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Compliance

New Disclosure Requirements for Financial Advice Providers

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Introduction

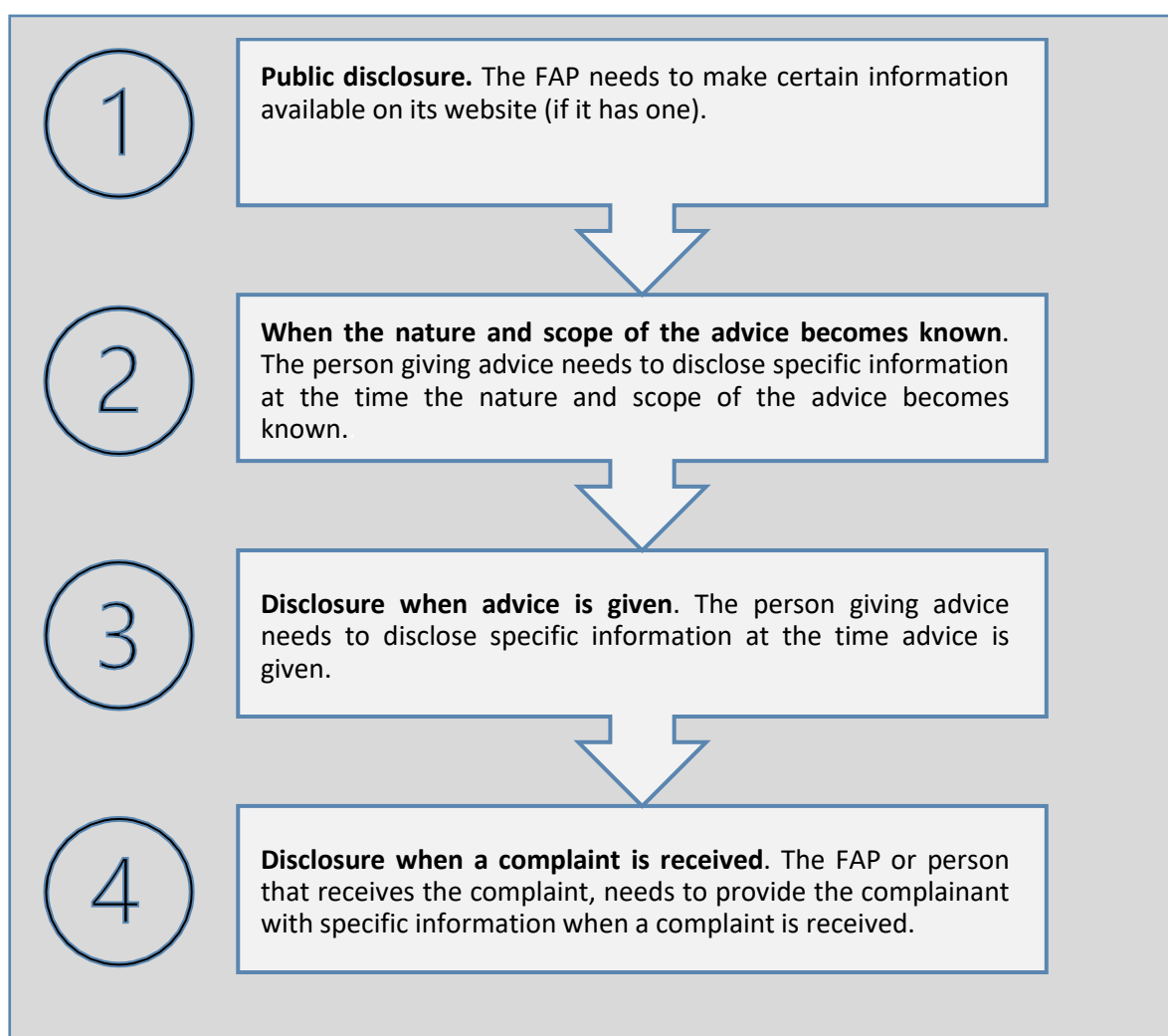
The Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations (the Regulations) come into force on 15 March 2021, the start date of the new financial advice regime.

On 15 March 2021, the Financial Markets Conduct Act 2013 (FMCA) will be amended, and a new regime will be introduced for regulating financial advisers under the FMCA.

Under the new regime, there are a range of new duties that will apply to financial advisers, financial advice providers (FAPs) (and those engaged by them), including the duty to make prescribed information available in a prescribed manner when required to do so under the FMCA. The Regulations provide the details of these new disclosure requirements.

The Quick Read

The Regulations identify four stages in the advice process where different disclosures are required.



There is no specified format for disclosure, except that the information must be available to clients in writing, and it must be clear, concise and effective.

Provided that the information is clear, concise and effective, disclosure information can be made available or given to clients in any form and manner reasonably considered appropriate.

The new disclosure requirements apply to financial advice given to retail clients. It does not apply to financial advice given to wholesale clients.

Key terms

Financial Advice Provider (FAP)

A FAP is an individual or entity that provides a 'financial advice service' (as defined by the FMCA). An individual or entity provides a financial advice service if they give regulated financial advice to their clients on their own account, or they engage others to give regulated financial advice to their clients on their behalf. The term FAP can only be used from the start of the new financial advice regime on 15 March 2021. To use the term FAP from this date, an individual or entity must be registered on the Financial Service Providers Register and hold a transitional or full FAP licence.

Publicly available

Information is publicly available if the information is available on a website that is maintained by or on behalf of a FAP in a way that ensures—

- that the information, or a link to the information, is prominently displayed either on the home page or on an appropriate section of the site; and
- that the home page prominently displays a link to the appropriate section of the site (if the information is displayed on that section of the site); and
- that members of the public can easily access the information at all reasonable times.

Material change

A change to disclosure information is a material change if a reasonable client would expect the change to, or to be likely to, materially influence a decision about whether to seek or obtain advice from a particular person or provider or to act on advice that they have been given.

The stages of disclosure

Public disclosure (regulation 229Cⁱ)

This regulation gives retail clients access to information that will help them find a FAP that meets their needs.



Who must make disclosure?

All FAPs must make the prescribed information available by providing it in writing on request from a member of the public.

In addition, if a FAP has a website that is either maintained by the FAP (or by someone else on behalf of the FAP), the FAP must make all of the applicable information publicly available on the website.

When does information need to be disclosed?

Upon receiving a request from a member of the public, all FAPs must provide the required information (as requested) in writing, as soon as practicable. Where the FAP has a website, the prescribed information must be made publicly available on the website by 15 March 2021.

How does information need to be disclosed on a website?

Information needs to be 'publicly available'. This means that the required information (or a link to the information) must be prominently displayed either on the home page or on an appropriate section of the FAP's website. If the information is displayed on a section of the website, there must be a prominent link on the home page to that section. The relevant information must always be easily accessible to the public.

What information needs to be disclosed?

The following information (as applicable) must be made publicly available:

Licensing information	A summary of the licensing status of the FAP and a brief summary of any conditions on the licence that may limit or restrict the advice that can be given.
Nature and scope of the advice	Information relating to the types of advice that the FAP gives, the financial advice products that can be advised on (specifically or by adequate description), and whether there are any material limitations (including on the product providers whose products can be advised on).

Fees or expenses	An explanation of any fees that might be charged for financial advice, including the circumstances in which they may be payable.
Conflicts of interest and incentives	A description of any material conflicts of interests, an explanation of the circumstances in which material commissions or other incentives will be received and a brief explanation of how any conflicts will be managed.
Complaints handling and dispute resolution	An explanation of how to complain, and information regarding the internal complaints procedure and external dispute resolution scheme.
Duties information.	A statement that the advice must meet legal duties to meet standards of competence, knowledge and skill in the Code of Conduct; give priority to the client's interests; exercise care, diligence and skill; and meet standards of ethical behaviour, conduct and client care in the Code of Conduct.
Contact details	The name and contact details of the FAP.

When nature and scope of advice is known (regulation 229Dⁱⁱ)

Disclosure at this stage help clients decide whether to seek, obtain, or act on advice from a particular provider.



Who must make disclosure?

The individual adviser who gives financial advice to a client of a FAP needs to disclose the prescribed information to the client. This duty applies to the individual adviser who establishes the nature and scope of the advice, regardless of whether that same adviser ends up giving the actual advice to the client.

If the person giving disclosure at this stage is not likely to provide the advice to the client, the disclosure they provide (as it relates to details about the adviser) must be about the person(s) who is likely to give advice.

When does information need to be disclosed?

This regulation applies at the time the person providing financial advice knows (or ought reasonably

to know) the nature and scope of the advice that a client is seeking, or they are giving or intending to give to a client.

The information must be given at the time this regulation applies or if it is not practicable to do so, as soon as practicable after that time. In any event, the information required under this regulation must not be given any later than the time of disclosure when advice is given (regulation 229E, see below). There is flexibility around the timing of disclosure if the scope is agreed and advice is provided in the same conversation. The required information only needs to be disclosed once.

What information needs to be disclosed?

When the nature and scope of the advice is known, a person who gives advice (A) must give the following information (as is applicable):

Nature and scope of the advice	Information relating to the types of advice that will be given, the financial advice products that will be advised on (specifically or by adequate description), and whether there are any material limitations (including on the product providers whose products can be advised on).
Reliability history	Information regarding any recent material instances of being publicly disciplined, relevant convictions or civil proceedings and, in the case of financial advisers, any recent bankruptcies or insolvencies.
Identifying information	Information to help identify the FAP and financial adviser.
Fees and expenses	Information regarding any fees or expenses that may need to be paid in relation to the giving of financial advice, including the circumstances when they are payable, terms of payment, and the amount of any fees (if known) or how they will be determined and an estimate (if practicable).
Conflicts of interest and incentives	A description of any material conflicts of interests and any material commissions or other incentives that will or may be received, including the amount or value of these, who is involved, and a brief explanation of how any conflicts will be managed.
Availability of information	If not given in writing, a statement that the client is able to request the information in writing.

If a person other than A is likely to give the advice to the client, then the information provided pursuant to the above in relation to A must be information relating to that other person who is likely to give the advice, instead of A (and may relate to more than one person).

Regulation 229D is triggered irrespective of whether a provider is providing advice proactively, or in response to a client request. All that is required in either circumstance is that the provider knows or ought reasonably to know the nature and scope of that advice that the provider gives or intends to give to a client.

When advice is given (regulation 229Eⁱⁱⁱ)

Disclosure at this stage gives clients information that will help them to make an informed decision about whether to act on advice that they have been given.



Who must make disclosure?

The individual adviser who gives the financial advice to a client of a FAP needs to disclose the prescribed information to the client.

When does information need to be disclosed?

The information must be given before or at the same time the advice is given, or if it is not practicable to do so, as soon as practicable after the advice is given.

This information may also be given simultaneously with the information required by regulation 229D (i.e., at the time the nature and scope of the advice is known). There is flexibility around the timing of disclosure if the scope is agreed and advice is provided in the same conversation. The required information only needs to be disclosed once.

What information needs to be disclosed?

A person who gives advice must give the client the following information (as is applicable):

Fees and expenses	Where different from that previously disclosed, information regarding any fees or expenses that may need to be paid in relation to the giving of financial advice, or following the advice, including the circumstances
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	when they are payable, terms of payment, the amount of any fees (if known) or how they will be determined and an estimate (if practicable), and a statement about any fees or expenses in relation to acting on the advice.
Conflicts of interest and incentives	Where different from that previously disclosed, a description of any material conflicts of interests and any material commissions or other incentives that will or may be received, including the amount or value of these, who is involved, and a brief explanation of how any conflicts will be managed.
Complaints handling and dispute resolution	An explanation of how to complain, and information regarding the internal complaints procedure and external dispute resolution scheme. This can be a reference to the provider's website unless the information has materially changed.
Duties information	A statement that the advice must meet legal duties to meet standards of competence, knowledge and skill in the Code of Conduct; give priority to the client's interests; exercise care, diligence and skill; and meet standards of ethical behaviour, conduct and client care in the Code of Conduct.
Identifying information	Information to help identify the FAP and financial adviser.
Availability of information	If not given in writing, a statement that the client is able to request the information in writing.

When a complaint is made (regulation 229F^{iv})

What is a complaint?

A complaint is an expression of dissatisfaction relating to the FAP's financial advice service to which a response or a resolution is explicitly or implicitly expected (including dissatisfaction with any advice given by the FAP or on its behalf). This definition aligns with the FMA's standard licence condition and other related legislation.

Who must make disclosure?

The FAP, or person engaged by the FAP to give advice on its behalf that receives the complaint must give the complainant certain prescribed information.

When does information need to be disclosed?

After receiving a complaint, the information must be given to the complainant within two working days, or if it is not practicable to do so, as soon as practicable after that time. If the complaint is resolved to the complainant's satisfaction before disclosure is made, subsequent disclosure is not required.

What information needs to be disclosed?

When a complaint is received, the following information must be provided to the complainant:

- An overview of the FAP's complaints handling process; and
- Prescribed information about the FAP's disputes resolution scheme.

How do I make disclosure?

Any information that is provided for the purposes of disclosure in any of the above cases must:

- Be presented in a clear, concise, and effective manner; and
- If it is presented with other information, be given prominence; and
- If it is presented in writing, be in a format, font, and type size that are easily readable; and
- Be made available or given free of charge.



Provided that the above requirements are met, the disclosure information can be made available or given to clients in any form and manner reasonably considered appropriate. There is no specified format for disclosure, except that the information must be available to clients in writing, and it must be clear, concise and effective.

For the purpose of disclosure on a FAP's website, the information (or a link to the information) must be prominently displayed either on the home page or on an appropriate section of the FAP's website. If the information is displayed on a section of the website, there must be a prominent link on the home page to that section. The relevant information must always be easily accessible to the public.

Can disclosure be made verbally?

It is possible to disclose the required information verbally – plain language must be used so that clients can understand the information they are being provided, and the information must be presented clearly, concisely and effectively. The FAP must also provide disclosure in writing if the client requests it. Also note the record keeping standard condition for FAP licences.

Do I have to disclose commission in dollars or as a percentage?

The Regulations do not state whether dollars or percentages should be used. The requirement is that disclosure relating to commissions must be clear, concise and effective. Although commission may be disclosed in either dollars or as a percentage, if the dollar value of a commission is known at the time of disclosure, it is clearer and more effective to express the commission in dollar terms than as a percentage.

Next Steps?

- If your business has a website, ensure that the required information is presented on it and is up to date. The information (or a link to the information) needs to be prominently displayed on the home page or on an appropriate section of the website. This preparation work needs to occur before 15 March 2021 and be implemented on 15 March 2021.
- Build new FAP disclosure statements and materials. Ensure that the language is easy to understand, clear and concise and the necessary information is provided, is effective and is up to date. Strategi will provide templates for client use. Advisers and QFEs will need to comply with the current disclosure obligations up until 14 March 2021 and switch to the new disclosure regime on 15 March 2021.
- Identify the relevant stages when information will need to be provided to clients. What are the relevant stages in your business' current processes that trigger disclosure? How will this change?
- Redesign your advice document templates if you intend to build the disclosure obligations into those documents.
- Implement a disclosure process that complies with the Regulations and ensures that the correct disclosure information is provided to clients at the correct times.

- Familiarise staff with the new legislation and provide training on the new disclosure requirements and processes. Ensure that individuals who give advice on behalf of the FAP understand their obligations under the Regulations and what the business' processes are for identifying when disclosure needs to be given and for providing disclosure.
- Prepare early and ensure your business is compliant and that you are in a position to satisfy the new disclosure requirements by 15 March 2021.

Strategi can assist with:

- Reviewing and drafting your disclosure materials and documents to ensure they are compliant with the Regulations.
- Designing disclosures and processes to fit within your existing processes, which are tailored to the type of service that you provide and will help your business to stay compliant under the new regime.

Strategi is here to help and can provide disclosure templates if required.

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ⁱ S229C, Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020
ⁱⁱ S229D, Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020
ⁱⁱⁱ S229E, Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020
^{iv} S229F, Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020