



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 246

Conflicted and other banned remuneration

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About this guide

This guide is for Australian financial services (AFS) licensees and their representatives and other entities that must comply with the conflicted and other banned remuneration provisions in Divs 4 and 5 of Pt 7.7A of the Corporations Act.

It sets out our guidance on complying with these provisions and how we will administer them.

The provisions apply to financial product advice given to retail clients and certain benefits given in relation to life risk insurance products.

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 December 2020 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 246 *Conflicted and other banned remuneration*, issued December 2017
- Superseded Regulatory Guide 246 *Conflicted remuneration*, issued March 2013

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

The conflicted and other banned remuneration provisions in Divs 4 and 5 of Pt 7.7A of the *Corporations Act 2001* (Corporations Act) primarily aim to more closely align the interests of those who provide financial product advice (advice) with the interests of their retail clients (clients).

Division 4 prohibits conflicted remuneration, including volume-based benefits and some performance benefits for employees.

Division 5 prohibits other remuneration, such as volume-based shelf-space fees and asset-based fees on borrowed amounts.

A number of benefits are excluded from the definition of conflicted and other banned remuneration.

This guide sets out:

- our expectations for how an Australian financial services (AFS) licensee and its representatives can comply with the conflicted and other banned remuneration provisions; and
- how we will administer these provisions.

The conflicted and other banned remuneration provisions

RG 246.1 The conflicted and other banned remuneration provisions primarily aim to more closely align the interests of those who provide advice with the interests of their clients, and improve the quality of advice these clients receive.

Note 1: In this guide, we use the term ‘advice’ to mean ‘financial product advice’, as defined in s766B of the Corporations Act, and the term ‘client’ to mean ‘retail client’, as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations 2001 (Corporations Regulations).

Note 2: Unless otherwise specified, references in this guide to sections (s), divisions (Divs) and parts (Pts) are to the Corporations Act, and references to regulations (regs) are to the Corporations Regulations.

RG 246.2 Table 1 sets out the conflicted and other banned remuneration provisions and where further information on these provisions can be found in this guide.

Table 1: Conflicted and other banned remuneration provisions

Description of ban	RG 246 reference
Conflicted remuneration (Div 4 of Pt 7.7A)	
The ban on conflicted remuneration where advice is given	See Section B, Section C, Section D, Appendix 1 and Appendix 2 .
The ban on conflicted remuneration where information is given on, or dealing occurs in, a life risk insurance product	See Section B (from RG 246.46), RG 246.131–RG 246.133, RG 246.152–RG 246.154 (including Example 16), Appendix 1 and Appendix 2 .
Other banned remuneration (Div 5 of Pt 7.7A)	
The ban on volume-based shelf-space fees	See Section E.
The ban on asset-based fees on borrowed amounts	See Section F.

Conflicted remuneration

- RG 246.3 The Corporations Act prohibits:
- an AFS licensee and its representatives (including authorised representatives) from accepting conflicted remuneration (see s963E, 963G and 963H);
 - product issuers and sellers from giving conflicted remuneration to a licensee and its representatives (see s963K); and
 - an employer of a licensee or representative from giving its licensee or representative employees conflicted remuneration for work they carry out as an employee (see s963J).

Note: Collectively, these prohibitions are referred to as ‘the ban on conflicted remuneration’.

- RG 246.4 For a general discussion of the conflicted remuneration provisions, see Section B.

- RG 246.5 There are a number of benefits that are excluded from the definition of conflicted remuneration. These are set out in [Appendix 1](#) and [Appendix 2](#).

Types of conflicted remuneration

- RG 246.6 The conflicted remuneration provisions apply to two types of remuneration:
- remuneration where advice is given; and
 - remuneration where information is given on, or dealing occurs in, a life risk insurance product.

The ban on conflicted remuneration where advice is given

- RG 246.7 In the context of advice, conflicted remuneration is (unless an exclusion applies) any benefit given to an AFS licensee or its representatives who provide advice to clients that, because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence:

- (a) the choice of financial product recommended to clients by the licensee or its representatives; or
- (b) the advice given to clients by the licensee or its representatives (see s963A).

RG 246.8 A benefit is not conflicted remuneration if it only influences advice provided to wholesale clients.

RG 246.9 There is a presumption that volume-based benefits are conflicted remuneration: see Section C. Some performance benefits for employees may also be conflicted remuneration: see Section D.

Note: A volume-based benefit is one where access to the benefit or the value of the benefit is dependent on the total number or value of financial products that are recommended to clients by an AFS licensee or its representatives, or are acquired by clients to whom a licensee or its representatives provide advice.

RG 246.10 The ban on conflicted remuneration affects how an AFS licensee and its representatives are paid for the advice they give and the other benefits they receive. It does not affect how advice is provided.

The ban on conflicted remuneration where information is given on, or dealing occurs in, a life risk insurance product

RG 246.11 Certain benefits given in relation to information given on, or dealing in, a life risk insurance product (i.e. benefits given in the absence of advice) are also considered to be conflicted remuneration: see reg 7.7A.11B and RG 246.46–RG 246.49. Some of these benefits are excluded from the ban on conflicted remuneration: see [Appendix 1](#) and [Appendix 2](#).

Note: While this guide largely focuses on benefits relating to advice given to a client, many of the principles equally apply to benefits that relate to information given on, or dealing in, a life risk insurance product. For example, the principles outlined in RG 246.37–RG 246.44 about when a benefit may reasonably be expected to influence advice can also be applied when determining whether a benefit may influence the information given on, or dealing in, a life risk insurance product: see regs 7.7A.11C(1)(a) and 7.7A.11D(1)(a).

Other banned remuneration

RG 246.12 In addition to the conflicted remuneration provisions in Div 4 of Pt 7.7A, the Corporations Act prohibits other forms of remuneration that have the potential to influence the advice received by clients: see Div 5 of Pt 7.7A. The other forms of remuneration that are generally prohibited are:

- (a) a platform operator accepting a volume-based shelf-space fee from a funds manager (see Section E); and

Note: A shelf-space fee is a fee for making a funds manager's products available through a platform. It also includes a discount on an amount payable, or a rebate of an amount paid, by a platform operator to a funds manager, where the discount or rebate is for the funds manager's products being available through the platform. A fee will be volume based if it is wholly or partly dependent on the total number or value of the funds manager's financial products to which the custodial arrangement relates.

- (b) an AFS licensee or its representatives, who provide advice to a client, charging asset-based fees on borrowed amounts used to acquire financial products by, or on behalf of, the client (see Section F).

Note: An asset-based fee is a fee paid by a client for receiving advice, where that fee is dependent on the amount of funds used or to be used to acquire financial products by, or on behalf of, the client. A fee is an asset-based fee even if it is paid by a third party holding assets on behalf of the client, provided that the client directs the third party to pay the fee.

When the provisions apply

RG 246.13 Compliance with the conflicted and other banned remuneration provisions (with the exception of the ban on conflicted remuneration in relation to most life risk insurance products) was mandatory from 1 July 2013.

RG 246.14 Before 1 January 2021, under ‘grandfathering’ arrangements, the conflicted and other banned remuneration provisions generally only applied to benefits given or accepted under arrangements entered into on or after 1 July 2013, and some benefits given or accepted under arrangements entered into before 1 July 2013: see RG 246.195–RG 246.198.

Note 1: From 1 July 2012, an AFS licensee could elect to comply with the obligations in Pt 7.7A, including the conflicted and other banned remuneration provisions, by lodging a notice with ASIC. If a licensee elected to comply with Pt 7.7A before 1 July 2013, Pt 7.7A applied from the date the licensee elected to comply. This would be the ‘application day’ of Pt 7.7A for that licensee. The licensee’s representatives were also required to comply with these obligations from that date. The application day for all other licensees was 1 July 2013.

Note 2: The commencement date for the ban on conflicted remuneration relating to most life risk insurance products was 1 January 2018.

RG 246.15 Amendments to the Corporations Act by the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Act 2019* (Ending Grandfathered Conflicted Remuneration Act) ended the grandfathering arrangements for conflicted and other banned remuneration in relation to advice on 1 January 2021: see Section G.

RG 246.16 Amendments to the Corporations Regulations by the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019* (Ending Grandfathered Conflicted Remuneration Regulations) provide for a scheme under which grandfathered benefits that would otherwise have been paid as conflicted remuneration on or after 1 January 2021, but for the Ending Grandfathered Conflicted Remuneration Act, are rebated to affected clients from that date: see RG 246.199–RG 246.214.

The anti-avoidance provision

RG 246.17 There is also a ban on entering into or carrying out a scheme that is designed to avoid the application of the provisions in Pt 7.7A, including the conflicted and other banned remuneration provisions: see s965 and Section H. The anti-avoidance provision is designed to ensure that the policy intent of Pt 7.7A is not avoided through industry or transaction structuring.

How we administer the provisions

- RG 246.18 The following principles guide our approach to administering the conflicted and other banned remuneration provisions:
- (a) the provisions are designed to more closely align the interests of those who provide advice to clients with the interests of those clients; and
 - (b) this alignment of interests depends on the substance of a benefit over its form—that is, whether a benefit is one that could reasonably be expected to influence the advice or financial product recommendations is more relevant than how the benefit has been labelled or presented to the client.
- RG 246.19 We are less likely to scrutinise benefits that are designed to achieve the outcome in RG 246.18(a). When looking at the substance of a benefit over its form, we will consider the overall circumstances in which the benefit is given, in deciding whether a benefit is conflicted remuneration.

Related obligations

- RG 246.20 The conflicted and other banned remuneration provisions operate alongside other obligations in the Corporations Act that affect how advice is provided to clients. These include other obligations in Pt 7.7A, such as those set out in Table 2.
- RG 246.21 In addition, a condition of a contract, or other arrangement, is void if it seeks to waive any of the obligations under the conflicted and other banned remuneration provisions: see s960A. Disclosure, including notices and disclaimers, cannot be used by an AFS licensee or its representatives to avoid their obligations under these provisions.

Note: For more information on some of the obligations that apply when advice is provided to clients, see [Regulatory Guide 36](#) *Licensing: Financial product advice and dealing* (RG 36), [Regulatory Guide 175](#) *Licensing: Financial product advisers—Conduct and disclosure* (RG 175) and [Regulatory Guide 244](#) *Giving information, general advice and scaled advice* (RG 244).

Table 2: Other obligations in Pt 7.7A that apply when advice is provided to clients

Obligation	When do the obligations apply?	What are the obligations?
Best interests duty and related obligations (Div 2 of Pt 7.7A)	<p>These obligations apply when personal advice is provided to a client.</p> <p>Note: The person to whom these obligations apply is generally the individual who provides the personal advice. We refer to this person as the 'advice provider'.</p>	<p>An advice provider must:</p> <ul style="list-style-type: none"> act in the best interests of its clients in relation to the advice; only provide advice if, in light of the actions the advice provider should have taken to comply with the best interests duty, it is reasonable to conclude that the resulting advice is appropriate for the client; give a warning to the client if it is reasonably apparent that the advice is based on incomplete or inaccurate information about the client's objectives, financial situation or needs; and generally prioritise the interests of the client over its own interests and those of some of its related parties. <p>Complying with the best interests duty and related obligations does not affect whether the conflicted and other banned remuneration provisions have been complied with. The best interests duty and related obligations and the conflicted and other banned remuneration provisions impose separate obligations on an AFS licensee and its representatives.</p> <p>Note: For more information, see RG 175 and RG 244.</p>
Obligations when charging ongoing fees to clients (Div 3 of Pt 7.7A)	<p>These obligations apply when personal advice is provided to a client by an AFS licensee or its representatives and there is an ongoing fee arrangement between the client and the licensee or its representatives.</p>	<p>An AFS licensee and its representatives must:</p> <ul style="list-style-type: none"> give the client an annual fee disclosure statement outlining information about the fees paid and the services received by the client over the previous year; and only charge an ongoing fee if the client 'opts in' to continue the ongoing fee arrangement every two years. This opt-in requirement applies unless ASIC is satisfied that the licensee or its representatives are bound by a code of conduct that, among other things, obviates the need for complying with the opt-in requirement in the Corporations Act. <p>Note: For more information, see Regulatory Guide 245 Fee disclosure statements (RG 245).</p>

B The ban on conflicted remuneration

Key points

This section provides an overview of the ban on conflicted remuneration in Div 4 of Pt 7.7A of the Corporations Act, including:

- who and what is covered by the ban;
- what is conflicted remuneration;
- what is not conflicted remuneration; and
- what happens if the ban is breached.

Who and what is covered by the ban?

RG 246.22 Division 4 of Pt 7.7A of the Corporations Act prohibits:

- (a) an AFS licensee and its representatives (including authorised representatives) from accepting conflicted remuneration (see s963E, 963G and 963H);
- (b) product issuers and sellers from giving conflicted remuneration to a licensee and its representatives (see s963K); and
- (c) an employer of a licensee or representative from giving its licensee or representative employees conflicted remuneration for work they carry out as an employee (see s963J).

RG 246.23 An AFS licensee will breach s963E if one of its representatives, other than an authorised representative, accepts conflicted remuneration and the licensee is the responsible licensee.

RG 246.24 An AFS licensee must also take reasonable steps to ensure that its representatives do not accept conflicted remuneration: see s963F. We expect that a licensee's processes and procedures for monitoring and supervising its representatives will allow the licensee to determine whether its representatives are accepting conflicted remuneration, and to take appropriate action if this occurs.

Note: An AFS licensee has an obligation to take reasonable steps to ensure that its representatives comply with the financial services laws: see s912A(1)(ca). For more information, see [Regulatory Guide 104 AFS licensing: Meeting the general obligations](#) (RG 104).

RG 246.25 The ban on conflicted remuneration therefore applies to a range of benefits, including those that are received by:

- (a) an AFS licensee; and
- (b) an authorised representative or other representative of a licensee, which includes benefits passed on by:

- (i) a licensee on whose behalf the representative acts; or
- (ii) an authorised representative employing a representative, if they both act on behalf of the same licensee.

What is conflicted remuneration?

- RG 246.26 Unless an exclusion applies, conflicted remuneration is any benefit given to an AFS licensee or its representatives that provide advice to clients that, because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence:
- (a) the choice of financial product recommended to clients by the licensee or its representatives; or
 - (b) the advice given to clients by the licensee or its representatives (see s963A).
- RG 246.27 In addition, some benefits in relation to life risk insurance products are considered to be conflicted remuneration, even when they do not meet this test: see RG 246.46–RG 246.49.

Monetary and non-monetary benefits

- RG 246.28 The ban on conflicted remuneration applies to a range of benefits that may be monetary or non-monetary. Non-monetary benefits could take a number of forms, including the following:
- (a) free or subsidised business equipment or services (e.g. computers and other hardware, software, information technology support and stationery);
 - (b) hospitality-related benefits (e.g. tickets to sporting events or concerts and subsidised travel);
 - (c) shares or other interests in a product issuer or AFS licensee;
 Note: Whether shares or other interests in a product issuer or licensee are conflicted remuneration is discussed at RG 246.120–RG 246.125.
 - (d) marketing assistance; and
 - (e) promotion or other ways of recognising an employee based on product recommendations or sales.
 Note: This is not intended to be an exhaustive list.
- RG 246.29 These benefits will not always be conflicted remuneration. Whether a benefit, including a non-monetary benefit, is conflicted remuneration is discussed further later in this section and in Section C and Section D.

Advice to clients

RG 246.30 The ban on conflicted remuneration applies when advice is given to clients, regardless of the channel used to communicate the advice. For example, the provisions apply to advice that is provided verbally, in paper-based format, or online.

RG 246.31 ‘Advice’ (i.e. ‘financial product advice’) is a recommendation or a statement of opinion, or a report of either of these things, that:

- (a) is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or
- (b) could reasonably be regarded as being intended to have such an influence (see s766B).

RG 246.32 It includes both general advice and personal advice. It also includes class of product advice: see s989B(4), which is notionally inserted by reg 7.8.12A.

Note: For a discussion of the distinction between general advice and personal advice, see [RG 36](#), [RG 175](#) and [RG 244](#).

RG 246.33 The Corporations Act contains a general definition of what a financial product is (see s763A), followed by a list of specific inclusions (see s764A) and a list of overriding exclusions (see s765A).

RG 246.34 Platforms that are investor directed portfolio services (IDPSs) and IDPS-like schemes are financial products under the Corporations Act because they are managed investment schemes. Another example of a managed investment scheme is a managed discretionary account.

RG 246.35 The provisions in the Corporations Act relating to advice, including the ban on conflicted remuneration, therefore apply when giving advice about:

- (a) using platforms and managed discretionary accounts; and
- (b) acquiring financial products through platforms.

Note: For more information on the regulation of platforms that are managed investment schemes, see [Regulatory Guide 148](#) *Platforms that are managed investment schemes and nominee and custody services* (RG 148).

RG 246.36 ‘Advice’ includes advice to establish, or use, a self-managed superannuation fund (SMSF) to purchase real property.

Influence the advice

RG 246.37 A benefit will be conflicted remuneration if it could be expected to influence the advice given.

RG 246.38 Whether a benefit is capable of doing this depends on the nature of the benefit or the circumstances in which it is given or accepted.

Evaluating the substance of the benefit

- RG 246.39 In deciding whether a benefit is conflicted remuneration, we will look at the substance of a benefit over its form, and consider the overall circumstances in which the benefit is given or accepted. This includes how an AFS licensee's or its representative's business is structured, the type of advice they provide and the types of products to which the advice relates.
- RG 246.40 This means, for example, that if a benefit is conflicted remuneration, doing the following does not change this fact:
- (a) stating in documentation that a benefit is not intended to influence the advice given; or
 - (b) renaming the conflicted remuneration as a form of remuneration that is not prohibited by the Corporations Act—for example, renaming a commission from a product issuer as an 'asset-based fee', even though the fee continues to be paid by the product issuer to the AFS licensee.
- RG 246.41 In forming our view about whether a benefit is conflicted remuneration, we will look at a range of factors, including:
- (a) how the AFS licensee or its representatives gain access to the benefit;
 - (b) who is giving the benefit;
 - (c) when the benefit is given or accepted;
 - (d) what reasonably appears to be the likely reason for the benefit being given;
 - (e) how the value of the benefit is determined; and
 - (f) what the benefit is and its features.
- RG 246.42 A benefit may be conflicted remuneration if it could reasonably be expected to influence an AFS licensee or its representatives in giving advice recommending that clients acquire financial products or increase their interest in a financial product, rather than providing them with strategic advice, such as retirement planning advice or advice on wealth accumulation strategies. This is because conflicted remuneration includes benefits that, because of their nature or the circumstances in which they are given, could reasonably be expected to influence the advice given to clients by a licensee or its representatives: see s963A(b).
- RG 246.43 This means that it is possible for a product-neutral benefit—that is, a benefit that is the same regardless of which financial products a client acquires—to be conflicted remuneration if it could reasonably be expected to influence the advice provided and it is not excluded from the ban on conflicted remuneration.

Note: For more information on providing non-product-specific personal advice, see [RG 175](#).

RG 246.44 We are less likely to scrutinise benefits that are designed to more closely align the interests of those who provide advice to clients with the interests of their clients.

Examples of conflicted remuneration

RG 246.45 The following are examples of benefits that are generally conflicted remuneration:

- (a) commissions (whether upfront or trailing, fixed or variable) paid by a product issuer to an AFS licensee (whether the payment is made directly or through some other arrangement);

Note: Commissions relating to life risk insurance products are excluded in certain circumstances: see [Appendix 2](#).
- (b) volume-based payments from a platform operator to a licensee;
- (c) volume-based payments from a licensee to an authorised representative or other representative;
- (d) volume-based bonuses and other payments, such as a commission or one-off payment, to a financial adviser, which are calculated by reference to the number or value of financial products acquired by clients following the advice of the financial adviser. The payment could be made by:
 - (i) the financial adviser's licensee;
 - (ii) a platform operator; or
 - (iii) a product issuer; and
- (e) a discount on the fees paid by an authorised representative to its licensee based on client funds held in a particular financial product.

Example 1: Sponsorship of conferences and soft dollar benefits (conflicted remuneration)

Scenario 1

An AFS licensee, whose representatives advise on a range of financial products from different product issuers, organises a conference for its representatives. The licensee invites product issuers to pay a substantial sponsorship fee in return for attending the conference and presenting information about their financial products.

Scenario 2

A group of financial advisers is invited to attend an overseas conference organised by a product issuer. The invitation includes complimentary business class flights, five-star accommodation and a networking dinner from the product provider to the financial advisers.

Commentary

The test for determining whether the benefits provided in either scenario are conflicted remuneration is whether those benefits could reasonably be expected to influence the choice of financial products recommended or advice given. This depends on a number of factors, including:

- the nature of the benefit and how generous it is; and
- what a reasonable person would consider to be the purpose of the person soliciting or giving the benefit (regardless of the actual purpose of the person soliciting or giving the benefit).

The definition of conflicted remuneration in s963A is objective and it does not matter if the benefits actually do influence the advice given by the advisers.

Both these examples are likely to breach the ban on conflicted remuneration.

Example 2: Financial adviser receiving commissions from a property developer (conflicted remuneration)

Scenario

A financial adviser has an arrangement with a property developer. Each time one of the adviser's SMSF clients purchases a property from the developer, the developer pays a commission to the adviser. The adviser regularly provides advice to clients recommending that they establish an SMSF in order to invest in property using their superannuation money.

Commentary

The commissions paid to the adviser by the property developer are likely to breach the ban on conflicted remuneration. This is because, in the circumstances in which the commissions are paid, they could reasonably be expected to influence the adviser to recommend that its clients establish an SMSF, or use an existing SMSF, to invest in property when the adviser might not otherwise do so.

Benefits relating to life risk insurance products

RG 246.46

The ban on conflicted remuneration has applied to benefits relating to advice on a life risk insurance product since 1 January 2018. An exclusion applies to this ban if certain conditions are met (i.e. commission caps and clawback arrangements): see [Appendix 2](#). An exclusion also applies if the benefit relates to a life risk insurance product acquired or issued in the following circumstances:

- the product was issued before 1 January 2018 (see s1549B(2)(a));
- the application for the issue of the life risk insurance product was made before 1 January 2018 and the policy was issued by 31 March 2018 (see s1549B(2)(b));

- (c) a person held a life risk insurance product immediately before 1 January 2018 and the person then acquires another life risk insurance product after this day due to exercising an option under the first product (see reg 7.7A.16H(2)); or
- (d) a person held a life risk insurance product immediately before 1 January 2018 and the product is cancelled due to an administrative error and the person then acquires another life risk insurance product as a result (see reg 7.7A.16H(2)).

RG 246.47 The following benefits relating to life risk insurance products issued from 1 January 2018 are also considered to be conflicted remuneration:

- (a) a benefit given to an AFS licensee or its representatives that relates to information given to a person about a life risk insurance product where access to the benefit, or the amount of the benefit, is dependent on the value or number of life risk insurance products subsequently acquired or varied by the person to whom the information was given (see reg 7.7A.11B(1)); and
- (b) a benefit given to an AFS licensee or its representatives in relation to dealing in a life risk insurance product with a client where access to the benefit, or the value of the benefit, is dependent on the value or number of life risk insurance products to which the dealing relates (see reg 7.7A.11B(2)).

Note 1: RG 246.47(a) does not apply to information given in the course of giving advice, or information given, to a wholesale client. RG 246.47(b) does not apply to dealing that occurs in the course of giving advice or information to, or dealing with, a wholesale client.

Note 2: [Appendix 1](#) and [Appendix 2](#) set out the exclusions that apply to these benefits.

RG 246.48 The Explanatory Statement to the Corporations Amendment (Life Insurance Remuneration Arrangements) Regulations 2017 provides that:

These benefits will be considered to be conflicted remuneration even if the benefit could not be reasonably expected to influence the choice of financial product or the financial product advice given to a retail client. This regulation is intended to ensure that all benefits linked to the sale of life risk products (not just benefits linked to the provision of financial product advice) are captured by the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017* (p. 4).

RG 246.49 If the benefit relates to multiple activities (i.e. advice, information and/or dealing), the ban on conflicted remuneration only applies to one activity. The ban relating to advice is the primary ban, followed by information and then dealing: see reg 7.7A.11B(1)(d) and 7.7A.11B(2)(c).

Example 3: Distribution of life risk insurance products**Scenario**

A life insurer has an arrangement with a distributor, who is an AFS licensee. The distributor receives a benefit each quarter from the life insurer, which is based on the volume of life risk insurance products sold by the distributor.

The distributor's sales staff sell the life insurer's products to customers over the telephone. The sales staff give information to customers about the life risk insurance products they are selling. They do not provide advice.

Commentary

As the benefits paid by the life insurer to the distributor are volume based and relate to information given on a life risk insurance product, they are conflicted remuneration because of reg 7.7A.11B(1), unless an exclusion applies.

What is not conflicted remuneration?

- RG 246.50 There are a range of benefits that the ban on conflicted remuneration does not apply to, including:
- (a) where the benefit is given in relation to a life risk insurance product, benefits given in the circumstances set out at RG 246.46 (e.g. for policies issued before 1 January 2018);
 - (b) benefits specifically excluded from the ban on conflicted remuneration (see RG 246.51–RG 246.78, [Appendix 1](#) and [Appendix 2](#));
 - (c) benefits that do not influence advice (see RG 246.83–RG 246.89); and
 - (d) where the benefit is given in relation to information given on, or dealing in, a life risk insurance product, benefits that do not influence these services (see RG 246.84 and [Appendix 1](#)).

Specific exclusions

- RG 246.51 [Appendix 1](#) and [Appendix 2](#) set out the benefits that are specifically excluded from being conflicted remuneration. These benefits are excluded regardless of whether or not they are volume based. Some of these specific exclusions are also set out below.

Benefits given by the client

- RG 246.52 A monetary or non-monetary benefit is not conflicted remuneration if it is given by a client in relation to:
- (a) the issue or sale of a financial product by the AFS licensee or its representative to the client (see s963B(1)(d)(i) and 963C(e)(i));

- (b) advice given to the client by the AFS licensee or its representative (see s963B(1)(d)(ii) and 963C(e)(ii));
- (c) information that is given to the client in relation to a life risk insurance product in the course of providing a financial product (see regs 7.7A.11C(1)(d) and 7.7A.11C(2)(d)); or
- (d) dealing in a life insurance product (see regs 7.7A.11D(1)(d) and 7.7A.11D(2)(e)).

RG 246.53 The Revised Explanatory Memorandum to the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012 (2012 Revised Explanatory Memorandum) describes the rationale for the exclusion in the context of a monetary fee paid by the client:

The provision is intended to exclude from the definition of conflicted remuneration any fee for service paid by the retail client, whether the benefit is given directly by the retail client or is given by another party at the direction, or with the clear consent, of the retail client (paragraph 2.27).

RG 246.54 The benefit may be given directly by the client or by another party on behalf of the client if the client has authorised the benefit and if the client has used their own funds to give the benefit.

RG 246.55 If the benefit forms part of an ongoing fee arrangement, the adviser must give the client a fee disclosure statement in relation to the arrangement: see [RG 245](#).

Authorised by the client

RG 246.56 When a benefit is given by another party on behalf of the client, that benefit must be ‘authorised’ by the client. This is because the Corporations Act states that a reference to doing an act, such as giving a benefit to an AFS licensee or its representatives, includes authorising the act to be done: see s52.

RG 246.57 We will administer the law on the basis that a benefit has been authorised by a client if the benefit is given at the client’s direction or with their clear consent.

RG 246.58 In our view, consent is ‘clear’ if it is genuine, express and specific. Mere knowledge of the benefit, or agreement to proceed with financial services in light of a disclosure about the benefit, is not clear consent.

RG 246.59 A client will not be considered to have given clear consent if the consent was not clearly and expressly sought. For example, where consent has been sought as part of a broad range of terms and conditions agreed by the client in aggregate rather than in a separate and distinct section of the terms and conditions, clear consent would not have been provided.

RG 246.60 If a client has withdrawn their consent to the benefit, the exclusions in RG 246.52 will cease to apply.

Client's own funds

- RG 246.61 For the exclusions in RG 246.52 to apply, the benefit must also have been given by the client using the client's own funds. Benefits given by third parties that are borne out of their own funds are not benefits given by the client.
- RG 246.62 Below are some examples of benefits that are not covered by the exclusions in s963B(1)(d) and 963C(e).

Example 4: Benefits that are not covered by the exclusions in s963B(1)(d) and 963C(e) (conflicted remuneration)
Scenario 1

Payments are made to a financial adviser by a responsible entity or platform operator from fees received by the responsible entity for operating a registered managed investment scheme (registered scheme) or by the platform operator for administering a platform. These are a benefit given by the responsible entity or platform operator out of their fees.

Scenario 2

Payments are made to a financial adviser by a margin lender from interest the margin lender charges and receives from its loan holders. These are a benefit given by the margin lender out of the interest the lender receives.

Commentary

Both these examples are *not* a benefit given by the client, even if consented to by the client.

- RG 246.63 As with other third parties, trustees of registrable superannuation entities and responsible entities of registered schemes may, with the client's consent, direct the client's funds to an AFS licensee or its representatives.
- RG 246.64 When doing so, trustees and responsible entities should consider their obligations under financial services laws if a client purports to direct or authorise them to pay a benefit out of the client's interest in the superannuation fund or registered scheme: see the note at the end of s963B(1) and paragraph 3.65 of the Revised Explanatory Memorandum to the Corporations Amendment (Financial Advice Measures) Bill 2016.

Passing on client benefits

- RG 246.65 Subject to RG 246.66, we consider that this exclusion applies when a benefit is given by a client to an AFS licensee and:
- (a) the licensee subsequently passes on the benefit, or a portion of the benefit, to one of its authorised representatives or other representatives; or
 - (b) the licensee passes on the benefit, or a portion of the benefit, to an authorised representative, and the authorised representative passes on the benefit, or a portion of the benefit, to another representative of the licensee (e.g. an employee of the authorised representative).

RG 246.66 However, the exclusion will only apply if the client has authorised passing on the benefits in this way, and no AFS licensee or authorised representative that passes on a benefit has discretion over the portion of the benefit that is passed on. If a licensee or its representatives have this discretion, we do not consider that the benefit has been given at the client's direction or with their clear consent: see RG 246.56–RG 246.60.

Example 5: Fees agreed through an application form (not conflicted remuneration)

Scenario

A product issuer issues financial products to clients through a third party AFS licensee whose representatives provide personal advice and general advice to clients.

The application form for the product provides space for the client, or the AFS licensee on behalf of the client and with the client's specific authority, to indicate the fee the client has agreed that the licensee will receive for any advice provided. Before the client signs the application form, the representative of the licensee tells the client that they are authorising the licensee to receive the fees set out in the application form.

The application form states that the fee paid by the client to the AFS licensee will be collected by the product issuer as agent of the licensee. The fee will then be sent by the product issuer to the licensee. The form also includes a section for the licensee to consent to this arrangement.

Commentary

We consider that the exclusion in s963B(1)(d)(ii) for fees given by a client applies to the fee collected by the product issuer and passed on to the AFS licensee. The client has specified the fee and authorised the product issuer to collect the fee from the client on behalf of the licensee. Therefore, the fee is not conflicted remuneration.

Example 6: Benefits given to an authorised representative (not conflicted remuneration)

Scenario

An authorised representative is self-employed as a financial adviser and gives advice to clients.

Clients pay fees to the AFS licensee for the advice the representative provides to the client on behalf of the licensee. These fees are a combination of flat fees (e.g. \$2,000) and asset-based fees.

The AFS licensee passes 80% of all fees received from the client to the authorised representative.

The authorised representative also employs three other financial advisers who are representatives of the AFS licensee.

Commentary

The following benefits are not conflicted remuneration:

- the fees received by the AFS licensee from the client;
- the portion of the fees from the client that the licensee passes on to the authorised representative, provided that the client has authorised this and the licensee has no discretion over the portion of the benefit that is passed on; and
- any fee the authorised representative passes on to representatives of the licensee that they employ, provided that the client has authorised this and the authorised representative has no discretion over the portion of the benefit that is passed on.

These benefits are excluded from the ban on conflicted remuneration because they are given by a client for the provision of advice: see s963B(1)(d)(ii) and RG 246.52–RG 246.66.

'Buyer of last resort' arrangements

RG 246.67 Arrangements for the purchase of a financial advice business in the future are sometimes called 'buyer of last resort' arrangements.

RG 246.68 A monetary benefit (purchase price) payable for a financial advice business is not conflicted remuneration to the extent that:

- (a) the benefit is given to an AFS licensee or its representative;
- (b) the benefit is paid as part of the purchase or sale of all or part of the licensee's or representative's financial advice business; and
- (c) the price of the financial advice business is calculated using a formula:
 - (i) which is based, in whole or in part, on the number or value of all or part of the financial products held by the licensee's clients or the representative's clients; and
 - (ii) in which the weighting attributed to the financial products issued by the licensee, a related body corporate, or other person is the same as the weighting attributed to other similar financial products (see reg 7.7A.12EA).

Note: Similar exclusions apply when a monetary benefit is given to an AFS licensee or its representative as part of the purchase or sale of all, or part of, the licensee's or representative's business in relation to information on, or dealing in, a life risk insurance product. See [Appendix 1](#) for further information.

RG 246.69 We consider that financial products are similar if they perform broadly the same function. Whether financial products are similar depends on the circumstances.

RG 246.70 In particular, we will scrutinise arrangements where different weightings are attributed to different financial products so that products issued by a particular issuer or issuers, or issuers in a particular corporate group or groups, are given more weight.

RG 246.71 If this exclusion, or another exclusion from the ban on conflicted remuneration, does not apply to the purchase or sale of an AFS licensee's or representative's financial advice business, the agreement to purchase at the relevant price may be conflicted remuneration if it could reasonably be expected to influence advice given to a client.

Benefits with a small value

RG 246.72 A non-monetary benefit is not conflicted remuneration if its value is less than \$300 for each AFS licensee or its representative that is the final recipient of the benefit, and identical or similar benefits are not given on a frequent or regular basis: see s963C(b) and reg 7.7A.13.

Note: Similar exclusions apply when the benefit relates to information on, or dealing in, a life risk insurance product. See [Appendix 1](#) for further information.

RG 246.73 If a benefit is given to an AFS licensee and the licensee passes on this benefit to a representative, the representative is the final recipient of the benefit. If the licensee keeps half of a benefit and passes on the other half to a representative, the licensee is the final recipient of half of the benefit and the representative is the final recipient of the other half.

RG 246.74 The \$300 limit applies to a non-monetary benefit given in a single event, taking into account that the exclusion will not apply if identical or similar benefits are given on a frequent or regular basis.

RG 246.75 An AFS licensee must keep records of non-monetary benefits with a value of between \$100 and \$300 that are given to the licensee or any of its representatives: see reg 7.8.11A.

RG 246.76 We use the amounts in regs 7.7A.13 and 7.8.11A as a guide in considering when we are more likely to scrutinise a monetary benefit to determine whether it is conflicted remuneration.

RG 246.77 Accordingly, we are more likely to scrutinise monetary benefits to determine whether they are conflicted remuneration if:

- (a) for benefits that are given on a frequent or regular basis:
 - (i) the value of each benefit is over \$100; and
 - (ii) the combined value of all benefits is greater than \$300 for each AFS licensee or representative that is the final recipient of the benefit; or
- (b) for benefits that are not given on a frequent or regular basis, the value of the benefit is greater than \$300 for each licensee or representative that is the final recipient of the benefit.

RG 246.78 We consider the benefits in RG 246.77 are more likely to influence the advice given.

Passing on excluded benefits

- RG 246.79 When an excluded benefit is passed on, or reflected in a benefit given to another AFS licensee or its representatives that provide advice to clients, this is a separate benefit. This is because the circumstances in which the separate benefit is given are different from the circumstances in which the excluded benefit was given.
- RG 246.80 The separate benefit does not automatically continue to be excluded from the ban on conflicted remuneration. It is only excluded if it satisfies the conditions of an exclusion, or could not reasonably be expected to influence the advice provided by the AFS licensee or its representatives that receive the benefit.
- RG 246.81 For example, asset-based fees paid by clients to an AFS licensee for advice provided by a representative on behalf of the licensee are excluded from being conflicted remuneration: see s963B(1)(d)(ii). However, this does not necessarily mean that a performance benefit or other benefit paid by the licensee to the representative, based on the increase in asset-based fees paid by the representative's clients, is excluded from the ban on conflicted remuneration.
- RG 246.82 If no exclusion applies, the performance benefit or other benefit will be conflicted remuneration if it could reasonably be expected to influence the advice provided by the representative: see Example 15.

Benefits that do not have an influence

- RG 246.83 Benefits that do not influence advice are not conflicted remuneration. RG 246.85–RG 246.89 provide examples of benefits that generally do not influence advice.
- RG 246.84 Some benefits relating to information given on, or dealing in, a life risk insurance product are also considered to be conflicted remuneration: see RG 246.46–RG 246.49. Benefits relating to information given on, or dealing in, a life risk insurance product are not conflicted remuneration if they could not reasonably be expected to influence:
- (a) whether the AFS licensee or its representative gives information to a person or deals in a life risk insurance product; or
 - (b) the way in which the licensee or its representative presents the information about, or deals in, a life risk insurance product (see regs 7.7A.11C(1)(a) and 7.7A.11D(1)(a)).

Note: The examples in RG 246.85–RG 246.89 and the principles in Section C and Section D are also relevant when determining whether a benefit may influence the information given, or dealing in, a life risk insurance product.

Salary

RG 246.85 Salary given to an AFS licensee or its representatives is generally not conflicted remuneration.

Note: For a situation where a salary increase could be conflicted remuneration, see Example 15.

RG 246.86 This includes salary paid by an employer that is:

- (a) an AFS licensee who pays an employee that is an authorised representative or other representative; and
- (b) an authorised representative who pays an employee that is a representative.

RG 246.87 Specifically, the base salary given to such an employee is not conflicted remuneration if neither the level nor a component of the base salary or salary increases could reasonably be expected to influence the advice given.

RG 246.88 An employee's salary is generally conflicted remuneration if it is calculated by reference to the number or value of financial products recommended by the employee to clients. Guidance on salary and the ban on conflicted remuneration is set out in Section D.

Licensees paying for a representative's business expenses

RG 246.89 Benefits provided by an AFS licensee to its representatives (including authorised representatives) to cover business expenses incurred in providing advice on behalf of the licensee are generally not conflicted remuneration (e.g. business equipment such as telephones, desks and chairs), particularly where they are purchased for market value. However, this applies only if the availability of these resources:

- (a) does not depend on a factor that could reasonably be expected to influence the advice given by the AFS licensee or its representatives; or
- (b) is covered by an exclusion from the ban on conflicted remuneration.

What happens if the ban is breached?

RG 246.90 The consequences of breaching the ban on conflicted remuneration are set out in Table 3.

Table 3: Consequences of breaching the ban on conflicted remuneration

Person	Consequence of breach
AFS licensee	Civil penalty or administrative sanctions (e.g. a licence suspension or cancellation)
Authorised representative	<p>Civil penalty, except where:</p> <ul style="list-style-type: none"> the AFS licensee provides the authorised representative with information about the nature of the benefit to be accepted by the authorised representative; at the time the authorised representative accepts the benefit, it is not aware that the benefit is conflicted remuneration because the representative is acting in reliance on that information; and the representative's reliance on that information is reasonable (see s963G(2)) <p>Administrative sanctions (e.g. a banning order)</p>
Other representative	<p>Administrative sanctions (e.g. a banning order)</p> <p>Note: Section 963H does not prohibit a representative that is not an authorised representative from accepting conflicted remuneration from their employer. However, the employer will be liable for a civil penalty if it gives an employee conflicted remuneration for the work they carry out: see s963J.</p>
Employer of an AFS licensee or its representatives	Civil penalty or administrative sanctions
Product issuers and sellers that do not hold an AFS licence	Civil penalty

Onus of proof

RG 246.91 It is generally the party claiming that the ban on conflicted remuneration has been breached that bears the onus of proving that a benefit is conflicted remuneration. However, where the presumption that volume-based benefits are conflicted remuneration applies, the onus is on the person who is responding to a claim that they have breached the ban to show why giving or accepting the volume-based benefit is not conflicted remuneration.

Note: For more information on volume-based benefits, see Section C.

Other obligations

RG 246.92 Other obligations in the Corporations Act apply when personal advice is given to a client—for example, the best interests duty and related obligations in Div 2 of Pt 7.7A, and the requirement to give a Statement of Advice (SOA) in Pt 7.7. These requirements operate alongside the ban on conflicted remuneration and apply even if a benefit is excluded from the ban.

Note: For more information on the best interests duty and related obligations, see Table 2, [RG 175](#) and [RG 244](#). For more information on providing an SOA, see [RG 175](#).

RG 246.93 In addition to these obligations, an AFS licensee must have in place adequate arrangements to manage conflicts of interest that may arise in relation to activities undertaken by the licensee or its representatives: see s912A(1)(aa). This is particularly relevant where a benefit is excluded from the ban on conflicted remuneration. Some benefits that are excluded from the ban can create conflicts of interest for a licensee and/or its representatives.

Note: For more information on complying with the conflicts management obligation in s912A(1)(aa), see [Regulatory Guide 181](#) *Licensing: Managing conflicts of interest* (RG 181).

Example 7: Brokerage-based payments

Scenario

An advice provider is a representative of a trading participant in a prescribed financial market. The percentage of the brokerage fees paid to the advice provider by the trading participant, who is its employer, is calculated by reference to the provider's annualised brokerage earned, and this is calculated on a quarterly basis.

The advice provider realises that, with two days remaining before the end of the quarter, they are very close to earning enough brokerage for their firm to increase their proportion of the brokerage retained. The advice provider calls various clients and gives personal advice to each of them that their equities portfolios could benefit from some rebalancing towards listed energy stocks that have been appearing in the media lately. However, the advice provider does not conduct an investigation into these clients' current relevant circumstances.

Three of the advice provider's clients agree that they have not looked at their portfolio in some time and, based on the advice provider's advice, decide that they would like to diversify into energy-related equities.

The advice provider disposes of some of the holdings of each client and replaces them with energy-related equities, as agreed. In doing this, the advice provider increases its own brokerage for the quarter, which moves it into a new remuneration band.

Commentary

Because of the exclusion in reg 7.7A.12D, the brokerage earned by the advice provider is not conflicted remuneration: see [Appendix 1](#).

However, the advice provider is in breach of its obligations in Div 2 of Pt 7.7A. The advice provider, in their efforts to move to a higher remuneration bracket, is advising clients to rebalance their share portfolio. Among other things, the advice provider has not considered or investigated the clients' objectives, financial situation and needs.

In this situation, the advice provider is in breach of the best interests duty in s961B and the obligation to prioritise the clients' interests in s961J. It is also likely to be in breach of the appropriate advice requirement in s961G.

C Volume-based benefits

Key points

Under Div 4 of Pt 7.7A of the Corporations Act, volume-based benefits that are wholly or partly dependant on the total number or value of financial products recommended to or acquired by clients are presumed to be conflicted remuneration: see s963L.

Factors to consider in showing that a volume-based benefit is not conflicted remuneration include the connection of the benefit to the advice, how to access the benefit, the value of the benefit and the content of the advice.

This section considers situations where volume-based benefits are:

- passed on to representatives of an AFS licensee;
- given as part of a 'white label' stockbroking arrangement;
- given to a licensee that is also a product issuer; and
- given as part of an equity arrangement.

We have taken a 'no-action' position on management and administration fees accepted by product issuers. This applies if the product issuer does not give personal advice about products that it issues or about products of the same class, or where a registrable superannuation entity accepts management or administration fees that may be charged under the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

We have provided guidance that:

- in some circumstances, a volume-based benefit may not be conflicted remuneration if it is passed on to the client; and
- we are less likely to scrutinise a benefit that is not passed on by an AFS licensee to the individual representatives who provide advice if certain controls are in place.

Volume-based benefits and conflicted remuneration

RG 246.94 There is a presumption that volume-based benefits are conflicted remuneration: see s963L. A benefit is volume based if access to the benefit or the value of the benefit is wholly or partly dependent on the total number or value of financial products:

- (a) recommended to clients by an AFS licensee or its representatives; or
- (b) acquired by clients to whom a licensee or its representatives provide advice.

Note 1: A non-volume-based benefit may also be conflicted remuneration if it could reasonably be expected to influence the advice given. This is not covered by the presumption in s963L.

Note 2: The presumption in s963L also applies to volume-based benefits in relation to advice on life risk insurance products, unless an exclusion applies.

- RG 246.95 A benefit may be a volume-based benefit if, for example, it is:
- (a) calculated as a fixed percentage (e.g. 1%) of all client funds invested in financial products based on the recommendations of a representative;
 - (b) calculated based on a sliding scale, such as:
 - (i) 0.5% for the first \$10 million in client funds invested based on the recommendations of a representative;
 - (ii) 0.75% for amounts over \$10 million and less than \$20 million; and
 - (iii) 1% for amounts over \$20 million; or
 - (c) a flat fee which will only be paid if a threshold based on the number or value of financial products recommended by an AFS licensee or its representatives or acquired by their clients is met—for example, a \$12,000 bonus that is only paid if client funds in a particular financial product exceed \$20 million.
- RG 246.96 In these cases, either the value of or access to the benefit is dependent on the total value of financial products acquired, based on the recommendations of an AFS licensee or its representatives.
- RG 246.97 Some asset-based fees paid by clients are a volume-based benefit. However, the fee will not be conflicted remuneration if an exclusion applies, such as the exclusion for benefits given by the client in s963B(1)(d)(ii).
- RG 246.98 It is up to the party seeking to prove that a volume-based benefit is not conflicted remuneration to rebut the presumption and show that the benefit is not one that could reasonably be expected to influence the advice.

Example 8: White label arrangements (conflicted remuneration)

Note: A 'white label' arrangement for a platform is an arrangement where an AFS licensee enters into contractual arrangements with a platform operator to rebrand the platform operator's platform to make it appear as its own—that is, the platform is 'badged' or 'promoted' by the licensee.

Scenario 1

A platform operator provides a white label platform to an AFS licensee that labels the platform as its own. The sub-plans on the platform are the same as the sub-plans the platform operator uses for white label arrangements it has with other licensees.

The client pays the platform operator a bundled fee for administration services provided by the platform operator and promotion and distribution services provided by the AFS licensee. This fee is split between the platform operator and the licensee.

Scenario 2

A responsible entity provides a white label registered scheme to an AFS licensee that labels the scheme as its own.

The client pays the responsible entity a bundled fee for administration services provided by the responsible entity and promotion and distribution services provided by the AFS licensee. This fee is split between the responsible entity and the licensee.

Commentary

In both scenarios, to the extent that the share of the fee between the platform operator or responsible entity and the AFS licensee is volume based, any volume-based margin accessed by the licensee would be presumed to be conflicted remuneration.

Example 9: Benefits given to an authorised representative (conflicted remuneration)

Scenario

An authorised representative is self-employed as a financial adviser and provides advice to clients.

One of the products on which the authorised representative gives advice is the preferred platform of the AFS licensee that authorises the authorised representative to provide advice on the licensee's behalf.

The authorised representative pays the AFS licensee a 'licensee fee' every quarter for the services the licensee provides to the authorised representative (e.g. compliance support). This fee is offset against the money the licensee pays the authorised representative for the revenue the authorised representative generates.

If client funds held in products that are available through the preferred platform increase by \$4 million in a quarter, the AFS licensee will waive the licensee fee for that quarter.

Commentary

The fee waiver is volume based and is presumed to be conflicted remuneration.

Rebutting the presumption in s963L

- RG 246.99 The presumption in s963L could be rebutted by showing that, for example:
- (a) the value of the benefit is not significant enough that it could reasonably be expected to influence the advice given to a client; or
 - (b) how the benefit is accessed could not reasonably be expected to influence the advice given to a client.

- RG 246.100 Whether the presumption can be rebutted needs to be assessed objectively, based on the circumstances as a whole. Considerations that may be relevant include:

- (a) the connection between the benefit and the advice that is provided to clients;

- (b) how often the AFS licensee or its representatives who receive the benefit provide advice to clients;
- (c) the value of the benefit, including relative to the total remuneration of the licensee or its representatives;
- (d) what a licensee or its representatives need to do to access the benefit;
- (e) the content of the advice; and
- (f) who is advantaged by the benefit.

Examples of volume-based benefits

RG 246.101 Set out below are examples of volume-based benefits and whether the presumption in s963L may be rebutted in those circumstances.

Note: In some situations, an AFS licensee or its representatives may be able to show that a performance benefit that is volume based is not conflicted remuneration: see Section D.

Benefits that are passed on to the client

RG 246.102 Some AFS licensees and representatives—typically, authorised representatives—receive volume-based benefits and pass on the whole amount to their clients. We think it is unlikely that the benefit is conflicted remuneration if:

- (a) it is promptly passed on to the client (as soon as practicable but no later than three months after receiving the benefit) by the licensee or its representatives that accept the benefit; and
- (b) the licensee or its representatives accept the benefit on the condition that it will be passed on to the client.

RG 246.103 In this situation, the benefit is unlikely to influence the advice provided.

RG 246.104 In many cases, a product issuer or seller may be able to satisfy itself that it is not giving an AFS licensee or its representatives conflicted remuneration if:

- (a) the benefit is given on the condition that it is passed on in its entirety to the client; and
- (b) a product issuer reasonably believes the benefit will be passed on.

Benefits that are not passed on to the adviser

RG 246.105 Some AFS licensees receive benefits, which are often volume based, from platform operators and other product issuers but do not pass on these benefits, or any portion of them, to the individual representatives who provide the advice to clients.

- RG 246.106 Instead, the AFS licensee uses the benefit to pay for its operating expenses. It may also pass on a portion of the benefit to an authorised representative to help pay for the authorised representative's operating expenses. The authorised representative does not pass on this benefit to individual representatives who provide the advice to clients.
- RG 246.107 When this occurs, we are less likely to scrutinise the benefit under the ban on conflicted remuneration if there are controls in place to ensure that the benefit does not influence the advice given by representatives of the AFS licensee.

Note: For information on implementing and maintaining policies in the context of conflicts management arrangements, see [RG 181](#). For more information on how the ban on conflicted remuneration applies to non-monetary benefits (e.g. information technology costs), see [Appendix 1](#).

Example 10: Benefits that are not passed on to the adviser (not conflicted remuneration)

Scenario

An AFS licensee receives a commission from a platform operator but does not pass on any portion of the commission to its advisers who provide advice to clients on behalf of the licensee. Instead, the licensee uses the benefit to pay for its operating expenses, such as information technology costs.

Commentary

We are less likely to scrutinise the benefit if the AFS licensee can show, or a product issuer or seller can rely on the licensee showing, that:

- no portion of the benefit is passed on to an individual who provides advice to a client;
- the platforms and the products its advisers can recommend to clients are not selected based on the potential value of the benefit the licensee receives from the platform operator or other product issuer (e.g. it could show this by demonstrating it has robust policies that are implemented and maintained for platform and product selection);
- it does not promote any specific platform or other product to its individual advisers or clients other than by way of general adviser education that is equally available for all platforms and products its advisers can recommend to clients; and
- it makes available a diverse range of platforms and has an extensive list of products its advisers can potentially recommend to clients.

In this situation, we think it is unlikely that the benefit could reasonably be expected to influence the advice given to a client. This is because the individual adviser does not receive any portion of the benefit, and the AFS licensee does not influence the specific products (if any) that its advisers recommend to clients. We expect licensees to continually monitor the products being recommended by their advisers in order to identify whether in fact there does appear to be an influence on the advice being given to clients.

If the benefit is volume based, the onus is on the AFS licensee to show that the benefit is not conflicted remuneration. We expect the licensee to keep sufficient records relating to the benefit to be able to show that the benefit could not reasonably be expected to influence the advice.

We also think it is unlikely that the benefit could reasonably be expected to influence the advice given to a client if the AFS licensee passed on a portion of the benefit to an authorised representative that also uses the benefit to pay for its operating expenses, and the authorised representative can show the matters listed above.

White label stockbroking platforms and securities dealers

- RG 246.108 Where an AFS licensee that is not a market participant outsources trading activities on licensed markets to a third party market participant, this is usually done through a white label stockbroking platform offered by the market participant. The licensee (known as a ‘securities dealer’) promotes the market participant’s trading platform to make it appear as its own.
- RG 246.109 The main purpose of the platform is to provide execution services to clients. However, the securities dealer might also give personal advice or general advice in the form of research about financial products and markets.
- RG 246.110 While many business models exist, clients generally pay the market participant a product-neutral, percentage-based fee on all transactions conducted through the platform (‘brokerage’). The market participant then passes a portion of this fee back to the securities dealer.
- RG 246.111 If the service is limited to execution-only transactions, there is an exclusion from the ban on conflicted remuneration that may apply: see s963B(1)(c) and [Appendix 1](#).
- RG 246.112 If the brokerage paid by a client to a market participant for executing transactions is subsequently passed on to the securities dealer, there is an exclusion from the ban on conflicted remuneration that may apply, provided that neither the market participant nor the securities dealer give personal advice to the client for the relevant transaction, and certain other conditions are met: see reg 7.7A.12D(1A) and [Appendix 1](#).
- RG 246.113 If a securities dealer receives a portion of brokerage, which is volume based, from a market participant for executing transactions and reg 7.7A.12D(1A) is not satisfied (e.g. because personal advice has been given to the client to which the transaction relates), this is presumed to be conflicted remuneration under s963L, unless an exclusion applies.
- RG 246.114 If no exclusion applies, the securities dealer needs to rebut the presumption in s963L and show that the benefit received is not conflicted remuneration.

AFS licensees that are platform operators (or other product issuers)

RG 246.115 If an AFS licensee is a platform operator or other product issuer, some benefits provided to the licensee in its capacity as a platform operator or other product issuer may be conflicted remuneration. This may be the case if the increased use of the platform or other product would increase the benefit given to the licensee (e.g. management fees for the product).

RG 246.116 For example, some payments made to an AFS licensee that operates a platform under a private label arrangement might also be conflicted remuneration. This is because the benefits are given to a licensee, or its representatives, who provide advice to clients. The ban on conflicted remuneration applies regardless of whether the licensee provides other financial services connected with the financial products they issue, such as a platform.

Note: A 'private label' arrangement for a platform is where an AFS licensee is also a platform operator, although it typically outsources the administration of the platform to another platform operator.

RG 246.117 If the benefit is volume based, the onus is on the AFS licensee to rebut the presumption in s963L and show that the volume-based benefits are not conflicted remuneration. The licensee can do this by showing that the benefit could not reasonably be expected to influence the advice given.

Relevant factors

- RG 246.118 Factors that are relevant in determining whether a benefit is conflicted remuneration when it is accepted by an AFS licensee that is also a platform operator (or other product issuer) include:
- (a) those listed at RG 246.41 (e.g. what reasonably appears to be the likely reason why the benefit is being given);
 - (b) what benefit is generated by a recommendation of the licensee to acquire, hold or increase a client's interest in a product it also issues; and
 - (c) whether the product fees received by the licensee in its capacity as a platform operator (or other product issuer) are a benefit that could reasonably be expected to influence the advice.
- RG 246.119 We consider that the following examples involve payments that are conflicted remuneration.

Example 11: Preferred marketing payment (conflicted remuneration)

Scenario

A funds manager makes a payment (either volume based or a flat fee) to an AFS licensee that is also a platform operator to get preferred marketing access to the licensee's advisers.

Commentary

Such a payment is conflicted remuneration whether or not the AFS licensee is also a platform operator. This is because the licensee's advisers are more likely to recommend that a client acquire the funds manager's products through the platform.

Example 12: Volume bonuses (conflicted remuneration)**Scenario**

A funds manager makes a payment to an AFS licensee that is also a platform operator. The payment is based on the volume of the funds manager's products acquired by clients of the licensee's advisers.

Commentary

The payment is presumed to be conflicted remuneration under s963L. The AFS licensee may be able to rebut the presumption if it can show that the payment could not reasonably be expected to influence the advice given to clients (e.g. if the payment is not passed on to advisers: see RG 246.105–RG 246.107).

Equity arrangements

- RG 246.120 Equity arrangements involve giving shares or other interests in an AFS licensee's business. Depending on how the arrangement is structured, it may enable representatives to receive volume-based payments in the form of dividends or other profit-sharing benefits, which may be conflicted remuneration.
- RG 246.121 Equity arrangements with a representative may be put in place to more closely align the interests of the representative with the ongoing success of the AFS licensee's business. For example, the profitability of the licensee is likely to improve as more fee-for-service revenue from clients is received based on advice given by representatives on behalf of the licensee. This, in turn, is likely to mean increased dividends for representatives with shares in the licensee's business.
- RG 246.122 An equity arrangement is only conflicted remuneration if it could reasonably be expected to influence the advice that the representative gives.

Relevant factors

- RG 246.123 Factors that are relevant in determining whether an equity arrangement with a representative is conflicted remuneration include:
- (a) how direct the link is between the value of the equity arrangement and the value or number of financial products recommended or acquired based on the advice of the representative (e.g. a benefit is less likely to be conflicted remuneration if it is not dependent on the type of financial products acquired by clients or the type of advice given);

- (b) the remuneration a representative is eligible to receive from the equity arrangement (e.g. dividends);
- (c) the potential value of the equity interest;
- (d) the portion of the AFS licensee's business that involves, or is dependent on, remuneration generated from providing advice to clients; and
- (e) the criteria a representative needs to satisfy to be eligible for an equity interest in the licensee's business (e.g. a benefit is more likely to be conflicted remuneration if eligibility is based on meeting financial product sales targets).

RG 246.124 RG 246.100 sets out other considerations that may be relevant in showing whether an equity arrangement is conflicted remuneration.

RG 246.125 Apart from equity arrangements with representatives, other types of equity arrangements may also be conflicted remuneration.

Example 13: A white label platform arrangement (conflicted remuneration)

Scenario

An AFS licensee company (the promoter) is established to operate a white label platform arrangement. The promoter issues shares to another licensee that is a financial planning business. The financial planning business includes the promoter's white label platform on its approved product list. The promoter pays regular dividends to the financial planning business as a shareholder, based on the profit derived from the white label platform arrangement.

Commentary

A benefit given under this arrangement is presumed to be conflicted remuneration under s963L because it is a volume-based payment. It is up to the promoter or the financial planning business to show that the arrangement is not conflicted remuneration because it could not reasonably be expected to influence the choice of financial products (in this case the platform) recommended by the financial planning business and its representatives.

Management or administration fees charged by product issuers

RG 246.126 The ban on conflicted remuneration may prevent product issuers—such as trustees of superannuation funds, responsible entities and platform operators—from giving advice to a client to increase or maintain their investment or other interest in the issuer's products. This is because such advice may result in increasing, or maintaining, the management or administration fees payable, which is often based on the volume of funds the client holds in the product.

- RG 246.127 We will not take action against product issuers for breaching the ban on conflicted remuneration if they breach the provisions only because they provide general advice about their own products and accept management or administration fees for those products.
- RG 246.128 In relation to a responsible entity of a registered scheme, we will also not take action for any breach of s601FC(1)(k) as a result of the unlawful payment. Section 601FC(1)(k) requires, among other things, that a responsible entity ensure that all payments out of scheme property, such as management fees, are made in accordance with the Corporations Act.
- RG 246.129 The no-action positions in RG 246.127–RG 246.128 only apply if:
- (a) the product issuer does not provide any personal advice about products that it issues or about products of that class; and
 - (b) the no-action position in RG 246.130 does not apply.
- RG 246.130 We will also not take action against a trustee of a registrable superannuation entity for a breach of the ban on conflicted remuneration as a result of accepting management or administration fees that may reasonably be expected to influence the advice that the SIS Act allows to be charged: see s99F of the SIS Act. This type of advice is commonly called ‘intra-fund’ advice. This no-action position does not apply if the trustee provides intra-fund advice in a way that breaches a law other than the ban on conflicted remuneration.

Note: An ASIC no-action position merely states our current intention not to take regulatory action on a particular state of affairs or conduct. It does not preclude third parties from taking legal action on conduct covered by the no-action position: see [Regulatory Guide 108](#) *No-action letters* (RG 108).

Volume-based benefits for life risk insurance products

- RG 246.131 The presumption in s963L applies to benefits relating to advice on life risk insurance products, unless an exemption applies.
- RG 246.132 However, the presumption in s963L does not apply to benefits relating to information given on, or dealing in, a life risk insurance product.

Note: Volume-based benefits that relate to information given on, or dealing in, a life risk insurance product are considered to be conflicted remuneration, unless an exclusion applies: see RG 246.46–RG 246.49, [Appendix 1](#) and [Appendix 2](#).

- RG 246.133 The principles set out at RG 246.99–RG 246.100, and the principles underlying the examples at RG 246.101–RG 246.125, are relevant when determining whether the exclusions for benefits that do not influence the information given on, or dealing in, a life risk insurance product apply: see regs 7.7A.11C(1)(a) and 7.7A.11D(1)(a).

D Performance benefits for employees

Key points

Under Div 4 of Pt 7.7A, some performance benefits for employees who provide advice to clients may be conflicted remuneration.

Employers should consider the factors set out in Table 4 when assessing whether they can show that a performance benefit is not conflicted remuneration. These factors include:

- the eligibility criteria for the performance benefit and how difficult it is to meet these criteria;
- the purpose of the performance benefit;
- the weighting of the benefit in relation to an employee's total remuneration;
- the link between the benefit and the advice provided to clients;
- what involvement the employee has in the advice-giving process;
- the environment in which the benefit is given; and
- whether an exclusion from the ban on conflicted remuneration applies.

The principles in this section can also be applied when determining whether a benefit could reasonably be expected to influence the information given on, or dealing in, a life risk insurance product: see regs 7.7A.11C(1)(a) and 7.7A.11D(1)(a).

Performance benefits and conflicted remuneration

- RG 246.134 The ban on conflicted remuneration may affect performance benefits given by an employer (e.g. an AFS licensee or authorised representative) to employees who provide advice to clients.
- RG 246.135 The ban on conflicted remuneration does not prohibit employees who provide advice to clients from receiving performance pay. However, it does affect how these arrangements may be structured.
- RG 246.136 A representative of an AFS licensee, other than an authorised representative, is not prohibited from accepting a 'conflicted' performance benefit that is given to them by their employer: see s963H. However, their employer, or an employer of a licensee, must not give its employees conflicted remuneration for work they carry out as an employee: see s963J.

- RG 246.137 Performance benefits for employees may include:
- (a) bonuses;
 - (b) pay rises;
 - (c) promotion or other forms of recognition;
 - (d) reward-focused entertainment or travel; and
 - (e) shares or options in the employer's business (see RG 246.120–RG 246.125).

Note: This is not intended to be an exhaustive list.

- RG 246.138 These benefits are only conflicted remuneration if they could reasonably be expected to influence the advice given by an employee where the employee is an AFS licensee or one of its representatives.
- RG 246.139 We recognise that not all performance benefits provided to employees could reasonably be expected to influence the advice they provide.

Example 14: A bonus paid to a financial adviser (not conflicted remuneration)

Scenario

A financial adviser who is a representative of an AFS licensee and provides advice to clients receives a \$5,000 bonus from their licensee.

The bonus is paid in recognition of:

- high levels of customer satisfaction;
- an increase in customer referrals;
- an outstanding compliance rating; and
- developing referral networks with other professional services firms.

Commentary

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

- RG 246.140 Some performance benefits are entirely volume based. In these situations, we consider it would be difficult for the employer to rebut the presumption that the benefit is conflicted remuneration. For guidance on considerations that may be relevant in rebutting the presumption, see RG 246.100.
- RG 246.141 A performance benefit calculated on remuneration that is excluded from being conflicted remuneration may still be conflicted remuneration if it could reasonably be expected to influence the advice provided and it is not itself excluded from the provisions.

Example 15: Remuneration for a financial adviser**Scenario**

A financial adviser (a representative) receives a base salary of \$80,000 to service the client base of their employer who is an AFS licensee. The work they do for their employer includes attending half-yearly meetings with some of the licensee's clients, responding to telephone queries and providing quarterly portfolio reports.

For the ongoing service, clients pay an annual percentage-based fee to the AFS licensee calculated on the value of financial products that they have acquired based on the advice provided by the licensee's advisers (an asset-based fee). Each year the adviser's salary is adjusted to reflect any increase in the asset-based fees paid by the clients they advise.

Commentary

While the asset-based fees paid by clients to the AFS licensee would not be conflicted remuneration because of the exclusion in s963B(1)(d)(ii), adjustments made to the adviser's salary to reflect any increase in the asset-based fees paid by clients is a separate benefit. How the ban on conflicted remuneration applies to the salary increases needs to be considered separately.

In this case, access to, and the value of, the future salary increases depend on the value of financial products acquired by the adviser's clients. The benefit would be presumed to be conflicted remuneration because it is volume based: see s963L. To rebut the presumption in s963L, the employer needs to show that future salary increases could not reasonably be expected to influence the advice given.

The employer may be able to show that, in the circumstances, the prospect of future salary increases could not reasonably be expected to influence the advice the adviser provides because this does not influence:

- whether the adviser provides product-specific advice (for which asset-based fees are charged) instead of strategic advice; and
- if the adviser provides product-specific advice, which products the adviser recommends.

If this is the case, the future salary increases are not conflicted remuneration.

For more details on how to evaluate whether a performance benefit is conflicted remuneration, see Table 4.

Evaluating the performance benefit

- RG 246.142 Some employers determine the amount of any performance benefit given to an employee based on a number of differently weighted criteria. This approach is referred to by many employers as a 'balanced scorecard' approach.

- RG 246.143 Often, one or more criteria in the balanced scorecard relate to the volume of financial products recommended or acquired by clients (volume-based criteria). If this is the case, the part of the performance arrangement that is volume based is presumed to be conflicted remuneration under s963L. The onus is on the employer to show that it is not conflicted remuneration, taking into account all the circumstances.
- RG 246.144 Some of the types of non-volume-based criteria on which a balanced scorecard may be based include:
- (a) complying with the law;
 - (b) meeting the employer's compliance and other corporate policies;
 - (c) the quality of financial advice given by the employee;
 - (d) client satisfaction with the employee;
 - (e) measures of customer loyalty or advocacy, such as the employee's net promoter score;
 - (f) the number of new clients the employee has brought to the business;
 - (g) the value of investable assets of the employee's clients;
 - (h) the amount of time-based fees generated by the employee;
 - (i) the training undertaken by the employee; and
 - (j) the number of complaints received about the employee.
- RG 246.145 A performance benefit based only on non-volume-based criteria is not presumed to be conflicted remuneration.
- RG 246.146 Some of the criteria in a balanced scorecard may be prerequisites for eligibility to receive a performance benefit (a 'gate opener'), rather than a factor on which the value of the performance benefit is based. For this reason, employers need to evaluate the performance benefit as a whole to determine whether or not it is not conflicted remuneration.
- RG 246.147 In doing this, relevant factors for an employer to consider are likely to include the issues set out in Table 4. For the benefit not to be conflicted remuneration, it must:
- (a) not reasonably be expected to influence the advice given by the employee; or
 - (b) be excluded from the ban on conflicted remuneration (see also RG 246.149).
- RG 246.148 We are less likely to scrutinise performance benefits that are designed to more closely align the interests of employees who provide advice to clients with the interests of their clients. An example might be a performance benefit that only rewards an employee for providing good quality advice and does not depend on a particular type of product being recommended or the type of advice being provided.

RG 246.149 There is an exclusion for remuneration, including performance benefits, received by an employee of an Australian authorised deposit-taking institution (ADI) who provides advice about basic banking, general insurance and/or consumer credit insurance products. To qualify for the exclusion, the employee must not, at the same time, give advice on any other financial products. However, the employee may give advice at the same time on non-financial products, such as credit facilities, and remain eligible for the exclusion: see s963D.

Table 4: Factors to consider when evaluating performance benefits

Factor	Description
Eligibility criteria	<p>What are the criteria that must be met for an employee to be eligible to receive a performance benefit, and could satisfying such criteria reasonably be expected to influence the advice given? For example, a relevant consideration is whether eligibility criteria explicitly or implicitly encourage the recommendation of a particular product.</p> <p>The more difficult it is to satisfy the eligibility criteria, the less likely that the performance benefit could reasonably be expected to influence the advice given. One way to measure this might be by reference to the proportion of employees who are able to meet the criteria.</p>
Purpose of the benefit	<p>What behaviour does the employer appear to be trying to encourage through the performance benefit? For example, the criteria that make up the balanced scorecard may appear to be designed to encourage an employee to recommend that clients acquire specific financial products regardless of their interests, which means the performance benefit is likely to be conflicted remuneration. It may also cause advice to be given that does not comply with the best interests duty and related obligations in Div 2 of Pt 7.7A.</p>
Weighting of the benefit in relation to total remuneration	<p>What is the relative proportion of the benefit compared to the employee's overall remuneration? For example, the overall remuneration would include the performance benefit and any other forms of remuneration (e.g. salary).</p>
Link between the benefit and the advice	<p>How direct is the link between the performance benefit and the value or number of financial products recommended or acquired by clients, based on the advice provided by the employee? For example, a performance benefit is more likely to be conflicted remuneration if it contains a criterion based on the volume of product sales compared with one that contains a criterion based on the profitability of an employee's business unit: see RG 246.150.</p>
Involvement of recipient in the advice-giving process	<p>How directly involved in the advice-giving process is the recipient of the benefit? For example, if the recipient of a benefit helps prepare the advice but does not provide input into the recommendations that are made to a client, the performance benefit is less likely to be conflicted remuneration.</p>

Factor	Description
Environment in which the benefit is given	<p>In addition to the factors above, it is also relevant to consider whether the benefit is given in an environment that encourages the provision of good quality advice that is in the client's interests.</p> <p>This could be specifically evidenced if, to qualify for the benefit, the recipient must also satisfy other criteria, such as criteria based on the quality of advice given, consumer satisfaction, and compliance with internal processes and legal requirements.</p> <p>It may also be relevant to consider non-performance-based practices, such as:</p> <ul style="list-style-type: none"> • training; • monitoring and supervision; and • workplace policies and procedures, including the consequences of not complying with such policies and procedures.
Excluded benefits	<p>If part of a performance benefit is not conflicted remuneration because one or more exclusions apply, it is not relevant to consider that part of the benefit in determining whether the rest of the performance benefit is conflicted remuneration.</p>

Remuneration based on total profitability

- RG 246.150 If an employee is remunerated based on the total profitability of their employer or the business unit in which they work, and not the employee's individual sales, this would not be conflicted remuneration if the size of the business unit is large enough that the impact of the individual employee's sales on the profitability of the employer or the relevant business unit could not reasonably be expected to influence the advice given.

Keeping records

- RG 246.151 We expect employers to keep records of how an employee's performance benefit has been calculated. Among other things, the employer's remuneration policy and documentation for how individual performance benefits are calculated are relevant records. Keeping records is essential to help the employer show that the presumption in s963L can be rebutted.

Performance benefits relating to life risk insurance products

- RG 246.152 The ban on conflicted remuneration applies to performance benefits relating to advice on life risk insurance products, unless an exemption applies.
- RG 246.153 As noted at RG 246.47, certain benefits that relate to information given on, or dealing in, a life risk insurance product are considered to be conflicted remuneration. These benefits will not be conflicted remuneration if the benefit could not reasonably be expected to influence whether the AFS licensee or its representative:

- (a) gives the information to the person, or the way in which the licensee or representative presents the information in giving it to the person; or
- (b) deals in the life risk insurance product, or the way in which the licensee or representative deals in the life risk insurance product (see regs 7.7A.11C–7.7A.11D).

RG 246.154 The principles set out in this section and the factors in Table 4 are relevant to the determination of whether performance benefits paid to persons that give information on, or deal in, life risk insurance products could not reasonably be expected to have such an influence.

Example 16: Remuneration to employees of a direct life insurer

Scenario

A life insurer employs sales staff to sell its products to customers over the telephone. The sales staff give information to customers about the life risk insurance products they are selling (they do not give advice). The sales staff are paid using a 'balanced scorecard' approach.

The balanced scorecard includes various elements that must be satisfied before a bonus will be paid. The elements relate to customer satisfaction, compliance with legal obligations, adherence to internal operating policies and call scripts, and a volume-based element based on the number of life risk insurance products purchased as a result of the information given to clients.

Commentary

Unless an exclusion applies, the bonus paid under the balanced scorecard will be considered to be conflicted remuneration because access to the bonus is dependent on the number of life risk insurance products acquired as a result of information given by the sales staff: see reg 7.7A.11B(1).

However, an exclusion will apply and the benefit will not be conflicted remuneration if it could not reasonably be expected to influence whether sales staff give information to customers, or the way in which sales staff present information to customers: see reg 7.7A.11C.

Whether this is the case will depend on the criteria of the balanced scorecard, and the different weightings applied to the criteria. If significant weight is placed on the volume-based criteria, it is likely that the benefit will be conflicted remuneration.

If, however, the weighting of the balanced scorecard predominantly favours the non-volume-based criteria, it is more likely that the bonus will not influence the information given to customers and will, therefore, not be conflicted remuneration.

E Volume-based shelf-space fees

Key points

In addition to the ban on conflicted remuneration (in Div 4 of Pt 7.7A), Div 5 of Pt 7.7A of the Corporations Act prohibits other forms of remuneration that have the potential to influence the advice received by clients. Section 964A(1) prohibits a platform operator from accepting a benefit that is a 'volume-based shelf-space fee'.

When looking to show that a benefit is not a volume-based shelf-space fee:

- if the 'fee-for-service' exclusion is being relied on, we are more likely to scrutinise a fee if:
 - there is a sudden increase in the fee after the commencement of s964A that is unrelated to the platform operator's costs;
 - the fee is based on the value of funds under management;
 - the fee is inconsistent with the fees charged for similar services provided to other funds managers; or
 - the fee is inconsistent with the average fees charged by other platform operators; and
- if the 'scale efficiencies' exclusion is being relied on, a platform operator must be able to demonstrate how a rebate or discount was arrived at and how it is referable to scale efficiencies or estimated scale efficiencies gained by the funds manager from distributing its products through the platform.

We will not take action against a platform operator who accepts a volume-based shelf-space fee if that fee is passed on promptly to clients.

The ban on volume-based shelf-space fees

RG 246.155 Under Div 5 of Pt 7.7A of the Corporations Act, a platform operator is prohibited from accepting a benefit if it is a volume-based shelf-space fee: see s964A(1). As stated in the 2012 Revised Explanatory Memorandum, the purpose of the ban is to prevent:

... [t]he receipt by platform operators of volume-based benefits to the extent that such incentives are merely a means of product issuers or funds managers 'purchasing' shelf space or preferential positions on administration platforms (paragraph 2.61).

RG 246.156 This ban applies if:

- (a) an AFS licensee or a trustee that is a responsible superannuation entity (RSE) licensee (the platform operator) is, or offers to be, the provider of a custodial arrangement;

- (b) a monetary or non-monetary benefit is given, or is to be given, by another AFS licensee or RSE licensee (the funds manager) to the platform operator; and
- (c) a financial product to which the custodial arrangement relates is a financial product in which the funds manager deals (see s964).

RG 246.157 A platform operator, for the purposes of this ban, is typically an operator of an IDPS, an IDPS-like scheme, a nominee or custody service, or a superannuation master trust.

Note 1: A 'platform', for the purposes of the conflicted and other banned remuneration provisions, is defined in the 'key terms'.

Note 2: For more information on IDPSs and nominee and custody services, see [RG 148](#).

RG 246.158 In particular, platform operators are prohibited from accepting volume-based shelf-space fees from funds managers: see s964A(1). If a platform operator provides advice to clients, the ban on conflicted remuneration in Div 4 of Pt 7.7A is also relevant: see Section B, Section C and Section D.

RG 246.159 A shelf-space fee is a fee for making a funds manager's products available through the platform. It also includes a discount on an amount payable, or a rebate of an amount paid, by a platform operator to a funds manager, if the discount or rebate is for the funds manager's products being made available through the platform.

RG 246.160 A benefit is generally presumed to be a volume-based shelf-space fee if the benefit, or the value of the benefit, is wholly or partly dependent on the total number or value of the funds manager's financial products to which the custodial arrangement relates: see s964A(2). This includes fees that are based on past, current or projected volumes, even if other factors were considered in determining the value of the benefit: see [Example 17](#). It also includes a fee paid by a funds manager, calculated by reference to each of its products on the platform.

RG 246.161 The presumption in s964A(2) does not apply to the extent that a platform operator can show that one of the following applies to all or part of the benefit:

- (a) the benefit is 'a reasonable fee for a service provided to the funds manager by the platform operator or another person' (fee-for-service exclusion); or
- (b) the benefit is 'a discount on an amount payable, or a rebate of an amount paid, to the funds manager by the platform operator, the value of which does not exceed an amount that may reasonably be attributed to efficiencies gained by the funds manager because of the number or value of financial products in relation to which the funds manager provides services to the platform operator, or through the platform operator to another person' (scale efficiencies exclusion) (see s964A(3)).

Note: Platform operators must also consider their obligations under Pt IV of the *Competition and Consumer Act 2010*.

RG 246.162 If one or both of these exclusions applies to a benefit, or part of a benefit, the benefit or part of it will not be presumed to be a prohibited volume-based shelf-space fee. However, even if a platform operator believes it can rely on one or both of the two exclusions in s964A(3), it is still possible that the fee is a prohibited volume-based shelf-space fee.

The fee-for-service exclusion

RG 246.163 Whether the fee-for-service exclusion (see RG 246.161(a)) can be relied on depends on the circumstances of the case. The services provided by the platform operator to the funds manager need to be identified. For the fee to be reasonable, we consider there should generally be a correlation between the fee and the platform operator's costs in providing the service. We recognise that other factors may be relevant in setting the price of the fee.

RG 246.164 The types of fees to which this exclusion apply include:

- (a) fees charged to cover the platform operator's costs in listing a product on its platform; and
- (b) fees for reporting services provided by the platform operator to the funds manager about clients who have invested in its products and advisers who have recommended its products.

Note: This is not intended to be an exhaustive list.

RG 246.165 We are more likely to scrutinise a fee to determine whether it is a prohibited volume-based shelf-space fee (because the fee-for-service exclusion does not apply) if:

- (a) there was a sudden increase in the fee after the commencement of s964A that is unrelated to the platform operator's costs;
- (b) the fee is based on the value of funds under management (these fees are unlikely to correlate with the platform operator's costs in providing the service);
- (c) the fee is inconsistent with the fees charged for similar services provided to other funds managers; or
- (d) the fee is inconsistent with the average fees charged by other platform operators.

Note: The fee may still not be a prohibited volume-based shelf-space fee to the extent that the scale efficiencies exclusion applies.

The scale efficiencies exclusion

- RG 246.166 The scale efficiencies exclusion (see RG 246.161(b)) is mainly designed to apply to situations where the funds manager can realise economies of scale due to the volume of business it generates by placing its products on the platform ('scale efficiencies'). In such a situation, a discount may be given or a rebate may be paid to the platform operator by the funds manager in recognition of these economies of scale.
- RG 246.167 To rely on the scale efficiencies exclusion, a platform operator must be able to demonstrate how a rebate or discount was arrived at and how it is referable to scale efficiencies or estimated scale efficiencies gained by the funds manager from distributing its products through the platform.
- RG 246.168 One way a platform operator may do this is by receiving and keeping regular and appropriately verified written analyses from the funds manager about its costs and how the value of the rebate or discount is referable to scale efficiencies or estimated scale efficiencies. The analysis should set out details about how the funds manager's fixed costs (as opposed to costs that vary with each financial product sold) have reduced by reference to the number or value of financial products that are acquired by clients using the platform.
- RG 246.169 The value of the rebate or discount for scale efficiencies will therefore change depending on the number or value of financial products acquired through the platform.
- RG 246.170 A platform operator may rely on other methods to demonstrate the amount of the discount or rebate is not more than the scale efficiencies. We expect that these other methods would, at a minimum, have the same level of analysis and veracity in demonstrating the scale efficiencies or estimated scale efficiencies as described at RG 246.168.
- RG 246.171 We do not consider that receiving a written confirmation from a funds manager alone that states that a discount or rebate is referable to the scale efficiencies gained by the funds manager without providing further information has the same level of analysis and veracity as described at RG 246.168.

Example 17: A volume-based shelf-space fee (prohibited)

Scenario

A responsible entity enters into a fixed-price contract for three years, commencing on 1 July 2017, to rebate an amount of management fees charged to a platform operator. The annual amount is calculated based on the average volume of retail client business that the responsible entity has been able to generate by placing its financial products on the platform over a three-year period from 1 July 2014 to 30 June 2017. This amount exceeds the actual scale efficiencies gained by the responsible entity in placing its financial products on the platform.

Commentary

The rebate is presumed to be a volume-based shelf-space fee because it is based on the value of the responsible entity's financial products acquired by clients to which the custodial arrangement with the platform operator relates. This is the case even if the rebate is based on the value of products acquired over a particular period in the past.

The platform operator cannot rely on the scale efficiencies exclusion for this rebate because it is not directly referable to the scale efficiencies the responsible entity gains by using the platform.

Example 18: A fee for 'scale efficiencies' (not prohibited)**Scenario**

A responsible entity enters into an agreement for interests in its XYZ Managed Investment Scheme to be made available through a platform. Under the agreement, a rebate of management fees charged is to be paid to the platform operator based on the estimated scale efficiencies the responsible entity gains by distributing interests in the XYZ Managed Investment Scheme through the platform.

The rebate is reviewed annually based on a statement provided to the platform operator by the responsible entity that contains details about:

- the fixed and variable costs that the responsible entity incurs on interests acquired or held in the scheme through the platform;
- the estimated costs that the responsible entity would have incurred on the products if it had not been able to use the platform but instead offered the products to individual clients directly and the clients held the investments in their own name (these costs have been determined using reasonable assumptions);
- the difference between these two costs represents the value of the scale efficiencies the responsible entity has been able to realise by selling products through the platform; and
- the calculation of the rebate as a percentage (of no more than 100%) of the value of these efficiencies.

The platform operator also receives an opinion from an expert about the statement, including how the rebate was calculated and the reasonableness of any assumptions used.

Commentary

In this situation, we think it is likely that the scale efficiencies exclusion can be relied on. As mentioned at RG 246.162, even if the scale efficiencies exclusion applies, it is still possible that the fee is a prohibited volume-based shelf-space fee. However, this is unlikely to be the case if the rebate:

- is for the reasonable costs that are likely to be saved by the product issuer as a result of clients acquiring financial products through the platform; and
- is not related to making the products available through the platform.

Passing on a volume-based shelf-space fee to the client

- RG 246.172 We will not take action against a platform operator that accepts a fee if that fee is passed on to clients promptly—that is, as soon as practicable but no later than three months after receiving the benefit. In this case, we do not consider that the fee will be regarded as a volume-based shelf-space fee. We consider that taking such an approach is consistent with the overall policy intent of the ban on volume-based shelf-space fees, which is designed to prevent funds managers from purchasing preferential positions on platforms.
- RG 246.173 If a volume-based shelf-space fee is rebated back to clients, the volume-based shelf-space fee is unlikely to influence how platform operators select which products are available on the platform or the prominence they are given.

Non-volume-based shelf-space fees

- RG 246.174 Although the ban on volume-based shelf-space fees in s964A does not extend to non-volume-based fees paid by funds managers to platform operators, platform operators must still comply with the general obligation in s912A(1)(aa) to have in place adequate arrangements to manage conflicts of interest. [RG 181](#) sets out our general approach to assessing compliance with s912A(1)(aa).
- Note: A flat fee based on the historical number or value of the funds manager's financial products available through a platform is a volume-based shelf-space fee and is covered by the ban in s964A: see RG 246.160.
- RG 246.175 If a platform operator or its representatives also provide advice to clients, the ban on conflicted remuneration may apply: see RG 246.115–RG 246.119.
- RG 246.176 If a platform operator accepts a non-volume-based shelf-space fee, this may be an avoidance scheme to which the anti-avoidance provision applies: see RG 246.225–RG 246.227.

F Asset-based fees on borrowed amounts

Key points

Asset-based fees on borrowed amounts are another type of remuneration that is generally banned by Div 5 of Pt 7.7A of the Corporations Act. An AFS licensee and its authorised representatives that provide advice to clients are generally prohibited from charging asset-based fees on borrowed amounts that are to be used to acquire financial products by or on behalf of a client: see s964D and 964E.

In determining whether an amount is borrowed, an AFS licensee and its representatives cannot ignore any information they have discovered when making client inquiries as a result of complying with the best interests duty in s961B.

If a client has a portfolio of products purchased with a combination of borrowed and non-borrowed amounts, asset-based fees can be charged on the proportion of the portfolio purchased with non-borrowed amounts.

The ban on asset-based fees on borrowed amounts does not apply:

- to brokerage fees;
- if it is not reasonably apparent that an amount is borrowed;
- if the fees are not for providing advice; and
- to financial products that are acquired under a dividend or distribution reinvestment plan.

The general ban on asset-based fees on borrowed amounts

RG 246.177 An AFS licensee and its authorised representatives that provide advice to clients are generally prohibited from charging asset-based fees on borrowed amounts that are to be used to acquire financial products by or on behalf of a client: see s964D and 964E. If a licensee or its representatives are found to have charged asset-based fees on borrowed amounts, they may be liable for a civil penalty.

RG 246.178 An AFS licensee also contravenes this general prohibition if one of its representatives (other than an authorised representative) charges an asset-based fee on a borrowed amount used to acquire financial products by or on behalf of a client: see s964D(2).

RG 246.179 The ban applies regardless of how the amount is borrowed. An amount could be borrowed through secured or unsecured means, including through a credit facility, such as a personal loan or a credit card, or a margin lending facility: see s964G(1). An amount is no longer borrowed if it has been repaid: see s964G(2).

- RG 246.180 The purpose of this ban is to prevent advisers from artificially increasing the size of their advice fees by ‘gearing up’ their clients: see the Hon Bill Shorten MP’s second reading speech to the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 on 24 November 2011. ‘Gearing up’ refers to increasing the amount of a client’s portfolio based on borrowed amounts.

Example 19: Asset-based fees charged on a margin loan (prohibited)

Scenario

An AFS licensee charges a client, to whom it provides advice, an advice fee of 1% of the margin loan, which one of the licensee’s advisers has arranged for the client. The purpose of the margin loan is to provide the client with funds that they can invest, based on the advice of the adviser.

Commentary

The AFS licensee is prohibited from charging the client this fee under s964D. It is an asset-based fee charged on a borrowed amount that will be used to acquire financial products on behalf of the client.

It is possible that a client may also contribute some of their own funds (e.g. as initial security for the loan). To the extent that these funds are not borrowed, asset-based fees may be charged. See RG 246.187–RG 246.188 for more information on how such fees may be charged on a portfolio of products purchased with a combination of borrowed and non-borrowed amounts.

Interaction with the best interests duty

- RG 246.181 When an AFS licensee or its authorised representative provides personal advice to a client, they must make inquiries into the client’s relevant circumstances to comply with the best interests duty in s961B. In the course of making these inquiries, they are likely to discover if the client is asking them to acquire financial products using money that the client has borrowed.
- RG 246.182 The ban on charging asset-based fees on borrowed amounts does not affect the obligation under s961B to make inquiries into the client’s relevant circumstances. An AFS licensee and its representatives cannot ignore the information they have discovered in the course of making these client inquiries when determining whether an amount is borrowed for the purposes of the ban on charging asset-based fees on borrowed amounts: see s964D(5) and 964E(4).

Note: See [RG 175](#) and [RG 244](#) for guidance on complying with the best interests duty.

Instalment warrants

- RG 246.183 An instalment warrant gives the holder of the warrant a beneficial interest in an underlying financial product. It generally has:
- (a) an equity component, which is paid when the warrant is acquired; and
 - (b) a debt component, which is generally a limited recourse loan (i.e. the warrant issuer has no recourse against the warrant holder for repayment of the loan).
- RG 246.184 The holder of the warrant may acquire legal ownership of the underlying financial product by repaying the loan.
- RG 246.185 We consider that the ban on asset-based fees on borrowed amounts applies to the extent that an asset-based fee is referable to the debt component of an instalment warrant. When this is the case, we consider any asset-based fees charged are charged on a borrowed amount used or to be used to acquire the instalment warrant by or on behalf of the client: see s964D and 964E.
- RG 246.186 The ban also applies to any borrowed amounts used to purchase the instalment warrant.

Portfolios of products

- RG 246.187 A client may have a portfolio of products purchased with a combination of borrowed and non-borrowed amounts. In this case, we consider that, to charge an asset-based fee, the net value of the portfolio should be determined, and the amount borrowed (less any amount repaid) should then be deducted from this net value. Asset-based fees should only be charged on the resulting value of the portfolio after borrowed amounts are deducted.
- RG 246.188 The proportion of borrowed and non-borrowed assets may change over time—for example, if a client borrows additional amounts to add to their portfolio—and fee arrangements should be adjusted to reflect this.

When the ban does not apply

Brokerage fees

- RG 246.189 The ban on asset-based fees on borrowed amounts does not apply if an asset-based fee is a brokerage fee: see regs 7.7A.17 and 7.7A.18.

If it is not reasonably apparent that an amount is borrowed

- RG 246.190 While the ban applies regardless of how the amount is borrowed, the ban does not apply if it is not reasonably apparent that an amount has been borrowed: see s964D(3) and 964E(2). This is an objective standard based on whether something would be apparent to a person with a reasonable level of expertise in the subject matter of the advice sought by the client, who has exercised care and objectively assessed the information given by the client to the AFS licensee or its representatives: see s964H.
- RG 246.191 This means that the ban on charging asset-based fees does not apply to an AFS licensee or its authorised representative if they do not know that an amount used to acquire financial products by or on behalf of a client has been borrowed, as long as this fact is not reasonably apparent.

Note: RG 246.181–RG 246.182 discuss how the obligation to make inquiries as part of the best interests duty interacts with the ban on asset-based fees on borrowed amounts.

Example 20: Client borrows money to invest without the adviser's knowledge

Scenario

A client borrows an amount of money for investment purposes from an entity that is unrelated to the client's adviser. The client then seeks personal advice from their adviser. The adviser has no prior knowledge that the client has borrowed funds for investment purposes. The adviser recommends some investments to the client and proposes to charge an asset-based fee for this advice.

Commentary

Generally, the process of making reasonable inquiries about the client's relevant circumstances in the course of providing advice should include inquiries about the source of the funds the client has available to them to invest, and whether they were borrowed. If the adviser is made aware that the client's funds are borrowed, then charging an asset-based fee on financial products purchased with the borrowed amount is prohibited under s964D. In this case, it would not be relevant that the client borrowed the amount before the advice was given.

However, if for some reason the client did not inform the adviser that the funds were borrowed despite reasonable inquiries being made, we consider that it would not be reasonably apparent to the adviser that an amount had been borrowed, and the prohibition would not apply.

The fee is not for providing advice

- RG 246.192 A fee for providing advice to a client is an asset-based fee to the extent that it is dependent on the amount of funds to be used to acquire financial products by or on behalf of the client: see s964F.

RG 246.193 If a fee charged is not for providing advice, the ban on asset-based fees on borrowed amounts does not apply to the fee. For example, application fees and the interest charged on a loan taken out by a client to purchase financial products are generally not fees for providing advice.

Dividend or distribution reinvestment plans

RG 246.194 When a client acquires a financial product and participates in a dividend or distribution reinvestment plan in relation to that holding, we consider that the ban on asset-based fees on borrowed amounts does not apply to products issued under the dividend or distribution reinvestment plan. This is because these products are not acquired with borrowed amounts.

G Previously grandfathered conflicted remuneration

Key points

Before 1 January 2021, the ban on conflicted and other banned remuneration under Divs 4 and 5 of Pt 7.7A did not apply to certain 'grandfathered' benefits.

'Grandfathering' of conflicted and other banned remuneration in relation to advice ended on 1 January 2021.

This section provides guidance on:

- what the 'grandfathering' arrangements were before 1 January 2021;
- the scheme under which grandfathered conflicted remuneration that remains payable on or after 1 January 2021 must be rebated, including the just and equitable test that should be applied to determine the rebate amount; and
- the records that an AFS licensee who is required to rebate conflicted remuneration must keep.

'Grandfathering' arrangements before 1 January 2021

RG 246.195 Before 1 January 2021, under 'grandfathering' arrangements, the conflicted and other banned remuneration provisions did not apply because of certain transitional provisions in the Corporations Act and the Corporations Regulations.

RG 246.196 Under the previous transitional provisions:

- (a) the ban on conflicted remuneration for advice in Div 4 of Pt 7.7A did not apply to some benefits given to an AFS licensee or its representatives under arrangements entered into before the application day;
- (b) the ban on volume-based shelf space fees in Div 5 of Pt 7.7A did not apply to a benefit given to a platform operator that is an AFS licensee or RSE licensee if the benefit was given under an arrangement entered into before the application day; and
- (c) the ban on asset-based fees on borrowed amounts in Div 5 of Pt 7.7A did not apply to:
 - (i) fees charged before the application day, even if they were paid after this date; and
 - (ii) fees charged on or after the application day if funds were borrowed and used to acquire financial products before this date.

Note: The 'application day' was generally 1 July 2013, unless an AFS licensee elected to comply with Pt 7.7A before that day: see RG 246.14.

- RG 246.197 Grandfathering arrangements for the benefits set out in RG 246.196 ended on, and no longer apply from, 1 January 2021, when amendments to the Corporations Act by the Ending Grandfathered Conflicted Remuneration Act commenced: see s1528–1529 and 1531.
- RG 246.198 Previously grandfathered benefits that are given from 1 January 2021 are subject to the ban on conflicted and other banned remuneration, including where the legal obligation to give the benefits accrued before 1 January 2021 (e.g. where a product issuer is legally obliged to give an AFS licensee a benefit in December 2020, but does not give the benefit until on or after 1 January 2021).

Rebate of previously grandfathered benefits

- RG 246.199 Amendments to the Corporations Regulations by the Ending Grandfathered Conflicted Remuneration Regulations provide for a rebating scheme for grandfathered benefits that would have been paid as conflicted remuneration: see regs 7.7A.15AJ–7.7A.15AK. Under this scheme, conflicted remuneration for advice that remains payable on or after 1 January 2021 must be rebated by a covered person to a product holder instead of being paid to an AFS licensee or its representatives.
- RG 246.200 A covered person is a person who would be legally obliged to pay conflicted remuneration to another person on or after 1 January 2021 but for the ban on conflicted remuneration in Div 4 of Pt 7.7A: see s963M. Generally, a covered person is a product issuer.
- Note: A covered person who fails to pay an amount or monetary benefit in accordance with the Ending Grandfathered Conflicted Remuneration Regulations is liable to a civil penalty: see s963P and 1317E(3).
- RG 246.201 A product holder includes:
- (a) a client who received, or was legally entitled to receive, advice in connection with the conflicted remuneration; and
 - (b) a person who holds the same financial products (or products in the same class) as those for which the conflicted advice was provided (see s963N(2) and (3)).
- RG 246.202 Generally, a product holder is a person who holds a product directly or indirectly through a third party that holds the product on that person's behalf. If a financial product is held by a person on behalf of another person, both people are product holders.

RG 246.203 The obligation on a covered person under the rebating scheme extends only to payments of conflicted remuneration banned under Subdiv C of Div 4 of Pt 7.7A. It does not extend to other remuneration banned under Div 5 of Pt 7.7A such as volume-based shelf-space fees and asset-based fees on borrowed amounts.

Just and equitable test

RG 246.204 The amount paid, or the amount of the monetary benefit provided, to a product holder under a rebating scheme must be an amount that is just and equitable in the circumstances: see reg 7.7A.15AK(2).

RG 246.205 The matters that a covered person should consider when determining whether an amount is just and equitable are:

- (a) the amount of the conflicted remuneration that would have been payable;
- (b) the amount invested by each product holder in the financial products—generally, for an amount to be just and equitable, a product holder with more invested should receive a larger rebate;
- (c) the structure of the fees (if any) that the product holder has paid for those financial products—this is relevant to determining whether the product holder has incurred the cost of the conflicted remuneration and should therefore receive a rebate;
- (d) the extent to which the sum of the amounts to be paid and the amount of the monetary benefits to be provided to the product holder equals the amount of, or the present value of, the conflicted remuneration (see RG 246.210–RG 246.211); and
- (e) any other relevant matter—for example, a factor that is unique to an individual product holder that could help to determine the rebate that the specific product holder receives (see reg 7.7A.15AK(3)).

RG 246.206 The just and equitable test is intended to give some flexibility to a covered person so that the rebate amount provided does not need to precisely match the amount of conflicted remuneration. However, the matters listed in RG 246.205 have the effect that the total amount of monetary benefits provided to a product holder must, in aggregate, closely match the conflicted remuneration that would otherwise have been paid by the covered person.

RG 246.207 A nil amount for a particular product holder may be just and equitable if the product holder holds the financial product on behalf of another product holder.

- RG 246.208 It is possible for a product holder to incur the cost of conflicted remuneration, even though that product holder has never received advice. In these cases, whether or not the product holder received advice, including whether or not the covered person has records of the product holder receiving advice, will not be a relevant factor in determining if a covered person has distributed a monetary benefit in a just and equitable manner.
- RG 246.209 The cost of providing a monetary benefit to a product holder is not a matter that a covered person can consider when determining whether an amount is just and equitable: see reg 7.7A.15AK(4).

One-off lump sum payments

- RG 246.210 For some financial products, it may be just and equitable to pay a one-off lump sum to a client reflecting the present value of future conflicted remuneration.
- RG 246.211 This approach may be appropriate for products such as annuities if the length of time a client will be in the product is known (e.g. fixed-term annuities or endowments) or if the term can be determined based on life expectancy (e.g. lifetime annuities or whole-of-life conventional products) and the amount of conflicted remuneration to be paid is known.

Example 21: Making a one-off lump sum payment to clients

Scenario

A product issuer is the provider of a fixed-term annuity product to clients. The product issuer is required under contract to pay \$3 million in conflicted remuneration to various dealer groups in relation to 20,000 client accounts on or after 1 January 2021.

The product issuer determines that the cost of funding the \$3 million in conflicted remuneration will be borne by all 20,000 client accounts because all clients pay the same product fee regardless of whether they received advice associated with the conflicted remuneration.

The product issuer decides to rebate the conflicted remuneration by paying a one-off lump sum to all clients that reflects the present value of future conflicted remuneration. The present value of the future conflicted remuneration is determined by assuming no future voluntary surrender of the product.

Commentary

In this situation, we think it is just and equitable for the product issuer to rebate the conflicted remuneration by paying a one-off lump sum to all clients because the length of time the clients will be in the fixed-term annuity is known.

How benefits can be rebated

- RG 246.212 The conflicted remuneration can be rebated to a product holder by making a payment or providing a monetary benefit: s963N. A monetary benefit can be provided, for example, by passing previously grandfathered benefits to a product holder in the form of higher interest rates or reducing a product-based fee that a product holder must pay.
- RG 246.213 Providing a monetary benefit by reducing product fees may be suitable in situations when a rebate is to be provided to all product holders.

Timeframe in which rebates must occur

- RG 246.214 A covered person must pay the amount or provide the monetary benefit to a product holder no later than one year after the date by which the covered person is legally obliged (disregarding the ban) to give the conflicted remuneration to another person: see reg 7.7A.15AK(1). This one-year limit allows a monetary benefit to be provided by reducing a product-based fee that is charged on an annual basis.

Record-keeping obligations for AFS licensees

- RG 246.215 An AFS licensee that is a covered person must keep certain records: see reg 7.8.11B. The record-keeping obligations apply to financial records for periods ending after 1 January 2021: see reg 10.33.02.
- RG 246.216 An AFS licensee that is a covered person must keep records of:
- (a) all conflicted remuneration the licensee is legally obliged (disregarding the ban on conflicted remuneration in Subdiv C of Div 4 of Pt 7.7A) to give to another person for a financial year;
 - (b) all amounts paid and monetary benefits provided to clients by the licensee as required by reg 7.7A.15AK for a financial year; and
 - (c) all cases where the licensee determined that an amount that was just and equitable was nil (see reg 7.8.11B(1)).
- RG 246.217 An AFS licensee that is a covered person must also keep records on:
- (a) how the licensee ascertained the identity of the product holders;
 - (b) how the licensee determined the amounts that, in the circumstances, were just and equitable to pay or provide to the product holders, including:
 - (i) nil amounts; and
 - (ii) any discrepancy if the total amount of payments and monetary benefits provided to product holders does not match the conflicted remuneration;

- (c) the financial product or products to which the conflicted remuneration relates including:
 - (i) the name or names of the product or products; and
 - (ii) any product identification numbers of that product or products;
- (d) the dates that the licensee was required under reg 7.7A.15AK to pay the amounts or provide the monetary benefits;
- (e) the date or dates on which the amounts were paid or the monetary benefits were provided; and
- (f) how the amounts were paid or the monetary benefits were provided (see reg 7.8.11B(2) and (3)).

H The anti-avoidance provision

Key points

In administering the anti-avoidance provision in s965, we are more likely to scrutinise schemes that appear to have no commercial purpose other than to avoid the application of the conflicted and other banned remuneration provisions.

We are less likely to scrutinise schemes that are normal commercial transactions conducted in the ordinary course of business.

What is anti-avoidance?

RG 246.218 A person must not enter into or carry out a scheme to avoid the application of any provision in Pt 7.7A: see s965. This includes:

- (a) the ban on conflicted remuneration in Div 4 of Pt 7.7A, including where the scheme seeks to avoid the application of the ban to benefits relating to life risk insurance products (see Section B, Section C and Section D);
- (b) the ban on platform operators accepting volume-based shelf-space fees in Subdiv A of Div 5 of Pt 7.7A (see Section E); and
- (c) the ban on charging asset-based fees on borrowed amounts in Subdiv B of Div 5 of Pt 7.7A (see Section F).

RG 246.219 The effect of the anti-avoidance provision is that a person must not, either alone or with other people, enter into or carry out a scheme if:

- (a) it would be concluded that they did so for the sole or non-incidental purpose of avoiding the application of any provision of Pt 7.7A; and
- (b) the scheme or part of the scheme has achieved—or, apart from s965, would achieve—that purpose (see s965(1)).

RG 246.220 A person may be liable for a civil penalty if they are found to have breached s965(1).

RG 246.221 Section 965(1) could potentially apply to a broad range of schemes (e.g. any contract, agreement, plan, proposal, course of action or course of conduct).

Avoidance schemes

RG 246.222 A person may contravene s965 if they enter into or carry out a scheme that meets the criteria in RG 246.219.

RG 246.223 We are more likely to scrutinise schemes that appear to have no commercial purpose other than to avoid the application of the conflicted and other banned remuneration provisions.

Note: The discussion in this section on arrangements to which the anti-avoidance provision applies is not intended to be exhaustive.

Schemes with related parties

RG 246.224 A scheme may be an avoidance scheme if it is structured so that an entity that is related to:

- (a) a person to whom the ban on conflicted remuneration in Div 4 of Pt 7.7A applies—accepts or gives conflicted remuneration;
- (b) a platform operator—accepts a fee that would otherwise be a prohibited volume-based shelf-space fee; or
- (c) an AFS licensee or its authorised representative, to which the ban on charging asset-based fees on borrowed amounts applies—charges a client an asset-based fee on a borrowed amount.

Example 22: Establishing a special purpose AFS licensee (likely to be an avoidance scheme)

Scenario

A platform operator provides a white label or private label platform arrangement to an AFS licensee (Licensee A).

The directors and shareholders of Licensee A are also financial advisers who provide advice to clients. A separate AFS licensee (Licensee B) is established for the labelled platform arrangement to separate it from Licensee A. The financial advisers are also directors and shareholders of Licensee B.

The client pays a fee to the platform operator for administration services as well as distribution services. The administration services are for holding the products through the platform and the reporting that is provided to clients. The distribution services are offering and issuing any financial products available through the platform to clients.

The platform operator gives a portion of the fee to Licensee B. Their portion is a percentage-based share of the fee based on the level of assets held on the platform.

Commentary

While the volume-based fee is received by Licensee B that does not provide advice to clients, the directors and shareholders of the licensee provide advice to clients. This arrangement could reasonably be expected to influence the advice given to clients by Licensee A and its representatives.

Such an arrangement is likely to be an avoidance scheme. This is because the payment would be conflicted remuneration if it was paid to Licensee A. However, in this case, it is not conflicted remuneration because it is paid to Licensee B.

In the circumstances and in the absence of another commercial purpose, it could be concluded that the payment was made to Licensee B for a purpose (i.e. not incidental) of avoiding the application of the ban on conflicted remuneration.

If payments are made by Licensee B to its directors and shareholders, this may also breach the ban on conflicted remuneration.

Non-volume-based shelf-space fees

- RG 246.225 A scheme may be an avoidance scheme if it is structured so that a platform operator is given or accepts a large flat fee that has no connection to:
- (a) the volume of financial products recommended or acquired by clients; or
 - (b) the number or value of financial products available through a platform.
- RG 246.226 Such fees may be used to ‘purchase’ preferential positions on a platform. The purpose of the ban on volume-based shelf-space fees is to prevent such arrangements from occurring.
- RG 246.227 These arrangements may also be a form of conflicted remuneration if the platform operator provides advice to clients, such as in the case of a private label arrangement.

Trading participants and brokerage

- RG 246.228 Regulation 7.7A.12D generally excludes brokerage from being conflicted remuneration if it is given to a trading participant of a prescribed financial market or ASX 24, or its representative: see [Appendix 1](#).
- RG 246.229 The exclusion may apply when a person is a trading participant of one prescribed financial market and trades on another financial market.
- RG 246.230 We are more likely to scrutinise conduct to determine whether the anti-avoidance provision has been breached if:
- (a) a person receives brokerage and is a trading participant of a market;
 - (b) the person’s business does not involve genuine measures to deal on this market on behalf of clients;
 - (c) the person’s business substantially consists of arranging transactions on a different market; and
 - (d) the person is not a trading participant of the different market.
- RG 246.231 This is because we consider this conduct is more likely to be carried out for the purpose (that is not incidental) of avoiding the ban on conflicted remuneration.

Schemes that are unlikely to be avoidance schemes

- RG 246.232 In administering the anti-avoidance provision, we are unlikely to scrutinise schemes that are normal commercial transactions conducted in the ordinary course of business.
- RG 246.233 We are also unlikely to take action on arrangements that have been genuinely entered into to comply with the ban on conflicted remuneration.

Example 23: Benefits for information technology software and support (not an avoidance scheme)

Scenario

Every month a product issuer offers the financial advisers of an AFS licensee an incentive of \$500 if they sell a certain volume of the issuer's products. From 1 July 2013, the product issuer no longer makes this offer (the product issuer has not elected to comply with Pt 7.7A before this date).

Instead, the product issuer offers to provide the AFS licensee with access to software that it owns, which allows the performance of a client's investment in the issuer's products to be monitored. The software can be accessed by all of the licensee's financial advisers.

Commentary

We would not consider the offer to provide access to this software to be an avoidance scheme. Nor would we consider it to be a form of conflicted remuneration because of the exclusion in s963C(d) for providing information technology software and support: see [Appendix 1](#).

Appendix 1: Benefits that are excluded from the ban on conflicted remuneration

RG 246.234 This appendix (Table 5) sets out examples of benefits that are excluded from the ban on conflicted remuneration in Div 4 of Pt 7.7A. It does not include all exclusions from the ban on conflicted remuneration. For example, it does not list conduct that is excluded from all of Pt 7.7A (e.g. see regs 7.7A.40 and 9.12.04).

Table 5: Benefits that are not conflicted remuneration

Type of benefit	Circumstances in which the benefit is given to an AFS licensee or its representatives that provide advice to clients
Benefits for advice on general insurance products: see reg 7.7A.12G	A monetary or non-monetary benefit, such as a commission, is not conflicted remuneration if it is given for advice on a general insurance product.
Benefits relating to life risk insurance products	See Appendix 2 .
Consumer credit insurance: see regs 7.7A.11C(1)(c), 7.7A.11D(1)(c), 7.7A.12A and 7.7A.12G	<p>The ban on conflicted remuneration does not apply if a monetary benefit is given in relation to consumer credit insurance.</p> <p>The ban on conflicted remuneration also does not apply if a benefit is given in relation to both consumer credit insurance and a non-financial product (e.g. a credit facility), due to reg 7.7A.12I, which allows mixed benefits in specified circumstances.</p>
Benefits in relation to execution-only services: see s963B(1)(c)	<p>A monetary benefit is not conflicted remuneration if:</p> <ul style="list-style-type: none"> • it is given in relation to the issue or sale of a financial product; • it does not relate to the issue or sale of a life risk insurance product; and • the advice about the product, or products of that class, has not been given to the client by the AFS licensee or its representative in the 12 months immediately before the benefit is given. <p>This means that a benefit is not conflicted remuneration if it is given in relation to an execution-only issue or sale of a financial product. However, this exclusion only applies if the advice about the product, or class of product to which the product belongs, has not been given to the client by the AFS licensee or its representative in the 12 months immediately before the benefit is given.</p> <p>For an AFS licensee that is part of a vertically integrated corporate group, if a separate licensee within the group has provided advice to the client within the previous 12 months, but the licensee seeking to rely on the exclusion has not, this fact alone does not prevent the licensee from relying on the exclusion.</p>

Type of benefit	Circumstances in which the benefit is given to an AFS licensee or its representatives that provide advice to clients
<p>Benefits given by the client: see s963B(1)(d) and 963C(e), and regs 7.7A.11C(1)(d), 7.7A.11C(2)(d), 7.7A.11D(1)(d) and 7.7A.11D(2)(e)</p>	<p>A monetary or non-monetary benefit is not conflicted remuneration if it is given by a client in relation to:</p> <ul style="list-style-type: none"> • the issue or sale of a financial product by an AFS licensee or its representative to the client (see s963B(1)(d)(i) and 963C(e)(i)); <p>Note: This does not apply to additional investments that do not result in an issue or sale, such as additional contributions to a superannuation account.</p> <ul style="list-style-type: none"> • advice given by the licensee or its representative to the client (see s963B(1)(d)(ii) and 963C(e)(ii))—for example, fees calculated based on an hourly rate, a fixed price or as an asset-based fee; • information that is given to the client in relation to a life risk insurance product in the course of providing a financial product (see regs 7.7A.11C(1)(d) and 7.7A.11C(2)(d)); or • dealing in a life insurance product (see regs 7.7A.11D(1)(d) and 7.7A.11D(2)(e)). <p>Benefits given by the client must have been authorised by the client.</p> <p>However, the mere fact that a client consents to a benefit being paid does not mean that the benefit is authorised by the client. For the above exclusions to apply, the benefit must be authorised by the client and given by the client. Benefits given by third parties that are borne out of their own funds are not benefits given by the client.</p> <p>We will administer the law as if a benefit has been authorised by a client if it is given at the client's direction or with their clear consent.</p> <p>In our view, consent is 'clear' if it is genuine, express and specific. Mere knowledge of the benefit, or agreement to proceed with financial services in light of a disclosure about the benefit, is not clear consent.</p> <p>Subject to the qualification below, we consider that this exclusion applies when:</p> <ul style="list-style-type: none"> • a benefit is given by a client to an AFS licensee and the licensee subsequently passes on this benefit, or a portion of the benefit, to one of its authorised representatives or another representative; or • if the licensee passes on the benefit, or a portion of the benefit, to an authorised representative, and the authorised representative passes on the benefit, or a portion of the benefit, to another representative of the licensee (e.g. an employee of the authorised representative). <p>The exclusion only applies if the client has authorised passing on the benefits in this way and no AFS licensee or authorised representative that passes on a benefit has discretion over the portion of a benefit that is passed on. If a licensee or representative has this discretion, we do not consider that the benefit has been given at the client's direction or with their clear consent.</p> <p>For more information, see RG 246.52–RG 246.66.</p>

Type of benefit	Circumstances in which the benefit is given to an AFS licensee or its representatives that provide advice to clients
'Stamping fees': see reg 7.7A.12B	<p>A monetary benefit is not conflicted remuneration if it is a 'stamping fee' given to facilitate an offer to issue or sell a financial product where the purpose of the offer is to raise funds for the person issuing or selling the financial product (i.e. capital raising).</p> <p>A stamping fee is a fee, or part of a fee, that a person, including an issuer of a financial product or a person acting on behalf of the issuer, pays either directly or indirectly to an AFS licensee or its representatives in connection with:</p> <ul style="list-style-type: none"> • an offer by the issuer to issue or sell a financial product; or • an invitation by the issuer for an application to issue or sell a financial product. <p>This exclusion only applies to financial products that are:</p> <ul style="list-style-type: none"> • debentures, stocks or bonds that are, or are proposed to be, issued by a government; • shares in, or debentures of, a body that are, or are proposed to be, listed on a prescribed financial market; • interests in a managed investment scheme that is, or is proposed to be, listed on a prescribed financial market; or • a right to acquire, by way of issue, the shares, debentures or interests referred to in the preceding two bullet points. <p>From 1 July 2020, the exclusion no longer applies to interests, or proposed interests, in:</p> <ul style="list-style-type: none"> • a company (other than an infrastructure entity) that is, or is proposed to be, listed and whose main purpose is investing in passive investments; and • a managed investment scheme (other than a real estate investment trust or an infrastructure entity) that is, or is proposed to be, listed.
Fees for dealing services: see reg 7.7A.12E	<p>A monetary benefit is not conflicted remuneration if the benefit is given to an AFS licensee or its representative by a client in relation to the licensee or representative dealing in a financial product on behalf of the client.</p>

Type of benefit	Circumstances in which the benefit is given to an AFS licensee or its representatives that provide advice to clients
Purchase or sale of a financial advice business ('buyer of last resort' arrangements): see regs 7.7A.11C(1)(e), 7.7A.11D(1)(e) and 7.7A.12EA	<p>A monetary benefit (purchase price) is not conflicted remuneration to the extent that:</p> <ul style="list-style-type: none"> • the benefit is given to an AFS licensee or its representative; • the benefit is paid as part of the purchase or sale of all or part of the licensee's or representative's financial advice business; and • the price of the financial advice business is calculated using a formula: <ul style="list-style-type: none"> – which is based, in whole or in part, on the number or value of all or part of the financial products held by the licensee's clients or the representative's clients; and – in which the weighting attributed to the financial products issued by the licensee, a related body corporate, or other person is the same as the weighting attributed to other similar financial products. <p>Further, a monetary benefit is not conflicted remuneration if it is given to an AFS licensee or representative as part of the purchase or sale of all or part of the licensee or representative's business in relation to:</p> <ul style="list-style-type: none"> • information given to a person about a life risk insurance product; or • dealing in a life risk insurance product. <p>For more information, see RG 246.67–RG 246.71.</p>
Benefits for advice on interests in a time-sharing scheme: see reg 7.7A.12C	A benefit is not conflicted remuneration if it is given for advice about an interest in a time-sharing scheme.

Type of benefit	Circumstances in which the benefit is given to an AFS licensee or its representatives that provide advice to clients
<p>Brokerage: see reg 7.7A.12D</p>	<p>A monetary benefit is not conflicted remuneration if:</p> <ul style="list-style-type: none"> • the benefit consists of a percentage, of no more than 100%, of a brokerage fee that is given to a trading participant of Asia Pacific Exchange Limited, ASX Limited, Chi-X Australia Pty Ltd, National Stock Exchange of Australia Limited or SIM Venture Securities Exchange Ltd (prescribed financial markets) or ASX 24; and • the trading participant, directly or indirectly, gives the benefit to a representative of the trading participant. <p>A fee is also not conflicted remuneration if:</p> <ul style="list-style-type: none"> • it is paid between a trading participant and another AFS licensee that is not a trading participant (non-trading participant) in respect of dealings by a client through a 'specified service' (see definition below); • each of those trades is executed by the trading participant on behalf of the client; • the fee is a percentage, not exceeding 100%, of a brokerage fee paid directly or indirectly by the client; and • no portion of the benefit is paid to a person other than the trading participant or the non-trading participant. <p>A trading participant is a participant of a market (listed above) admitted under the market's operating rules who is allowed, under the market's operating rules, to deal in one or more of the financial products that are traded on the market.</p> <p>A brokerage fee is a fee that a client pays to a trading participant in relation to a transaction in which the trading participant, on behalf of the client, deals in a financial product that is traded on:</p> <ul style="list-style-type: none"> • a prescribed financial market; • ASX 24; or • a prescribed foreign financial market. <p>A specified service is a service that:</p> <ul style="list-style-type: none"> • is provided for clients under the name or brand name of the trading participant or non-trading participant; • relates to the dealing, on behalf of the client, in a financial product traded on: <ul style="list-style-type: none"> – a prescribed financial market; or – a prescribed foreign financial market; • is provided in either or both of the following ways: <ul style="list-style-type: none"> – by direct electronic access; or – by telephone, but only if direct electronic access is unavailable for a temporary period, or the client expresses a preference for the service to be provided by telephone and neither the trading participant nor the non-trading participant provides advice to the client by telephone for dealings undertaken on the client's behalf; and • is provided in circumstances in which neither the trading participant nor the non-trading participant provides personal advice to the client for the dealing undertaken on the client's behalf.

Type of benefit	Circumstances in which the benefit is given to an AFS licensee or its representatives that provide advice to clients
Benefits given for advice about basic banking, general insurance and consumer credit insurance products: see s963D	<p>To the extent that a benefit is given in relation to advice, it is not conflicted remuneration if:</p> <ul style="list-style-type: none"> • the benefit only relates to a basic banking product, a general insurance product, a consumer credit insurance (CCI) product, or a combination of these financial products; • the AFS licensee or its representative that gives advice does not, at the same time, provide advice about any other financial products; and • the licensee or its representative is an agent or an employee of an Australian ADI or otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI. <p>This exclusion is designed to allow agents and employees of an Australian ADI, and other representatives acting under the name of the Australian ADI, to receive sales bonuses and other forms of remuneration for the advice that they give about basic banking, CCI and general insurance products. It also allows the agents and employees to receive such benefits even if those benefits also relate to advice or services that are not advice (e.g. advice about a credit facility) provided at the same time as advice about the basic banking, general insurance and/or CCI products.</p> <p>The exclusion may apply to a number of arrangements where a person is working for an Australian ADI under the name of the Australian ADI, including:</p> <ul style="list-style-type: none"> • contractors; • employees of employment agencies who may be working temporarily for the Australian ADI; • employees of a body corporate related to the Australian ADI; and • employees of another company who work exclusively for the Australian ADI. <p>Note: This is not intended to be an exhaustive list.</p>
Benefits with a small value: see s963C(b) and regs 7.7A.11C(2)(b), 7.7A.11D(2)(b), 7.7A.13 and 7.8.11A	<p>A non-monetary benefit is not conflicted remuneration if the value is less than \$300 for each AFS licensee or its representative that is the final recipient of the benefit and identical or similar benefits are not given on a frequent or regular basis.</p> <p>An AFS licensee must keep records of benefits with a value between \$100 and \$300 that are given to the licensee or any of its representatives that give advice: see reg 7.8.11A. We encourage licensees to similarly keep records where the benefit relates to information about a life risk insurance product or dealing in a life risk insurance product.</p> <p>See RG 246.72–RG 246.78.</p>

Type of benefit	Circumstances in which the benefit is given to an AFS licensee or its representatives that provide advice to clients
Benefits with an educational or training purpose: see s963C(c) and regs 7.7A.11C(2)(c), 7.7A.11D(2)(c), 7.7A.14, 7.7A.15 and 7.8.11A	<p>A non-monetary benefit, regardless of who gives it, is not conflicted remuneration if it has a genuine educational or training purpose that is relevant to:</p> <ul style="list-style-type: none"> • if the AFS licensee or representatives gives advice—the carrying on of a financial services business; or • for all AFS licensees or representatives—giving information on life risk insurance products or dealing in life risk insurance products. <p>The benefit must:</p> <ul style="list-style-type: none"> • be for the provision of an education or training course to an AFS licensee or its representative (the participant); or • have the dominant purpose of education or training. <p>Where the benefit is for the provision of an education or training course:</p> <ul style="list-style-type: none"> • education and training activities for the course must take up at least the lesser of six hours a day or 75% of the time spent on the course; and • the participant or their employer or AFS licensee must pay for travel and accommodation relating to the course, and events and functions held in conjunction with the course (e.g. day trips or dinners). <p>Examples of benefits to which this exclusion applies include written material on the tax implications of a product and research on a class of products an adviser gives advice on that would further the adviser’s knowledge about these products.</p> <p>An AFS licensee must keep records of education and training benefits that it or its representatives receive that relate to the carrying on of a financial services business, where the licensee or its representatives gives advice: see reg 7.8.11A. We encourage licensees to similarly keep records where the benefit relates to information on, or dealing in, a life risk insurance product.</p>
Life risk insurance benefits that do not influence advice: see regs 7.7A.11C(1)(a), 7.7A.11C(2)(a), 7.7A.11D(1)(a) and 7.7A.11D(2)(a)	<p>A monetary or non-monetary benefit given to an AFS licensee or its representative in relation to information given to a person on, or dealing in, a life risk insurance product, is not conflicted remuneration if:</p> <ul style="list-style-type: none"> • because of the nature of the benefit, or the circumstances in which it is given, the benefit could not reasonably be expected to influence: <ul style="list-style-type: none"> – whether the licensee or its representative gives the information to the person, or whether the licensee or its representative deals in the product; or – the way in which the licensee or its representative presents the information in giving it to the person, or the way in which the licensee or its representative deals in the product. <p>Benefits relating to advice on a life risk insurance product or other financial products are also not conflicted remuneration if they do not influence the advice: see RG 246.37–RG 246.44.</p>

Type of benefit	Circumstances in which the benefit is given to an AFS licensee or its representatives that provide advice to clients
Benefits for information technology software and support: see s963C(d) and regs 7.7A.11C(2)(d), 7.7A.11D(2)(d) and 7.8.11A	<p>A non-monetary benefit is not conflicted remuneration if it is for the provision of information technology software or support, and the benefit relates to:</p> <ul style="list-style-type: none"> • providing advice to clients about the financial products issued or sold by the benefit provider; or • giving information on, or dealing in, a life risk insurance product. <p>We consider that the following types of benefit are likely to be covered by this exclusion:</p> <ul style="list-style-type: none"> • software for an administration platform where the benefit is given by the owner or distributor of the software; • access to an information technology 'help desk' for problems that an AFS licensee or its representative experiences in using administration platform software, where the benefit is given by the software owner or distributor; and • access to a website to place client orders. <p>We consider that the following types of information technology software and support are unlikely to be covered by the exclusion:</p> <ul style="list-style-type: none"> • payroll administration software and related support services; • accounting software and related support services to manage the accounts of an AFS licensee's or one of its representative's business; and • anti-virus software. <p>If an AFS licensee receives benefits for information technology software and support and uses them to meet operating costs, we are less likely to scrutinise the benefit under the ban on conflicted remuneration if:</p> <ul style="list-style-type: none"> • the benefit is not passed on to the adviser; and • there are controls in place to ensure that the benefit does not influence the advice. <p>Our views on when this could be the case are discussed at RG 246.105–RG 246.107.</p> <p>An AFS licensee must keep records of information technology software or support that it or its representatives receive that relate to providing advice to clients about the products issued or sold by the benefit provider: see reg 7.8.11A. We encourage licensees to similarly keep records where the benefit relates to information on, or dealing in, a life risk insurance product.</p>

Type of benefit	Circumstances in which the benefit is given to an AFS licensee or its representatives that provide advice to clients
Mixed benefits: see reg 7.7A.12I	<p>Where a portion of a benefit is excluded from being conflicted remuneration, the benefit will continue to be excluded even if:</p> <ul style="list-style-type: none"> • the benefit also relates to other activities, but only to the extent that the part of the benefit that relates to the other activities is not conflicted remuneration; or • the AFS licensee or its representative that provides advice to a client provides other services (whether or not financial services) at the same time. <p>This exclusion does not apply to the extent that the provisions under which the benefit is given state that:</p> <ul style="list-style-type: none"> • the benefit may only relate to particular financial products or services; or • an AFS licensee or its representative must not receive the benefit if they, at the same time, provide other specified financial services. <p>The effect of this exclusion is that, among other things:</p> <ul style="list-style-type: none"> • an excluded benefit may also relate to products that are not financial products (such as credit facilities) unless the provision excluding the benefit provides otherwise; and • an excluded benefit may also relate to other financial services provided: <ul style="list-style-type: none"> – the component that relates to the other financial services is not conflicted remuneration; and – the provision excluding the benefit does not provide otherwise; and • the exclusion for basic banking and general insurance products in reg 7.7A.12H does not apply if advice is given on other financial products. This is a condition of relying on the exclusion in reg 7.7A.12H and the condition still applies regardless of the operation of reg 7.7A.12I. <p>However, the exclusion in reg 7.7A.12H will apply if other services are provided, such as dealing services or a credit service for the purposes of the <i>National Consumer Credit Protection Act 2009</i>.</p>

Appendix 2: Benefits relating to life risk insurance products that are excluded from the ban on conflicted remuneration

RG 246.235 This appendix sets out when benefits relating to life risk insurance products issued after 1 January 2018 are excluded from the ban on conflicted remuneration.

When a life insurance benefit is not conflicted remuneration

RG 246.236 A monetary benefit relating to a life risk insurance product is not conflicted remuneration if:

- (a) it is the same for the year in which the product or products are issued as it is for each year in which the product or products are continued (i.e. a level commission); or
- (b) it satisfies the ‘benefit ratio’ and the ‘clawback’ arrangements (see s963B(1)(b), regs 7.7A.11C(1)(b) and 7.7A.11D(1)(b) and Table 7, Table 8 and Table 9).

Note: [Appendix 1](#) sets out other exclusions that may apply to benefits relating to life risk insurance products. See, in particular, the exclusion for life risk insurance benefits that do not influence the advice.

RG 246.237 The benefit ratio and clawback arrangements are determined by ASIC and are set out in [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#). From 1 January 2020, the commission cap in the first year is set at 60% of the policy cost (i.e. upfront commission), and 20% of the policy cost after the first year (i.e. trailing commission): see section 5(2) and (3) of the instrument.

RG 246.238 The exclusion does not apply to monetary benefits relating to the following products:

- (a) a group life risk policy inside superannuation, whether it is for a default superannuation fund or another type of superannuation fund; and
- (b) an individual life insurance policy for the benefit of a member of a default superannuation fund.

RG 246.239 Depending on the circumstances, a commission given to an AFS licensee or its representative may or may not include GST. When a commission includes a GST component, the GST component is not intended to be a benefit for the purposes of the ban on conflicted remuneration: see paragraph 1.29 of the Explanatory Memorandum to the Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016.

Upfront commission given when there is a client-initiated increase

RG 246.240 When there is action taken by the client that results in an increase in the policy cost, the commission cap from 1 January 2020 is 60% of the increase in the policy cost for the 12 months after the increase, and 20% of the increase in the policy cost after the first 12 months: see section 5(4) and (5) of [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#).

Note: A client-initiated increase is defined in section 4 of the instrument and includes matters such as the policy holder agreeing to an increase in the sum insured or that the premium basis should change from a stepped premium to a level premium.

Example 24: Calculating the acceptable benefit ratio with a client-initiated increase

A life risk insurance product is issued to the holder on 31 December 2020 with a policy cost for the year of \$1,000. An acceptable benefit ratio for a benefit provided to an AFS licensee or its representative for the initial 12-month period is 0.6 (i.e. the maximum commission payable is 60% of the policy cost). Accordingly, the allowable commission is no more than \$600.

The holder decides to continue the product into a second year and to increase the sum insured. The policy cost for the second year increases to \$1,200, with \$150 of the increase being because of the decision to increase the sum insured and the remaining \$50 because of a CPI increase to the sum insured. The \$150 is a client-initiated increase and an acceptable benefit ratio of 0.6 applies for a benefit provided for the second year in relation to the \$150 increase.

Therefore, a benefit of up to \$90 may be given in relation to this increase. An acceptable benefit ratio of 0.2 applies for a benefit provided for the second year in relation to the \$1,050 balance of the policy cost. Therefore, a benefit of up to \$210 may be given in relation to the \$1,050 balance of the policy cost. Accordingly, the maximum total benefit that may be given for the second year is \$300.

Commission for a client-initiated increase that occurs part way through a year

RG 246.241 Table 6 provides the method for calculating the allowable upfront and trailing commission in relation to an increase in the policy cost if the client-initiated increase occurs part way through the year.

Table 6: Calculating the commission for a client-initiated increase that occurs part way through a year

Commission	Method
Upfront commission	<p>Calculate the maximum allowable commission in relation to the annual increase in policy cost following the client-initiated increase—that is:</p> $\text{Total annual client initiated increase} \times 0.6$ <p>For example, for a client-initiated increase that resulted in an increase in the policy cost of \$250 a year where the client-initiated increase occurred 292 days into the first year, the allowable commission would be \$150 (i.e. \$250 multiplied by 0.6).</p>
Trailing commission	<p>Where a client-initiated increase has occurred in the previous year, the 20% trailing commission cap applies to the client-initiated increase commencing 12 months after the time of the client-initiated increase. The trailing commission is calculated from the 12-month anniversary of the policy increase (and not from the anniversary of the issue of the policy) because the 60% commission cap for the client-initiated increase applies to the 12-month period from the date of the client-initiated increase.</p> <p>The first step is to calculate the acceptable benefit ratio using the following formula:</p> $\frac{0.2 \times \text{Relevant days in year}}{365}$ <p>'Relevant days in year' means the number of days from 12 months after the client-initiated increase until the end of the year.</p> <p>Following the previous example, if the policy continued for a further year, the acceptable benefit ratio would be 0.04 (i.e. (0.2 x 73) divided by 365).</p> <p>The second step is to calculate the maximum allowable commission by multiplying the acceptable benefit ratio and the total annual client-initiated increase.</p> <p>Following the example, the maximum allowable commission would be \$10 (i.e. 0.04 multiplied by \$250). A further trailing commission of up to 20% of the remaining policy cost could also be paid in relation to the policy.</p>

Source: See section 5(4) and (5) of [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#).

- RG 246.242 The commission can be paid in full or by instalment as long as, consistent with the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017*, it is a commission for the year in which the increase occurred. For example, if an obligation to pay a commission was incurred at the time of the increase, with the commission to be paid by instalments, the commission would be a commission for the year in which the increase occurred despite being paid by instalments.

Clawback arrangements

- RG 246.243 The arrangement under which the benefit is given must include a clawback requirement that provides that, when a policy is cancelled, not continued or the policy cost is reduced in the first two years, a certain percentage of the commission must be repaid to the party who provided the benefit (i.e. 'clawed back').

- RG 246.244 [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#) sets out the amount, or way of working out the amount, that must be repaid when a policy is cancelled, not continued, or the policy cost is reduced in the first two years of the policy. If an insurer does not follow the methodology in the instrument, the clawback amount must be equal to or greater than the amount determined by using the methodology: see s963BA(3)(b)–(4).
- RG 246.245 The clawback should be calculated against the total policy cost (or reduction in the total policy cost), rather than for each component of the policy that may be cancelled, not continued, or the cost reduced: see [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#) and s963BA(3).
- RG 246.246 The law does not prescribe a time period for repayment of commissions. This is a matter to be determined between AFS licensees or representatives and life insurers.
- RG 246.247 The clawback arrangements for trigger events are detailed in Table 7, Table 8 and Table 9.

When clawback does not apply

- RG 246.248 Clawback does not apply to the 20% trail commission paid in the second year of a policy if the policy is cancelled or not continued in the second year: see section 6(17) of [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#).
- RG 246.249 Clawback does not apply when the policy is cancelled or not continued in the first two years due to:
- (a) the death of the insured;
 - (b) situations of self-harm;
 - (c) the insured reaching an age at which coverage is no longer provided; or
 - (d) an administrative error (see reg 7.7A.12EB).
- RG 246.250 Clawback also does not apply when there is a reduction in the policy cost during the first two years due to:
- (a) the insurer and the insured agreeing to a reduction in a risk in relation to the insured (e.g. the insured decides to stop smoking);
 - (b) rebates or discounts provided to the insured that are intended to encourage the acquisition or continued holding of a life insurance product (e.g. a loyalty-based premium reduction);
 - (c) the insurer reducing the policy cost without changing the coverage provided (e.g. the insurer reduced the policy cost for competitive reasons);

- (d) a claim being made under the policy (e.g. a total and permanent disability claim being made on a policy that has both a death and a total permanent disability component could result in the policy only having a death benefit); or
- (e) an administrative error (see reg 7.7A.12EC).

Table 7: Clawback arrangements—Commission given for the first year not because of a client-initiated increase

Trigger event	Clawback amount
<p>Policy cancelled or not continued in the first year</p> <p>Note: If the policy is in force for exactly 12 months, and then cancelled or not continued into a second year, the second-year clawback provisions will apply (i.e. the clawback rate is 60% of the first-year commission, rather than 100% of the first-year commission).</p>	<p>The clawback amount is 100% of the commission.</p> <p>If an amount has already been clawed back due to a reduction in the policy cost, the commission is adjusted by subtracting the clawed back amount from the commission before clawing back 100% of the 'adjusted' commission.</p>
<p>Product cancelled or not continued in the second year</p> <p>Note: If the policy is in force for exactly 24 months, and then cancelled or not continued into a third year, there will be no clawback.</p>	<p>The clawback amount is 60% of the commission.</p> <p>If an amount has already been clawed back due to a reduction in the policy cost, the commission is adjusted by subtracting the clawed back amount from the commission before clawing back 60% of the 'adjusted' commission.</p> <p>Note: A different rule applies to a benefit given for a client-initiated increase benefit in the first year and within 12 months, and for reductions in policy cost (see below).</p>
<p>Policy cost reduced in the first year</p>	<p>The clawback amount is a percentage of the commission that is equal to the percentage by which the policy cost has been reduced. For example, if the policy cost is reduced by 20% in the first year, 20% of the commission would be clawed back.</p>
<p>Product continued into the second year at a reduced policy cost</p> <p>Policy cost reduced in the second year below the initial second-year policy cost (where there has not been a client-initiated increase)</p>	<p>The clawback amount is 60% of the percentage of the commission that is equal to the percentage by which the policy cost has been reduced. For example, if the policy cost is reduced by 10%, 60% of 10% of the commission will be clawed back.</p>

Source: See section 6 of [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#).

Note: When determining the policy cost for a product for the first year or the second year at a particular time, the policy cost for the year at that time is taken to be the amount that would have been the policy cost for the year if the product had been held on the terms and conditions applying at that time for the whole of the year: see section 6(18) of [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#).

Table 8: Clawback arrangements—Commission given for the first year because of a client-initiated increase

Trigger event	Clawback amount
Product cancelled or not continued in the second year and within 12 months of the client-initiated increase	The clawback amount is 100% of the commission from the client-initiated increase.
Policy cancelled or not continued in the second year and more than 12 months after the client-initiated increase	The clawback amount is 60% of the commission from the client-initiated increase.
Product is continued for the second year at a reduced policy cost and within 12 months of the client-initiated increase	<p>The clawback amount is a percentage of the commission from the client-initiated increase that is equal to the percentage by which the policy cost has been reduced.</p> <p>For example, if there is a client-initiated increase from \$800 to \$1,000 in the first year, there is a commission of \$120 from that client-initiated increase in the first year. If the policy cost for the second year decreased from \$1,000 in the first year to \$800 at the start of the second year, the percentage of the reduction in policy cost is 20%. The clawback amount on the client-initiated increase would be the percentage of the reduction multiplied by the commission amount (i.e. 20% of \$120 equals \$24).</p>
Policy cost for the second year is reduced to less than the policy cost at the start of the second year and within 12 months of the client-initiated increase	<p>The clawback amount is a percentage of the commission from the client-initiated increase that is equal to the percentage by which the policy cost has been reduced below the initial second-year policy cost.</p> <p>For example, the second-year policy cost begins at \$1,000, then partway through the second year reduces to \$800. The clawback amount will be the percentage of the reduction (20%) multiplied by the commission amount from the first-year client-initiated increase.</p>
Policy cost is reduced 12 months after the client-initiated increase	The clawback amount is 60% of the percentage of the commission from the client-initiated increase that is equal to the percentage by which the policy cost has been reduced.
Policy cost for the second year is reduced more than 12 months after the client-initiated increase to an amount that is less than the policy cost for the product for the second year	The clawback amount is 60% of the percentage of the commission from the client-initiated increase that is equal to the percentage by which the policy cost has been reduced below the policy cost as at 12 months after the client-initiated increase.

Source: See section 6 of [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#).

Note: When determining the policy cost for a product for the first year or the second year at a particular time, the policy cost for the year at that time is taken to be the amount that would have been the policy cost for the year if the product had been held on the terms and conditions applying at that time for the whole of the year: see section 6(18) of [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#).

Table 9: Clawback arrangements—Commission given for the second year because of a client-initiated increase in the second year

Trigger event	Clawback amount
Policy cancelled or not continued in the second year	The clawback amount is 100% of the commission from the client-initiated increase in the second year.
Policy cost for the second year is reduced	<p>The clawback amount is 100% of the commission from the client-initiated increase if the reduced policy cost is less than the policy cost immediately before the client-initiated increase.</p> <p>In any other circumstance (e.g. the policy cost for the second year is reduced but is still more than the policy cost immediately before the client-initiated increase), the following formula should be used to determine how much of the commission paid (i.e. 'benefit') must be clawed-back:</p> $\frac{\text{Benefit} \times \text{Aggregate reduction}}{\text{New policy cost}}$ <p>'Aggregate reduction' means the amount by which the policy cost for the second year (determined immediately after the reduction) is less than the policy cost for the second year (determined immediately after the client-initiated increase).</p> <p>'New policy cost' means the part of the policy cost payable for the second year (determined immediately after the client-initiated increase) that is payable because of the client-initiated increase.</p> <p>For example, if the policy cost for the second year began at \$1,100, then increased to \$1,200 due to a client-initiated increase, the maximum commission from the client-initiated increase would be \$60 (i.e. \$100 multiplied by 60%).</p> <p>If a \$60 commission were paid and the policy cost then reduced in the second year to \$1,000 (i.e. below the policy cost for the second year), the clawback amount would be 100% of the commission from the client-initiated increase (i.e. \$60 would be clawed back).</p> <p>If, however, the policy cost reduced in the second year to \$1,150 (i.e. less than the increased amount, but more than the policy cost before the client-initiated increase), the clawback amount would be \$30 (i.e. \$60 multiplied by (\$1,200 minus \$1,150) divided by \$100).</p> <p>ASIC Corporations (Life Insurance Commissions) Instrument 2017/510 notes that each application of section 6(14) gives rise to a separate clawback amount. This means that when there have been two commissions (e.g. from the issue of the product and from a client-initiated increase), a particular trigger event can result in separate clawback amounts being calculated for each commission.</p>

Source: See section 6 of [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#).

Note: When determining the policy cost for a product for the first year or the second year at a particular time, the policy cost for the year at that time is taken to be the amount that would have been the policy cost for the year if the product had been held on the terms and conditions applying at that time for the whole of the year: see section 6(18) of [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#).

Key terms

Term	Meaning in this document
2012 Revised Explanatory Memorandum	Revised Explanatory Memorandum to the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012
ADI	An authorised deposit-taking institution—a corporation that is authorised under the <i>Banking Act 1959</i> . ADIs include: <ul style="list-style-type: none"> • banks; • building societies; and • credit unions
advice	Financial product advice
advice provider	A person to whom the obligations in Div 2 of Pt 7.7A of the Corporations Act apply when providing personal advice to a client. This is generally the individual who provides the personal advice. However, if there is no individual who provides the advice, which may be the case if advice is provided through a computer program, the obligations in Div 2 of Pt 7.7A apply to the legal person that provides the advice (e.g. a corporate licensee or authorised representative)
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 Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
application day	The application day was generally 1 July 2013, unless an AFS licensee elected to comply with Pt 7.7A before that day: see RG 246.14
arrangement	Has the meaning given in s761A of the Corporations Act
ASIC	Australian Securities and Investments Commission
asset-based fee	A fee paid by a client for receiving advice, where that fee is dependent on the amount of funds used or to be used to acquire financial products by, or on behalf of, the client. A fee is an asset-based fee even if it is paid by a third party holding assets on behalf of the client, provided that the client directs the third party to pay the fee
ASX 24	The exchange market formerly known as Sydney Futures Exchange (SFE), operated by Australian Securities Exchange Limited

Term	Meaning in this document
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 Note: This is a definition contained in s761A.
avoidance scheme	A scheme to avoid the application of a provision in Pt 7.7A of the Corporations Act
ban on asset-based fees on borrowed amounts	The provisions in Subdiv B of Div 5 of Pt 7.7A of the Corporations Act
best interests duty	The duty to act in the best interests of the client when giving personal advice to a client as set out in s961B(1) of the Corporations Act
best interests duty and related obligations	The obligations in Div 2 of Pt 7.7A of the Corporations Act
client	A retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
conflicted remuneration	A benefit given to an AFS licensee, or a representative of a licensee, who provides advice to clients that, because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence: <ul style="list-style-type: none"> • the choice of financial product recommended to clients by the licensee or its representative; or • the advice given to clients by the licensee or its representative. In addition, the benefit must not be excluded from being conflicted remuneration by the Corporations Act or Corporations Regulations
conflicted and other banned remuneration provisions	The provisions on conflicted remuneration and other banned remuneration in Divs 4 and 5 of Pt 7.7A of the Corporations Act and in Div 4 of Pt 7.7A of the Corporations Regulations
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
covered person	Person covered by s963M of the Corporations Act
Ending Grandfathered Conflicted Remuneration Act	<i>Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Act 2019</i>
Ending Grandfathered Conflicted Remuneration Regulations	Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019

Term	Meaning in this document
fee-for-service exclusion	When the presumption in s964A(2) of the Corporations Act that certain fees are volume-based shelf-space fees does not apply because a benefit is a reasonable fee charged for a service provided to the funds manager by the platform operator or another person: see s964A(3)(a)
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"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) <p>Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.</p>
financial product advice	<p>A recommendation or a statement of opinion, or a report of either of these things, that:</p> <ul style="list-style-type: none"> • is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or • could reasonably be regarded as being intended to have such an influence. <p>This does not include anything in an exempt document.</p> <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
funds manager	Has the meaning given in s964 of the Corporations Act
general advice	<p>Advice that is not personal advice</p> <p>Note: This is a definition contained in s766B(4) of the Corporations Act.</p>
grandfathered benefit	A benefit to which the conflicted and other banned remuneration provisions did not apply because of certain transitional provisions in the Corporations Act and the Corporations Regulations
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	An investor directed portfolio services-like scheme as defined in Class Order [CO 13/762] <i>Investor directed portfolio-like services provided through a registered managed investment scheme</i> , or any instrument that amends or replaces that class order
influence the advice	<p>Something that, because of its nature or the circumstances in which it is given, could be expected to influence:</p> <ul style="list-style-type: none"> • the choice of financial products recommended to clients by an AFS licensee or its representatives; or • the advice given to clients by the licensee or its representatives

Term	Meaning in this document
licensee	An AFS licensee
life risk insurance product	Has the meaning given in s761A of the Corporations Act
nominee and custody service	A nominee and custody service as defined in ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156 or in any instrument that amends or replaces that instrument
personal advice	Advice given or directed to a person (including by electronic means) in circumstances where: <ul style="list-style-type: none"> the provider of the advice has considered one or more of the client's objectives, financial situation and needs; or a reasonable person might expect the provider to have considered one or more of these matters <p>Note: This is a definition contained in s766B(3) of the Corporations Act.</p>
platform	For the purposes of Divs 4 and 5 of Pt 7.7A of the Corporations Act, a custodial arrangement (as defined in s1012IA(1)), subject to s964(3)
platform operator	Has the meaning given in s964 of the Corporations Act
prescribed financial market	A financial market prescribed in reg 1.0.02A of the Corporations Regulations
private label arrangement (for a platform)	An arrangement where an AFS licensee is also a platform operator, although it typically outsources the administration of the platform to another platform operator
product holder	Has the meaning given in s963N of the Corporations Act
Pt 7.7A (for example)	A part of the Corporations Act (in this example, numbered 7.7A), unless otherwise specified
reg 7.7A.13 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.7A.13), unless otherwise specified
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
representative of an AFS licensee	Means: <ul style="list-style-type: none"> an authorised representative of the licensee; an employee or director of the licensee; an employee or director of a related body corporate of the licensee; or any other person acting on behalf of the licensee <p>Note: This is a definition contained in s910A of the Corporations Act.</p>
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
RG 146 (for example)	An ASIC regulatory guide (in this example numbered 146)

Term	Meaning in this document
RSE licensee	A registrable superannuation entity licensee—has the meaning given in s10 of the SIS Act
s782 (for example)	A section of the Corporations Act (in this example numbered 782), unless otherwise specified
scale efficiencies exclusion	When the presumption in s964A(2) that certain fees are volume-based shelf-space fees does not apply because a benefit is a discount on an amount payable, or a rebate of an amount paid, to the funds manager by the platform operator, the value of which does not exceed an amount that may reasonably be attributed to efficiencies gained by the funds manager because of the number or value of financial products in relation to which the funds manager provides services to the platform operator, or through the platform operator to another person: see s964A(3)(b)
shelf-space fee	A fee for making a funds manager's products available through a platform. It also includes a discount on an amount payable, or a rebate of an amount paid, by a platform operator to a funds manager, where the discount or rebate is for the funds manager's products being available through the platform
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SMSF	A self-managed superannuation fund
SOA	A Statement of Advice—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 of the Corporations Act Note: See s761A for the exact definition.
superannuation master trust	A superannuation fund that has an obligation to give documents to clients under s1012IA
volume-based benefit	A benefit that is not excluded from being conflicted remuneration where access to the benefit or the value of the benefit is dependent on the total number or value of financial products: <ul style="list-style-type: none"> recommended to a client by an AFS licensee or its representatives; or acquired by a client to whom a licensee or its representatives provide advice
white label arrangement (for a platform)	An arrangement where an AFS licensee enters into contractual arrangements with a platform operator to rebrand the platform operator's platform to make it appear as its own—that is, the platform is 'badged' or 'promoted' by the licensee

Related information

Headnotes

AFS licensees, asset-based fees, authorised representatives, avoidance, ban on conflicted remuneration, best interests duty, client, conflicted remuneration, conflicted and other banned remuneration, covered person, fee-for-service exclusion, financial product advice, general advice, grandfathered benefits, influence the advice, just and equitable, life risk insurance products, management fees, performance benefits, personal advice, private label arrangements, product holder, rebate, rebating scheme, record-keeping obligations, representatives, retail clients, scale efficiencies exclusion, volume-based benefits, volume-based shelf-space fees, white label arrangements

Legislative instruments

[ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#)

Regulatory guides

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

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

[RG 108](#) *No-action letters*

[RG 148](#) *Platforms that are managed investment schemes and nominee and custody services*

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

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

[RG 183](#) *Approval of financial services sector codes of conduct*

[RG 244](#) *Giving information, general advice and scaled advice*

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

Legislation

Competition and Consumer Act 2010, Pt IV

Corporations Act, Pts 7.7 and 7.7A, s52, 601FC, 761A, 761G, 763A, 764A, 765A, 766B, 912A, 960A, 961B, 961G, 961J, 963A, 963B, 963BA, 963C, 963D, 963E, 963F, 963G, 963H, 963J, 963K, 963L, 963M, 963N, 963P, 964, 964A, 964D, 964E, 964F, 964G, 964H, 965, 989B, 1317E, 1528, 1529, 1531, 1549B

Corporations Amendment (Financial Advice Measures) Bill 2016

Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011

Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012

Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017

Corporations Amendment (Life Insurance Remuneration Arrangements) Regulations 2017

Corporations Regulations, Pt 7.1, regs 7.7A.11B, 7.7A.11C, 7.7A.11D, 7.7A.12A, 7.7A.12B, 7.7A.12C, 7.7A.12D, 7.7A.12E, 7.7A.12EA, 7.7A.12EB, 7.7A.12EC, 7.7A.12G, 7.7A.12H, 7.7A.12I, 7.7A.13, 7.7A.14, 7.7A.15, 7.7A.15AK, 7.7A.16H, 7.7A.17, 7.7A.18, 7.7A.40, 7.8.11A, 7.8.12A, 9.12.04, 10.33.02

Ending Grandfathered Conflicted Remuneration Act

Ending Grandfathered Conflicted Remuneration Regulations

National Consumer Credit Protection Act 2009

SIS Act, s99F