the client effectively delegates discretion to the MDA provider to select investments for their portfolio, the client may retain the right to direct the provider on matters such as the timing of the transfer or realisation of assets in their portfolio, and how the proceeds from the realisation of assets should be used. The provider may also specifically reserve the right to recover amounts due from the client out of the assets in their portfolio (e.g. under margin lending arrangements, or for brokerage or other fees payable by the

client). These arrangements do not necessarily mean that the arrangement is not an MDA.

- RG 179.34 If the trading discretion given to an MDA provider is confined merely to the time or price at which transactions may be effected, we do not consider that this arrangement constitutes an MDA that would be covered by our MDA policy. In some circumstances, however, it may be an IDPS.

Note: For our policy on IDPSs, see RG 148.

## Client portfolio management

- RG 179.35 As part of an MDA—subject to any contrary arrangements that the provider may have previously put in place to ensure the repayment of money owed by the client—the MDA provider typically undertakes to:

- (a) manage the assets in each client's portfolio as a discrete portfolio;
- (b) provide reports to the client on their portfolio; and
- (c) follow the client's instructions on:
  - (i) the transfer and liquidation of assets in their portfolio; and
  - (ii) the payment of proceeds from the realisation of assets.

- RG 179.36 Assets in the client's portfolio under an MDA can be held in two ways: see RG 179.27. The management of each client's assets as a discrete portfolio involves:

- (a) where the legal title to the assets is held by the MDA provider or the agent of the MDA provider (e.g. where the client has a beneficial interest in the assets)—the identification of those assets as belonging to that particular client; or
- (b) where the legal title to the assets is held by the client—an authorisation arrangement, such as a power of attorney or signatory arrangement.

- RG 179.37 In either case, under the requirements of our relief, the MDA provider must not pool one client's portfolio assets with any other client's portfolio assets for investment purposes (e.g. to access wholesale investments). This is because pooling would be inconsistent with the policy basis for our relief that the client's assets are managed as a discrete portfolio belonging to that client.

Note: For guidance on the application of this requirement to an AFS licensee providing MDAs on a regulated platform, see RG 179.192.

- RG 179.38 However, an MDA provider will typically carry out some transactional and other functions relating to client portfolios on a collective basis (e.g. placing bulk orders or conducting research into financial products in which portfolio assets are to be invested). ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 does not prohibit this. Where this

occurs, there may be pooling for administrative cost savings that are to be passed on to clients, which would satisfy s9(a)(ii) of the definition of a managed investment scheme.

Note: ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 does not prohibit carrying out transactions between client portfolios. However, if an MDA provider is a participant of a licensed market, it may be subject to restrictions relating to such transactions under the market's operating rules.

## **Benefits for clients**

RG 179.39 Generally, a client participates in an MDA with the intention that they will derive benefits, including from:

- (a) the MDA provider's expertise in investment selection;
- (b) the MDA provider's ability to respond quickly to market developments by trading in the client's portfolio assets without referring to the client; and
- (c) possible cost reductions in the services offered as part of the MDA, which may include consolidated reporting and bulk ordering (although there is no pooling of different clients' portfolio assets for investment purposes, such as accessing wholesale investments: see RG 179.37).

RG 179.40 When coupled with the other features of an MDA (e.g. the client not having day-to-day control over their portfolio: see RG 179.32), we consider that MDAs generally fall within the definition of both a managed investment scheme (s9 of the Corporations Act) and a facility for making a financial investment (s763B of the Corporations Act).



## C Requirements for MDA providers

### Key points

As an MDA provider, if you enter into a contract with a client to provide an MDA, we will give you relief from the managed investment scheme provisions in Ch 5C of the Corporations Act, and certain disclosure requirements in Ch 6D and Pt 7.9 of the Corporations Act, on condition that you:

- hold an AFS licence authorisation to issue a financial product limited to MDA services, and other authorisations relevant to the MDA services you provide (see RG 179.45–RG 179.55); and
- comply with certain conditions (see Table 4).

Note: This section reflects the updated requirements of our relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968. For the dates that these requirements apply, see Table 2 in Section A.

### Our relief

RG 179.41 If you enter into a contract with a client to provide an MDA, and comply with certain conditions, we will give you relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 from:

- (a) the requirement in s601ED(5) of the Corporations Act that the MDA must be registered;
- (b) the requirement to prepare a PDS under Pt 7.9 of the Corporations Act; and
- (c) the securities disclosure and related provisions in Pts 6D.2 and 6D.3 of the Corporations Act for securities held on behalf of the client under the MDA.

Note: When we refer to ‘our relief’, we mean the relief in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 unless otherwise specified.

RG 179.42 To have the benefit of our relief, you must comply with the requirements set out in this section and Section D.

### Overview of the requirements

RG 179.43 You must meet all the requirements in this section and in Section D if you are an MDA provider that enters into contracts with clients to provide all of the services involved in providing an MDA (i.e. dealing, custodial or depository services, and financial product advice)—although you may use other AFS licensees as your agents.

Note: For our policy on MDAs with different arrangements, see Section E.

RG 179.44 Table 4 outlines the AFS licensing and other conditions that apply to you when you operate MDA services under our relief.

**Table 4: Overview of the requirements for an MDA provider under our relief in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968**

| Need for an AFS licence   | Location of guidance      |
|---|---------------------------|
| You must hold an AFS licence and relevant authorisations.   | See RG 179.45–RG 179.55   |
| Additional disclosure in the FSG  | Location of guidance      |
| You must include certain additional information in the FSG you give to each client about the MDA.   | See Section D             |
| MDA contract and investment program   | Location of guidance      |
| You must include certain additional upfront disclosure in the MDA contract.   | See Section D             |
| You must include in the MDA contract an investment program that complies with certain requirements, and ensure that the investment program is reviewed at least once every 12 months.   | See Section D             |
| Compliance issues   | Location of guidance      |
| You must comply with the general AFS licence obligations.   | See RG 179.56             |
| You must act honestly and in the best interests of the client, exercise reasonable care and diligence, give priority to the client's interests, and not use information about the client to your advantage or to cause detriment to the client. | See RG 179.58–RG 179.66   |
| You must manage conflicts of interest.  | See RG 179.67–RG 179.87   |
| You must comply with the asset holding requirements.  | See RG 179.88–RG 179.92   |
| You must maintain professional indemnity insurance that meets certain requirements.   | See RG 179.93–RG 179.94   |
| You must have, and comply with, adequate documented compliance measures and arrange for their audit.  | See RG 179.98–RG 179.100  |
| You must report non-compliance.   | See RG 179.101–RG 179.103 |
| You must not invest any of a client's portfolio assets in products or arrangements where recourse is not limited—except in certain circumstances.   | See RG 179.122–RG 179.130 |
| You must provide an annual fee disclosure statement if you provide personal advice and enter into an arrangement that provides for the payment of a fee during a period of more than 12 months.   | See RG 179.116–RG 179.121 |

| Client instructions, reporting and record keeping   | Location of guidance      |
|---|---------------------------|
| You must follow each client's instructions on corporate actions and communications about portfolio assets.  | See RG 179.95–RG 179.97   |
| You must provide to each client: <ul style="list-style-type: none"> <li>• either a quarterly report or electronic access to information on a substantially continuous basis; and</li> <li>• an annual investor statement and audit report.</li> </ul> | See RG 179.104–RG 179.115 |
| You must maintain records of the documents provided to each client.   | See RG 179.157–RG 179.158 |

## Hold an AFS licence and relevant authorisations

RG 179.45 Before you may enter into a contract with a client to provide an MDA service under our relief, you must hold a specific AFS licence authorisation to issue a financial product limited to MDA services: see RG 179.25. You will also need to obtain licence authorisations relevant to any other MDA services you provide.

RG 179.46 If we grant you an AFS licence with the relevant authorisations, you will need to comply with the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968.

Note: If the only MDAs you provide are MDAs for your family members or the family members of your representatives, see RG 179.201.

RG 179.47 The types of authorisation you require will depend on the functions and services you will undertake in relation to the MDA.

RG 179.48 In addition to the AFS licence authorisation to issue a financial product limited to MDA services, you must hold an AFS licence authorising you to:

- (a) deal in all the financial products in which a client's portfolio may be invested under the terms of the MDA contract;
- (b) provide financial product advice on an MDA if you provide that financial product advice;
- (c) provide financial product advice on all the financial products in which a client's portfolio may be invested, unless you have an external MDA adviser (see RG 179.49); and
- (d) provide a custodial or depository service, unless you have an external MDA custodian (see RG 179.51).

Note: You do not need an authorisation to operate a custodial or depository service if the client holds the legal title to the financial products in their portfolio.

## External MDA adviser

RG 179.49 If an external MDA adviser has entered into a direct contract with each client to whom the MDA provider provides an MDA to provide financial product advice relating to the investment program, the MDA provider may not be required to hold an AFS licence authorising it to give financial product advice to clients. In this case, the relevant licence authorisation will be held by the external MDA adviser.

RG 179.50 If you provide an MDA with an external MDA adviser, you will need to consider whether you require an AFS licence authorisation to give financial product advice. You should consider whether you make recommendations or statements of opinion about investing in an MDA, or about acquiring or disposing of financial products that are client portfolio assets independent of the investment program and annual review of the investment program.

Note: For details of how our policy applies to MDAs with an external MDA adviser, see Section E.

## External MDA custodian

RG 179.51 If an external MDA custodian has entered into a direct contract with each client to whom the MDA provider provides MDA services to provide custodial or depository services in relation to the client portfolio assets, the MDA provider is not required to hold an AFS licence authorising it to provide custodial or depository services. In this case, the relevant licence authorisation will be held by the external MDA custodian.

Note: For details of how our policy applies to MDAs with an external MDA custodian, see Section E.

## How we will assess your application for authorisation

RG 179.52 In deciding whether to grant the relevant AFS licence authorisations, we will assess whether you have the necessary resources and expertise to provide financial services involved in providing an MDA in accordance with your obligations as an AFS licensee, such as the capacity to provide the relevant financial services involved in providing the MDA efficiently, honestly and fairly.

RG 179.53 In addition, in considering whether to grant an authorisation to issue a financial product limited to MDA services, we will consider whether you have the capacity to provide the MDA efficiently, honestly and fairly, and in compliance with the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968.

- RG 179.54 We will base our assessment on our regulatory guidance, including:
- (a) the general requirements in:
    - (i) [Regulatory Guides 1, 2 and 3](#) *AFS Licensing Kit* (RG 1–RG 3);
    - (ii) [Regulatory Guide 104](#) *Licensing: Meeting the general obligations* (RG 104);
    - (iii) [Regulatory Guide 105](#) *Licensing: Organisational competence* (RG 105) (to the extent that these requirements apply to dealing in financial products, custody services and giving financial product advice);
    - (iv) [Regulatory Guide 126](#) *Compensation and insurance arrangements for AFS licensees* (RG 126);
    - (v) [Regulatory Guide 165](#) *Licensing: Internal and external dispute resolution* (RG 165); and
    - (vi) [Regulatory Guide 166](#) *Licensing: Financial requirements* (RG 166); and
  - (b) the more specific requirements in:
    - (i) [Regulatory Guide 132](#) *Compliance plans* (RG 132); and
    - (ii) [Regulatory Guide 133](#) *Managed investments and custodial or depository services: Holding assets* (RG 133) (except for the compliance committee requirements)—where the client (or client’s agent) does not hold the legal title to portfolio assets.

Note: We will apply these requirements as if references to managed investment schemes were to MDA services.

## How we will assess previous experience

- RG 179.55 You must have the knowledge and skills that demonstrate that you:
- (a) can provide all of the financial products and services covered by your AFS licence, including providing the MDA, and understand the legal and compliance obligations relating to those products and services; and
  - (b) understand the investment and operational issues of all the types of client portfolio assets under management (see RG 105).

## Comply with AFS licence obligations and our relief

- RG 179.56 This guide focuses on the obligations that apply to an MDA provider or persons who provide services and functions relating to an MDA under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968. In addition, you must comply with the general obligations that apply to an AFS licensee under the Corporations Act and your AFS licence conditions.

- RG 179.57 An MDA provider that breaches an AFS licence obligation—including the obligations that apply because of ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968—will be in breach of its obligations as an AFS licensee to comply with the relevant financial services laws.

Note: If you become aware that you can no longer meet or have breached any condition of our relief or the financial services laws, including your AFS licence conditions, you must notify ASIC: see RG 179.101.

## Comply with the duty to act honestly and with reasonable care

- RG 179.58 Under our relief, we impose obligations that are based on the duties of a responsible entity of a registered scheme under Ch 5C of the Corporations Act. We also require you to undertake these obligations contractually with each MDA client.
- RG 179.59 You must:
- (a) act honestly (s601FC(1)(a));
  - (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in your position in providing the MDA to the client (s601FC(1)(b));
  - (c) act in the best interests of the client in performing your duties in relation to the MDA and, if there is a conflict between the client's interest and your own interest in performing those duties, give priority to the client's interests (s601FC(1)(c)); and
  - (d) not use information you have about the client to gain an advantage for yourself or any other person, or to cause detriment to the client (s601FC(1)(e)).
- RG 179.60 You must also ensure that the MDA contract obliges you to accept liability for acts or omissions of people you engage to perform functions of the MDA as if they were your acts or omissions. This obligation does not extend to the acts or omissions of an external MDA custodian or an external MDA adviser.
- RG 179.61 We impose these additional obligations on MDA providers because they have discretionary authority to make and implement investment decisions on behalf of their clients. The obligation ensures that MDA clients have a level of protection that is comparable to the protection given to members of a registered scheme in relation to those duties.

## Act in the best interests of the client

RG 179.62 The obligation in our relief to act in the best interests of the client in performing your duties in relation to the MDA is a separate and additional obligation to the obligation for advisers providing personal advice to retail clients to act in the client's best interests in relation to the provision of personal advice.

Note: For guidance for financial product advisers, see Section F.

RG 179.63 Providing an MDA includes a broader range of financial services than the provision of personal advice. The duty under our relief applies across all activities undertaken in providing the MDA.

RG 179.64 We expect that, as part of your obligation to maintain adequate documented measures to ensure compliance with your obligations under our relief (see RG 179.98), you will implement processes and procedures to ensure that your representatives comply with the duty to act in the best interests of the client in relation to all the services provided under the MDA.

RG 179.65 We consider that you would breach your obligation to act honestly and in the best interests of the client if, for example, you are aware that the size or frequency of your transactions under an MDA are excessive, taking into account the investment objectives, financial situation and needs of the client. Even if you are not aware that the transactions are excessive, excessive transactions may breach the duty to exercise the degree of care and diligence that a reasonable person would exercise if they were in your position in providing the MDA to the client.

Note: Excessive transactions may be an indicator of 'churning'. Churning is trading of a size or frequency that has the effect of generating excess commissions.

### Example

#### Scenario

Anouke, a retail client, has invested in an MDA. Her investment objectives have a long-term focus. She has expressed to the MDA provider that she wants to invest in blue-chip, 'steady Australian shares' and wants to receive regular fully franked dividends.

#### Commentary

In this scenario, the criteria that may be applied to determine whether or not trading is excessive or inappropriate, and whether the MDA provider breaches its obligation to exercise care and diligence, may include, but are not limited to, whether:

- the shares are in the ASX 100 or producing a significant net profit after tax at the time of the trade;
- significant amounts of the shares are sold within 30 days of purchase and a fully franked dividend is not received;

- the trade results in a fully franked dividend being received;
- the brokerage, commission or management fees earned by the MDA provider or its agents during the period are high when expressed as a percentage of the change in value of the MDA portfolio for the period; and
- the trade is contrary to the client's relevant circumstances.

Note 1: In this guide, we use the term 'client's relevant circumstances' to refer to the objectives, financial situation and needs of a client that would reasonably be considered relevant to the subject matter of advice sought by the client.

Note 2: Under Rule 3.3.2 of the ASIC Market Integrity Rules (ASX Market) 2010, a market participant must not enter into a market transaction on an MDA for a retail client if the size or frequency of the market transaction may be considered excessive, taking into account the client's relevant circumstances.

RG 179.66 Similarly, we consider that you would breach your obligation to act honestly, as well as your AFS licence obligations, if you conduct discretionary trading outside the terms of the MDA agreement and investment program.

Note: Under Rule 3.3.1 of the ASIC Market Integrity Rules (ASX Market) 2010, a market participant must not enter into a market transaction for a client, or allocate a market transaction to a client's account, except under an exercise of discretion in relation to that particular client's MDA (i.e. within the terms of the MDA contract).

## Manage conflicts of interest

RG 179.67 You must comply with your AFS licence obligations, including the requirement under s912A(1)(aa) of the Corporations Act that you have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the provision of financial services by you or your representatives (the 'conflict management obligation'). We expect you to take into account our guidance in [Regulatory Guide 181](#) *Licensing: Managing conflicts of interest* (RG 181) to comply with this obligation.

RG 179.68 If you provide an MDA in reliance on our relief, you must comply with additional obligations to the conflict management obligation that applies to all AFS licensees. You must ensure that each MDA contract obliges you to:

... act in the best interests of the retail client in performing your duties in relation to the MDA and, if there is a conflict between the interests of the client and your own interests in performing those duties, give priority to the client's interests (ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968).

RG 179.69 Our relief imposes this additional, more specific obligation on MDA providers because they have discretionary authority to make and implement investment decisions on behalf of their clients. The obligation ensures consistency between the obligations imposed on MDA providers and those imposed on responsible entities of registered schemes under s601FC of the Corporations Act.



## Common conflicts of interest

RG 179.70 The provision of an MDA will often give rise to conflicts of interest that you need to manage. Some common conflicts of interest that may arise in providing an MDA include the following:

- (a) An MDA provider that derives revenue from transaction fees (e.g. brokerage), from transactions within the MDA, may have a conflict between its interest in generating revenue by increasing the number and/or size of transactions that it undertakes for clients and its client's interest in avoiding unnecessary transaction fees: see RG 179.65.
- (b) An MDA provider that issues other financial products may have a conflict between its interest in generating additional revenue from those other financial products and its client's interest in being invested in the most appropriate investments, given their relevant circumstances.
- (c) An MDA provider that has interests in other investments or companies (e.g. as an investor or officer) may have a conflict between its interest as an investor or officer of those investments or companies and its client's interests in being invested in the most appropriate investments, given their relevant circumstances.
- (d) An MDA provider that underwrites or acts as lead manager for capital raisings may have a conflict between its interest in the success of those capital raisings and its client's interest in being invested in the most appropriate investments, given their relevant circumstances.

Note 1: This list contains examples only and is not an exhaustive list of all conflicts of interest that may arise in the course of providing an MDA. You should review your individual circumstances to identify divergent interests, and assess those interests and potential conflicts.

Note 2: AFS licensees, including MDA providers, must comply with the provisions in the Corporations Act relating to conflicted remuneration and other prohibited remuneration. You need to consider your obligations under these provisions and ensure that you comply with all relevant obligations, including prohibitions on giving and accepting conflicted remuneration relating to financial product advice. For further guidance on these obligations, see [Regulatory Guide 246](#) *Conflicted remuneration* (RG 246).

## Managing conflicts of interest as an MDA provider

RG 179.71 To comply with your conflicts management obligation, and the specific requirements in relation to conflicts under our relief, you must, on an ongoing basis, have adequate documented conflicts management arrangements in place that ensure that you and your representatives:

- (a) identify actual or potential conflicts of interest;
- (b) evaluate and assess those conflicts; and
- (c) act in the best interests of each client and, where there is a conflict, prioritise each client's interests over your own interests.

RG 179.72 RG 181 identifies three mechanisms that AFS licensees would generally use to manage conflicts of interest. These mechanisms are:

- (a) avoiding conflicts of interest;
- (b) controlling conflicts of interest; and
- (c) disclosing conflicts of interest.

### **Avoiding conflicts of interest**

RG 179.73 Some conflicts of interest would have such a serious or significant potential impact on an MDA client, or an MDA provider, that the only adequate mechanism for you to manage that conflict would be to avoid it.

RG 179.74 Given that MDA providers have a specific obligation under our relief to give priority to clients' interests in any situation where there may be a conflict of interest, you are likely to need to manage certain conflicts by avoiding them.

RG 179.75 You are responsible for identifying and avoiding such conflicts. You need to ensure that you have effective arrangements in place to enable you to identify and evaluate such conflicts.

RG 179.76 Mechanisms you may use to avoid conflicts of interest include:

- (a) declining to enter into an MDA contract in certain circumstances;
- (b) declining to enter into other arrangements or business activities which give rise to a serious conflict of interest in relation to your responsibilities as an MDA provider; or
- (c) using remuneration and fee charging models that negate certain conflicts of interest.

### **Example**

#### **Scenario**

XY Invest is a small, boutique financial planning business that offers MDAs to retail clients. The principals of XY Invest also undertake trading in shares and derivatives on their own behalf.

Bryce seeks personal advice from one of the principals of XY Invest about setting up an MDA account with them. He has some existing shareholdings that he would like to be incorporated into an MDA account, and he would like XY Invest to also exercise discretionary authority over those holdings as part of the MDA.

One of Bryce's holdings is a stock that the principal of XY Invest short sells from time to time.

#### **Commentary**

The interests of the principal of XY Invest in short selling the relevant stock are not aligned with the interests of Bryce as an existing stockholder. This conflict of interest means that if XY Invest were to manage an MDA on Bryce's behalf, a significant and serious conflict of interest would arise.

To comply with its obligations under s912A(1)(aa) and ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968, we consider that XY Invest would need to avoid this conflict of interest.

For example, XY Invest may offer the MDA to Bryce but decline to hold discretionary authority over those shares, or undertake not to engage in short selling of those shares on its own behalf while it holds that discretionary authority over Bryce's holding.

### Controlling conflicts of interest

- RG 179.77 Some conflicts of interest that may arise with MDAs can be adequately managed by implementing internal controls to ensure that you and your representatives act in the client's best interests and, where there is a conflict, that the client's interests are prioritised over your own.
- RG 179.78 You may utilise some or all of the following measures to control conflicts of interest that may arise in providing an MDA:
- (a) the use of an independent investment committee to make or review investment decisions;
  - (b) the requirement for all investment decisions to be approved by a compliance officer before being implemented;
  - (c) the requirement for conflicted transactions to be flagged and subject to an additional level of approval or oversight;
  - (d) the monitoring and supervision of systems that create alerts if certain parameters are breached (e.g. relating to trading frequency), and processes for a review of those alerts;
  - (e) robust information barriers that insulate representatives who provide advice or make discretionary investment decisions from the information or circumstances that give rise to a particular conflict; and
  - (f) the suspension of your discretionary authority, in certain circumstances, and seeking instead the explicit and informed consent or instruction from the client before undertaking certain transactions, if such an approach would result in an outcome that is in the client's best interests.

Note: This is not an exhaustive list.

- RG 179.79 If you elect to seek the explicit consent or instruction from the client before undertaking certain transactions, we would expect you to notify the client of this modification to their MDA contract and of the nature of the material conflict of interest. Acting under instruction from the client does not remove your obligations to act in the client's best interest and to prioritise the client's interests over your own.

### Disclosing conflicts of interest

RG 179.80 If you have a material conflict of interest, we would expect you to disclose this to your affected MDA clients in a meaningful and timely way.

RG 179.81 Material conflicts of interest that are known (or should reasonably be expected to be known) before the MDA is entered into should be clearly identified in your FSG, and in the MDA contract and/or SOA provided to the client.

Note: For further guidance on the information we expect AFS licensees to provide to clients when disclosing conflicts of interest, see RG 181.49–RG 181.56.

RG 179.82 Some material conflicts of interest may not be envisaged when initial advice is provided to the client and the MDA contract is entered into. Other conflicts may only be able to be described in a very generic way. You need to consider how you will disclose these sorts of conflicts of interest to your clients. Potential options for disclosure include:

- (a) writing to clients before undertaking specific transactions to advise them of a conflict related to a specific transaction;
- (b) writing to clients if changes in business activities or operations result in material conflicts that may affect many transactions; or
- (c) suspending your discretionary authority in certain circumstances and instead making appropriate disclosure and seeking the explicit and informed consent or instruction from clients before undertaking certain transactions.

RG 179.83 It would be difficult to provide meaningful and timely disclosure of material conflicts of interest if the disclosure is only made after a transaction has occurred (e.g. by highlighting conflicted transactions in a quarterly or annual report). Disclosure after the transaction has already taken place means that the client may not have the opportunity to consider how the conflict may affect the service being provided to them before the service is actually provided.

RG 179.84 In RG 181, we note that disclosure by itself will often not be sufficient to manage a conflict of interest: see RG 181.49. Rather, in many cases, disclosure is best used to supplement the avoidance or control of a conflict by providing the client with a means to assess the service they are being offered in light of risks arising from the AFS licensee's own interests and to decide on the extent (if any) to which they will use the product or service being offered: see RG 181.51.

RG 179.85 In light of your specific duty under our relief to give priority to clients' interests in any situation where there may be a conflict of interest, it is unlikely, in most cases, that disclosure will be sufficient on its own to meet this duty. You should therefore use disclosure in addition to managing the conflict by other means (i.e. avoidance or control).

### Documentation and compliance audit requirements

- RG 179.86 We expect that arrangements adopted to avoid, control or disclose conflicts of interest are documented, and that compliance with those measures is also documented on an ongoing basis.
- RG 179.87 If you are acting under our relief, you are specifically required to have and maintain adequate documented measures to ensure compliance with your obligations under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (see RG 179.98), including the conflicts of interest obligations.

Note: For more general guidance on documentation and record keeping in relation to conflicts of interest, see RG 181.44–RG 181.48.

## Comply with the requirements for holding client portfolio assets

- RG 179.88 We impose minimum standards on MDA providers for holding client portfolio assets to ensure that efficient operational arrangements exist and client portfolio assets are not exposed to unnecessary risks because of the way they are held.
- RG 179.89 If you have delegated the holding of a client's portfolio assets to a custodian, you must do all things necessary to ensure compliance by the custodian with those minimum standards. You must also do all things necessary to ensure that any sub-custodians engaged directly or indirectly by the custodian also satisfy the minimum standards applying to custodians.

Note 1: For guidance on the obligations that apply to MDA providers in relation to holding assets, see RG 133.

Note 2: For an MDA provided by persons dealing in derivatives, we permit clients' funds and assets to be held in brokers' segregated accounts.

### Minimum asset holding requirements

- RG 179.90 Table 5 provides an overview of the minimum standards we require an MDA provider to satisfy.

**Table 5: Minimum standards for MDA providers holding client portfolio assets**

| Minimum requirement                                      | Explanation  |
|--|--|
| Client portfolio assets are held on trust for the client | <p>You must do all things necessary to ensure that, if you hold a client's portfolio assets, you hold these assets on trust for the client. If you engage a custodian to hold client portfolio assets, you must ensure that all assets held by a custodian or sub-custodian are held so that the client has a beneficial interest in the assets (other than in certain circumstances where the assets are located outside of Australia and assets are held under the client money or client asset provisions of Divs 2 and 4 of Pt 7.8 of the Corporations Act).</p> <p>Note: Except for certain amounts held as margin, money and assets held under Divs 2 and 4 of Pt 7.8 must be held on trust for the client under regs 7.8.01(5) and 7.8.07(2).</p> <p>Money held in the account of an entity carrying on a banking business must be held in an account that complies with s981B of the Corporations Act.</p> |

| Minimum requirement  | Explanation  |
|--|--|
| Client portfolio assets are held separately                    | <p>You must do all things necessary to ensure that client portfolio assets are, as far as practicable, clearly identified and held separately from the property of the MDA provider, the holder of the assets and any other person other than the client, except in relation to:</p> <ul style="list-style-type: none"> <li>• Australian or foreign currency;</li> <li>• a deposit-taking facility of a body carrying on a business of accepting money on deposit, including rights under that facility;</li> <li>• securities (as defined in s92(1) of the Corporations Act); or</li> <li>• derivatives.</li> </ul> <p>In those cases, it is permissible to use omnibus accounts subject to certain conditions.</p> |
| Organisational structure that supports compliance              | <p>You must do all things necessary to ensure that you have, and any custodian or sub-custodian has, an organisational structure that supports compliance with the requirement to hold client portfolio assets separately. You must segregate custodial staff in a way that minimises any potential conflicts of interest and have a documented policy to support this.</p>  |
| Necessary capacity and resources                               | <p>You must do all things necessary to ensure that custodial staff have the necessary capacity and resources to perform core administrative activities.</p>  |
| Record keeping—compliance measures                             | <p>You must keep records demonstrating how you comply with your obligations to ensure any custodian or sub-custodian complies with the minimum standards.</p>  |
| Record keeping—client portfolio assets                         | <p>You must do all things necessary to ensure that:</p> <ul style="list-style-type: none"> <li>• you and any custodian keeps records of client portfolio assets in a way that enables the holding of these assets to be conveniently and properly audited by an auditor of the MDA service; and</li> <li>• any custodian or sub-custodian keeps such records in relation to any asset that they hold.</li> </ul>   |
| Monitor the custodian  | <p>You must have an established process to monitor and assess the custodian's performance of its obligations.</p>  |
| Custodians and discretionary decisions about a deposit account | <p>You must not permit a custodian or sub-custodian to be involved in discretionary decisions about a deposit account, unless you are satisfied that the custodian or sub-custodian has set out in writing and implements reasonable processes for determining which account to use, monitoring performance by the account issuer of the issuer's obligations in relation to the account, and taking action if the issuer fails to meet its obligations.</p>   |

### Agreement with the custodian

RG 179.91 If you engage a custodian to hold the client portfolio assets of an MDA you issued to a client, you must ensure that you satisfy the minimum content requirements for agreements between MDA providers and custodians, and between custodians and sub-custodians.

RG 179.92 Table 6 sets out a summary of these minimum requirements.

**Table 6: Minimum content requirements for an MDA provider's agreement with a custodian**

| Minimum requirement  | Explanation  |
|--|--|
| Written agreement with the custodian                           | If you hold a beneficial interest in the client's portfolio assets on behalf of the client, you must have a written agreement with the custodian that meets the minimum content requirements, subject to limited exceptions for overseas property and for a custodian that you control.  |
| Written agreement with each sub-custodian                      | <p>If you do not hold a beneficial interest in the client's portfolio assets on behalf of the client (i.e. you arrange for the assets to be held by a custodian on behalf of the relevant client or clients), you must:</p> <ul style="list-style-type: none"> <li>• have a written agreement with the custodian that meets the relevant requirements; and</li> <li>• do all things necessary to ensure that the custodian has a written agreement with each sub-custodian that the custodian engages to hold the client's portfolio assets, and the written agreement meets the relevant requirements as if the sub-custodian were the custodian and the custodian were the MDA provider, subject to limited exceptions for overseas property and for a sub-custodian that the custodian controls.</li> </ul> |
| Specific terms in the custody agreement                        | <p>Among other things, the custody agreement must have provisions specifying:</p> <ul style="list-style-type: none"> <li>• the rights that you have for the ongoing review and monitoring of the custodian and any sub-custodian;</li> <li>• how instructions will be given;</li> <li>• that the custodian must not take a security interest over the client's portfolio assets unless this is permitted under the agreement and does not cover the custodian's unpaid fees; and</li> <li>• the terms on which the custodian is authorised to engage a sub-custodian.</li> </ul>   |
| Terms dealing with liability and indemnifying you against loss | You must ensure that the custody agreement has reasonable liability provisions and, if appropriate, contains reasonable indemnity provisions in relation to losses caused to you or the relevant client by the custodian's acts or omissions that relate to that agreement.  |
| Statement of compliance and the right to terminate             | <p>The custody agreement must require the custodian to certify to you in writing at least once every 13 months that the custodian believes, on reasonable grounds, that the custodian and each sub-custodian has met the terms of the agreement and certain minimum custodial standards that apply in relation to the custodian and sub-custodian, other than as disclosed in writing to you or as the custodian reasonably believes to be trivial.</p> <p>The custody agreement must also provide you with a right to terminate the agreement, in certain specified circumstances—including in circumstances that involve you having reasonable grounds for believing that the custodian or a sub-custodian has not complied with, or is unlikely to comply with, these minimum standards.</p>                |

## Maintain adequate insurance

- RG 179.93 We impose minimum insurance requirements for MDA providers that reflect the requirements applying to responsible entities of registered schemes. You must maintain an insurance policy covering professional indemnity and fraud by your officers and employees that:
- (a) is adequate, taking into account the nature of the activities carried out by you under your AFS licence; and
  - (b) covers claims amounting in aggregate, at the same time, to the lesser of:
    - (i) \$5 million; or
    - (ii) the aggregated average value of the client portfolio assets of all your MDA clients during the last 12 months or, if you have not been providing MDA services for at least 13 months, the amount reasonably estimated to be the aggregated average value of the client portfolio assets during your first 12 months of operation.

Note: This requirement is in addition to our general requirement for AFS licensees to have adequate compensation arrangements, as set out in RG 126. The same insurance may be relied on to meet both requirements.

- RG 179.94 When an entity is managing another person's money or assets, there is a risk of funds or assets being misappropriated or misused by officers of the business. The insurance requirements ensure that you provide some protection against the risk to you from claims by investors for loss suffered because of negligent administration or fraud.

## Follow client instructions on client portfolio assets

- RG 179.95 If the MDA contract specifically imposes a duty on you to consider exercising any rights that relate to the client portfolio assets (e.g. rights in relation to sale, consenting to corporate actions or making dividend reinvestments), you must fulfil these duties as set out in the MDA contract.
- RG 179.96 If the MDA contract does not impose such a duty in relation to a right of the holder, you must:
- (a) give to each client, as soon as practicable, a copy of all the communications that are relevant to the exercise of the right; and
  - (b) take reasonable steps to implement any instructions given by the client about how the right is to be exercised.
- RG 179.97 Depending on the contractual arrangement with the client, you may receive communications about financial products held in the client's portfolio (e.g. annual reports, takeover documents, or documents about proxy voting in corporate actions). Our requirements are designed to help ensure that the



client's rights relating to any matters affecting their portfolio must be considered by the MDA provider or, if not, to help ensure that the client will have access to the available information to consider themselves and the capacity to have the right exercised.

Note: For guidance on the requirement to disclose in the MDA contract the key differences between acquiring a financial product directly and acquiring a financial product through an MDA, see RG 179.146.

## Maintain adequate internal control procedures and audit

RG 179.98 You must maintain, document and comply with adequate internal control procedures to ensure compliance with your obligations under our relief and the provisions in the Corporations Act relating to MDA services.

Note: For further information about requirements for internal control procedures, see RG 132.

RG 179.99 The internal control procedures must be audited annually after the end of your financial year. You must arrange for a registered company auditor to audit and lodge with ASIC—together with your annual financial statements and auditors report under s989B—a statement from the auditor about:

- (a) whether you have met the requirement to document internal control procedures during the financial year to which the financial statements relate; and
- (b) whether the documented internal control procedures have ensured, as far as is reasonably practicable, compliance with the ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 and the Corporations Act at all times during the financial year.

RG 179.100 These requirements, which are based on the requirements applying to compliance plans for registered schemes, provide assurance that you are complying with your regulatory obligations.

## Notify ASIC of breaches

RG 179.101 If you become aware of matters that give you reason to believe that you have failed, other than in an immaterial respect, to comply with a condition of our relief, or the financial services laws including your AFS licence conditions, you must notify ASIC in writing of details of the breach. You must do this as soon as practicable and, in any event, within 10 business days of becoming aware of the breach.

Note: For further information about your obligation to report to ASIC certain breaches (or likely breaches) of your obligations, see [Regulatory Guide 78 Breach reporting by AFS licensees](#) (RG 78).

### How to lodge a breach report

A breach must be reported in writing. There is no prescribed form for reporting a breach. However, you can use Form FS80 *Notification by an AFS licensee of a significant breach of a licensee's obligations*, which is available on our website at [www.asic.gov.au/forms](http://www.asic.gov.au/forms).

Address the written breach report to 'Misconduct and Breach Reporting, Australian Securities and Investments Commission', or email the written report to ASIC at [fsr.breach.reporting@asic.gov.au](mailto:fsr.breach.reporting@asic.gov.au).

- RG 179.102 To determine any regulatory response, we will consider the nature, scope and effect of any breach of the requirements of our relief, or the failure to report any such breach. This may include, where appropriate, exclusion from reliance on our relief by way of a notice, or the revocation or suspension of your AFS licence.
- RG 179.103 In exercising our administrative powers, we will apply the considerations set out in [Regulatory Guide 98](#) *Licensing: Administrative action against financial services providers* (RG 98).

## Comply with quarterly reporting obligations

- RG 179.104 You must provide to each client either:
- (a) quarterly reports containing the information in RG 179.107 within one month after each quarter end date; or
  - (b) electronic access to the information referred to in RG 179.108 on a substantially continuous basis.
- RG 179.105 You can give documents to your clients electronically—including by providing hyperlinks or by reference to a website—if the investor has agreed to this, or by giving documents to agents of the client other than the MDA provider in some circumstances.

Note: For details on online financial services disclosure, see [Regulatory Guide 221](#) *Facilitating online financial services disclosures* (RG 221).

- RG 179.106 You can only give electronic access to clients as an alternative to quarterly reports if:
- (a) the client has agreed not to be given a quarterly report;
  - (b) the client has agreed to obtain the information set out in RG 179.108 electronically; and
  - (c) you have no reason to doubt that the client can access this information electronically on a substantially continuous basis.

Note: For your reporting obligations if all the transactions under the MDA are carried out on a regulated platform and all the client portfolio assets are held through one or more regulated platforms, see RG 179.194.

- RG 179.107 The quarterly report must contain the following information:
- (a) all transactions carried out during the quarter as part of the MDA services provided to the client, including any liabilities incurred in relation to those transactions;
  - (b) details about, and a reasonable valuation of, the assets (including any cash held in a trust account) in the client's portfolio on the quarter end date; and
  - (c) all revenue and expenses (including fees and charges) relating to the MDA during the quarter.
- RG 179.108 If electronic access is provided instead of quarterly reports, the following information must be accessible electronically:
- (a) all transactions carried out as part of the MDA services provided to the client, including any liabilities incurred in relation to those transactions for a period of at least 12 months up to a date no more than 48 hours (excluding hours on a day that is not a business day) before the time of access;
  - (b) the value of the assets (including any cash held in a trust account) in the client's portfolio at a time no more than 48 hours (excluding hours on a day that is not a business day) before the time of access;
  - (c) all revenue and expenses (including fees and charges) relating to the MDA for a period of at least 12 months up to a date no more than 48 hours (excluding hours on a day that is not a business day) before the time of access; and
  - (d) a statement of the time at which the information is current.
- RG 179.109 Giving clients quarterly reports, or continuous electronic access to information, provides a mechanism to:
- (a) enable the client to monitor the performance of, and trading in, their portfolio and thereby address the possible risk of excessive trading of client portfolio assets; and
  - (b) promote accountability by ensuring that transactions are carried out in accordance with the investment program, including any changes to the program following its review.

## Provide an annual investor statement and audit report

- RG 179.110 You must ensure that each client is given an annual investor statement within three months of the end of each financial year. The annual investor statement is important because it will help clients assess their investment and comply with their tax obligations.

Note: See RG 179.194 for your reporting obligations if all of the transactions under the MDA are carried out by you giving instructions to the operator of a regulated platform and all the client portfolio assets are held through one or more regulated platforms.

RG 179.111 The annual investor statement must contain:

- (a) a summary of all the transactions carried out as part of the MDA (see RG 179.112);
- (b) the total management costs, and any other fees and costs associated with your MDA service, over the relevant reporting period, calculated on the same basis as required for disclosure in the FSG. This means you must take into account all the fees and costs for your service, and management costs, as if the MDA service were a registered scheme;
- (c) a copy of the annual review of the investment program (see RG 179.140); and
- (d) an annual audit report (see RG 179.113).

RG 179.112 The annual statement must contain a summary of the transactions that occurred as part of the MDA held by the client during the financial year, including the nature and purpose of those transactions. For each client who has been provided with quarterly reports, the annual investor statement must state that the client may request a copy of any quarterly report relating to the relevant financial year.

RG 179.113 You must ensure that each client is given an annual audit report within three months of the end of each financial year.

RG 179.114 The audit report must contain the following opinions:

- (a) whether the internal controls and other procedures of the MDA provider, and any other person acting on behalf of the MDA provider, were suitably designed and operated effectively in all material respects to ensure that the information provided in the quarterly reports or electronically on an ongoing basis (as relevant) for the financial year was not materially misstated;
- (b) whether the aggregate of assets (other than assets held by a client), liabilities, revenue and expenses shown in the clients' annual investor statements for the financial year were properly reconciled to the corresponding amounts shown in the audited reports prepared by the holder of any client portfolio assets; and
- (c) whether the auditor has any reason to believe that the information provided in the quarterly reports, or electronically on an ongoing basis, and the annual investor statement was materially misstated.

Note 1: To form the required view about the adequacy of your systems to produce the reports referred to above, without material misstatements, it is not necessary for the auditor to review each client's file. Where the normal audit procedures permit an audit based on random or risk-based samples of client files, such procedures would be sufficient to form this view. If there is an external MDA custodian providing custody services, your auditors may be able to rely on the audited reports provided by the external MDA custodian for their audit if they consider this to be appropriate. For details of how our policy applies when there is an external MDA custodian, see Section E.

Note 2: You can use the same registered company auditor you employ to conduct the compliance audit under RG 179.99 to carry out the audit of the adequacy of your systems to produce quarterly reports or ongoing electronic information.

- RG 179.115 You can give documents to clients electronically—including by providing hyperlinks or by reference to a website—if:
- (a) the person has agreed to receive documents in that manner; and
  - (b) the document can be downloaded free of charge (excluding any normal fees payable to the recipient's internet service provider).

Note: For details on online financial services disclosure, see RG 221.

## Provide fee disclosure statements

- RG 179.116 We consider that most fee arrangements for MDAs would include 'ongoing fee arrangements' for the purposes of the fee disclosure statement (FDS) obligations in Div 3 of Pt 7.7A of the Corporations Act. Fee recipients, as defined in s962C of the Corporations Act, must give retail clients an FDS, which discloses information about the previous 12 months of their ongoing fee arrangements.

Note: For detailed guidance on the FDS obligations, see [Regulatory Guide 245 Fee disclosure statements](#) (RG 245).

- RG 179.117 The legislation prescribes that product fees charged by the issuer of financial products (see s962A(5) of the Corporations Act and reg 7.7A.10 of the Corporations Regulations) do not form part of the ongoing fee arrangement and therefore do not need to be disclosed in the FDS. An MDA is a financial product.
- RG 179.118 Where the product fees charged by product issuers, in relation to products acquired through an MDA, and the fees for running the MDA itself (e.g. investment management, administration, account-keeping fees and transaction fees) are bundled together with other fees (e.g. as advice fees), you need to determine to what extent the fees are product fees and disclose all other fees.
- RG 179.119 To the extent that you cannot identify the breakdown of fees, good practice would be to disclose the whole amount of the fees. Given that an annual review of the investment program is an integral component of an MDA (see RG 179.140), we consider it would not be consistent with your duty to do all things necessary to carry on the business efficiently, honestly and fairly to use product fees to cross-subsidise the cost of providing personal advice in order to avoid the fee disclosure statement requirement.
- RG 179.120 If wished, you may provide the annual FDS at the same time as the SOA for the annual review of the investment program (see RG 179.140), or the record of advice. You must ensure that you meet both the SOA or record of advice requirements, as well as the ongoing FDS requirements. In doing so, you should be careful to adhere to the general obligations in the Corporations Act

and the *Australian Securities and Investments Commission Act 2001*—in particular, the provisions that deal with misleading or deceptive conduct and false or misleading representations.

- RG 179.121 Therefore, the prescribed information for the FDS (see s962H(2) of the Corporations Act) should not be integrated into another document, such as an SOA, and the prescribed information should remain separate and clear to ensure that retail clients can ascertain whether the service they are receiving is commensurate with the ongoing fees they are paying.

## Obtain consent for investments in non-limited recourse products

- RG 179.122 Under our relief, you must seek prior written consent from the client if you are going to invest their client portfolio assets in a non-limited recourse product.
- RG 179.123 In this guide, we define a non-limited recourse product as:
- ... a facility that includes an obligation imposed on a person under an agreement to pay an amount to another person in the event of the occurrence or non-occurrence of something, where the rights of the other person in relation to the obligation are not limited to any property that the first person has paid or set aside as security for the payment, or property to be transferred by the other person to the first person on completion of the obligation under the agreement.
- RG 179.124 Our regulatory approach seeks to balance the need to ensure that you have the flexibility to structure your MDA offering to best suit the needs of your particular client with the need to ensure that investors are adequately informed about the specific risks involved when you have the discretion to invest in products with non-limited recourse.
- RG 179.125 Depending on the size of the investment and the degree of leverage involved, a client can suffer significant losses in a short period of time, and may end up with losses that exceed the value of the investment in their portfolio, requiring an additional contribution of funds. Because you can make discretionary decisions on behalf of a client, the client may not be immediately aware of the positions held or any losses, margin calls or other adverse events.
- RG 179.126 Clients are not given a PDS for the underlying products and so may not appreciate the risks involved when you invest in highly leveraged products. You, or the MDA adviser, are required to outline the key risks of the MDA in the FSG and the investment program.

### Written consent

- RG 179.127 Clients must sign a written consent before you can invest their portfolio assets in a non-limited recourse product.

RG 179.128 The written consent must contain clear, concise and effective disclosure about the non-limited recourse product, including:

- (a) information about how the non-limited recourse product works;
- (b) the significant risks, including a prominent warning that investing in the non-limited recourse product involves the risk of losing substantially more than the initial investment;
- (c) an explanation of any other features of the non-limited recourse product that are sufficiently important to be material to a reasonable person's decision to invest in the non-limited recourse product;
- (d) information about the degree of leverage that may apply in relation to the product, including:
  - (i) if the maximum potential liability of an investor in relation to the product is unlimited—a statement to that effect; and
  - (ii) otherwise—the maximum value of the ratio between the maximum potential liability of a client in relation to the product and the amount payable by the client to acquire the product;
- (e) information about your policy for communicating and satisfying margin calls or requirements to provide collateral or make payments in relation to the product;
- (f) information about your policy for closing positions at a loss in relation to the product; and
- (g) at least one prominent example that illustrates in dollar terms the matters referred to in RG 179.128(a) and RG 179.128(b).

RG 179.129 You do not need written consent on a transaction-by-transaction basis if the client is willing to accept the risk of a non-limited recourse product of the same kind. This applies until there is a change in the investment program contained in the client's MDA contract, or until the time of the annual review (see RG 179.140), at which stage you will need a new written consent.

RG 179.130 For example, if the client has previously consented to you investing in a margin lending facility, you can invest in a margin lending facility provided by another issuer; or if you have made disclosure adequately covering the full range of derivatives, the client may consent to all derivatives that may have non-limited recourse.

Note: If you intend to invest client portfolio assets in a non-limited recourse product, you must include a specific risk warning in the FSG and in each client's investment program: see Section D.

## D Requirements for the FSG and MDA contract

### Key points

As an MDA provider, if you enter into a contract with a client to provide an MDA, we will give you relief from the managed investment scheme provisions in Ch 5C and certain disclosure requirements in the Corporations Act if you comply with certain conditions: see Table 4.

This section covers the conditions of our relief that require you to:

- include additional information in the FSG you give to each client about the MDA you provide;
- include certain terms in the MDA contract;
- provide an investment program;
- ensure that the investment program and MDA contract are reviewed at least once every 12 months; and
- retain copies of disclosure documents for at least seven years.

Note: This section reflects the updated requirements of our relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968. For the dates that these requirements apply, see Table 2 in Section A.

### Provide additional disclosure in the FSG

RG 179.131 We consider that, by supplementing the disclosure requirements in the Corporations Act relating to financial services, rather than requiring MDA providers to comply with the disclosure provisions in Pt 7.9, MDA clients (and prospective clients) can make confident and informed decisions and compare similar MDA services.

RG 179.132 As an MDA provider, before you enter into an MDA contract with a client, you must give each client an FSG that complies with the requirements in Div 2 of Pt 7.7 of the Corporations Act.

Note: For guidance on preparing and providing an FSG, see Section C of [Regulatory Guide 175](#) *Licensing: Financial product advisers—Conduct and disclosure* (RG 175).

RG 179.133 In addition to these requirements, the FSG must include the additional information and statements set out in Table 7. This information should:

- (a) include as much detail as a client would reasonably need to make an informed decision about whether to participate in the MDA; and
- (b) be worded and presented in a clear, concise and effective manner.



**Table 7: Requirements for MDA providers to include additional disclosure in the FSG**

| Additional disclosure requirement  | Explanation  |
|--|--|
| You must include information about how the client may give you instructions on corporate actions (e.g. proxy voting) and communications about financial products in the client's portfolio assets.   | Wherever possible, we consider that clients should be able to control the exercise of rights for investments through an MDA in the same way as for direct holders of the same financial products.  |
| You must include a statement that the client must first enter into an MDA contract with you before the MDA can be provided.  | You must enter into an MDA contract with each client before you provide an MDA service to that client under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968.  |
| <p>You must include a statement that the MDA contract will include an investment program that is prepared in accordance with the requirements in Div 3 of Pt 7.7 and Div 2 of Pt 7.7A of the Corporations Act, and that the investment program will contain the following information:</p> <ul style="list-style-type: none"> <li>• the nature and scope of the discretions that you will be authorised and required to exercise;</li> <li>• any significant risks associated with the MDA contract;</li> <li>• the basis on which the MDA contract is considered to be suitable for the client; and</li> <li>• warnings that the MDA contract: <ul style="list-style-type: none"> <li>– may not be suitable for the client if the client has provided limited or inaccurate information about their relevant circumstances; and</li> <li>– may cease to be suitable if the client's relevant circumstances change.</li> </ul> </li> </ul> | <p>The investment program is a critical aspect of an MDA. Disclosure about the investment program in the FSG encourages confident and informed decision making by investors and financial consumers.</p>   |
| You must include information about fees and costs in relation to the MDA that is consistent with Pt 2 of Sch 10 of the Corporations Regulations as if the FSG were a PDS for an interest in a registered scheme.   | <p>These disclosure requirements will promote confident and informed decision making by investors and financial consumers by helping clients to more readily ascertain the fees and costs involved in a particular MDA, and to compare these with the fees and costs associated with other MDAs, IDPSs and registered schemes.</p> <p>The requirement means that the FSG must disclose management costs not only in the MDA but also in interposed vehicles, and reflect the cumulative impact of all these management costs. Additional examples might incorporate typical fees for advice that are charged separately from the fees and costs of the MDA.</p> <p>Note: For guidance about disclosing fees and costs in PDSs and the enhanced fee disclosure regulations, see <a href="#">Regulatory Guide 97</a> <i>Disclosing fees and costs in PDSs and periodic statements</i> (RG 97).</p> |

| Additional disclosure requirement   | Explanation   |
|---|---|
| <p>You must include information about the operation of any outsourcing arrangements that apply to the MDA.</p> <p>As a minimum, we expect you to disclose the following in relation to the MDA:</p> <ul style="list-style-type: none"> <li>• a brief description of the procedures you have in place to ensure that due skill and care is taken in choosing suitable service providers;</li> <li>• your functions that are outsourced;</li> <li>• the entities that will be performing the outsourced functions; and</li> <li>• a brief description of the procedures you will use to monitor the performance of the providers of the outsourced functions.</li> </ul> <p>Note: While you may engage external providers to perform functions on your behalf, you remain responsible for the discharge of those functions and for meeting the obligations under your AFS licence, the Corporations Act and ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968.</p> | <p>Many MDA providers outsource functions that relate to their AFS licence or their operation of the MDA, including administrative or operational functions. We require you to include a description of the operation of outsourcing arrangements that apply to the MDA in the FSG to assist investors and financial consumers in making confident and informed decisions about whether or not to invest in an MDA.</p>   |
| <p>You must include information about any significant risks associated with investing through the MDA.</p>  | <p>You must ensure that you disclose information about the risks associated with the MDA offering rather than the underlying products or strategies themselves. Explaining these risks, however, will inevitably involve some explanation of the underlying strategy or products. For example, if the MDA includes discretion to trade contracts for difference or other derivatives, a clear explanation of the associated risks, including operational and market risk, is necessary.</p> |
| <p>If you intend to invest client portfolio assets in non-limited recourse products, you must include:</p> <ul style="list-style-type: none"> <li>• sufficient itemisation of the non-limited recourse products to ensure that the client is likely to understand the kinds of non-limited recourse products you intend to acquire on their behalf;</li> <li>• information about the degree of leverage that may be employed;</li> <li>• a clear and prominent example illustrating in dollars the risk of the potential liability of an investor in each type of product;</li> <li>• information about any other significant risks associated with investing in these types of products;</li> <li>• your policies about communicating and meeting margin calls or requirements to provide collateral in relation to each type of product; and</li> <li>• information about your policy for closing positions at a loss in relation to each type of product.</li> </ul>                       | <p>You must include a specific risk warning which outlines the additional risks to the client as a result of the MDA investing in non-limited recourse arrangements.</p> <p>The degree of leverage is equal to the maximum amount of potential liability relative to the amount that is payable to acquire the product (e.g. initial margin), expressed as a percentage. If there is a potential for unlimited liability, you should state this.</p>  |

| Additional disclosure requirement   | Explanation   |
|---|---|
| You must include any other information that might reasonably be expected to have a material influence on the decision of a reasonable person (as a retail client) about whether to use the MDA. | The FSG must contain information that investors require to make an informed decision about whether to invest in the MDA: see RG 168.19. |

## Enter into an MDA contract that includes an investment program

RG 179.134 Under our relief in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968, you must enter into an MDA contract with each client before providing an MDA to that client. The MDA contract must include the items set out in Table 8.

**Table 8: Obligations relating to the MDA contract**

| Terms that must be included in the MDA contract  | Location of guidance               |
|--|------------------------------------|
| An investment program that meets certain requirements  | See RG 179.135–RG 179.145          |
| Obligations to act honestly and in the best interests of the client, exercise due care and diligence, give priority to the client's interests and not use information about the client to your advantage or to cause detriment to the client   | See Section C                      |
| A prominent warning that identifies the key areas of difference between acquiring financial products directly and acquiring the same products through the MDA  | See RG 179.146–RG 179.41RG 179.148 |
| If you intend to invest client portfolio assets in non-limited recourse products, a specific risk warning outlining the additional risks to the client   | See RG 179.149–RG 179.150          |
| Information about how the contract may be terminated   | See RG 179.151–RG 179.154          |
| Information about fees and costs relating to the MDA that complies with Pt 2 of Sch 10 of the Corporations Regulations as if the MDA contract were a PDS for a product interest in a registered scheme   | See RG 179.155–RG 179.156          |
| Statements that you will be responsible to the client for: <ul style="list-style-type: none"> <li>• the functions that you are contracted to perform; and</li> <li>• compliance with:               <ul style="list-style-type: none"> <li>– the requirements of our relief in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968;</li> <li>– the MDA contract, including the investment program (except where the client has agreed in writing to a variation); and</li> <li>– any representations included in the FSG for the MDA service</li> </ul> </li> </ul> |                                    |

## Investment program

- RG 179.135 The investment program is a critical aspect of any MDA. You must ensure that each MDA contract contains an identifiable part that is entitled ‘Investment program’. The investment program must be worded in a clear, concise and effective manner and include all of the information required to be included in the investment program, as set out at RG 179.137.
- RG 179.136 Our requirements relating to the investment program are designed to promote client protection and also to provide flexibility in the nature of the investment program that may be included in an MDA contract. For example, the program could be very detailed and identify financial products or classes of financial product in which you would invest, or it may contain a broad investment strategy or an identified goal that allows you a broad discretion to make investments to achieve an agreed outcome.
- RG 179.137 Our requirements also take into account that the investment program involves giving personal advice. You must therefore ensure that the investment program:
- (a) includes an opinion that the MDA contract is suitable for the particular client in light of that client’s relevant circumstances and the basis for that opinion;
  - (b) includes an investment strategy containing sufficient detail that a person would reasonably require to make a decision, as a retail client, on whether the investment program is suitable for them;
  - (c) complies with the requirements for an SOA in Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act—unless there is a separate SOA that meets those requirements—and the best interests duty and related obligations in Div 2 of Pt 7.7A of the Corporations Act; and
  - (d) sets out, in as much detail as is necessary for the client to clearly understand:
    - (i) any significant risks associated with the MDA contract, which will include the nature and scope of your discretions under the MDA contract and the strategies that you will apply in exercising those discretions;
    - (ii) how the client may give you instructions that affect the exercise of your discretions under the MDA contract;
    - (iii) details of when and by whom the suitability of the MDA contract to the client’s relevant circumstances will be reviewed; and
    - (iv) warnings that the MDA contract:
      - (A) may not be suitable for the client if the client has provided you with limited or inaccurate personal information about their relevant circumstances; and
      - (B) may cease to be suitable for the client if their relevant circumstances change.

RG 179.138 To ensure that the investment program meets the requirements in Div 3 of Pt 7.7 and Div 2 of Pt 7.7A of the Corporations Act, in addition to the above, you must:

- (a) act in the best interests of the client (s961B);
- (b) only provide appropriate advice (s961G)—we consider that advice is appropriate if it would be reasonable to conclude, at the time the advice is provided, that:
  - (i) it is fit for its purpose—that is, following the advice is likely to satisfy the client’s relevant circumstances; and
  - (ii) the client is likely to be in a better position if they follow the advice (see RG 175.224–RG 175.231);
- (c) give certain warnings if incomplete or inaccurate personal information is given by the client (s961H);
- (d) prioritise the client’s interests (s961J); and
- (e) give an SOA (which is the means by which the advice is provided) containing certain information (Subdiv D of Div 3 of Pt 7.7).

Note 1: For guidance on compliance with the conduct and disclosure obligations in Pts 7.7 and 7.7A of the Corporations Act, see RG 175.

Note 2: For details of how our policy applies if there is an external MDA adviser, see Section D.

RG 179.139 You may meet your obligations relating to an SOA under Div 3 of Pt 7.7 and our conditions of relief in one document (i.e. the investment program included in the MDA contract). This could be done by:

- (a) displaying prominently on the cover of the investment program the title ‘Statement of Advice’ (s947A(1) of the Corporations Act);
- (b) including in the investment program all the other information required to be included in an SOA (e.g. the information about remuneration, benefits and other interests of the provider and its associates required under s947B(d), (e) and (f) of the Corporations Act); and
- (c) including the additional information that must be provided to the client under s947D of the Corporations Act in the investment program, to the extent that the investment program contains discretions that authorise or require you to replace financial products in the client’s portfolio.

Note 1: Our relief does not prevent you from using a separate SOA to comply with Div 3 of Pt 7.7, instead of including it in the investment program.

Note 2: Any changes to the investment program must also comply with the SOA requirements; however, any new SOA may refer to information in a previous SOA: see RG 175.

## Review the MDA contract and investment program annually

- RG 179.140 You must ensure that the investment program is reviewed in light of the particular client's relevant circumstances at least once every 13 months. This is to ensure that each client obtaining MDA services has an MDA contract that continues to be suitable for that client.
- RG 179.141 We expect this process to include reasonable inquiries to update the client's relevant circumstances to ensure that these are complete and accurate before reviewing the investment program for that client.
- RG 179.142 You, or an external MDA adviser, must give the client personal advice about the MDA contract, including the investment program, at least once every 13 months.
- RG 179.143 In giving this advice, you must comply with the conduct and disclosure obligations in Pts 7.7 and 7.7A of the Corporations Act, including:
- (a) the requirement to give the client an SOA; and
  - (b) the obligation for the advice provider to:
    - (i) act in the best interests of the client;
    - (ii) provide appropriate advice;
    - (iii) warn the client if the advice is based on inaccurate or incomplete information; and
    - (iv) prioritise the interests of the client.

Note: For guidance on compliance with the conduct and disclosure obligations in Pts 7.7 and 7.7A of the Corporations Act, see RG 175.

- RG 179.144 The annual review of the investment program, must include information about:
- (a) when the investment program was reviewed;
  - (b) the basis on which you consider the MDA contract continues to be suitable for the client in light of the client's relevant circumstances; and
  - (c) if any changes to the MDA contract are considered necessary (including its termination) in light of any changes in the client's relevant circumstances—whether and when those changes have been or will be made.

Note 1: Our policy does not restrict you from reviewing the investment program more frequently than annually. If you provide more frequent reviews, an SOA consolidating the outcomes of these reviews, and satisfying the above requirements, must still be prepared and provided to the client annually.

Note 2: For details of how our policy applies if there is an external MDA adviser, see Section E.

Note 3: A single document may be used to meet the SOA requirement and the conditions of our relief: see RG 179.139.

## When an SOA is not required

RG 179.145 An SOA does not need to be given in the case of further advice, including the annual review of the investment program, provided that the following requirements are met:

- (a) you have previously given the client an SOA setting out the client's relevant circumstances in relation to the advice (the 'previous advice');
- (b) the client's relevant circumstances in relation to the further advice (taking into account the client's objectives, financial situation and needs) are not significantly different from the client's relevant circumstances in relation to the previous advice; and
- (c) the basis on which the further advice is given is not significantly different from the basis on which the previous advice was given.

Note: See reg 7.7.10AE of the Corporations Regulations and RG 175.195–RG 175.196 about your obligations to keep a record of advice if you do not provide an SOA for the annual review.

## Indirect holding disclosure

RG 179.146 We consider it appropriate that investors in MDA arrangements enjoy, to the extent practicable, the same rights for investments held through an MDA as for direct holders of the same financial products.

RG 179.147 Where this is not possible, we consider that it is appropriate for investors to be given clear, concise and effective disclosure in the MDA contract about the key differences between acquiring a financial product directly and acquiring the product through the MDA. Depending on the contractual arrangement with the client, this disclosure may not be necessary—for example, if the client retains the legal title to their portfolio assets and retains the relevant rights relating to their portfolio assets.

RG 179.148 At a minimum, we expect that you will provide disclosure about arrangements to exercise voting rights attaching to financial products held under the MDA, including if the MDA provider does not accept an obligation to consider exercising voting rights, what processes will ensure that votes are cast on the client's instructions, where practicable, and what arrangements will apply for passing on disclosures relevant to the exercise of a right to vote.

## Risk warning if you invest in non-limited recourse products

- RG 179.149 If you intend to invest a client's portfolio assets in non-limited recourse products, you are required to include a specific risk warning in each client's investment program, which outlines the additional risks to the client as a result of the MDA investing in non-limited recourse products.
- RG 179.150 You will need to include in the investment program the information referred to in Table 7 relating to the disclosure obligations in the FSG.

## Include in the MDA contract steps for terminating the contract

- RG 179.151 Under our relief in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968, you must formulate a policy setting out the steps you will take to terminate an MDA contract if:
- (a) the MDA contract is to be terminated under the terms of the contract; or
  - (b) the MDA contract no longer meets our conditions of relief (e.g. if an annual review is not completed within the required timeframe) and ASIC has given you a notice in writing that you may no longer rely on the relief.
- RG 179.152 You must disclose in the MDA contract information about how the client may terminate the contract, including:
- (a) how the instruction to terminate must be communicated;
  - (b) how long it will take for the termination to take effect, which must not be longer than is reasonably necessary; and
  - (c) how the client portfolio assets will be disposed of, or transferred to the client, if those assets are not held directly by the client.
- RG 179.153 We believe that, to run your MDA effectively and efficiently, you should have in place policies and procedures to ensure the orderly exit of clients from MDA contracts.
- RG 179.154 Disclosing these policies to the client in the MDA contract will ensure that investors are aware of their rights and entitlements, including:
- (a) what they must do if they wish to terminate the MDA; and
  - (b) what will happen to their assets if they are held by you or a custodian.



## Disclose fees and costs

RG 179.155 The MDA contract must contain information about the fees and costs of the MDA in a manner that is consistent with Sch 10 of the Corporations Regulations as if it were a PDS for a registered scheme.

Note: For guidance about disclosing fees and costs in PDSs and the enhanced fee disclosure regulations, see RG 97.

RG 179.156 We think that it is important that fee information is included in the MDA contract—in addition to the FSG—because the MDA contract sets out the terms that govern the relationship between you and the client. This disclosure may be incorporated by reference.

Note: See Table 7 for the fees and costs disclosure obligations in the FSG.

## Retain copies of disclosure documents

RG 179.157 Under our relief in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968, you must keep (or cause to be kept) a copy of any of the following documents you have given to a client, for at least seven years from the date the document is provided to the client:

- (a) an FSG;
- (b) an MDA contract; and
- (c) any other document required to be given under our relief (e.g. SOA, quarterly report and annual investor statement).

Note: These documents may be kept electronically.

RG 179.158 These requirements are designed to ensure that the key documents relating to an MDA service—such as the FSG, the MDA contract, the SOA (which we anticipate is likely to be included in the investment program), and annual reports provided to the client—are maintained for at least seven years after they have last been used. Given the personalised nature of MDA services, documents given to the client under our relief need to be maintained for compliance purposes.

Note: It is not necessary to keep a separate copy of any non-personalised document given under our relief on each client file (e.g. a generic FSG given to all MDA clients) if you maintain a copy of that generic document and records showing the date on which it was provided to the client: see RG 175.129.

## E MDA services with different arrangements

### Key points

We recognise that the provision of an MDA includes a broad range of financial services and that an MDA may be structured in a number of different ways.

This section sets out how our MDA policy is varied if an MDA:

- has an external MDA custodian (see RG 179.160–RG 179.166);
- has an external MDA adviser (see RG 179.167–RG 179.176);
- has external administration support (see RG 179.177–RG 179.179);
- involves an arrangement where the client, instead of the MDA provider or an external MDA custodian, holds the legal title to the client portfolio assets (see RG 179.180–RG 179.184);
- is provided on a regulated platform (see RG 179.185–RG 179.200); and
- is provided to family members (see RG 179.201–RG 179.207).

An MDA service may have only one of the above variations or a combination of any of them.

RG 179.159 Often, persons other than the MDA provider provide financial services that form part of the provision of an MDA directly to the MDA client. Our policy is flexible enough to accommodate these different arrangements, but it must be clear to clients what those arrangements are and who is responsible for the delivery of those services.

## MDA with an external MDA custodian

### When does an MDA have an external MDA custodian?

RG 179.160 An MDA service has an external MDA custodian if a person other than the MDA provider:

- (a) enters into a direct contract with a client to provide custody services; and
- (b) the custody services relate to the MDA provided to that client by the MDA provider.

### What relief do we give to an external MDA custodian?

RG 179.161 We give the same relief to an external MDA custodian as we give to an MDA provider: see RG 179.41. Our relief gives an external MDA custodian conditional relief from having to register a managed investment scheme and prepare a PDS. In addition, we give conditional relief for the external MDA

custodian from complying with the securities disclosure and related provisions contained in Ch 6D of the Corporations Act for securities held on behalf of the client under an MDA in which the external MDA custodian provides custodial or depository services.

RG 179.162 However, we tailor the conditions of that relief so that they apply to the provision of custodial or depository services to ensure that clients obtaining these services have a similar level of protection as is available to them where it is the MDA provider who provides the custodial or depository services.

RG 179.163 To have the benefit of our relief, the external MDA custodian must comply with the conditions set out in Table 9.

**Table 9: Conditions of relief that apply to an external MDA custodian**

| Requirement   | Explanation   |
|---|---|
| The external MDA custodian must hold an AFS licence that authorises it to deal and operate custodial or depository services for retail clients.   | See RG 179.51.  |
| <p>The external MDA custodian must have a written contract with each client to whom it provides custodial or depository services for an MDA, which requires the external MDA custodian to:</p> <ul style="list-style-type: none"> <li>act honestly and exercise due care and diligence;</li> <li>give priority to the client's interests and not use information about the client to gain an advantage or to cause detriment to the client;</li> <li>compensate the client for any loss caused by an act or omission of any agent or other person engaged in connection with the custodial or depository services as if they were acts or omissions of the external MDA custodian; and</li> <li>comply with the requirements of our relief.</li> </ul> <p>Records of the contracts with clients must be maintained for seven years.</p> | As for an MDA provider: see Table 5.  |
| <p>The external MDA custodian must give an FSG to each client.</p> <p>Records of any FSG given to a retail client should be maintained for seven years.</p>   | <p>The FSG must comply with Div 2 of Pt 7.7 of the Corporations Act and give as much detail as is necessary for the client to clearly understand the functions performed as an external MDA custodian and the division of responsibility between the external MDA custodian and the MDA provider.</p> |

| Requirement  | Explanation  |
|--|--|
| The external MDA custodian must ensure that each MDA client's assets are managed as a discrete portfolio.  | <p>The external MDA custodian must ensure that each MDA client's portfolio assets are:</p> <ul style="list-style-type: none"> <li>held or caused to be held separately from the assets of any other person (including those of other clients) and in trust for the relevant client (other than certain overseas assets, or when held under Divs 2 or 4 of Pt 7.8 of the Corporations Act);</li> </ul> <p>Note: Except for certain amounts held as margin, money and assets held under Divs 2 and 4 of Pt 7.8 must be held on trust for the client under regs 7.8.01(5) and 7.8.07(2).</p> <ul style="list-style-type: none"> <li>held in an account that complies with s981B of the Corporations Act, where money is held in the account of an entity carrying on a banking business; and</li> <li>held in a way that the client has a beneficial interest in the client portfolio assets if the assets are held by a person directly or indirectly engaged by the external MDA custodian.</li> </ul>  |
| The external MDA custodian must report non-compliance.   | As for an MDA provider: see RG 179.101.  |
| The external MDA custodian must maintain professional indemnity insurance that meets certain requirements. | <p>The insurance policy must cover professional indemnity and fraud by the external MDA custodian's officers and employees, and must:</p> <ul style="list-style-type: none"> <li>be adequate, taking into account the nature of the activities carried out by the external MDA custodian; and</li> <li>cover claims amounting in aggregate, at the same time, to the lesser of: <ul style="list-style-type: none"> <li>\$5 million; or</li> <li>the aggregated average value of the client portfolio assets of all clients to whom the custodian provided custodial or depository services during the last 12 months or, if it has not been providing MDA services for at least 13 months, the amount reasonably estimated to be the aggregated average value of client portfolio assets during the first 12 months for which the custodian will provide those MDA services.</li> </ul> </li> </ul> <p>Note: This requirement is in addition to the general requirements for AFS licensees to have compensation arrangements, as set out in RG 126. The same insurance may be relied on to meet both requirements.</p> |

RG 179.164 In addition, we require that an external MDA custodian must not knowingly cause the MDA provider to breach the conditions of our relief or the other requirements in the Corporations Act. This is because the provider has to rely on the external MDA custodian in order to provide MDA services under our relief.

## What conditions apply to an MDA provider who has an external MDA custodian?

- RG 179.165 If you, as an MDA provider, provide an MDA that has an external MDA custodian, that service can be operated under our main relief (see RG 179.41), subject to the following variations of the conditions of that relief:
- (a) you do not need to have an AFS licence authorisation to provide custodial or depository services to retail clients; and
  - (b) the FSG that is given to each MDA client under our main relief must contain the additional information, as set out in RG 179.166.

### Specific FSG requirements

- RG 179.166 To ensure that clients clearly understand the division of responsibilities between you, as the MDA provider, and the external MDA custodian, you must include in the FSG you give to each client:
- (a) a statement that you do not provide custodial or depository services relating to the MDA services;
  - (b) the name and details of the external MDA custodian who is responsible for the custodial or depository services; and
  - (c) information, in as much detail as would be reasonably required, for the client to clearly understand the division of responsibilities between the MDA provider and the external MDA custodian in managing the client's portfolio assets under our relief (e.g. how the client's instructions on corporate actions and communications about financial products in the client's portfolio assets are to be carried out and by whom).

Note: Where an external MDA custodian provides custodial or depository services to an MDA client, the client would generally be given two FSGs (i.e. the FSG provided by the MDA provider and the FSG provided by the external MDA custodian). However, an FSG could cover two providing entities. Each providing entity will be liable for its content: see RG 175 for details about combined FSGs.

## MDA with an external MDA adviser

### When does an MDA have an external MDA adviser?

- RG 179.167 An MDA has an external MDA adviser if a person other than the MDA provider:
- (a) enters into a direct contract with a client to prepare or review an investment program; and
  - (b) the investment program is, or is intended to be, included in the MDA contract between that client and the MDA provider.

### **What relief do we give to an external MDA adviser?**

- RG 179.168 We do not consider it is necessary for an external MDA adviser who prepares or reviews an investment program that is, or is intended to be, included in an MDA contract to have any relief from the AFS licensing and conduct requirements as far as these provisions apply to their advice.
- RG 179.169 Advisers are directly responsible to the client for the financial product advice contained in the investment program. They must hold an AFS licence with an authorisation to give financial product advice to retail clients and must fully comply with the conduct requirements in Pts 7.7 and 7.7A of the Corporations Act that apply to giving personal advice (including the obligation to provide an FSG and an SOA to the client).
- RG 179.170 An MDA adviser is exempt from the financial product disclosure provisions of Pt 7.9 of the Corporations Act for recommending or offering to arrange the issue of an MDA or products acquired or held through the MDA.

Note: For guidance on the obligations that apply to a financial product adviser, see Section F.

### **What conditions apply to an MDA provider who has an external MDA adviser?**

- RG 179.171 If you, as an MDA provider, include in the MDA contract an investment program prepared and reviewed by an external MDA adviser—in addition to our main relief (see RG 179.41), we will give you relief from Pt 7.7 of the Corporations Act, subject to the following variations of the conditions of that relief :
- (a) you do not need an AFS licence authorisation to give financial product advice to retail clients in relation to general advice contained in any offer document;
  - (b) you must offer your MDA services through an FSG that meets certain conditions (see RG 179.173); and
  - (c) you must comply with certain conditions relating to the preparation and annual review of the investment program by the external MDA adviser (see RG 179.174–RG 179.176).
- RG 179.172 These requirements are designed to ensure that clients obtaining MDA services that have external MDA advisers:
- (a) have investment programs that continue to be suitable for them; and
  - (b) clearly understand that a person other than the MDA provider is directly responsible to them for the suitability of that investment program.

### Additional disclosure in the FSG

RG 179.173 If you include in the MDA contract an investment program prepared by an external MDA adviser, you must include in the FSG you give to MDA clients under our relief the following additional information in as much detail as is necessary for the client to clearly understand:

- (a) the name and contact details of the external MDA adviser who is responsible for the preparation and/or review of the investment program;
- (b) to the extent that the investment program does not include the following:
  - (i) a statement about the nature and scope of the discretions you will be authorised, or required, to exercise under the MDA contract; and
  - (ii) information about the significant risks associated with the MDA contract;
- (c) a statement that the investment program contains:
  - (i) the basis on which the external MDA adviser considers the MDA contract to be suitable for the client; and
  - (ii) warnings that the MDA contract:
    - (A) may not be suitable for the client if the client has provided you with limited or inaccurate personal information about their relevant circumstances; and
    - (B) may cease to be suitable for the client if the client's relevant circumstances change.

Note: Where an external MDA adviser prepares and reviews an investment program included in an MDA contract for the client, the client would generally be given two FSGs (i.e. the FSG provided by the MDA provider for the MDA service and the FSG provided by the external MDA adviser for the financial product advice). However, an FSG could cover two providing entities: see RG 175 for details.

### Additional requirements for the investment program

RG 179.174 If you, as an MDA provider, include in the MDA contract an investment program prepared by an external MDA adviser, you must:

- (a) review the SOA given in relation to that investment program before entering into the MDA contract, and not enter into the contract if you have reason to believe that the MDA is not appropriate to the client's relevant circumstances;
- (b) have no reason to believe that the investment program does not comply with the requirements for an SOA in Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act; and
- (c) have no reason to believe that any statement in the FSG about the investment program prepared by the external MDA adviser is misleading or deceptive or likely to mislead or deceive.

RG 179.175 We do not envisage that an MDA provider needs to undertake a comprehensive review of the investment program to form a view under RG 179.174(a). By forming this view, the MDA provider does not endorse the investment program or the review report.

RG 179.176 If you rely on an external MDA adviser to undertake the annual review of the investment program, you must:

- (a) include with the annual investor statement that you send to the client (see RG 179.110):
  - (i) a copy of the annual review; or
  - (ii) if you have reason to believe that the annual review has already been given to the client, the information required under RG 179.144 to the extent that this information is not included in the annual review already given to the client.

Note: The same external MDA adviser who prepares the investment program does not have to undertake its annual review. Different external MDA advisers may carry out these tasks. They must separately comply with their obligations under the Corporations Act when providing their services and are directly responsible to the client for those services.

## MDA with external administration support

RG 179.177 We recognise that many MDA business models use extensive outsourcing arrangements to deliver the MDA, including outsourcing the administrative functions. While you may engage external providers to perform functions on your behalf, you remain responsible for the discharge of those functions and for meeting your obligations under your AFS licence, the Corporations Act and under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968.

RG 179.178 If you outsource the administrative functions of an MDA you provide to a client, you must comply with the disclosure obligations in the FSG about the outsourcing arrangements. You must include in the FSG:

- (a) a brief description of the procedures you have in place to ensure that due skill and care are taken in choosing a suitable service provider;
- (b) the functions that you have outsourced;
- (c) the entities that will be performing the outsourced functions; and
- (d) a brief description of the procedures you will use to monitor the performance of the providers of the outsourced functions.

RG 179.179 We do not consider it is necessary to grant relief from the AFS licensing and conduct requirements to a person providing administration support to an MDA provider. If you are providing administrative support to an MDA provider, you need to consider whether you are providing a financial service, and whether



you need to have an AFS licence and to comply with the obligations under Ch 7 of the Corporations Act and under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968.

Note 1: For further information, see [Regulatory Guide 36](#) *Licensing: Financial product advice and dealing* (RG 36).

Note 2: For more information about applying for an AFS licence, see RG 1–RG 3.

## MDA where the client holds the legal title to portfolio assets

RG 179.180 If the client holds the legal title to their portfolio assets—technically, persons providing dealing services or issuing their financial products provide dealing services to the client rather than to the MDA provider. However, functionally, these MDAs are no different from MDAs where the MDA provider (or an external MDA custodian) holds the legal title to the client portfolio assets. In both cases, the effective investment decisions are made by the MDA provider and not by the client.

RG 179.181 Therefore, we give relief from the FSG and some of the PDS disclosure requirements as far as these apply to persons providing execution services or issuing their financial products to clients where the client holds the legal title to those assets. This helps to:

- (a) ensure that there is a consistent level of regulation of MDA services; and
- (b) remove the cost of unnecessary disclosure.

RG 179.182 If a client holds the legal title to financial products in their portfolio assets, we give relief from:

- (a) the FSG requirements in Div 2 of Pt 7.7 of the Corporations Act to any AFS licensee or authorised representative who provides certain dealing services (i.e. execution of trades) relating to the clients' portfolio assets; and
- (b) the disclosure provisions in Pts 6D.2 or 7.9 of the Corporations Act (as applicable) to persons who issue their own financial products to MDA clients.

RG 179.183 We give this relief to these persons on condition that they:

- (a) do not knowingly cause or procure the MDA provider to breach the conditions of the MDA provider's relief or the requirements of the Corporations Act;
- (b) do not knowingly engage in misleading or deceptive conduct in relation to the MDA service; and
- (c) inform ASIC in writing as soon as practicable after they have become aware that they have engaged in the conduct referred to in

RG 179.183(a)–RG 179.183(b) in relation to the MDA service, and that this conduct is, or is likely to be, a significant breach.

- RG 179.184 If a client holds the legal title to the financial products in their portfolio assets, the MDA provider does not need any additional relief. However:
- (a) in managing the client’s portfolio assets, the provider should ensure that the assets are clearly identified as available to be managed at the MDA provider’s discretion under the MDA contract, and that this is reflected in meeting the reporting requirements in RG 179.104; and
  - (b) if the client directs all communications about the client portfolio assets to be sent to the MDA provider, the provider must ensure that the requirements in RG 179.96 are met.

## MDA on a regulated platform

- RG 179.185 If you provide an MDA on a regulated platform, you must hold an AFS licence authorisation covering the provision of the financial services involved in providing the MDA and comply with the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968. You must comply with the same operation, disclosure and conduct requirements that apply to other MDA providers except for certain requirements about client reporting: see RG 179.194.

- RG 179.186 A staged implementation of the requirements applies: see RG 179.200.

Note: Under our relief instrument, a regulated platform means ‘an IDPS, IDPS-like scheme or a superannuation entity within the meaning in the *Superannuation Industry (Supervision) Act 1993*’.

## Applying for relevant AFS licence authorisations

- RG 179.187 On 5 November 2004, we issued a no-action letter to the Investment and Financial Services Association (now the Financial Services Council) and the Securities and Derivatives Industry Association (now the Stockbrokers Association of Australia) addressing the situation of MDA providers who hold a limited power of attorney that is valid only within a regulated platform and is limited to authorising the MDA provider to transfer funds between investments offered through the regulated platform, but not to contribute or withdraw funds.
- RG 179.188 The no-action position was issued pending the development of our policy, and this will no longer have effect from 1 October 2018 for AFS licensees relying on it before 1 October 2016: see RG 179.200.
- RG 179.189 If you provide an MDA under the no-action position—from 1 October 2018, you must hold an AFS licence authorisation to deal by issuing a financial

product in respect of interests in managed investment schemes limited to MDA services or miscellaneous financial investment products limited to MDA services, and other authorisations for dealing in the financial products covered by the regulated platform to which the MDA relates.

RG 179.190 Applicants will need to demonstrate that they meet the minimum experience requirements set out in RG 105 for all of the financial products and services covered by the authorisation including the issue of the financial product.

RG 179.191 When we assess an application for the AFS licence authorisations relevant to the MDA services you provide, we will take into consideration the experience gained by the AFS licensee under the no-action position for regulated platform MDAs, to the extent that it is equivalent to the MDA business proposed to be undertaken by the licensee.

Note: For guidance on how we will assess an application for the AFS licence authorisations relevant to the MDA services you provide, see RG 179.52.

### **Obligation not to pool assets**

RG 179.192 It is a requirement under our relief that an MDA provider must not pool the assets of a client with property that is not the client's portfolio assets to enable an investment to be made on more favourable terms.

RG 179.193 We are aware that regulated platforms pool client investments to enable an investment to be made on more favourable terms (e.g. to give clients access to investments they could not hold directly). Pooling by the regulated platform operator does not mean that the MDA provider is in breach of the relevant condition of our relief.

### **Client reporting**

RG 179.194 Under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968, we grant relief from the client reporting obligations that generally apply under the instrument if you provide an MDA in which all of the client portfolio assets are held through one or more regulated platforms.

### **Quarterly report**

RG 179.195 As the MDA provider, you do not have to comply with the quarterly reporting obligations, as set out at RG 179.104, if the transactions have been, or will be, reported to you or the client by the regulated platform operator, as long as you ensure that:

- (a) if the transaction reports generated by the regulated platform are given to you, you give the report to the client as soon as is reasonably practicable; and

- (b) as soon as is reasonably practicable following the reports being provided by the regulated platform operator, you review the transaction details in the report and report any exceptions or anomalies to the client.

### **Annual report**

- RG 179.196 If you provide an MDA in which all of the client portfolio assets are held through one or more regulated platforms, we grant you relief from the requirements to provide an annual statement and audit report, as set out at RG 179.110.
- RG 179.197 However, you must inform the client about the total management costs and any other fees and costs associated with your MDA service over the relevant reporting period, calculated on the same basis as required for disclosure in the FSG. This means you must take into account all the fees and costs for your service, and any fees and costs for the regulated platform will be an interposed vehicle through which you invest client portfolio assets.

### **Retain copies of disclosure documents**

- RG 179.198 Under our relief in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968, you must keep (or cause to be kept) a copy of any document required to be given under our relief. You are not required to keep a copy of a document provided by the regulated platform operator.

### **When the requirements apply**

- RG 179.199 A staged implementation of the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 applies to an MDA on a regulated platform.
- RG 179.200 If you first relied on the no-action letter before 1 October 2016, you can continue to rely on the no-action letter until 1 October 2018. From 1 October 2018, you must comply with the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968, including the requirement to obtain an AFS licence authorisation to deal by issuing a financial product in respect of interests in managed investment schemes limited to MDA services or miscellaneous financial investment products limited to MDA services. You can obtain this licence authorisation during the period up until 1 October 2018.

## **Market participants providing an MDA to family members**

- RG 179.201 We consider that, if a representative of an AFS licensee undertakes discretionary trading on behalf of a family member, that trading would generally be part of the financial services business conducted by the licensee. As a result, these accounts would be considered MDAs and would be subject

to the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968, including the licensing requirements.

- RG 179.202 On 8 December 2004, we issued a no-action letter to the Securities and Derivatives Industry Association (now the Stockbrokers Association of Australia) addressing the situation in which an AFS licensee's representatives provide discretionary trading services to their immediate family members.
- RG 179.203 We are aware that it is a common compliance policy that staff of market participants and their related family accounts must deal through the market participant. Market participants are well placed to ensure that all discretions exercised under the MDA are within the powers agreed by the client, and to detect transactions that are beyond the scope of the discretion. The ASIC market integrity rules contain rules about management and supervision. Supervision of trading activities happens on a daily basis and in real time. Transactions conducted for the client under the MDA will be considered to be a staff account subject to the surveillance applied to staff proprietary investment decisions and reviewed in accordance with the firm's staff proprietary investment and trading procedures.
- RG 179.204 In addition to the above, we give our relief because of the high level of trust that generally exists within most family relationships, the professional expertise of the representative, and the alignment of interests that commonly occurs between family members.
- RG 179.205 If you are a market participant and the only MDAs you provide are MDAs for your family members or the family members of your representatives, we give you relief from:
- (a) the requirement that the MDA must be registered under s601ED(5) of the Corporations Act;
  - (b) the requirement to obtain the AFS licence authorisations relevant to the MDA services you provide, and related provisions in Pt 7.6 of the Corporations Act;
  - (c) the financial services disclosure provisions in Pt 7.7 of the Corporations Act; and
  - (d) the requirement to prepare a PDS under Pt 7.9 of the Corporations Act.
- RG 179.206 To have the benefit of our relief, you must comply with the requirements set out in Table 10.

**Table 10: Conditions of relief for market participants that operate family accounts**

| Condition   | How to comply with the condition  |
|---|---|
| MDA provided to family members only   | <p>The MDA must only be provided to a family member of the AFS licensee or a family member of a representative of the licensee.</p> <p>Note: A family member in relation to a person means a spouse or non-adult child of the person.</p>   |
| Written acknowledgment by the family member   | <p>Before the issue of the MDA to a family member who has legal capacity to sign such an acknowledgment, you must obtain from the client:</p> <ul style="list-style-type: none"> <li>• written agreement to the discretions that you exercise under the MDA; and</li> <li>• written acknowledgement that: <ul style="list-style-type: none"> <li>– confirmation of transactions that you conduct under the MDA will be sent to an address nominated by the client; and</li> <li>– transactions you conduct for the client under the MDA will be considered to be a staff account subject to the surveillance applied to staff proprietary investment decisions and reviewed in accordance with the firm's staff proprietary investment and trading procedures.</li> </ul> </li> </ul>   |
| Written disclosure to the family member   | <p>You must disclose to the client in writing:</p> <ul style="list-style-type: none"> <li>• whether the client has access to internal and external dispute resolution schemes, and, if so, details of these schemes and how to access these schemes; and</li> <li>• whether the client has access to any compensation arrangements you are required to maintain under the Corporations Act.</li> </ul>  |
| Adequate monitoring and supervision   | <p>You must maintain adequate monitoring and supervision policies and processes to ensure that all discretions exercised under the MDA are within the powers agreed by the client, and to detect transactions that are beyond the scope of the discretion.</p>  |
| Written consent from an adult client before investing in a non-limited recourse product | <p>You must not invest in a non-limited recourse product unless you seek prior written consent from an adult client.</p> <p>In addition to the requirements set out in our guidance at RG 179.122–RG 179.129, you must ensure that, if you invest in or keep non-limited recourse products as client portfolio assets, you or an external MDA adviser must give the client personal advice, at least once every 13 months, about whether the non-limited recourse product is suitable in light of the client's relevant circumstances.</p> <p>We have included this additional requirement because, if you provide an MDA to a family member under our relief, you are exempt from the requirement in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 to review the MDA contract and investment program at least once every 13 months.</p> |

### When the requirements apply

- RG 179.207 A staged implementation of the requirements in ASIC Corporations (Managed Discretionary Accounts) Instrument 2016/968 applies to market participants providing an MDA to family members. If you first relied on the no-action letter before 1 October 2016, you have until 1 October 2017 to comply with the requirements in ASIC Corporations (Managed Discretionary Accounts) Instrument 2016/968.

## F Obligations of financial product advisers

### Key points

If you are make recommendations or statements of opinion about investing in an MDA or investing through an MDA (including providing an investment program and/or annual review of the investment program), you will be providing financial product advice under s766B of the Corporations Act.

This section covers:

- complying with the duty to act in the best interests of the client (see RG 179.211–RG 179.214);
- content of advice and providing an SOA (see RG 179.215–RG 179.218; and
- managing conflicts of interest (see RG 179.219–RG 179.223).

### Comply with requirements for providing financial product advice

RG 179.208 An MDA generally falls within the definition of both a managed investment scheme under s9 of the Corporations Act and a facility for making a financial investment under s763B of the Corporations Act. Therefore, opinions or recommendations from the MDA provider or external MDA adviser that are intended to influence, or that could reasonably be regarded as intended to influence, a person in making a decision in relation to an MDA will be financial product advice.

RG 179.209 If you are carrying on a business in Australia that includes making recommendations or statements of opinion about investing in an MDA or acquiring or disposing of financial products that are client portfolio assets, you will be providing financial product advice under s766B of the Corporations Act. You must therefore:

- (a) hold an AFS licence with an appropriate authorisation for giving that financial product advice;
- (b) be a representative of an AFS licensee with an appropriate authorisation for giving that financial product advice; or
- (c) fall within an exemption under s911A(2).

RG 179.210 The provision of an MDA may involve giving financial product advice in a number of ways. For example:

- (a) where the MDA provider offers the financial product constituted by the MDA to clients, an offer document—unless it is an exempt document—may be financial product advice; and

- (b) where the MDA provider or an external MDA adviser recommends the MDA and/or the investments that are to be made through the MDA as financial products suitable for the particular client, that is personal advice (e.g. in providing the investment program and annual review of the investment program).

## Comply with the best interests duty

- RG 179.211 If you provide personal advice about whether to invest in an MDA or about investments held through the MDA, you will need to comply with the conduct and disclosure requirements in Pts 7.7 and 7.7A of the Corporations Act.
- RG 179.212 Division 2 of Pt 7.7A of the Corporations Act imposes four key obligations on persons who provide personal advice to clients. This includes MDA providers who provide personal advice, and external MDA advisers. The obligations are:
- (a) the best interests duty (s961B);
  - (b) the appropriate advice requirement (s961G);
  - (c) the obligation to warn the client if advice is based on incomplete or inaccurate information (s961H); and
  - (d) the obligation to prioritise the client's interests (s961J).

Note: We have provided guidance to all advice providers about these obligations in RG 175.

## Investment program

- RG 179.213 If you prepare and/or review an investment program included in an MDA contract, you are providing personal financial product advice. If you are engaged by the MDA provider to prepare and/or review the investment program, you must comply with the requirements of our relief in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968. For our guidance on these obligations, see RG 179.135–RG 179.145.
- RG 179.214 If you enter into a direct contract with a client to prepare or review an investment program included in the MDA contract, we do not grant any relief from the AFS licensing and conduct requirements as far as these provisions apply to your advice: see RG 179.168–RG 179.169.



## Provide an SOA with clear content of advice

RG 179.215 If you give personal advice about investing in an MDA—including preparing the investment program and/or the annual review of the investment program—you must meet the requirements in Pt 7.7 of the Corporations Act to give the client an SOA. The SOA will help the client understand, and decide whether to rely on, the personal advice.

RG 179.216 We expect the SOA to clearly and unambiguously set out the personal advice and the reasoning that led to the advice, including why the advice and recommendation were considered appropriate in light of the alternative options considered, and the advantages and disadvantages for the client if the client follows the advice. This may include:

- (a) the advantages of investing in an MDA in comparison to the alternative options considered, such as investing directly or through another MDA;
- (b) the range of investments offered through the MDA and whether they are appropriate for the client;
- (c) the fees and costs associated with the MDA and how they relate to other fees and costs, including fees and costs connected with the investments to be acquired through the MDA and fees and costs connected with your service, or your AFS licensee's service;
- (d) any significant tax implications from investing in the MDA;
- (e) any significant risks the client will bear in relation to acquiring a specific MDA and MDAs as a class of product; and
- (f) any significant implications if the client later wishes to leave the MDA or is required to leave the MDA (e.g. fees and tax implications).

Note: For more information on preparing and providing an SOA, see Section D of RG 175.

## Disclosure of remuneration

RG 179.217 The SOA must include disclosures about any benefits or remuneration that you, as the providing entity preparing the SOA, or any of your associates might receive, and any other interests you or they have that might be reasonably capable of influencing you in providing the advice. This information must be included in as much detail as a person would reasonably require as a client to decide whether to act on the advice.

RG 179.218 We consider it will generally help clients if you identify in the SOA the total fees and costs for your advice, the MDA service and the investments that you recommend to be made through the MDA to enable a client to understand the cumulative impact of all fees and costs.

## Manage conflicts of interest

RG 179.219 If you are an AFS licensee responsible for providing financial product advice about an MDA and/or the investments through an MDA, you must comply with the requirement in s912A(1)(aa) of the Corporations Act to have in place adequate arrangements to manage conflicts of interest.

RG 179.220 RG 181 identifies three mechanisms that AFS licensees would generally use to manage conflicts of interest. These mechanisms are:

- (a) avoiding conflicts of interest;
- (b) controlling conflicts of interest; and
- (c) disclosing conflicts of interest.

Note: We expect you to take into account the guidance in RG 181 to comply with the obligation to manage conflicts of interest.

RG 179.221 For example, AFS licensees and their representatives who provide advice often have associations with other parties in the distribution chain that may give rise to conflicts of interest, including MDA providers. These relationships may influence:

- (a) advisers to recommend the use of an MDA; and/or
- (b) the selection of investments made through an MDA.

RG 179.222 We expect an AFS licensee who provides advice to take reasonable steps to work with other parties in the product distribution chain to identify relationships and arrangements that may give rise to conflicts of interest in relation to the provision of financial services, and to ensure that appropriate and robust measures are in place to manage conflicts of interest.

RG 179.223 We consider it good practice to document any measures in place to manage such conflicts of interest, and manage material conflicts through a combination of internal controls, disclosure and, in some cases, avoidance of the conflicts.

## Appendix: Transitional requirements

RG 179.224 If you issue an MDA before 1 October 2016, you have until 1 October 2017 to comply with the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968. For existing MDA providers:

- (a) the requirements in the amended [CO 04/194] will apply until 1 October 2017 (after which the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 will apply); or
- (b) if you opt in to the revised regulatory regime for MDAs before 1 October 2017, the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 will apply from the date you publish a notice to this effect on your website (i.e. a date between 1 October 2016 and 1 October 2017).

Note: If you provide an MDA on a regulated platform and have relied on the no-action letter, you have until 1 October 2018 to comply with the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968: see Table 22.

RG 179.225 If you first issue an MDA from 1 October 2016, the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 will apply from the authorisation date.

## Requirements for MDA providers

**Table 11: Need for an AFS licence**

| Requirement or obligation                       | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier) |
|---|--|--|
| Hold an AFS licence and relevant authorisations | No change  | No change  |

**Table 12: Compliance issues**

| Requirement or obligation  | Relief under [CO 04/194]<br>(until no later than 1 October 2017)   | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier)   |
|--|--|--|
| Comply with your AFS licence obligations and the conditions of our relief under the relevant instrument  | You must comply with the requirements in [CO 04/194]. Amendments to the class order are identified in this table | You must comply with your AFS licence obligations and the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968                     |
| Perform your obligations honestly, act in the best interests of the client and do not use information about the client to your advantage or to cause detriment to the client | No change  | No change  |
| Manage conflicts of interest   | No change  | See additional guidance on our expectations for managing conflicts of interest   |
| Comply with the asset holding requirements   | No change  | See additional guidance to assist MDA providers and custodians   |
| Maintain adequate insurance  | No change  | No change  |
| Comply with your financial requirements  | No change  | See RG 166   |
| Maintain adequate internal control procedures and arrange for their audit  | No change  | No change  |
| Breach reporting   | You must notify ASIC of breaches within five business days   | You must notify ASIC of breaches within 10 business days. See updated guidance on how we determine our regulatory response   |
| Do not invest client portfolio assets in unregistered schemes  | No change  | No change  |
| Do not invest client portfolio assets in non-limited recourse products—except in certain circumstances   | Not applicable   | You must seek prior written consent from the client if you are going to invest their client portfolio assets in a non-limited recourse product, and provide certain warnings |

| Requirement or obligation          | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier)   |
|------------------------------------|--|--|
| Termination of the MDA contract    | Not applicable   | You must have in place written policies setting out the steps you will take to terminate an MDA contract, when an MDA contract is to be terminated   |
| Provide a fee disclosure statement | No change  | See additional guidance on the requirement to provide an annual fee disclosure statement if you provide personal advice and enter into an arrangement that provides for the payment of a fee other than a product fee during a period of more than 12 months |

**Table 13: Client instructions, reporting and record keeping**

| Requirement or obligation                                 | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier) |
|---|--|--|
| Follow client instructions on the client portfolio assets | No change  | No change  |
| Comply with quarterly reporting obligations               | No change  | No change  |
| Provide an annual investor statement and audit report     | No change  | You must include specific information about total fees and costs   |
| Give documents electronically                             | No change  | No change  |
| Retain copies of the documents provided to each client    | No change  | No change  |

**Table 14: Additional disclosure in the FSG**

| Requirement or obligation  | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier) |
|--|--|--|
| Provide disclosure about how the client may give instructions on corporate actions (e.g. proxy voting) and communications about their portfolio assets | No change  | No change  |

| Requirement or obligation  | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier)  |
|--|--|---|
| Provide a statement that the client must first enter into an MDA contract with you before an MDA can be provided   | No change  | No change   |
| Provide a statement that the MDA contract will include an investment program that is prepared in accordance with the requirements in Div 3 of Pt 7.7 and Div 2 of Pt 7.7A and will include certain information | No change  | See additional guidance clarifying that you must comply with Div 2 of Pt 7.7A   |
| Provide disclosure about who will be responsible for reviewing the investment program  | No change  | No change   |
| Provide disclosure about outsourcing arrangements  | Not applicable   | You must give clear, concise and effective disclosure about the operation of outsourcing arrangements that apply to the MDA, where relevant   |
| Provide disclosure about fees and costs  | No change  | See additional guidance noting the requirement that the FSG must contain information about the fees and costs of the MDA in a manner that is consistent with Pt 2 of Sch 10 of the Corporations Regulations as if the FSG were a PDS for an interest in a registered scheme |
| Provide disclosure about any significant risks associated with investing through an MDA  | No change  | No change   |
| If an external MDA custodian holds the legal title to any of the client portfolio assets, or if the client holds the client portfolio assets, include certain statements in the FSG                            | No change  | No change   |
| If the client will hold client portfolio assets, provide disclosure to the effect that the MDA does not include custodial or depository services   | No change  | No change   |
| Provide disclosure about any other information that might reasonably be expected to have a material influence on the decision of a reasonable person about whether to invest through an MDA                    | No change  | No change   |

**Table 15: Terms in the MDA contract**

| Requirement or obligation  | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier)   |
|--|--|--|
| Include terms about the nature and scope of discretions that the AFS licensee is authorised to exercise  | No change  | No change  |
| Include contractual obligations to act honestly and in the best interests of the client, and not to use information about the client to your advantage or to cause detriment to the client | No change  | No change  |
| Provide disclosure about voting rights   | Not applicable   | You must give clear, concise and effective disclosure about voting rights  |
| Give information about how the contract may be terminated  | Not applicable   | You must include terms in the MDA contract about termination of the contract, including disclosure about your policy for ensuring the orderly exit of clients from MDA contracts   |
| Provide disclosure about fees and costs  | No change  | See additional guidance on the requirement to include in the MDA contract (including by cross-reference) disclosure about the fees and costs of the MDA that is consistent with Sch 10 of the Corporations Regulations as if the MDA contract were a PDS for a registered scheme |

**Table 16: Investment program**

| Requirement or obligation                          | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier)  |
|--|--|---|
| MDA contract includes an investment program        | No change  | No change   |
| Investment program contains an investment strategy | Not applicable   | See additional guidance clarifying that the investment program must include an investment strategy that contains sufficient detail to permit an opinion to be formed on the suitability of the investment program for each client |

| Requirement or obligation   | Relief under [CO 04/194]<br>(until no later than 1 October 2017)   | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier) |
|---|--|--|
| Investment program complies with the requirements for an SOA in Div 3 of Pt 7.7 and the best interests duty in Div 2 of Pt 7.7A | No change  | See additional guidance clarifying that the personal advice must comply with the best interests duty in Div 2 of Pt 7.7A.    |
| The investment program meets certain requirements about content and suitability for the client                                  | No change  | No change  |
| Investment program review   | The client must receive personal advice about the MDA contract, including the investment program, on an annual basis and an SOA that complies with the requirements in Div 3 of Pt 7.7 | See additional guidance clarifying that the personal advice must comply with the best interests duty in Div 2 of Pt 7.7A     |
| When an SOA is not required   | No change  | See additional guidance on when an SOA does not need to be given   |

## MDAs with different arrangements

**Table 17: External custodian**

| Requirement or obligation   | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier) |
|---|--|--|
| Hold an AFS licence with authorisation to deal and operate custodial or depository services | No change  | No change  |
| Content requirements in the written contract with clients                                   | No change  | No change  |
| Provide an FSG to each client   | No change  | No change  |
| Manage each MDA client's assets as a discrete portfolio                                     | No change  | No change  |



| Requirement or obligation  | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier) |
|--|--|--|
| Breach reporting   | Notify ASIC of breaches within five business days                | Notify ASIC of breaches within 10 business days. See updated regulatory guidance on how we determine our regulatory response |
| Maintain adequate insurance  | No change  | No change  |
| Do not knowingly cause the MDA provider to breach the conditions of our relief | No change  | No change  |

**Table 18: MDA provider who has an external MDA custodian**

| Requirement or obligation   | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier) |
|---|--|--|
| MDA provider does not need an AFS licence authorisation to provide custodial or depository services | No change  | No change  |
| FSG contains additional information   | No change  | No change  |

**Table 19: External MDA adviser**

| Requirement or obligation   | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier) |
|---|--|--|
| Hold an AFS licence with relevant authorisations, and comply with the conduct and disclosure requirements in Pts 7.7 and 7.7A | No change  | See additional guidance clarifying that an external MDA adviser must comply with the best interests duty in Pt 7.7A          |

**Table 20: MDA provider with external MDA adviser**

| Requirement or obligation  | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier) |
|--|--|--|
| Do not need an AFS licence authorisation to give general advice contained in an offer document | No change  | No change  |
| Additional disclosure in the FSG   | No change  | No change  |
| Conditions relating to the preparation and annual review of the investment program             | No change  | No change  |

**Table 21: External administration support**

| Requirement or obligation                                    | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier)                 |
|--|--|--|
| Hold an AFS licence  | No change  | See additional guidance on the need for a person providing administration support to consider whether they are providing a financial service |
| MDA provider—provide disclosure in the FSG about outsourcing | Not applicable   | You must give clear, concise and effective disclosure about the operation of outsourcing arrangements that apply to the MDA                  |

**Table 22: MDA on a regulated platform—No-action letter**

| Requirement or obligation                               | Relief under no-action letter<br>(until 1 October 2018)  | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2018)  |
|---|--|--|
| Hold an AFS licence and relevant authorisations         | If you provide an MDA on a regulated platform and have relied on the no-action letter, you may continue to rely on the terms of the no-action letter | If you provide an MDA on a regulated platform, you must hold an AFS licence authorisation to deal by issuing a financial product in respect of interests in managed investment schemes limited to MDA services or miscellaneous financial investment products limited to MDA services. You must comply with the requirements in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 |
| Quarterly and annual transaction reporting requirements | Not applicable   | We grant some relief from these requirements   |

**Table 23: Providing an MDA to family members under the no-action letter**

| Requirement or obligation  | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier)  |
|--|--|---|
| Relief from the requirements to obtain an MDA licence authorisation                                    | No change from our position under the no-action letter           | Relief from the requirements to obtain an MDA licence authorisation, register the scheme and certain disclosure requirements under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 |
| MDA is provided to family members only   | The no-action letter applies to immediate family members         | Relief applies to 'family members'. We clarify the meaning of 'family members' in the regulatory guidance   |
| AFS licensees that provide MDAs for family members comply with the requirements of relief              | Not applicable   | You must comply with conditions relating to monitoring and supervision; disclosure to the family member; and obtaining written acknowledgment from the family member  |
| Do not invest client portfolio assets in non-limited recourse products—except in certain circumstances | Not applicable   | You must seek prior written consent from a family member with legal capacity if you are going to invest their client portfolio assets in a non-limited recourse product   |

**Table 24: Obligations for financial product advisers**

| Requirement or obligation   | Relief under [CO 04/194]<br>(until no later than 1 October 2017) | Relief under ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (from 1 October 2017 or earlier) |
|---|--|--|
| Comply with conduct and disclosure obligations for financial product advisers | No change  | See additional guidance to reflect changes in the law and assist advisers to understand and comply with their obligations    |

## Key terms

| Term                            | Meaning in this document   |
|---------------------------------|--|
| [CO 13/763] (for example)       | An ASIC class order (in this example numbered 13/763)  |
| AFS licence                     | An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services<br><br>Note: This is a definition contained in s761A. |
| AFS licensee                    | A person who holds an AFS licence under s913B of the Corporations Act<br><br>Note: This is a definition contained in s761A.  |
| annual review                   | Annual review of the investment program included in an MDA contract  |
| ASIC                            | Australian Securities and Investments Commission   |
| ASX                             | ASX Limited or the exchange market operated by ASX Limited   |
| authorised representative       | A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee<br><br>Note: This is a definition contained in s761A.           |
| best interests duty             | The duty to act in the best interests of the client when giving personal advice to a retail client, as set out in s961B(1) of the Corporations Act   |
| Ch 5C (for example)             | A chapter of the Corporations Act (in this example, numbered 5C)   |
| client                          | See 'retail client'  |
| client contributions            | Contributions of money or money's worth given by a client to an MDA provider in the manner described in Section B  |
| client portfolio assets         | Financial products and other property derived directly or indirectly from a client's contributions   |
| client's relevant circumstances | The objectives, financial situation and needs of a client that would reasonably be considered relevant to the subject matter of advice sought by the client  |
| Corporations Act                | <i>Corporations Act 2001</i> , including regulations made for the purposes of that Act   |
| Corporations Regulations        | Corporations Regulations 2001  |

| Term                           | Meaning in this document  |
|--------------------------------|---|
| custody services               | Custodial or depository services, as defined in s766E of the Corporations Act   |
| external MDA adviser           | An AFS licensee that deals directly with a client and is directly responsible for personal advice to that client through preparing or reviewing an investment program included in an MDA contract   |
| external MDA custodian         | An AFS licensee who enters into a direct contract with a retail client to provide custodial services relating to an MDA service operated by an MDA provider   |
| family member                  | A family member in relation to a person means a spouse or non-adult child of the person   |
| FDS                            | fee disclosure statement  |
| financial product              | <p>A facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> <li>• makes a financial investment (see s763B)</li> <li>• manages financial risk (see s763C)</li> <li>• makes non-cash payments (see s763D)</li> </ul> <p>Note: This is the definition contained in s763A of the Corporations Act: see also s763B-765A.</p>  |
| financial product advice       | <p>A recommendation, statement of opinion or interpretation of information, or a report of any of those things, that:</p> <ul style="list-style-type: none"> <li>• is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products, or</li> <li>• could reasonably be regarded as being intended to have such an influence</li> </ul> <p>Note: This is a definition contained in s766B of the Corporations Act.</p> |
| financial service              | Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act  |
| Financial Services Guide (FSG) | <p>A document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act</p> <p>Note: This is a definition contained in s761A.</p>  |
| IDPS                           | An investor directed portfolio service, as defined in Class Order [CO 13/763] <i>Investor directed portfolio services</i> or any instrument that amends or replaces that class order  |
| IDPS-like scheme               | Investor directed portfolio services-like scheme, as defined in <a href="#">Class Order [CO 13/762]</a> <i>Investor directed portfolio services provided through a registered managed investment scheme</i> or any instrument that amends or replaces that class order  |

| Term                               | Meaning in this document  |
|------------------------------------|---|
| investment program                 | The document required to be included in an MDA contract that meets the requirements set out in Section C  |
| licensee                           | A person who holds an AFS licence   |
| managed investment scheme          | Has the meaning set out in s9 of the Corporations Act   |
| market participant                 | A participant of a licensed market  |
| MDA                                | A managed discretionary account, as defined in Section B  |
| MDA client                         | A person to whom MDA services are provided, or are to be provided, by an MDA provider   |
| MDA contract                       | The contract between an MDA provider and a retail client relating to the provision of an MDA service under ASIC relief  |
| MDA provider (provider)            | A person who enters into a contract with a client to provide an MDA under our relief.   |
| MDA service                        | Some or all of the services and functions involved in providing an MDA  |
| nominee and custody service        | Has the meaning set out in Class Order [CO 02/295] <i>Nominee and custody services</i> or any instrument that amends or replaces that class order   |
| non-limited recourse product       | A facility that includes an obligation imposed on a person under an agreement to pay an amount to another person in the event of the occurrence or non-occurrence of something, where the rights of the other person in relation to the obligation are not limited to any property that the first person has paid or set aside as security for the payment, or property to be transferred by the other person to the first person on completion of the obligation under the agreement                 |
| personal advice                    | <p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> <li>the person giving the advice has considered one or more of the client's objectives, financial situation and needs; or</li> <li>a reasonable person might expect the person giving the advice to have considered one or more of these matters</li> </ul> <p>Note: This is a definition contained in s766B(3) of the Corporations Act.</p> |
| Product Disclosure Statement (PDS) | <p>A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9</p> <p>Note: See s761A of the Corporations Act for the exact definition.</p>  |

| Term                      | Meaning in this document   |
|---------------------------|--|
| Pt 5C.6 (for example)     | A part of the Corporations Act (in this example, numbered 5C.6)  |
| reg 7.7.10A               | A regulation of the Corporations Regulations (in this example, numbered 7.7.10A)   |
| registered scheme         | A registered managed investment scheme or a proposed registered managed investment scheme  |
| regulated platform        | An IDPS, IDPS-like scheme or a superannuation entity within the meaning of the <i>Superannuation Industry (Supervision) Act 1993</i> that operates a custodial arrangement under s1012IA   |
| retail client             | A client, as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations  |
| RG 148 (for example)      | An ASIC regulatory guide (in this example, numbered 148)   |
| s766E (for example)       | A section of the Corporations Act (in this example, numbered 766E)   |
| Statement of Advice (SOA) | <p>A document that must be given to a retail client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7</p> <p>Note: See s761A of the Corporations Act for the exact definition.</p>   |
| trading discretion        | The discretion that may be exercised by the MDA provider to invest in financial products using client contributions without prior reference to the client for each transaction, subject to any limitation that may be agreed between the client and the MDA provider |
| wholesale client          | A client who is not a retail client, as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations   |

## Related information

### Headnotes

AFS licence, Australian financial services licence, best interests duty, conflicts of interest, discretionary portfolio accounts, external MDA adviser, external MDA custodian, financial product, financial product advice, financial services, Financial Services Guide, managed discretionary accounts, managed investment schemes, MDA provider, Product Disclosure Statement, retail client, Statement of Advice

### Class orders and pro formas

[\[CO 04/194\]](#) *Managed discretionary accounts*

[\[CO 13/762\]](#) *Investor directed portfolio services provided through a registered managed investment scheme*

[PF 209](#) *Australian financial services licence conditions*

### Regulatory guides

[RG 1–3](#) *AFS Licensing Kit*

[RG 36](#) *Licensing: Financial product advice and dealing*

[RG 51](#) *Applications for relief*

[RG 78](#) *Breach reporting by AFS licensees*

[RG 97](#) *Disclosing fees and costs in PDSs and periodic statements*

[RG 98](#) *Licensing: Administrative action against financial services providers*

[RG 104](#) *Licensing: Meeting the general obligations*

[RG 105](#) *Licensing: Organisational competence*

[RG 126](#) *Compensation and insurance arrangements for AFS licensees*

[RG 132](#) *Managed investments: Compliance plans*

[RG 133](#) *Managed investments and custodial or depository services: Holding assets*

[RG 148](#) *Platforms that are managed investment schemes*

[RG 149](#) *Nominee and custody services*

[RG 165](#) *Licensing: Internal and external dispute resolution*



[RG 166](#) *Licensing: Financial requirements*

[RG 175](#) *Licensing: Financial product advisers—Conduct and disclosure*

[RG 181](#) *Licensing: Managing conflicts of interest*

[RG 221](#) *Facilitating digital financial services disclosures*

[RG 245](#) *Fee disclosure statements*

[RG 246](#) *Conflicted remuneration*

## **Legislation**

*Australian Securities and Investments Commission Act 2001*

Corporations Act, Chs 5C and 6D; Pts 7.7 and 7.9; s981B

*Superannuation Industry (Supervision) Act 1993*

## **ASIC market integrity rules**

ASIC Market Integrity Rules (ASX Market) 2010, Rules 3.3.1 and 3.3.2

## **Consultation papers**

[CP 200](#) *Managed discretionary accounts: Update to RG 179*